

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H

D

HOUSE BILL 951  
PROPOSED COMMITTEE SUBSTITUTE H951-CSRIf-22 [v.7]  
06/15/2021 12:18:47 PM

Short Title: Modernize Energy Generation.

(Public)

Sponsors:

Referred to:

May 12, 2021

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODERNIZE NORTH CAROLINA'S GENERATION AND GRID  
3 RESOURCES AND RATEMAKING AND INVEST IN CRITICAL ENERGY  
4 INFRASTRUCTURE FOR THE BENEFIT OF CUSTOMERS.  
5 .

6 The General Assembly of North Carolina enacts:  
7

8 **PART I. CERTAIN REQUIREMENTS FOR GRID MODERNIZATION AND**  
9 **INVESTMENT IN CRITICAL ENERGY INFRASTRUCTURE**

10 **SECTION 1.(a)** Findings. – The General Assembly of North Carolina finds:

- 11 (1) In order to ensure predictable and low customer electricity costs, promote  
12 economic development, protect the continued long-term reliability of electric  
13 service, and protect the environment, it is in the public interest of the State to  
14 seek to continue the transition away from coal-fired electricity generation in  
15 an orderly and disciplined manner.
- 16 (2) Over-reliance on coal-fired electricity generation carries financial and  
17 operational risks in light of the future potential for limited coal supply options  
18 due to coal market consolidation, future potential coal market constraints, and  
19 coal price unpredictability. These risks are increased when combined with the  
20 effects of likely future stringent federal environmental regulations, including  
21 future potential tax or other costs, direct or indirect, imposed on coal-fired  
22 electricity generation.
- 23 (3) In transitioning away from coal-fired electricity generation given uncertainty  
24 of long term fuel supply and environmental regulation, it is in the public  
25 interest and the policy of the State that maintaining predictable and affordable  
26 customer electricity costs and maintaining continued long-term reliability of  
27 the electric grid are the most significant factors in determining replacement  
28 generating resources.
- 29 (4) It is in the public interest for the electric public utilities to accelerate retirement  
30 of certain coal-fired electric generating facilities in an orderly and disciplined  
31 manner that (i) ensures continued electric system reliability for all customers,  
32 (ii) mitigates the financial and operational risks associated with potential rapid  
33 coal-fired electric generating facility retirement over a short period of time in  
34 the future, (iii) seeks to maximize the overall value and lower the overall cost  
35 of such future transition, (iv) seeks to reduce the risk of future rate shock  
36 arising from the need for a more compressed transition, (v) delivers to electric



- 1 utility customers financial and operational benefits from diverse and new  
2 electric generation technologies, and (vi) will result in a reduction by 2030 of  
3 electric power sector CO2 emissions of at least 61% over 2005 levels.
- 4 (5) The plan set forth herein is generally consistent with the electric public  
5 utilities' current integrated resource plan and this Act will allow the electric  
6 public utilities to implement their integrated resource plans in a more efficient  
7 manner.
- 8 (6) The plan set forth herein will provide an "all of the above" approach to  
9 replacing a limited number coal-fired power plants with a combination of  
10 natural gas, nuclear, solar and storage generating technologies.
- 11 (7) It is in the public interest to decrease the number of rate cases and reduce the  
12 regulatory lag that currently delays and hinders certain capital investments  
13 which would bring or maintain benefit to customers served by the electric  
14 public utilities.
- 15 (8) To facilitate the investments necessary to transition from coal-fired electricity  
16 generation in a manner that ensures predictable and affordable customer  
17 electricity costs, the General Assembly declares that it is in the public interest  
18 for the North Carolina Utilities Commission to authorize the use of  
19 performance-based regulation for electric utilities in order to achieve and  
20 encourage all of the following:
- 21 a. Alignment of electric public utilities' incentives with customer and  
22 societal interests through regulatory mechanisms that reward  
23 improved operations and increased program effectiveness,
- 24 b. Electric public utilities' innovation in service delivery to customers.
- 25 c. Electric public utilities' investments to make the grid smarter, more  
26 resilient to adverse weather and to cyber and physical security threats,  
27 and capable of accommodating more renewable and distributed energy  
28 resources onto the system.
- 29 d. More efficient use of energy by customers by decoupling electric  
30 public utility revenues from customer consumption.
- 31 e. Multi-year rate planning to maintain predictable and affordable rates  
32 and reduce regulatory lag on necessary investments.

33 **SECTION 1.(b) Definitions.** – For purposes of Part I of this act, the following definitions  
34 shall apply:

- 35 (1) "Coal retirement and replacement plan" means a plan, as described further in  
36 subsection (d) of this section, for retiring a subcritical coal-fired electric  
37 generating facility located in North Carolina by December 31, 2030, and the  
38 replacement of such facility with a new source of energy and capacity.
- 39 (2) "Designated replacement resources" means those resources that are prescribed  
40 in subsection (c) of this section and those replacement resources that are  
41 approved by the Commission pursuant to subsection (d) of this section to  
42 replace the capacity and energy lost by the retirement of the remaining  
43 subcritical coal-fired generating facility.
- 44 (3) "Energy storage system" or "ESS" means a system, equipment, facility, or  
45 technology relating to the electric grid that: (i) is capable of absorbing or  
46 receiving electrical energy, storing such energy for a period of time, and  
47 dispatching electrical energy after storage; and (ii) uses a mechanical,  
48 electrical, chemical, electrochemical, or thermal process to store such energy.
- 49 (4) "Subcritical coal-fired generating facilities" means the remaining units of the  
50 Allen Plant located in Gaston County, Marshall Units 1 and 2 located in

1 Catawba County, the Roxboro Plant located in Person County, Cliffside Unit  
2 5 located in Cleveland County, and the Mayo Plant located in Person County.

3 **SECTION 1.(c)** Subcritical coal fired generating facilities; specific requirements  
4 for retirement and associated designated replacement resources. – In order to continue the  
5 transition away from coal-fired electricity generation in an orderly and disciplined manner, and  
6 to minimize the financial and operational risks to customers of over reliance on coal generation,  
7 the electric public utilities shall retire all subcritical coal-fired generating facilities by December  
8 31, 2030 in the manner and subject to the conditions described herein.

9 (1) Allen Plant. – Except as provided in subdivisions (1) and (2) of subsection (e)  
10 of this section, the remaining units of the Allen Plant shall be retired on or  
11 before December 31, 2023. On or near the site of the Allen Plant, but in no  
12 event outside of Gaston County, the applicable electric public utility shall  
13 procure and own designated replacement resources comprised of one or more  
14 energy storage systems with a total capacity of approximately 20 MW AC /  
15 80 megawatt hours (MWh). The applicable electric public utility shall exert  
16 reasonable efforts to ensure that the designated replacement resources are  
17 constructed according to a timeline that allows for retirement of the coal-fired  
18 generating facility by the targeted retirement dates, and the utility shall  
19 provide updates to the Utilities Commission regarding the status of such  
20 efforts in its integrated resource plans.

21 (2) Marshall Units 1 and 2. – Except as provided in subdivisions (1) and (2) of  
22 subsection (e) of this section, Marshall Units 1 and 2 shall be retired on or  
23 before December 31, 2026. On or near the site of the Marshall Plant, but in no  
24 event outside of Catawba County, the applicable electric public utility shall  
25 procure and own designated replacement resources comprised of natural gas  
26 fueled simple cycle combustion turbine generating facilities with a generating  
27 capacity totaling approximately 900 MW; provided that the electric public  
28 utility shall be permitted to propose a smaller combustion turbine generating  
29 facility where the electric public utility determines that technological or other  
30 constraints so require. The applicable electric public utility shall exert  
31 reasonable efforts to ensure that the designated replacement resources are  
32 constructed according to a timeline that allows for retirement of the coal-fired  
33 generating facility by the targeted retirement dates, and the utility shall  
34 provide updates to the Utilities Commission regarding the status of such  
35 efforts in its integrated resource plans.

36 (3) Roxboro Plant. –

37 a. A coal retirement and replacement plan shall be filed for the Roxboro  
38 Plant, on or before September 1, 2024. With respect to the designated  
39 replacement resource for the Roxboro Plant, the replacement resource  
40 shall be a generating facility located on the Roxboro Plant site that  
41 satisfies all of the following criteria:

- 42 1. The resource has continuous generating and dispatch  
43 capabilities and other operating characteristics that provide  
44 system reliability benefits that are equal to or greater than the  
45 retiring Roxboro Plant.
- 46 2. The resource provides effective load carrying capability  
47 sufficient to ensure continued reliability of the system.
- 48 3. The resource has the ability to deliver continuous power at or  
49 near the maximum capacity of the resource for a continuous  
50 period of one week or longer without reliance on other grid  
51 resources.

1                   b.     In the event that the applicable electric public utility, in its reasonable  
2                   discretion, determines that it will be unable or infeasible to procure or  
3                   construct a generating facility at the Roxboro Plant site that satisfies  
4                   the criteria set forth in sub-sub-subdivisions a.1. through a.3. of this  
5                   subdivision, the replacement resource shall be one or more alternative  
6                   replacement generation options to be identified, procured, and owned  
7                   by the electric public utility that satisfies those criteria, but may be  
8                   located on one or more sites owned by one of the applicable electric  
9                   public utilities.

10           (4)     Cliffside Unit 5. – A coal retirement and replacement plan shall be filed for  
11           Cliffside Unit 5 on or before September 1, 2027. With respect to designated  
12           replacement resources for the facility, the replacement resource shall be an  
13           energy storage system to be procured and owned by the applicable electric  
14           public utility. The applicable electric public utility shall seek to locate a  
15           substantial portion of the ESS on the Cliffside Unit 5 site, but shall be  
16           permitted to site such ESS on or near other electric public utility property  
17           where such siting will provide increased benefit to customers.

18           (5)     Mayo Plant. – A coal retirement and replacement plan shall be filed for the  
19           Mayo Plant on or before September 1, 2027. With respect to designated  
20           replacement resources for these facilities, the replacement resource for each  
21           facility shall be an ESS to be procured and owned by the applicable electric  
22           public utility. The applicable electric public utility shall seek to locate a  
23           substantial portion of the ESS on the site of the applicable subcritical  
24           coal-fired generating facility, but shall be permitted to site such ESS on or  
25           near other electric public utility property where such siting will provide  
26           increased benefit to customers.

27     **SECTION 1.(d) Coal retirement and replacement plans generally. –**

28     (1)     A coal retirement and replacement plan shall include all of the following:

29           a.     The proposed retirement date for the applicable subcritical coal-fired  
30           generating facility and the reasons for that proposed retirement date.

31           b.     The proposed size and location of the replacement resource or  
32           resources intended to replace the energy and capacity of the subcritical  
33           coal-fired generating facility in order to ensure safe, reliable, and  
34           cost-effective service to the electric public utility's customers and the  
35           projected timing of the commercial operation of such replacement  
36           resource or resources.

37           c.     A forecast of capital costs, fuel costs, other operation and maintenance  
38           costs, and the capacity factors of the proposed replacement resource,  
39           as well as any assumptions about future regulatory compliance costs.

40           d.     In the case of replacement resources that would require a certificate  
41           under G.S. 62-110.1 or otherwise, to the extent not already required  
42           above, the information that would be required in connection with an  
43           application for certificate of a generating facility under G.S. 62-110.1,  
44           except that the information required under or in connection with  
45           G.S. 62-110.1(d) shall not be required.

46     (2)     After receipt of a coal retirement and replacement plan, the Commission shall  
47     do all of the following:

48           a.     Establish a procedural schedule to allow interested parties to intervene  
49           in the proceeding, to facilitate discovery of evidence between and  
50           among parties to the proceeding, and to receive comments of the  
51           parties and the filing of any direct or rebuttal expert witness testimony.

- 1                   b.     Hold a single public hearing and require the applicant to publish a  
2                   single notice of the public hearing in a newspaper of general  
3                   circulation in the county in which the subcritical coal-fired generating  
4                   facility is located.  
5                   c.     Schedule an evidentiary hearing to allow for the cross-examination of  
6                   expert witnesses, to resolve all contested issues between the parties to  
7                   the proceeding, and to address any questions or issues the Commission  
8                   may raise upon its own motion.  
9                   (3)    After completion of the process described in subdivision (2) of this subsection,  
10                  the Commission shall issue an order approving, modifying, or rejecting an  
11                  electric public utility's coal retirement and replacement plan within 180 days  
12                  after the filing thereof. The Commission shall approve a coal retirement and  
13                  replacement plan if it finds all of the following:  
14                  a.     The coal retirement and replacement plan complies with the applicable  
15                  requirements set forth in this subsection;  
16                  b.     The replacement resource proposed in a coal retirement and  
17                  replacement plan is sized appropriately to: (i) ensure sufficient energy  
18                  on an hourly basis over an annual period, and ensure sufficient  
19                  capacity to serve anticipated peak electrical load plus an adequate  
20                  planning reserve margin based upon the applicable electric public  
21                  utility's then current projections of customer load requirements; and  
22                  (ii) provide equivalent ancillary services and ensure compliance with  
23                  any applicable reliability standards, including the North American  
24                  Electric Reliability Corporation's (NERC) reliability standards.  
25                  c.     The electric public utility has reasonably and prudently utilized  
26                  competitive equipment procurement practices to ensure that the  
27                  projected cost of the proposed replacement resource is reasonable in  
28                  accordance with the requirements set forth in subdivisions (3) through  
29                  (5) of subsection (c) of this section.  
30                  (4)    In a decision issued pursuant to subdivision (3) of this subsection approving  
31                  any replacement resource, the Commission shall include an approved  
32                  construction cost for each such replacement resource. If a replacement  
33                  resource requires a certificate of public convenience and necessity under  
34                  G.S. 62-110.1 or otherwise, and is approved by the Commission under this  
35                  section, such replacement resource shall be deemed consistent with the public  
36                  convenience and necessity and public interest for purposes of G.S. 62-110.1  
37                  and the Commission shall issue a certificate of public convenience and  
38                  necessity for such replacement resources at the time of its approval, and no  
39                  further process shall be required under G.S. 62-110.1 except as otherwise  
40                  addressed herein.

41                   **SECTION 1.(e)** General provisions applicable to retirement of subcritical coal-fired  
42                  generating facilities. –

- 43                  (1)    Notwithstanding any date established under subsections (c) or (d) of this  
44                  section that requires retirement of a subcritical coal-fired generating facility,  
45                  in the event the applicable electric public utility determines that the retirement  
46                  of any such facility would have the potential to compromise reliability of the  
47                  electric public utility's service, or otherwise impact the ability of the electric  
48                  public utility to comply with any applicable reliability requirements, the  
49                  electric public utility shall file notice with the Commission describing the  
50                  reliability issues preventing compliance with the requirement for retirement  
51                  by the date specified, and requesting a delay of retirement date. Upon receipt

of a notice and request for retirement delay as authorized by this subdivision, the Commission may conduct a hearing regarding such delay, and shall issue an order approving or rejecting the request for delay within 90 days of receipt of such notice and request.

- (2) In order to ensure the continued reliability of the electric system, no subcritical coal-fired generating facilities shall be retired unless and until the applicable designated replacement resource has been placed in-service; provided, however, that the electric public utility shall be authorized to retire the subcritical coal-fired generating facility prior to the in-service date of the applicable designated replacement resource if the electric public utility determines that it will be able to maintain reliable service in that circumstance.
- (3) In the case of each subcritical coal-fired generating facility that is retired pursuant to this section, the applicable electric public utility shall be permitted to establish a regulatory asset for the remaining net book value of each subcritical coal-fired generating facility and amortize the regulatory asset at the same rate the subcritical coal-fired generating facility was previously being depreciated. The regulatory asset shall be included in rate base for ratemaking purposes, and in a future general rate proceeding, the Commission shall establish an amortization period for recovery and allow a return on the unamortized balance at the electric public utility's then authorized, net-of-tax, weighted average cost of capital.

**SECTION 1.(f)** General provisions applicable to designated replacement resources and renewable generating facilities purchased and owned by the electric public utilities pursuant to G.S. 62-110.8 through procurements occurring after January 1, 2021. –

- (1) In order to ensure predictable and affordable customer electricity costs for all customers and to ensure an orderly and disciplined transition, the applicable electric utility shall, in the case of the generating facilities and ESS required to be procured pursuant to subsection (c) of this section, utilize competitive procurement in compliance with the requirements of G.S. 62-110.8 for the design, engineering, and construction of such generating facilities and ESS.
- (2) The designated replacement resources identified in subsection (c) of this section that require a certificate of public convenience and necessity under G.S. 62-110.1, or otherwise, shall be deemed consistent with the public convenience and necessity and public interest for purposes of G.S. 62-110.1 so long as the applicable electric public utility reasonably and prudently procures such replacement generation in a manner consistent with subdivision (1) of this subsection. The renewable generating facilities and ESS purchased and owned by the electric public utilities pursuant to G.S. 62-110.8 through procurements occurring after January 1, 2021 shall be deemed consistent with the public convenience and necessity and public interest for purposes of G.S. 62-110.1 so long as the renewable generating facilities and ESS were procured in compliance with the procurement process established under G.S. 62-110.8.
- (3) Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited decision on an application for a certificate of public convenience for all such resources. The Commission shall render its decision on an application for a certificate, including any related transmission line needed for the new generation facility, within 90 days of the date the application is filed. An application for a certificate of public convenience and necessity to construct or procure those designated replacement resources identified in subsection (c) of this section that require a certificate of public convenience and necessity

and the renewable generating facilities purchased and owned by the electric public utilities pursuant to G.S. 62-110.8 through procurements occurring after January 1, 2021 shall be subject to all of the following:

- a. The applicable electric public utility shall provide written notice to the Commission of the date the electric public utility intends to file an application no less than 30 days prior to the submission of the application.
  - b. When the electric public utility applies for a certificate as provided in this subdivision, it shall submit to the Commission an estimate of the costs of construction of the generating facility in such detail as the Commission may require.
  - c. G.S. 62-110.1(d) and (e) and G.S. 62-82(a) shall not apply to such applications.
  - d. The Commission shall hold a single public hearing for such applications and require the applicant to publish a single notice of the public hearing in a newspaper of general circulation in the county in which the generating facility is located.
- (4) The electric public utilities shall be permitted to recover from its customers the reasonably and prudently incurred cost of all generation facilities and energy storage systems purchased or constructed pursuant to subsections (c) or (d) of this section. In the case of an energy storage system approved by the Commission pursuant to subsection (d) of this section, there shall be a rebuttable presumption that the electric public utility's actual costs are reasonable and prudent if such actual costs are at or below the projected costs approved by the Commission. In the case of certificated generation facility approved by the Commission pursuant to this subsection or subsection (d) of this section or procured pursuant to G.S. 62-110.8, notwithstanding G.S. 62-110.1(f1), there shall be a rebuttable presumption that the electric public utility's actual costs are reasonable and prudent if such actual costs are at or below the projected costs approved by the Commission; provided that upon the request of the electric public utility or upon its own motion pursuant to G.S. 62-110.1(f), the Commission may conduct an ongoing review of construction of the facility under G.S. 62-110.1(f), in which case the cost recovery provisions of G.S. 62-110.1(f1) shall apply except that the electric public utility may seek cost recovery in a rate case under either G.S. 62-133 or G.S. 62-133.16. The electric public utilities shall be permitted to establish a regulatory asset and defer to such regulatory asset the incremental costs of all such costs incurred pursuant to this section until such time as the costs can be reflected in customer rates. The types of incremental costs that may be deferred include, but are not limited to, operation and maintenance expenses, administration costs, property tax, depreciation expenses, income taxes, carrying costs related to electric plant investments, and regulatory assets at the electric public utility's then authorized, net-of-tax, weighted average cost of capital.

**SECTION 1.(g)** G.S. 62-110.8 reads as rewritten:

**"§ 62-110.8. Competitive procurement of renewable energy.**

- (a) Each electric public utility shall file for Commission approval a program for the competitive procurement of energy and capacity from renewable energy facilities with the purpose of adding renewable energy to the State's generation portfolio in a manner that allows the State's electric public utilities to continue to reliably and cost-effectively serve customers' future energy needs. Renewable energy facilities eligible to participate in the competitive

1 procurement shall include those facilities that use renewable energy resources identified in  
2 G.S. 62-133.8(a)(8) ~~but but~~, except as provided in subsection (b1) of this section, shall be limited  
3 to facilities with a nameplate capacity rating of 80 megawatts (MW) ~~(MW) AC~~ or less that are  
4 placed in service after the date of the electric public utility's initial competitive procurement.  
5 Subject to the limitations set forth in subsections (b) and (c) of this section, the electric public  
6 utilities shall issue requests for proposals to procure and shall procure, energy and capacity from  
7 renewable energy facilities in the aggregate amount of ~~2,660 megawatts (MW)~~, and the total  
8 amount shall be reasonably allocated over a term of 45 months beginning when the Commission  
9 approves the program ~~7,327 megawatts (MW) AC~~, such amount being inclusive of those solar  
10 generating facilities to be procured pursuant to G.S. 62-126.8B and G.S. 62-126.8A, and the total  
11 amount shall be reasonably allocated over a term of 105 months beginning when the Commission  
12 approves the program; provided, however, that the electric public utilities shall conduct an annual  
13 procurement of approximately 777 megawatts (MW) AC each calendar year beginning in 2021  
14 and concluding in 2026. The electric public utilities shall be permitted to petition the Commission  
15 for approval to modify the procurement schedule established herein in the event that  
16 administration of annual procurements becomes impractical due to the need to align with then  
17 existing interconnection study processes or other factors beyond the utilities' control, and the  
18 Commission shall approve such modifications if it determines that the modifications would be in  
19 the public interest. The Commission shall require the additional competitive procurement of  
20 renewable energy capacity by the electric public utilities in an amount that includes all of the  
21 following: (i) any unawarded portion of the initial competitive procurement required by this  
22 subsection; (ii) any deficit in renewable energy capacity identified pursuant to subdivision (1) of  
23 subsection (b) of this section; and (iii) any capacity reallocated pursuant to G.S. 62-159.2. In  
24 addition, at the termination of the initial competitive procurement period of ~~45~~105 months, the  
25 offering of a new renewable energy resources competitive procurement and the amount to be  
26 procured shall be determined by the Commission, based on a showing of need evidenced by the  
27 electric public utility's most recent biennial integrated resource plan or annual update approved  
28 or accepted by the Commission pursuant to G.S. 62-110.1(e) G.S. 62-110.1(c); provided that the  
29 percentage allocation of ownership between third parties and the electric public utilities for all  
30 procurements commencing after January 1, 2021 that is specified in subsection (b1) of this  
31 section shall apply to any such additional procurements.

32 (b) Electric public utilities may jointly or individually implement the aggregate  
33 competitive procurement requirements set forth in subsection (a) of this section ~~and and~~, with  
34 respect to procurements commencing prior to January 1, 2021, may satisfy such requirements for  
35 the procurement of renewable energy capacity to be supplied by renewable energy facilities  
36 through any of the following: (i) renewable energy facilities to be acquired from third parties and  
37 subsequently owned and operated by the soliciting public utility or utilities; (ii) renewable energy  
38 facilities to be constructed, owned, and operated by the soliciting public utility or utilities subject  
39 to the limitations of subdivision (4) of this subsection; or (iii) the purchase of renewable energy,  
40 capacity, and environmental and renewable attributes from renewable energy facilities owned  
41 and operated by third parties that commit to allow the procuring public utility rights to dispatch,  
42 operate, and control the solicited renewable energy facilities in the same manner as the utility's  
43 own generating resources.

44 (b1) All procurements required by subsection (a) of this section commencing after January  
45 1, 2021, shall be subject to the following requirements:

- 46 (1) Forty-five percent (45%) of the total MW (AC) of renewable energy facilities  
47 scheduled to be procured in procurements commencing after January 1, 2021  
48 shall be supplied through the purchase of renewable energy, capacity, and  
49 environmental and renewable attributes from renewable energy facilities  
50 owned and operated by third parties that commit to allow the procuring  
51 electric public utility rights to dispatch, operate, and control the solicited



1 renewable energy facilities in the same manner as the utility's own  
2 generating resources.

3 (2) Fifty-five percent (55%) of the total MW (AC) of renewable energy facilities  
4 scheduled to be procured through procurements commencing after January 1,  
5 2021 shall be supplied from renewable energy facilities to be acquired or  
6 otherwise sourced from third parties and owned and operated by the soliciting  
7 electric public utility. The cap on facility nameplate capacity of 80 megawatts  
8 (MW) AC or less established by subsection (a) of this section shall not apply  
9 to facilities procured pursuant to this subdivision.

10 (b2) Procured renewable energy capacity, as provided for in this section, shall be subject  
11 to the following limitations:

12 (1) ~~If prior to the end of the initial 45-month competitive procurement period the~~  
13 ~~public utilities subject to this section have executed power purchase~~  
14 ~~agreements and interconnection agreements for renewable energy capacity~~  
15 ~~within their balancing authority areas that are not subject to economic dispatch~~  
16 ~~or curtailment and were not procured pursuant to G.S. 62-159.2 having an~~  
17 ~~aggregate capacity in excess of 3,500 megawatts (MW), the Commission shall~~  
18 ~~reduce the competitive procurement aggregate amount by the amount of such~~  
19 ~~exceedance. If the aggregate capacity of such renewable energy facilities is~~  
20 ~~less than 3,500 megawatts (MW) at the end of the initial 45-month competitive~~  
21 ~~procurement period, the Commission shall require the electric public utilities~~  
22 ~~to conduct an additional competitive procurement in the amount of such~~  
23 ~~deficit. In the event that it is reasonably projected that, on or before January~~  
24 ~~1, 2027, the electric public utilities subject to the procurement obligation~~  
25 ~~under subsection (a) of this section will have executed power purchase~~  
26 ~~agreements and interconnection agreements with renewable generating~~  
27 ~~facilities within their balancing authority areas having an aggregate MW~~  
28 ~~capacity (AC) in excess of 3,500 MW (AC), exclusive of power purchase~~  
29 ~~agreements entered into pursuant to this section, G.S. 62-159.2, and~~  
30 ~~G.S. 62-62-126.8B, the Commission shall reduce the total aggregate MW~~  
31 ~~capacity (AC) of renewable generating facilities required for procurement~~  
32 ~~under this section by an amount equal to the difference between: (i) the actual~~  
33 ~~amount of aggregate MW capacity (AC) of renewable generating facilities~~  
34 ~~with executed power purchase agreements and interconnection agreements,~~  
35 ~~including all such renewable generating facilities located in the electric public~~  
36 ~~utility's balancing authority area, whether located inside or outside the~~  
37 ~~geographic boundaries of the State but exclusive of power purchase~~  
38 ~~agreements entered into pursuant to this section, G.S. 62-159.2, and~~  
39 ~~G.S. 62-62-126.8B; and (ii) 3,500 MW (AC).~~

40 (2) To ensure the cost-effectiveness of ~~procured~~ new renewable energy resources,  
41 ~~each public utility's procurement obligation~~ the price to be paid under any  
42 ~~power purchase agreements for third-party owned resources, combined with~~  
43 ~~the cost of any necessary transmission or distribution upgrade, shall be capped~~  
44 ~~by the public utility's current forecast of its avoided cost calculated over the~~  
45 ~~term of the power purchase agreement. The public utility's current forecast of~~  
46 ~~its avoided cost shall be consistent with the Commission-approved avoided~~  
47 ~~cost methodology.~~

48 (3) Each public utility shall submit to the Commission for approval and make  
49 publicly available at 30 days prior to each competitive procurement  
50 solicitation a pro forma ~~contract~~ power purchase agreement to be utilized for  
51 the purpose of informing market participants of terms and conditions of the

1 competitive procurement. Each pro forma ~~contract power purchase agreement~~  
2 shall define limits and compensation for resource dispatch and curtailments.  
3 The pro forma ~~contract power purchase agreement~~ shall be for a term of 20  
4 years; provided, however, the Commission may approve a contract term of a  
5 different duration if the Commission determines that it is in the public interest  
6 to do so.

- 7 (4) ~~No~~ With respect only to those procurements commencing prior to January 1,  
8 2021, more than thirty percent (30%) of an electric public utility's competitive  
9 procurement requirement may be satisfied through the utility's own  
10 development of renewable energy facilities offered by the electric public  
11 utility or any subsidiary of the electric public utility that is located within the  
12 electric public utility's service territory. This limitation shall not apply to any  
13 renewable energy facilities acquired by an electric public utility that are  
14 selected through the competitive procurement and are located within the  
15 electric public utility's service territory.

16 (c) Subject to the aggregate competitive procurement requirements established by this  
17 section, the electric public utilities shall have the authority to determine the location and allocated  
18 amount of the competitive procurement within their respective balancing authority areas, whether  
19 located inside or outside the geographic boundaries of the State, taking into consideration (i) the  
20 State's desire to foster diversification of siting of renewable energy resources throughout the  
21 State; (ii) the efficiency and reliability impacts of siting of additional renewable energy facilities  
22 in each public utility's service territory; and (iii) the potential for increased delivered cost to a  
23 public utility's customers as a result of siting additional renewable energy facilities in a public  
24 utility's service territory, including additional costs of ancillary services that may be imposed due  
25 to the operational or locational characteristics of a specific renewable energy resource  
26 technology, such as nondispatchability, unreliability of availability, and creation or exacerbation  
27 of system congestion that may increase redispatch costs. In the case of renewable energy facilities  
28 to be procured and owned by the electric public utilities pursuant to this section, the electric  
29 public utilities shall be permitted through the competitive processes described herein to solicit  
30 bids for the construction of such renewable energy facilities on or near property owned or  
31 controlled by the electric public utility, including the site of any retiring subcritical coal-fired  
32 generating facility, where such sites will provide benefits to customers, including through  
33 reduced interconnection or infrastructure costs.

34 (d) For all procurements commencing prior to January 1, 2022, the~~The~~ competitive  
35 procurement of renewable energy capacity established pursuant to this section shall be  
36 independently administered by a third-party entity to be approved by the ~~Commission. The~~  
37 ~~third-party entity shall~~ Commission; provided that in the case of any procurement commencing  
38 after January 1, 2021 but prior to January 1, 2022, the electric public utilities shall be permitted  
39 to directly assist the third-party entity and provide input on all aspects of the procurement and  
40 shall collaborate with the third-party entity to -develop and publish the methodology used to  
41 evaluate responses received pursuant to a competitive procurement solicitation and to ensure that  
42 all responses are treated equitably. For all procurements commencing after January 1, 2022, the  
43 competitive procurement of renewable energy capacity required pursuant to this section shall be  
44 administered by the electric public utilities in accordance with the rules to be adopted pursuant  
45 to subdivision (1) of subsection (h) of this section, and subject to oversight and evaluation by a  
46 third-party entity to be approved by the Commission. All reasonable and prudent administrative  
47 and related expenses incurred to implement this subsection shall be recovered from market  
48 participants through administrative fees levied upon those that participate in the competitive  
49 bidding process, as approved by the Commission.

50 (e) ~~An~~ With respect only to those procurements commencing prior to January 1, 2021,  
51 an electric public utility may participate in any competitive procurement process, but shall only

1 participate within its own assigned service territory. If the public utility uses nonpublicly  
2 available information concerning its own distribution or transmission system in preparing a  
3 proposal to a competitive procurement, the public utility shall make such information available  
4 to third parties that have notified the public utility of their intention to submit a proposal to the  
5 same request for proposals.

6 (e1) In the case of all procurements commencing after January 1, 2021, neither the electric  
7 public utilities nor any of their affiliates shall be permitted to submit bids into the competitive  
8 procurement process or to have any financial interest in third-party bidders.

9 (f) For purposes of this section, the term "balancing authority" means the entity that  
10 integrates resource plans ahead of time, maintains load-interchange-generation balance within a  
11 balancing authority area, and supports interconnection frequency in real time, and the term  
12 "balancing authority area" means the collection of generation, transmission, and loads within the  
13 metered boundaries of the balancing authority, and the balancing authority maintains  
14 load-resource balance within this area.

15 (g) An electric public utility shall be authorized to recover the costs of all purchases of  
16 energy, capacity, and environmental and renewable attributes from third-party renewable energy  
17 facilities and to recover the authorized revenue of any utility-owned assets ~~that are procured~~  
18 pursuant to this section prior to January 1, 2021 through an annual rider approved by the  
19 Commission and reviewed annually. Provided it is in the public interest, the authorized revenue  
20 for any such renewable energy facilities owned by an electric public utility and procured pursuant  
21 to this section prior to January 1, 2021, may be calculated on a market basis in lieu of  
22 cost-of-service based recovery, using data from the applicable competitive procurement to  
23 determine the market price in accordance with the methodology established by the Commission  
24 pursuant to subsection (h) of this section. The annual increase in the aggregate amount of these  
25 costs that are recoverable by an electric public utility pursuant to this subsection shall not exceed  
26 one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross  
27 revenues for the preceding calendar year.

28 (g1) With respect to all procurements commencing after January 1, 2021, an electric public  
29 utility shall be permitted to recover from its customers the reasonably and prudently incurred  
30 costs paid under power purchase agreements executed pursuant to this section through the rider  
31 authorized under subsection (g) of this section; provided, however, costs that may be recovered  
32 by the utility for utility-owned renewable generating facilities shall be subject to the same cost  
33 caps established under subdivision (2) of subsection (b2) of this section applicable to power  
34 purchases of third-party owned resources. An electric public utility shall be permitted to establish  
35 a regulatory asset and defer to such regulatory asset the incremental costs of all such costs  
36 incurred pursuant to this section until such time as the costs can be reflected in customer rates.  
37 The types of incremental costs that may be deferred include, but are not limited to, operation and  
38 maintenance expenses, administration costs, property tax, depreciation expense, income taxes,  
39 carrying costs related to electric plant investments, and regulatory assets at the electric public  
40 utility's then authorized, net-of-tax, weighted average cost of capital.

41 (g2) In determining the most cost-effective proposals in any procurement process under  
42 this section, the electric public utility shall take into account the cost of any needed transmission  
43 or distribution upgrades but, in the case of any proposals selected by the electric public utility,  
44 such transmission or distribution upgrades costs shall not be directly assigned to the bidder, but  
45 instead shall be included in the electric public utility's rate base for ratemaking purposes. In  
46 addition, the electric public utility shall be permitted to establish a regulatory asset and defer to  
47 such regulatory asset the incremental cost of all such upgrades, along with associated carrying  
48 costs based on the electric public utility's then authorized net-of-tax, weighted average cost of  
49 capital, until such time as the costs can be reflected in customer rates. In a future general rate  
50 proceeding, the Commission shall establish an amortization period for recovery and allow a

1 return on the unamortized balance at the electric public utility's then authorized, net-of-tax,  
2 weighted average cost of capital.

3 (h) The Commission shall adopt rules to implement the requirements of this section, as  
4 follows:

- 5 (1) Oversight of the competitive procurement ~~program~~ program by the  
6 Commission and by independent third parties. No later than May 1, 2022, the  
7 Commission's rules shall be amended to provide for (i) administration of the  
8 procurement process, including establishing the selection methodology and  
9 selection of projects, by the electric public utilities subject to the oversight of  
10 an independent evaluator retained by the utilities pursuant to a contract  
11 approved by the Commission; (ii) approval by the Commission of the electric  
12 public utilities' selection methodology and the independent evaluator's review  
13 procedures; (iii) detailed reports by the independent evaluator to the  
14 Commission regarding the results of each procurement; and (iv) any further  
15 changes related to the foregoing, including modification of communication  
16 restrictions deemed appropriate by the Commission.
- 17 (2) To provide for a waiver of regulatory conditions or code of conduct  
18 requirements that would unreasonably restrict a public utility or its affiliates  
19 from participating in the competitive procurement ~~process~~, with respect to  
20 procurements occurring under this section prior to January 1, 2021, unless the  
21 Commission finds that such a waiver would not hold the public utility's  
22 customers harmless.
- 23 (3) Establishment of a procedure for expedited review and approval of certificates  
24 of public convenience and necessity, or the transfer thereof, for renewable  
25 energy facilities owned by the public utility and procured pursuant to this  
26 section. The Commission shall issue an order not later than 30 days after a  
27 petition for a certificate is filed by the public utility.
- 28 (4) Establishment of a methodology to allow an electric public utility to recover  
29 its costs pursuant to ~~subsection (g)~~ subsections (g), (g1), and (g2) of this  
30 section.
- 31 (5) Establishment of a procedure for the Commission to modify or delay  
32 implementation of the provisions of this section in whole or in part if the  
33 Commission determines that it is in the public interest to do so.

34 ..."

35 **SECTION 1.(h)** The requirements of subsections (a) through (g) of this section  
36 shall not apply to an electric public utility serving fewer than 150,000 North  
37 Carolina retail jurisdictional customers as of January 1, 2021.

38 **SECTION 1.(i)** G.S. 62-133.2 reads as rewritten:

39 **"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

40 ...

41 (d) The Commission shall provide for notice of a public hearing with reasonable and  
42 adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the  
43 Commission shall receive evidence from the utility, the Public Staff, and any intervenor desiring  
44 to submit evidence, and from the public generally. In reaching its decision, the Commission shall  
45 consider all evidence required under subsection (c) of this section as well as any and all other  
46 competent evidence that may assist the Commission in reaching its decision including changes  
47 in the cost of fuel consumed and fuel-related costs that occur within a reasonable time, as  
48 determined by the Commission, after the test period is closed. The Commission shall incorporate  
49 in its cost of fuel and fuel-related costs determination under this subsection the experienced  
50 over-recovery or under-recovery of reasonable costs of fuel and fuel-related costs prudently  
51 incurred during the test period, based upon the prudent standards set pursuant to subsection (d1)

1 of this section, in fixing an increment or decrement rider. Upon request of the electric public  
2 utility, the Commission shall also incorporate in this determination the experienced  
3 over-recovery or under-recovery of costs of fuel and fuel-related costs through the date that is 30  
4 calendar days prior to the date of the hearing, provided that the reasonableness and prudence of  
5 these costs shall be subject to review in the utility's next annual hearing pursuant to this section.  
6 The Commission shall use deferral accounting, and consecutive test periods, in complying with  
7 this subsection, and the over-recovery or under-recovery portion of the increment or decrement  
8 shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a  
9 general rate case. The burden of proof as to the correctness and reasonableness of the charge and  
10 as to whether the cost of fuel and fuel-related costs were reasonably and prudently incurred shall  
11 be on the utility. The Commission shall allow only that portion, if any, of a requested cost of fuel  
12 and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel and  
13 fuel-related costs prudently incurred under efficient management and economic operations.  
14 Efficient management and economic operations include actions and decisions that modify  
15 commitment and dispatch to manage seasonal demand, mitigate fuel supply security and  
16 transportation risk, and maintain dispatchable capacity value. In evaluating whether cost of fuel  
17 and fuel-related costs were reasonable and prudently incurred, the Commission shall apply the  
18 rule adopted pursuant to subsection (d1) of this section. To the extent that the Commission  
19 determines that an increment or decrement to the rates of the utility due to changes in the cost of  
20 fuel and fuel-related costs over or under base fuel costs established in the preceding general rate  
21 case is just and reasonable, the Commission shall order that the increment or decrement become  
22 effective for all sales of electricity and remain in effect until changed in a subsequent general rate  
23 case or annual proceeding under this section.

24 ...."

25 SECTION 1.(k) This section is effective when it becomes law.  
26  
27

## 28 AUTHORIZE FINANCING OF CERTAIN ENERGY TRANSITION COSTS

29

30 SECTION 2.(a) Article 8 of Chapter 62 of the General Statutes is amended by adding  
31 a new section to read:

### 32 "§ 62-173. Financing for certain energy transition costs.

33 (a) Definitions. – The following definitions apply in this section:

- 34 (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve  
35 account, surety bond, interest rate lock or swap arrangement, hedging  
36 arrangement, liquidity or credit support arrangement, or other financial  
37 arrangement entered into in connection with energy transition bonds.  
38 (2) Assignee. – A legally recognized entity to which a public utility assigns, sells,  
39 or transfers, other than as security, all or a portion of its interest in or right to  
40 energy transition property. The term includes a corporation, limited liability  
41 company, general partnership or limited partnership, public authority, trust,  
42 financing entity, or any entity to which an assignee assigns, sells, or transfers,  
43 other than as security, its interest in or right to energy transition property.  
44 (3) Bondholder. – A person who holds an energy transition bond.  
45 (4) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.  
46 (5) Commission. – The North Carolina Utilities Commission.  
47 (6) Energy transition bonds. – Bonds, debentures, notes, certificates of  
48 participation, certificates of beneficial interest, certificates of ownership, or  
49 other evidences of indebtedness or ownership that are issued by a public utility  
50 or an assignee pursuant to a financing order, the proceeds of which are used  
51 directly or indirectly to recover, finance, or refinance Commission-approved

1 energy transition costs and financing costs, and that are secured by or payable  
2 from energy transition property. If certificates of participation or ownership  
3 are issued, references in this section to principal, interest, or premium shall be  
4 construed to refer to comparable amounts under those certificates.

5 (7) Energy transition charge. – The amounts authorized by the Commission to  
6 repay, finance, or refinance energy transition costs and financing costs and  
7 that are nonbypassable charges (i) imposed on and part of all retail customer  
8 bills, (ii) collected by a public utility or its successors or assignees, or a  
9 collection agent, in full, separate and apart from the public utility's base rates,  
10 and (iii) paid by all existing or future retail customers receiving transmission  
11 or distribution service, or both, from the public utility or its successors or  
12 assignees under Commission-approved rate schedules or under special  
13 contracts, even if a customer elects to purchase electricity from an alternative  
14 electricity supplier following a fundamental change in regulation of public  
15 utilities in this State.

16 (8) Energy transition costs. – A cost, other than a monetary penalty, fine, or  
17 forfeiture assessed against a public utility by a government agency or court  
18 under a federal or State environmental statute, rule, or regulation, which  
19 includes the following:

20 a. As approved by the Commission, the unrecovered net book value of  
21 early retired electric generating facilities at Marshall Unit 1 in  
22 Catawba County and the Roxboro Plant Units 3 and 4 located in  
23 Person County, not to exceed one hundred million dollars  
24 (\$100,000,000) per public utility.

25 b. The following costs the public utility has incurred or will incur caused  
26 by, associated with, or remain as a result of the early retirement of  
27 electric generating facilities at Marshall Unit 1 and the Roxboro Plant  
28 Units 3 and 4: costs of decommissioning and restoring the site of the  
29 early retired electric generating facilities at Marshall Unit 1, and the  
30 Roxboro Plant Units 3 and 4, except for costs incurred pursuant to  
31 G.S. 130A-309.200 to G.S. 130A-309.226 or 40 C.F.R. Subpart D,  
32 which are not subject to this statute, and other applicable capital and  
33 operating costs, accrued carrying charges, deferred expenses,  
34 reductions for applicable insurance and salvage proceeds and the costs  
35 of retiring any existing indebtedness, fees, costs, and expenses to  
36 modify existing debt agreements or for waivers or consents related to  
37 existing debt agreements.

38 (9) Energy transition property. – All of the following:

39 a. All rights and interests of a public utility or successor or assignee of  
40 the public utility under a financing order, including the right to impose,  
41 bill, charge, collect, and receive energy transition charges authorized  
42 under the financing order and to obtain periodic adjustments to such  
43 charges as provided in the financing order.

44 b. All revenues, collections, claims, rights to payments, payments,  
45 money, or proceeds arising from the rights and interests specified in  
46 the financing order, regardless of whether such revenues, collections,  
47 claims, rights to payment, payments, money, or proceeds are imposed,  
48 billed, received, collected, or maintained together with or commingled  
49 with other revenues, collections, rights to payment, payments, money,  
50 or proceeds.

51 (10) Financing costs. – The term includes all of the following:



- 1           a.     Interest and acquisition, defeasance, or redemption premiums payable
- 2                     on energy transition bonds.
- 3           b.     Redemption premiums or make-whole payments related to the early
- 4                     redemption of the public utility's first mortgage bonds or other debt
- 5                     associated with the retired electric generating facility.
- 6           c.     Any payment required under an ancillary agreement and any amount
- 7                     required to fund or replenish a reserve account or other accounts
- 8                     established under the terms of any indenture, ancillary agreement, or
- 9                     other financing documents pertaining to energy transition bonds.
- 10          d.     Any other cost related to issuing, supporting, repaying, refunding, and
- 11                     servicing energy transition bonds, including, servicing fees,
- 12                     accounting and auditing fees, trustee fees, legal fees, consulting fees,
- 13                     structuring adviser fees, administrative fees, placement and
- 14                     underwriting fees, independent director and manager fees, capitalized
- 15                     interest, rating agency fees, stock exchange listing and compliance
- 16                     fees, security registration fees, filing fees, information technology
- 17                     programming costs, and any other costs necessary to otherwise ensure
- 18                     the timely payment of energy transition bonds or other amounts or
- 19                     charges payable in connection with the bonds, including costs related
- 20                     to obtaining the financing order.
- 21          e.     Any taxes and license fees or other fees imposed on the revenues
- 22                     generated from the collection of the energy transition charge or
- 23                     otherwise resulting from the collection of energy transition charges, in
- 24                     any such case whether paid, payable, or accrued.
- 25          f.     Any State and local taxes, franchise, gross receipts, and other taxes or
- 26                     similar charges, including regulatory assessment fees, whether paid,
- 27                     payable, or accrued.
- 28          g.     Any costs incurred by the Commission or public staff for any outside
- 29                     consultants or counsel retained in connection with the securitization of
- 30                     energy transition costs, except as provided in subdivision (3) of
- 31                     subsection (d) of this section.
- 32     (11)   Financing order. – An order that authorizes the issuance of energy transition
- 33                     bonds; the imposition, collection, and periodic adjustments of an energy
- 34                     transition charge; the creation of energy transition property; and the sale,
- 35                     assignment, or transfer of energy transition property to an assignee.
- 36     (12)   Financing party. – Bondholders and trustees, collateral agents, any party under
- 37                     an ancillary agreement, or any other person acting for the benefit of
- 38                     bondholders.
- 39     (13)   Financing statement. – Defined in Article 9 of the Code.
- 40     (14)   Pledgee. – A financing party to which a public utility or its successors or
- 41                     assignees mortgages, negotiates, pledges, or creates a security interest or lien
- 42                     on all or any portion of its interest in or right to energy transition property.
- 43     (15)   Public utility. – A public utility, as defined in G.S. 62-3, that sells electric
- 44                     power to retail electric customers in the State.
- 45     (b)    Financing Orders. –
- 46           (1)   A public utility shall petition the Commission for a financing order for energy
- 47                     transition costs. The petition shall include all of the following:
- 48                     a.     The energy transition costs incurred by the utility and an estimate of
- 49                                 the costs that are being undertaken but are not completed.
- 50                     b.     An indicator of whether the public utility proposes to finance all or a
- 51                                 portion of the energy transition costs using energy transition bonds. If



1 the public utility proposes to finance a portion of the costs, the public  
2 utility must identify the specific portion in the petition. By electing not  
3 to finance a portion of such energy transition costs using energy  
4 transition bonds, a public utility shall not be deemed to waive its right  
5 to recover such costs pursuant to a separate proceeding with the  
6 Commission.

7 c. An estimate of the financing costs related to the energy transition  
8 bonds.

9 d. An estimate of the energy transition charges necessary to recover the  
10 energy transition costs and financing costs and the proposed period for  
11 recovery of such costs.

12 e. An estimate of the quantifiable customer savings resulting from the  
13 use of energy transition bonds instead of traditional cost recovery  
14 methods. The estimate required by this sub-subdivision shall be equal  
15 to the arithmetic difference between the net present value of the costs  
16 to customers that are estimated to result from the issuance of energy  
17 transition bonds, excluding transition assistance funds, and the net  
18 present value of the costs that would result from financing and  
19 recovering energy transition costs from customers by use of the  
20 following formula for traditional cost recovery: the establishment of  
21 a regulatory asset and recovery of the amortization expense over a  
22 10-year amortization period plus a return on the unamortized balance  
23 at the public utility's weighted average cost of capital, as defined in its  
24 most recent base rate case proceeding before the Commission.

25 f. Direct testimony and exhibits supporting the petition.

26 (2) If a public utility is subject to a settlement agreement that governs the type  
27 and amount of costs that could be included in energy transition costs, the  
28 public utility proposes to finance all or a portion of the principal costs using  
29 energy transition bonds, and the principal costs are not already subject to  
30 review and approval by the Commission in a separate proceeding, then the  
31 public utility must file a petition with the Commission for review and approval  
32 of those principal costs no later than 90 days before filing a petition for a  
33 financing order pursuant to this section.

34 (3) Petition and order. –

35 a. Proceedings on a petition submitted pursuant to this subdivision begin  
36 with the petition by a public utility, filed subject to the time frame  
37 specified in subdivision (2) of this subsection, if applicable, and shall  
38 be disposed of in accordance with the requirements of this Chapter and  
39 the rules of the Commission, except as follows:

40 1. Within 14 days after the date the petition is filed, the  
41 Commission shall establish a procedural schedule that permits  
42 a Commission decision no later than 135 days after the date the  
43 petition is filed.

44 2. No later than 135 days after the date the petition is filed, the  
45 Commission shall issue a financing order or an order rejecting  
46 the petition. A party to the Commission proceeding may  
47 petition the Commission for reconsideration of the financing  
48 order within five days after the date of its issuance.

49 b. A financing order issued by the Commission to a public utility shall  
50 include all of the following elements:

- 1                    1.    Except for changes made pursuant to the formula-based  
2                    mechanism authorized under this section, the amount of energy  
3                    transition costs to be financed using energy transition bonds.  
4                    The Commission shall describe and estimate the amount of  
5                    financing costs that shall be recovered through energy  
6                    transition charges and specify the period over which energy  
7                    transition costs and financing costs shall be recovered.
- 8                    2.    A finding that the proposed issuance of energy transition bonds  
9                    and the imposition and collection of an energy transition  
10                   charge are expected to provide quantifiable benefits to  
11                   customers as compared to the costs, excluding transition  
12                   assistance funds, that would have been incurred absent the  
13                   issuance of energy transition bonds.
- 14                   3.    A finding that the structuring and pricing of the energy  
15                   transition bonds performed by the public utility are reasonably  
16                   expected to result in the lowest energy transition charges  
17                   consistent with market conditions at the time the energy  
18                   transition bonds are priced and the terms set forth in such  
19                   financing order.
- 20                   4.    A requirement that, for so long as the energy transition bonds  
21                   are outstanding and until all financing costs have been paid in  
22                   full, the imposition and collection of energy transition charges  
23                   authorized under a financing order shall be nonbypassable and  
24                   paid by all existing and future retail customers receiving  
25                   transmission or distribution service, or both, from the public  
26                   utility or its successors or assignees under  
27                   Commission-approved rate schedules or under special  
28                   contracts, even if a customer elects to purchase electricity from  
29                   an alternative electric supplier following a fundamental change  
30                   in regulation of public utilities in this State.
- 31                   5.    A formula-based true-up mechanism for making, at least  
32                   annually, expeditious periodic adjustments in the energy  
33                   transition charges that customers are required to pay pursuant  
34                   to the financing order and for making any adjustments that are  
35                   necessary to correct for any overcollection or undercollection  
36                   of the charges or to otherwise ensure the timely payment of  
37                   energy transition bonds and financing costs and other required  
38                   amounts and charges payable in connection with the energy  
39                   transition bonds.
- 40                   6.    The energy transition property that is, or shall be, created in  
41                   favor of a public utility or its successors or assignees and that  
42                   shall be used to pay or secure energy transition bonds and all  
43                   financing costs.
- 44                   7.    The degree of flexibility to be afforded to the public utility in  
45                   establishing the terms and conditions of the energy transition  
46                   bonds, including, but not limited to, repayment schedules,  
47                   expected interest rates, and other financing costs.
- 48                   8.    How energy transition charges will be allocated among  
49                   customer classes.
- 50                   9.    A requirement that, after the final terms of an issuance of energy  
51                   transition bonds have been established and before the issuance

- 1 of energy transition bonds, the public utility determines the  
2 resulting initial energy transition charge in accordance with the  
3 financing order and that such initial energy transition charge  
4 be final and effective upon the issuance of such energy  
5 transition bonds without further Commission action so long as  
6 the energy transition charge is consistent with the financing  
7 order.
- 8 10. A requirement that the public utility, simultaneously with the  
9 inception of the collection of energy transition charges, reduce  
10 its rates through a reduction in base rates or by a negative rider  
11 on customer bills in an amount equal to the revenue  
12 requirement in customer rates associated with the utility assets  
13 being financed by energy transition bonds. The public utility  
14 shall propose the method to reduce its rates in accordance with  
15 this sub-sub-subdivision in its petition.
- 16 11. A method of tracing funds collected as energy transition  
17 charges, or other proceeds of energy transition property, and  
18 determine that such method shall be deemed the method of  
19 tracing such funds and determining the identifiable cash  
20 proceeds of any energy transition property subject to a  
21 financing order under applicable law.
- 22 12. Any other conditions authorized by this section that the  
23 Commission determines are appropriate.
- 24 c. A financing order issued to a public utility may provide that creation  
25 of the public utility's energy transition property is conditioned upon,  
26 and simultaneous with, the sale or other transfer of the energy  
27 transition property to an assignee and the pledge of the energy  
28 transition property to secure energy transition bonds.
- 29 d. If the Commission issues a financing order, the public utility shall file  
30 with the Commission at least annually a petition or a letter applying  
31 the formula-based mechanism and, based on estimates of consumption  
32 for each rate class and other mathematical factors, requesting  
33 administrative approval to make the applicable adjustments. The  
34 review of the filing shall be limited to determining whether there are  
35 any mathematical or clerical errors in the application of the  
36 formula-based mechanism relating to the appropriate amount of any  
37 overcollection or undercollection of energy transition charges and the  
38 amount of an adjustment. The adjustments shall ensure the recovery  
39 of revenues sufficient to provide for the payment of principal, interest,  
40 acquisition, defeasance, financing costs, or redemption premium and  
41 other fees, costs, and charges in respect of energy transition bonds  
42 approved under the financing order. Within 30 days after receiving a  
43 public utility's request pursuant to this paragraph, the Commission  
44 shall either approve the request or inform the public utility of any  
45 mathematical or clerical errors in its calculation. If the Commission  
46 informs the utility of mathematical or clerical errors in its calculation,  
47 the utility may correct its error and refile its request. The time frames  
48 previously described in this paragraph shall apply to a refiled request.
- 49 e. Subsequent to the transfer of energy transition property to an assignee  
50 or the issuance of energy transition bonds authorized thereby,  
51 whichever is earlier, a financing order is irrevocable and, except for

1 changes made pursuant to the formula-based mechanism authorized in  
2 this section, the Commission may not amend, modify, or terminate the  
3 financing order by any subsequent action or reduce, impair, postpone,  
4 terminate, or otherwise adjust energy transition charges approved in  
5 the financing order. After the issuance of a financing order, the public  
6 utility retains sole discretion regarding whether to assign, sell, or  
7 otherwise transfer energy transition property.

8 f. If required by the Commission in a financing order, within one  
9 business day after the final terms of the energy transition bonds are  
10 determined, the public utility shall provide an issuance advice letter to  
11 the Commission. The issuance advice letter shall be in a form  
12 approved in the financing order and shall include (i) the final terms of  
13 the energy transition bond issuance, up-front financing costs and  
14 on-going financing costs and (ii) a certification by the public utility, as  
15 a condition to closing, that the sale of energy transition bonds complies  
16 with the requirements of this section. By no later than noon on the  
17 fourth business day after the final terms of the energy transition bonds  
18 are determined, the Commission shall either approve the issuance  
19 advice letter or deliver an order to the public utility to prevent the  
20 issuance of the energy transition bonds. To the extent the Commission  
21 does not respond to the issuance advice letter or deliver an order to  
22 prevent the issuance of the energy transition bonds within the time  
23 period proscribed in the financing order, the transaction as proposed  
24 in the issuance advice letter may proceed without further action by the  
25 Commission.

26 (4) At the request of a public utility, the Commission may commence a  
27 proceeding and issue a subsequent financing order that provides for  
28 refinancing, retiring, or refunding the energy transition bonds issued pursuant  
29 to the original financing order if the Commission finds that the subsequent  
30 financing order satisfies all of the criteria specified in this section for a  
31 financing order. Effective upon retirement of the refunded energy transition  
32 bonds and the issuance of new energy transition bonds, the Commission shall  
33 adjust the related energy transition charges accordingly.

34 (5) Within 60 days after the Commission issues a financing order or a decision  
35 denying a request for reconsideration or, if the request for reconsideration is  
36 granted, within 30 days after the Commission issues its decision on  
37 reconsideration, an adversely affected party may petition for judicial review  
38 in the Supreme Court of North Carolina. Review on appeal shall be based  
39 solely on the record before the Commission and briefs to the court and is  
40 limited to determining whether the financing order, or the order on  
41 reconsideration, conforms to the State Constitution and State and federal law  
42 and is within the authority of the Commission under this section.

43 (6) Duration of financing order. –

44 a. A financing order remains in effect and energy transition property  
45 under the financing order continues to exist until energy transition  
46 bonds issued pursuant to the financing order have been paid in full or  
47 defeased and, in each case, all Commission-approved financing costs  
48 of such energy transition bonds have been recovered in full.

49 b. A financing order issued to a public utility remains in effect and  
50 unabated notwithstanding the reorganization, bankruptcy or other

insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(c) Exception to Commission Jurisdiction. – The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this Chapter, consider the energy transition bonds issued pursuant to a financing order to be the debt of the public utility other than for federal income tax purposes, consider the energy transition charges paid under the financing order to be the revenue of the public utility for any purpose, or consider the energy transition costs or financing costs specified in the financing order to be the costs of the public utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.

(d) Public Utility Duties. – The electric bills of a public utility that has obtained a financing order and caused energy transition bonds to be issued must comply with the provisions of this subsection; however, the failure of a public utility to comply with this subsection does not invalidate, impair, or affect any financing order, energy transition property, energy transition charge, or energy transition bonds. The public utility must do all of the following:

(1) Explicitly reflect that a portion of the charges on such bill represents energy transition charges approved in a financing order issued to the public utility and, if the energy transition property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to energy transition charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the energy transition charge and the ownership of the charge.

(2) Include the energy transition charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

(3) If a public utility's petition for a financing order is denied or withdrawn or, for any reason, no energy transition bonds are issued, any costs of retaining expert consultants and counsel on behalf of the Commission or the public staff, as authorized by subsection (n) of this section and approved by the Commission, shall be paid by the public utility and shall be eligible for full recovery by the public utility, including a return at the public utility's weighted average cost of capital, in the public utility's future rates.

(e) Energy transition Property. –

(1) Provisions applicable to energy transition property. –

a. All energy transition property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of energy transition charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of energy transition charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.

b. Energy transition property specified in a financing order exists until energy transition bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such energy transition bonds have been recovered in full.

1           c.     All or any portion of energy transition property specified in a financing  
2                 order issued to a public utility may be transferred, sold, conveyed, or  
3                 assigned to a successor or assignee that is wholly owned, directly or  
4                 indirectly, by the public utility and created for the limited purpose of  
5                 acquiring, owning, or administering energy transition property or  
6                 issuing energy transition bonds under the financing order. All or any  
7                 portion of energy transition property may be pledged to secure energy  
8                 transition bonds issued pursuant to the financing order, amounts  
9                 payable to financing parties and to counterparties under any ancillary  
10                agreements, and other financing costs. Any transfer, sale, conveyance,  
11                assignment, grant of a security interest in or pledge of energy transition  
12                property by a public utility, or an affiliate of the public utility, to an  
13                assignee, to the extent previously authorized in a financing order, does  
14                not require the prior consent and approval of the Commission.

15           d.     If a public utility defaults on any required payment of charges arising  
16                 from energy transition property specified in a financing order, a court,  
17                 upon application by an interested party, and without limiting any other  
18                 remedies available to the applying party, shall order the sequestration  
19                 and payment of the revenues arising from the energy transition  
20                 property to the financing parties or their assignees. Any such financing  
21                 order remains in full force and effect notwithstanding any  
22                 reorganization, bankruptcy, or other insolvency proceedings with  
23                 respect to the public utility or its successors or assignees.

24           e.     The interest of a transferee, purchaser, acquirer, assignee, or pledgee  
25                 in energy transition property specified in a financing order issued to a  
26                 public utility, and in the revenue and collections arising from that  
27                 property, is not subject to setoff, counterclaim, surcharge, or defense  
28                 by the public utility or any other person or in connection with the  
29                 reorganization, bankruptcy, or other insolvency of the public utility or  
30                 any other entity.

31           f.     Any successor to a public utility, whether pursuant to any  
32                 reorganization, bankruptcy, or other insolvency proceeding or whether  
33                 pursuant to any merger or acquisition, sale, or other business  
34                 combination, or transfer by operation of law, as a result of public  
35                 utility restructuring or otherwise, must perform and satisfy all  
36                 obligations of, and have the same rights under a financing order as, the  
37                 public utility under the financing order in the same manner and to the  
38                 same extent as the public utility, including collecting and paying to the  
39                 person entitled to receive the revenues, collections, payments, or  
40                 proceeds of the energy transition property. Nothing in this  
41                 sub-subdivision is intended to limit or impair any authority of the  
42                 Commission concerning the transfer or succession of interests of  
43                 public utilities.

44           g.     Energy transition bonds shall be nonrecourse to the credit or any assets  
45                 of the public utility other than the energy transition property as  
46                 specified in the financing order and any rights under any ancillary  
47                 agreement.

48       (2)   Provisions applicable to security interests. –

49           a.     The creation, perfection, and enforcement of any security interest in  
50                 energy transition property to secure the repayment of the principal and  
51                 interest and other amounts payable in respect of energy transition

- 1 bonds; amounts payable under any ancillary agreement and other  
2 financing costs are governed by this subsection and not by the  
3 provisions of the Code.
- 4 b. A security interest in energy transition property is created, valid, and  
5 binding and perfected at the later of the time: (i) the financing order is  
6 issued, (ii) a security agreement is executed and delivered by the  
7 debtor granting such security interest, (iii) the debtor has rights in such  
8 energy transition property or the power to transfer rights in such  
9 energy transition property, or (iv) value is received for the energy  
10 transition property. The description of energy transition property in a  
11 security agreement is sufficient if the description refers to this section  
12 and the financing order creating the energy transition property.
- 13 c. A security interest shall attach without any physical delivery of  
14 collateral or other act, and, upon the filing of a financing statement  
15 with the office of the Secretary of State, the lien of the security interest  
16 shall be valid, binding, and perfected against all parties having claims  
17 of any kind in tort, contract, or otherwise against the person granting  
18 the security interest, regardless of whether the parties have notice of  
19 the lien. Also upon this filing, a transfer of an interest in the energy  
20 transition property shall be perfected against all parties having claims  
21 of any kind, including any judicial lien or other lien creditors or any  
22 claims of the seller or creditors of the seller, and shall have priority  
23 over all competing claims other than any prior security interest,  
24 ownership interest, or assignment in the property previously perfected  
25 in accordance with this section.
- 26 d. The Secretary of State shall maintain any financing statement filed to  
27 perfect any security interest under this section in the same manner that  
28 the Secretary maintains financing statements filed by transmitting  
29 utilities under the Code. The filing of a financing statement under this  
30 section shall be governed by the provisions regarding the filing of  
31 financing statements in the Code.
- 32 e. The priority of a security interest in energy transition property is not  
33 affected by the commingling of energy transition charges with other  
34 amounts. Any pledgee or secured party shall have a perfected security  
35 interest in the amount of all energy transition charges that are  
36 deposited in any cash or deposit account of the qualifying utility in  
37 which energy transition charges have been commingled with other  
38 funds and any other security interest that may apply to those funds shall  
39 be terminated when they are transferred to a segregated account for the  
40 assignee or a financing party.
- 41 f. No application of the formula-based adjustment mechanism as  
42 provided in this section will affect the validity, perfection, or priority  
43 of a security interest in or transfer of energy transition property.
- 44 g. If a default or termination occurs under the energy transition bonds,  
45 the financing parties or their representatives may foreclose on or  
46 otherwise enforce their lien and security interest in any energy  
47 transition property as if they were secured parties with a perfected and  
48 prior lien under the Code, and the Commission may order amounts  
49 arising from energy transition charges be transferred to a separate  
50 account for the financing parties' benefit, to which their lien and  
51 security interest shall apply. On application by or on behalf of the

1 financing parties, the Superior Court of Wake County shall order the  
2 sequestration and payment to them of revenues arising from the energy  
3 transition charges.

4 (3) Provisions applicable to the sale, assignment, or transfer of energy transition  
5 property. –

6 a. Any sale, assignment, or other transfer of energy transition property  
7 shall be an absolute transfer and true sale of, and not a pledge of or  
8 secured transaction relating to, the seller's right, title, and interest in,  
9 to, and under the energy transition property if the documents  
10 governing the transaction expressly state that the transaction is a sale  
11 or other absolute transfer other than for federal and State income tax  
12 purposes. For all purposes other than federal and State income tax  
13 purposes, the parties' characterization of a transaction as a sale of an  
14 interest in energy transition property shall be conclusive that the  
15 transaction is a true sale and that ownership has passed to the party  
16 characterized as the purchaser, regardless of whether the purchaser  
17 has possession of any documents evidencing or pertaining to the  
18 interest. A transfer of an interest in energy transition property may be  
19 created only when all of the following have occurred: (i) the financing  
20 order creating the energy transition property has become effective, (ii)  
21 the documents evidencing the transfer of energy transition property  
22 have been executed by the assignor and delivered to the assignee, and  
23 (iii) value is received for the energy transition property. After such a  
24 transaction, the energy transition property is not subject to any claims  
25 of the transferor or the transferor's creditors, other than creditors  
26 holding a prior security interest in the energy transition property  
27 perfected in accordance with subdivision (2) of this subsection.

28 b. The characterization of the sale, assignment, or other transfer as an  
29 absolute transfer and true sale and the corresponding characterization  
30 of the property interest of the purchaser, shall not be affected or  
31 impaired by the occurrence of any of the following factors:

- 32 1. Commingling of energy transition charges with other amounts.
- 33 2. The retention by the seller of (i) a partial or residual interest,  
34 including an equity interest, in the energy transition property,  
35 whether direct or indirect, or whether subordinate or otherwise,  
36 or (ii) the right to recover costs associated with taxes, franchise  
37 fees, or license fees imposed on the collection of energy  
38 transition charges.
- 39 3. Any recourse that the purchaser may have against the seller.
- 40 4. Any indemnification rights, obligations, or repurchase rights  
41 made or provided by the seller.
- 42 5. The obligation of the seller to collect energy transition charges  
43 on behalf of an assignee.
- 44 6. The transferor acting as the servicer of the energy transition  
45 charges or the existence of any contract that authorizes or  
46 requires the public utility, to the extent that any interest in  
47 energy transition property is sold or assigned, to contract with  
48 the assignee or any financing party that it will continue to  
49 operate its system to provide service to its customers, will  
50 collect amounts in respect of the energy transition charges for  
51 the benefit and account of such assignee or financing party, and



- 1                                    will account for and remit such amounts to or for the account  
2                                    of such assignee or financing party.
- 3                                    7.    The treatment of the sale, conveyance, assignment, or other  
4                                    transfer for tax, financial reporting, or other purposes.
- 5                                    8.    The granting or providing to bondholders a preferred right to  
6                                    the energy transition property or credit enhancement by the  
7                                    public utility or its affiliates with respect to such energy  
8                                    transition bonds.
- 9                                    9.    Any application of the formula-based adjustment mechanism  
10                                   as provided in this section.
- 11                                  c.    Any right that a public utility has in the energy transition property  
12                                  before its pledge, sale, or transfer or any other right created under this  
13                                  section or created in the financing order and assignable under this  
14                                  section or assignable pursuant to a financing order is property in the  
15                                  form of a contract right or a chose in action. Transfer of an interest in  
16                                  energy transition property to an assignee is enforceable only upon the  
17                                  later of (i) the issuance of a financing order, (ii) the assignor having  
18                                  rights in such energy transition property or the power to transfer rights  
19                                  in such energy transition property to an assignee, (iii) the execution and  
20                                  delivery by the assignor of transfer documents in connection with the  
21                                  issuance of energy transition bonds, and (iv) the receipt of value for  
22                                  the energy transition property. An enforceable transfer of an interest  
23                                  in energy transition property to an assignee is perfected against all  
24                                  third parties, including subsequent judicial or other lien creditors,  
25                                  when a notice of that transfer has been given by the filing of a  
26                                  financing statement in accordance with sub-subdivision c. of  
27                                  subdivision (2) of this subsection. The transfer is perfected against  
28                                  third parties as of the date of filing.
- 29                                  d.    The Secretary of State shall maintain any financing statement filed to  
30                                  perfect any sale, assignment, or transfer of energy transition property  
31                                  under this section in the same manner that the Secretary maintains  
32                                  financing statements filed by transmitting utilities under the Code. The  
33                                  filing of any financing statement under this section shall be governed  
34                                  by the provisions regarding the filing of financing statements in the  
35                                  Code. The filing of such a financing statement is the only method of  
36                                  perfecting a transfer of energy transition property.
- 37                                  e.    The priority of a transfer perfected under this section is not impaired  
38                                  by any later modification of the financing order or energy transition  
39                                  property or by the commingling of funds arising from energy transition  
40                                  property with other funds. Any other security interest that may apply  
41                                  to those funds, other than a security interest perfected under  
42                                  subdivision (2) of this subsection, is terminated when they are  
43                                  transferred to a segregated account for the assignee or a financing  
44                                  party. If energy transition property has been transferred to an assignee  
45                                  or financing party, any proceeds of that property must be held in trust  
46                                  for the assignee or financing party.
- 47                                  f.    The priority of the conflicting interests of assignees in the same  
48                                  interest or rights in any energy transition property is determined as  
49                                  follows:
- 50                                      1.    Conflicting perfected interests or rights of assignees rank  
51                                      according to priority in time of perfection. Priority dates from

1 the time a filing covering the transfer is made in accordance  
2 with sub-subdivision c. of subdivision (2) of this subsection.

3 2. A perfected interest or right of an assignee has priority over a  
4 conflicting unperfected interest or right of an assignee.

5 3. A perfected interest or right of an assignee has priority over a  
6 person who becomes a lien creditor after the perfection of such  
7 assignee's interest or right.

8 (f) Description or Indication of Property. – The description of energy transition property  
9 being transferred to an assignee in any sale agreement, purchase agreement, or other transfer  
10 agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other  
11 security document, or indicated in any financing statement is only sufficient if such description  
12 or indication refers to the financing order that created the energy transition property and states  
13 that the agreement or financing statement covers all or part of the property described in the  
14 financing order. This section applies to all purported transfers of, and all purported grants or liens  
15 or security interests in, energy transition property, regardless of whether the related sale  
16 agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement,  
17 or other security document was entered into, or any financing statement was filed.

18 (g) Financing Statements. – All financing statements referenced in this section are subject  
19 to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does  
20 not apply.

21 (h) Choice of Law. – The law governing the validity, enforceability, attachment,  
22 perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or  
23 the pledge or creation of a security interest in any energy transition property shall be the laws of  
24 this State.

25 (i) Energy transition Bonds Not Public Debt. – Neither the State nor its political  
26 subdivisions are liable on any energy transition bonds, and the bonds are not a debt or a general  
27 obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are  
28 they special obligations or indebtedness of the State or any agency or political subdivision. An  
29 issue of energy transition bonds does not, directly, indirectly, or contingently, obligate the State  
30 or any agency, political subdivision, or instrumentality of the State to levy any tax or make any  
31 appropriation for payment of the energy transition bonds, other than in their capacity as consumers  
32 of electricity. All energy transition bonds must contain on the face thereof a statement to the  
33 following effect: "Neither the full faith and credit nor the taxing power of the State of North  
34 Carolina is pledged to the payment of the principal of, or interest on, this bond."

35 (j) Legal Investment. – All of the following entities may legally invest any sinking funds,  
36 moneys, or other funds in energy transition bonds:

37 (1) Subject to applicable statutory restrictions on State or local investment  
38 authority, the State, units of local government, political subdivisions, public  
39 bodies, and public officers, except for members of the Commission.

40 (2) Banks and bankers, savings and loan associations, credit unions, trust  
41 companies, savings banks and institutions, investment companies, insurance  
42 companies, insurance associations, and other persons carrying on a banking  
43 or insurance business.

44 (3) Personal representatives, guardians, trustees, and other fiduciaries.

45 (4) All other persons authorized to invest in bonds or other obligations of a similar  
46 nature.

47 (k) Obligation of Nonimpairment. –

48 (1) The State and its agencies, including the Commission, pledge and agree with  
49 bondholders, the owners of the energy transition property, and other financing  
50 parties that the State and its agencies will not take any action listed in this  
51 subdivision. This paragraph does not preclude limitation or alteration if full

1 compensation is made by law for the full protection of the energy transition  
2 charges collected pursuant to a financing order and of the bondholders and  
3 any assignee or financing party entering into a contract with the public utility.  
4 The prohibited actions are as follows:

- 5 a. Alter the provisions of this section, which authorize the Commission  
6 to create an irrevocable contract right or chose in action by the  
7 issuance of a financing order, to create energy transition property, and  
8 make the energy transition charges imposed by a financing order  
9 irrevocable, binding, or nonbypassable charges.  
10 b. Take or permit any action that impairs or would impair the value of  
11 energy transition property or the security for the energy transition  
12 bonds or revises the energy transition costs for which recovery is  
13 authorized.  
14 c. In any way impair the rights and remedies of the bondholders,  
15 assignees, and other financing parties.  
16 d. Except for changes made pursuant to the formula-based adjustment  
17 mechanism authorized under this section, reduce, alter, or impair  
18 energy transition charges that are to be imposed, billed, charged,  
19 collected, and remitted for the benefit of the bondholders, any  
20 assignee, and any other financing parties until any and all principal,  
21 interest, premium, financing costs and other fees, expenses, or charges  
22 incurred, and any contracts to be performed, in connection with the  
23 related energy transition bonds have been paid and performed in full.

24 (2) Any person or entity that issues energy transition bonds may include the  
25 language specified in this subsection in the energy transition bonds and related  
26 documentation.

27 (l) Not a Public Utility. – An assignee or financing party is not a public utility or person  
28 providing electric service by virtue of engaging in the transactions described in this section.

29 (m) Conflicts. – If there is a conflict between this section and any other law regarding the  
30 attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or  
31 transfer of, or security interest in energy transition property, this section shall govern.

32 (n) Consultation. – In making determinations under this section, the Commission or  
33 public staff or both may engage an outside consultant and counsel.

34 (o) Effect of Invalidity. – If any provision of this section is held invalid or is invalidated,  
35 superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the  
36 validity of any action allowed under this section which is taken by a public utility, an assignee, a  
37 financing party, a collection agent, or a party to an ancillary agreement; and any such action  
38 remains in full force and effect with respect to all energy transition bonds issued or authorized in  
39 a financing order issued under this section before the date that such provision is held invalid or  
40 is invalidated, superseded, replaced, or repealed, or expires for any reason."

41 **SECTION 2.(b)** G.S. 25-9-109 reads as rewritten:

42 "**§ 25-9-109. Scope.**

43 (a) General scope of Article. – Except as otherwise provided in subsections (c) and (d)  
44 of this section, this Article applies to all of the following:

- 45 (1) A transaction, regardless of its form, that creates a security interest in personal  
46 property or fixtures by ~~contract;~~contract.  
47 (2) An agricultural ~~lien;~~lien.  
48 (3) A sale of accounts, chattel paper, payment intangibles, or promissory  
49 ~~notes;~~notes.  
50 (4) A ~~consignment;~~consignment.

- 1 (5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or  
2 25-2A-508(5), as provided in G.S. ~~25-9-110;~~ and 25-9-110.
- 3 (6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.
- 4 (b) Security interest in secured obligation. – The application of this Article to a security  
5 interest in a secured obligation is not affected by the fact that the obligation is itself secured by a  
6 transaction or interest to which this Article does not apply.
- 7 (c) Extent to which Article does not apply. – This Article does not apply to the extent  
8 ~~that;~~ that any one or more of the following conditions are met:
- 9 (1) A statute, regulation, or treaty of the United States preempts this  
10 ~~Article;~~ Article.
- 11 (2) Repealed by Session Laws 2001-218, s. 2, effective July 1, 2001.
- 12 (3) A statute of another state, a foreign country, or a governmental unit of another  
13 state or a foreign country, other than a statute generally applicable to security  
14 interests, expressly governs creation, perfection, priority, or enforcement of a  
15 security interest created by the state, country, or governmental ~~unit;~~ or unit.
- 16 (4) The rights of a transferee beneficiary or nominated person under a letter of  
17 credit are independent and superior under G.S. 25-5-114.
- 18 (d) Inapplicability of Article. – This Article does not apply ~~to;~~ to any of the following:
- 19 (1) A landlord's lien, other than an agricultural ~~lien;~~ lien.
- 20 (2) A lien, other than an agricultural lien, given by statute or other rule of law for  
21 services or materials, but G.S. 25-9-333 applies with respect to priority of the  
22 ~~lien;~~ lien.
- 23 (3) An assignment of a claim for wages, salary, or other compensation of an  
24 ~~employee;~~ employee.
- 25 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as  
26 part of a sale of the business out of which they ~~arose;~~ arose.
- 27 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory  
28 notes which is for the purpose of collection ~~only;~~ only.
- 29 (6) An assignment of a right to payment under a contract to an assignee that is  
30 also obligated to perform under the ~~contract;~~ contract.
- 31 (7) An assignment of a single account, payment intangible, or promissory note to  
32 an assignee in full or partial satisfaction of a preexisting  
33 ~~indebtedness;~~ indebtedness.
- 34 (8) A transfer of an interest in or an assignment of a claim under a policy of  
35 insurance, other than an assignment by or to a health-care provider of a  
36 health-care-insurance receivable and any subsequent assignment of the right  
37 to payment, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to  
38 proceeds and priorities in ~~proceeds;~~ proceeds.
- 39 (9) An assignment of a right represented by a judgment, other than a judgment  
40 taken on a right to payment that was ~~collateral;~~ collateral.
- 41 (10) A right of recoupment or setoff, ~~but;~~ but (i) G.S.
- 42 a. ~~G.S.-25-9-340~~ applies with respect to the effectiveness of rights of  
43 recoupment or setoff against deposit ~~accounts;~~ and accounts and (ii)  
44 G.S.
- 45 b. ~~G.S.-25-9-404~~ applies with respect to defenses or claims of an account  
46 ~~debtor;~~ debtor.
- 47 (11) The creation or transfer of an interest in or lien on real property, including a  
48 lease or rents thereunder, except to the extent that provision is made ~~for;~~ for  
49 the following:
- 50 a. Liens on real property in G.S. 25-9-203 and G.S. ~~25-9-308;~~ 25-9-308.
- 51 b. Fixtures in G.S. ~~25-9-334;~~ 25-9-334.

- 1 c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and  
2 ~~25-9-519; and~~25-9-519.
- 3 d. Security agreements covering personal and real property in  
4 G.S. ~~25-9-604;~~25-9-604.
- 5 (12) An assignment of a claim arising in tort, other than a commercial tort claim,  
6 but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and  
7 priorities in ~~proceeds;~~proceeds.
- 8 (13) An assignment of a deposit account in a consumer transaction, but  
9 G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities  
10 in ~~proceeds;~~proceeds.
- 11 (14) The creation, perfection, priority, or enforcement of any lien on, assignment  
12 of, pledge of, or security in, any revenues, rights, funds, or other tangible or  
13 intangible assets created, made, or granted by this State or a governmental unit  
14 in this State, including the assignment of rights as secured party in security  
15 interests granted by any party subject to the provisions of this Article to this  
16 State or a governmental unit in this State, to secure, directly or indirectly, any  
17 bond, note, other evidence of indebtedness, or other payment obligations for  
18 borrowed money issued by, or in connection with, installment or lease  
19 purchase financings by, this State or a governmental unit in this State.  
20 However, notwithstanding this subdivision, this Article does apply to the  
21 creation, perfection, priority, and enforcement of security interests created by  
22 this State or a governmental unit in this State in equipment or ~~fixtures;~~  
23 ~~or~~fixtures.
- 24 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,  
25 pledge of, security interest in, or other transfer of, any interest or right or  
26 portion of any interest or right in any storm recovery property as defined in  
27 G.S. 62-172.
- 28 (16) The creation, perfection, priority, or enforcement of any sale, assignment of,  
29 pledge of, security interest in, or other transfer of, any interest or right or  
30 portion of any interest or right in any energy transition property as defined in  
31 G.S. 62-173."

32 **SECTION 2.(c)** This section is effective when it becomes law.

33  
34 **ADVANCED NUCLEAR EARLY SITE PERMIT AND SUBSEQUENT LICENSE**  
35 **RENEWAL**

36 **SECTION 3.(a)** In order to support a diverse portfolio of advanced energy  
37 technologies, reduce future permitting and siting costs, and promote the development of  
38 advanced nuclear energy, the electric public utilities operating in this State may jointly or  
39 separately incur costs up to an aggregate total of fifty million dollars (\$50,000,000) to pursue an  
40 Early Site Permit ("ESP") from the Nuclear Regulatory Commission for siting of an advanced  
41 nuclear facility at a single location in the State. The electric public utilities shall make reasonable  
42 efforts to obtain any funding available from any federal agencies in order to offset such costs,  
43 and any such funding obtained from a federal agency shall be utilized to offset the costs incurred.  
44 Each participating electric public utility may establish a regulatory asset and defer to such  
45 regulatory asset the incremental costs incurred in connection with its pursuit of an ESP, along  
46 with associated carrying costs based on the utility's then-authorized, net-of-tax, weighted average  
47 cost of capital, until such time as the costs can be reflected in customer rates. In a future general  
48 rate proceeding, the Commission shall establish an amortization period for recovery, and allow  
49 a return on the unamortized balance at the utility's then authorized, net-of-tax, weighted average  
50 cost of capital. This section shall not be construed to provide any legislative endorsement for the

1 selection of nuclear resources in future electric public utility integrated resource plans, which  
2 shall be reviewed by the Commission in accordance with then-applicable laws and regulations.

3 **SECTION 3.(b)** In order to support the continued operation of high capacity factor,  
4 low-cost, and emissions free nuclear electric generation, the electric public utilities are directed  
5 to prepare and submit Subsequent License Renewal applications with the Nuclear Regulatory  
6 Commission for each of the six currently operating nuclear electric generating facility sites in the  
7 electric public utilities' balancing area authority. The electric public utilities shall report on the  
8 status of the Subsequent License Renewal applications in their integrated resource plan filings.

9 **SECTION 3.(c)** This section is effective when it becomes law.

10  
11  
12 **PART II. RATEMAKING MODERNIZATION/AUTHORIZE PERFORMANCE**  
13 **BASED REGULATION OF ELECTRIC PUBLIC UTILITIES**  
14

15 The General Assembly of North Carolina enacts:

16 **SECTION 4.(a)** Article 7 of Chapter 62 of the General Statutes is amended by  
17 adding a new section to read:

18 **"§ 62-133.16. Performance-Based Regulation Authorized.**

19 (a) **Definitions.** – For purposes of this section, the following definitions apply:

- 20 (1) **"Cost causation principle"** means establishment of a causal link between a  
21 **specific customer class, how that class uses the electric system, and costs**  
22 **incurred by the electric public utility for the provision of electric service.**
- 23 (2) **"Decoupling ratemaking mechanism"** means a ratemaking mechanism  
24 **intended to break the link between an electric public utility's revenue and the**  
25 **level of consumption of electricity on a per customer basis by its residential**  
26 **customers.**
- 27 (3) **"Distributed energy resource" or "DER" means an annual device or measure**  
28 **that produces electricity or reduces electricity consumption, and is connected**  
29 **to the electric distribution system, either on the customer's premises, or on the**  
30 **electric public utility's primary distribution system. A DER may include any**  
31 **of the following: energy efficiency, distributed generation, demand response,**  
32 **microgrids, energy storage, energy management systems, and electric**  
33 **vehicles.**
- 34 (4) **"Earnings sharing mechanism" means an annual ratemaking mechanism that**  
35 **shares surplus earnings between the electric public utility and customers over**  
36 **the period of time covered by a MYRP and any further period of time pursuant**  
37 **authorized pursuant to subdivision (1)e. of subsection (d) of this section.**
- 38 (4) **"Multi-year rate plan" or "MYRP" means a ratemaking mechanism under**  
39 **which the Commission sets base rates for a multi-year period that includes**  
40 **authorized periodic changes in base rates without the need for the electric**  
41 **public utility to file a subsequent general rate application pursuant to**  
42 **G.S. 62-133, along with an earnings sharing mechanism.**
- 43 (5) **"Performance incentive mechanism" or "PIM" means a ratemaking**  
44 **mechanism that links electric public utility revenue or earnings to electric**  
45 **public utility performance in targeted areas consistent with policy goals, as**  
46 **that term is defined by this section, approved by the Commission, and includes**  
47 **specific performance metrics and targets against which electric public utility**  
48 **performance is measured.**
- 49 (6) **"Performance-based regulation" or "PBR" means an alternative ratemaking**  
50 **approach that includes decoupling, one or more performance incentive**  
51 **mechanisms, and a multi-year rate plan, including an earnings sharing**

1 mechanism, or such other alternative regulatory mechanisms as may be  
2 proposed by an electric public utility.

3 (7) "Tracking metric" means a methodology for tracking and quantitatively  
4 measuring and monitoring outcomes or electric public utility performance.

5 (8) "Policy goal" means the expected or anticipated achievement of operational  
6 efficiency, cost savings, or reliability of electric service that is greater than  
7 that which already is required by State or federal law or regulation, including  
8 standards the Commission has established by order prior to and independent  
9 of a PBR application; provided that, with respect to environmental standards,  
10 the Commission may not approve a policy goal that is more stringent than is  
11 established (i) by State law, (ii) by federal law, (iii) by the Environmental  
12 Management Commission pursuant to G.S. 143B-282, or (iv) by the United  
13 States Environmental Protection Agency.

14 (9) "Rate year" means the year of the MYRP for which base rates are effective.

15 (10) "Tracking metric" means a methodology for tracking and quantitatively  
16 measuring and monitoring outcomes or electric public utility performance.

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

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

36 (1) The following shall apply to a MYRP:

37 a. The base rates for the first rate year of a MYRP shall be fixed in the  
38 manner prescribed under G.S. 62-133, including actual changes in  
39 costs, revenues or the cost of the electric public utility's property used  
40 and useful, or to be used and useful within a reasonable time after the  
41 test period, plus costs associated with a known and measurable set of  
42 capital investments, net of operating benefits, associated with a set of  
43 discrete and identifiable capital spending projects to be placed in  
44 service during the first rate year. Subsequent changes in base rates in  
45 the second and third rate years of the MYRP shall be based on  
46 projected incremental Commission-authorized capital investments  
47 that will be used and useful during the rate year and associated  
48 expenses, net of operating benefits, including operation and  
49 maintenance savings, and depreciation of rate base associated with the  
50 capital investments, that are incurred or realized during each rate year  
51 of the MYRP period; provided that the amount of increase in the

1 second rate year under the MYRP shall not exceed 4% of the electric  
2 public utility's North Carolina retail jurisdictional revenue requirement  
3 that is used to fix rates during the first year of the MYRP pursuant to  
4 G.S. 62-133 excluding any revenue requirement for the capital  
5 spending projects to be placed in service during the first rate year. The  
6 amount of increase for the third rate year under the MYRP shall not  
7 exceed 4% of the electric public utility's North Carolina retail  
8 jurisdictional revenue requirement that is used to fix rates during the  
9 first year of the MYRP pursuant to G.S. 62-133, excluding any  
10 revenue requirement for the capital spending projects to be used during  
11 the first rate year. The revenue requirements associated with any single  
12 new generation plant placed in service during the MYRP for which the  
13 total plant in service balance exceeds \$500 million shall not be  
14 included in a MYRP. Instead, the utility may request and the  
15 Commission may grant, if it deems appropriate, permission to  
16 establish a regulatory asset and defer to such regulatory asset  
17 incremental costs related to such electric generation investments to be  
18 considered for recovery in a future rate proceeding. In setting the  
19 electric public utility's authorized rate of return on equity for an MYRP  
20 period, the Commission shall consider any increased or decreased risk  
21 to either the electric public utility or its ratepayers that may result from  
22 having an approved MYRP.

23 b. In a proceeding authorizing a MYRP, the Commission shall establish  
24 a rider to refund amounts related to the earnings sharing mechanism,  
25 and to refund or collect amounts related to PIM rewards or penalties,  
26 and decoupling adjustments.

27 c. Within 60 days of the conclusion of each rate year, the Commission  
28 shall establish a proceeding to:

29 1. Examine the earnings of the electric public utility during the  
30 rate year to determine if the earnings exceeded the authorized  
31 rate of return on equity determined by the Commission in the  
32 proceeding establishing the PBR. If the weather-normalized  
33 earnings exceed the authorized rate of return on equity plus 50  
34 basis points, the excess earnings above the authorized rate of  
35 return on equity plus 50 basis points will be refunded to  
36 customers in the rider established by the Commission. If the  
37 weather-normalized earnings fall below the authorized rate of  
38 return on equity, the electric public utility may file a rate case  
39 pursuant to G.S. 62-133. Any penalties or rewards from PIM  
40 incentives and any incentives related to demand-side  
41 management and energy efficiency measures pursuant to  
42 G.S. 62-133.9(f) will be excluded from the determination of  
43 any refund pursuant to earnings sharing mechanism.

44 2. Evaluate the performance of the electric public utility with  
45 respect to Commission approved PIMs applicable in the rate  
46 year. Any financial rewards shall be collected from customers  
47 and any penalties refunded to customers, in each case, through  
48 the rider established by the Commission.

49 3. Evaluate the decoupling ratemaking mechanism, and refund or  
50 collect, as applicable, a corresponding amount from residential  
51 customers through the rider established by the Commission.



- 1           (2)   The proposed decoupling mechanism shall only be applied to residential  
2           customer classes. The Commission shall establish an annual revenue  
3           requirement per residential customer and an appropriate distribution of said  
4           revenue requirement per customer in each month of the year. The established  
5           monthly revenue requirements times the actual number of residential  
6           customers each month shall become the target revenue for the residential  
7           class. Each month, the electric public utility shall defer to a regulatory asset  
8           or liability account the difference between the actual revenue and the target  
9           revenue for the residential class. The changes in revenue requirements for the  
10           second and third rate years shall be allocated to the residential customer class  
11           and divided by the number of residential customers to determine the  
12           appropriate adjustment to the annual revenue requirement per residential  
13           customer that is used to establish the target revenues for the residential class  
14           in the second and third rate years of a MYRP. The electric public utility may  
15           exclude rate schedules or riders for electric vehicle charging, including EV  
16           charging during off-peak periods on time-of-use rates, from the decoupling  
17           mechanism to preserve the electric public utility's incentive to encourage  
18           electric vehicle adoption.
- 19           (3)   The policy goal targeted by a PIM shall be clearly defined, measurable with a  
20           defined performance metric, and solely or primarily within the electric public  
21           utility's control.
- 22           (4)   Any PIM shall be structured to ensure that, pursuant to subdivisions (1) and  
23           (2) of this subsection, any penalty shall be refunded to customers and any  
24           reward shall be collected from customers and shall be limited such that the  
25           total of all potential and actual PIM incentives or penalties does not exceed  
26           1.0% of the electric public utility's total annual revenue requirement that is  
27           used to fix rates during the first year of the MYRP pursuant to G.S. 62-133,  
28           excluding any revenue requirement for the capital spending projects to be  
29           placed in service during the first rate year, where the PIM is approved. Any  
30           incentives related to demand-side management and energy efficiency  
31           measures pursuant to G.S. 62-133.9(f) shall be excluded from the limits  
32           established in this section and shall continue to be recovered through the  
33           demand-side management and energy efficiency (DSM/EE) rider.
- 34           (5)   Subject to the limitations set out in the preceding subdivision, any PIMs  
35           proposed by an electric public utility shall include one or more of the  
36           following:
- 37           a.   Rewards based on the sharing of savings achieved by meeting or  
38           exceeding a specific policy goal.
- 39           b.   Rewards or penalties based on differentiated authorized rates of return  
40           on common equity to encourage utility investments or operational  
41           changes to meet a specific policy goal, which shall not be greater than  
42           25 basis points.
- 43           c.   Fixed financial rewards to encourage achievement of specific policy  
44           goals, or fixed financial penalties for failure to achieve policy goals.
- 45           (d)   Commission action on application.—
- 46           (1)   The Commission shall approve a PBR application by an electric public utility  
47           only upon a finding that a proposed PBR would result in just and reasonable  
48           rates, is in the public interest, and is consistent with the criteria established in  
49           this section and rules adopted thereunder. In reviewing any such PBR  
50           application under this section, the Commission shall consider whether the  
51           PBR application:

- 1           a.     Assures that no customer or class of customers is unreasonably harmed  
2                     and that the rates are fair both to the electric public utility and to the  
3                     customer.
- 4           b.     Reasonably assures the continuation of safe and reliable electric  
5                     service.
- 6           c.     Will not unreasonably prejudice any class of electric customers and  
7                     result in sudden substantial rate increases or "rate shock" to customers.
- 8     (2)   In reviewing any such PBR application under this section, the Commission  
9           may consider whether the PBR application:
- 10          a.     Encourages peak load reduction or efficient use of the system.  
11          b.     Encourages utility-scale renewable energy and storage.  
12          c.     Encourages DERs.  
13          d.     Reduces low-income energy burdens.  
14          e.     Encourages energy efficiency.  
15          f.     Encourages carbon reductions.  
16          g.     Encourages beneficial electrification, including electric vehicles.  
17          h.     Supports equity in contracting.  
18          i.     Promotes resilience and security of the electric grid.  
19          j.     Maintains adequate levels of reliability and customer service.  
20          k.     Promotes rate designs that yield peak load reduction or beneficial  
21                     load-shaping.
- 22     (3)   When an electric public utility files with the Commission an application for a  
23           general rate case pursuant to G.S. 62-133 and that application includes a PBR  
24           application, the Commission shall institute proceedings on the application as  
25           provided in this subdivision. The electric public utility shall not make any  
26           changes in any rate or implement a PBR except upon 30 days' notice to the  
27           Commission, and the Commission may require the electric public utility to  
28           provide notice of the pending PBR application to the same extent as provided  
29           in G.S. 62-134(a) and may suspend the effect of the proposed base rates and  
30           PBR implementation pending investigation in the same manner as provided  
31           in G.S. 62-134(b); provided that, the Commission may suspend the  
32           implementation of the proposed base rates for no longer than 300 days. The  
33           electric public utility's application shall plainly state the changes in base rates  
34           and the time when the change in rates will go into effect and shall include  
35           schedules in the same manner required pursuant to G.S. 62-134(a). The  
36           Commission shall, upon reasonable notice, conduct a hearing concerning the  
37           lawfulness of the proposed base rates and the PBR application. After hearing,  
38           the Commission shall issue an order approving or rejecting the electric public  
39           utility's PBR application. The Commission shall not be permitted to modify  
40           the PBR application. In the event that the Commission rejects a PBR  
41           application, the Commission shall nevertheless establish the electric public  
42           utility's base rates in accordance with G.S. 62- 133 based on the PBR  
43           application. If the Commission rejects the PBR application, it shall provide an  
44           explanation of the deficiency and an opportunity for the electric public utility  
45           to refile, or for the electric public utility and the stakeholders to collaborate to  
46           cure the identified deficiency and refile.
- 47     (e)   Commission review. – At any time prior to expiration of a PBR plan period, the  
48           Commission, with good cause and upon its own motion or petition by the Public Staff, may  
49           examine the reasonableness of an electric public utility's rates under a plan, conduct periodic  
50           reviews with opportunities for public hearings and comments from interested parties, and initiate  
51           a proceeding to adjust base rates or PIMs as necessary. In addition, the approval of a PBR shall

1 not be construed to limit the Commission's authority to grant additional deferrals between rate  
2 cases for extraordinary costs not otherwise recognized in rates.

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

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

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

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

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

29 (1) The specific procedures and requirements that an electric public utility shall  
30 meet when requesting approval of a PBR application.

31 (2) The criteria for evaluating a PBR application.

32 (3) The parameters for a technical conference process to be conducted by the  
33 Commission prior to submission of any PBR application consisting of one or  
34 more public meetings at which the electric public utility presents information  
35 regarding projected transmission and distribution expenditures and interested  
36 parties are permitted to provide comment and feedback; provided, however,  
37 no cross-examination of parties shall be permitted. The technical conference  
38 process to be established shall not exceed a duration of 60 days from the date  
39 on which the electric public utility requests initiation of such process.

40 (4) In the event the Commission rejects a PBR application, the process by which  
41 an electric public utility may address the Commission's reasons for rejection  
42 of a PBR application, which process may include collaboration between  
43 stakeholders and the electric public utility to cure any identified deficiency in  
44 an electric public utility's PBR application."

45 **SECTION 4.(b)** The Commission shall adopt rules as required by G.S. 62-133.16  
46 (j), as enacted by subsection (a) of this section, no later than 120 days after the date this section  
47 becomes law.

48 **SECTION 4.(c)** This section is effective when it becomes law and applies to any  
49 ratemaking mechanisms filed by an electric public utility on or after the date that rules adopted  
50 pursuant to G.S. 62-133.16, as enacted by subsection (a) of this section, become effective.  
51

## PART III. CUSTOMER RENEWABLES PROGRAMS

## GREEN SOURCE ADVANTAGE

SECTION 5. G.S. 62-159.2 reads as rewritten:

"§ 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 electric 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-program 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. All agreements executed under this program prior to January 1, 2021 shall remain in full force and effect and shall not be deemed modified or altered in any respect.~~

(c1) In the case of any participating customer that has not entered into an agreement under this program on or before January 1, 2021, all of the following shall apply:

(1) The reasonably projected first year annual energy output of any renewable energy facility or facilities selected by or procured on behalf of a participating customer shall not exceed the average annual energy consumption of the eligible customer premises for the most recent three calendar years, or, in the case of premises not in operation for three years, the reasonably projected average annual energy consumption for the first three years of operation. Participating customers' premises shall be located in the State of North Carolina and in the retail service territory of the offering utility, and participating customers may only participate in the program offered by the electric public utility that provides such customer with retail service.

(2) No single generating facility selected by or procured on behalf of a participating customer shall exceed 80 megawatts alternating current (MW AC) in capacity.

(3) The electric public utility, the participating customer, and the owner of any renewable energy facility or facilities selected by or procured on behalf of a participating customer shall enter into an agreement providing that all environmental and renewable energy attributes generated by such facilities shall be transferred to the participating customer for retirement or retired on the customer's behalf.

1       (c2) Each public utility shall establish reasonable credit requirements for financial  
2 assurance for renewable energy suppliers and eligible customers that are consistent with the  
3 Uniform Commercial Code of North Carolina. Major military installations and The University  
4 of North Carolina are exempt from the financial assurance requirements of this section.

5       (d) The program shall be offered by the electric public utilities subject to this section for  
6 a period of five years or until December 31, 2022, whichever is later, and shall not exceed a  
7 combined 600 megawatts alternating current (MW)(MW AC) of total capacity. For the public  
8 utilities subject to this section, where a major military installation is located within its  
9 Commission-assigned service territory, at least 100 megawatts (MW) of new renewable energy  
10 facility capacity offered under the program shall be reserved for participation by major military  
11 installations. At least 250 megawatts alternating current (MW)(MW AC) of new renewable  
12 energy facility capacity offered under the programs shall also be reserved for participation by  
13 The University of North Carolina. Major military installations and The University of North  
14 Carolina must fully subscribe to all their allocations prior to December 31, 2020, ~~or a period of~~  
15 ~~no more than three years after approval of the program, whichever is later.~~2022. If any portion  
16 of total capacity set aside to major military installations or The University of North Carolina is  
17 not used, it shall be reallocated for use by any eligible program participant. If any portion of the  
18 600 megawatts alternating current (MW)(MW AC) of renewable energy capacity provided for in  
19 this section is not awarded prior to the expiration of the program, it shall be reallocated to and  
20 included in a competitive procurement in accordance with G.S. 62-110.8(a).

21       (e) In addition to the participating customer's normal retail bill, the total cost of any  
22 renewable energy and capacity procured by or provided by the electric public utility for the  
23 benefit of the program customer shall be paid by that customer. The electric public utility shall  
24 pay the owner of the renewable energy facility which provided the electricity. ~~The program~~  
25 ~~customer shall receive a bill credit for the energy as determined by the Commission; provided,~~  
26 ~~however, that the bill credit shall not exceed utility's avoided cost. The Commission shall ensure~~  
27 ~~that all other customers are held neutral, neither advantaged nor disadvantaged, from the impact~~  
28 ~~of the renewable electricity procured on behalf of the program customer. In the case of any~~  
29 ~~customer that enters into an agreement under this program after the effective date of this section,~~  
30 the customer shall be entitled to select one of the following bill credit options:

- 31           (1) A bill credit equal to the hourly real time avoided cost or day ahead avoided  
32 cost.  
33           (2) A bill credit equal to avoided cost as determined in a manner consistent with  
34 the most recent Commission-approved methodology for a period of two, five  
35 or ten years, as selected by the customer.

36       (f) Major military installations and The University of North Carolina shall be entitled to  
37 participate in the program as described in subsections (b) through (e) of this section, or in  
38 accordance with the following terms and conditions:

- 39           (1) On or before December 31, 2021, the University of North Carolina may  
40 provide written notice to the electric public utility of its intent to participate in  
41 the program and its desired capacity amount, not to exceed 250 megawatts  
42 alternating current (MW AC) of renewable energy capacity, and major  
43 military installations may provide written notice to the electric public utility  
44 of their intent to participate in the program and their desired capacity amount,  
45 not to exceed 100 megawatts alternating current (MW AC) of renewable  
46 energy capacity.  
47           (2) Upon receipt of written notice provided in accordance with subdivision (1) of  
48 this subsection, the electric public utility shall competitively procure from  
49 independent third parties renewable energy and capacity from one or more  
50 renewable energy facilities to provide the total amount of renewable energy  
51 capacity requested by The University of North Carolina and major military

1 installations utilizing the competitive procurement process set forth in  
2 G.S. 62-110.8 for procurements occurring on or after January 1, 2022. The  
3 electric public utility shall enter into a power purchase agreement with one or  
4 more renewable facilities selected through such competitive procurement;  
5 provided that the price to be paid under the power purchase agreement,  
6 inclusive of network upgrades, shall not exceed the electric public utility's  
7 avoided cost as determined in a manner consistent with the most recent  
8 Commission-approved methodology for a period of 20 years. The applicable  
9 power purchase agreement shall allow the procuring electric public utility  
10 rights to dispatch, operate, and control the renewable energy facilities in the  
11 same manner as the electric public utility's own generating resource. Where  
12 necessary, the electric public utility may allocate a renewable energy facility  
13 between the major military installations and The University of North Carolina.  
14 In the event that an insufficient amount of qualifying bids are received in the  
15 initial procurement event or the electric public utility is otherwise unable to  
16 procure the requested amount of capacity, the electric public utility may  
17 conduct subsequent procurements at a reasonably determined time to attempt  
18 to procure the full amount of requested capacity.

19 (3) In addition to their normal retail bill, the major military installations and The  
20 University of North Carolina shall pay a product charge equal to the price  
21 established through the competitive procurement for the renewable energy  
22 facility or facilities procured for them, respectively. The electric public utility  
23 shall pay the owner of the renewable energy facility or facilities selected  
24 through such competitive procurement at the price established through the  
25 competitive procurement. The major military installations and The University  
26 of North Carolina shall be entitled to a bill credit equal to the price established  
27 through the competitive procurement for the renewable energy facility or  
28 facilities procured for them, respectively.

29 (4) In the event that the electric public utility is prohibited, for purposes of  
30 compliance with a future federal or State law, rule, or regulation relating to air  
31 emissions or renewable energy or clean energy, from relying on or otherwise  
32 receiving credit for any renewable generating facility procured under this  
33 program for a major military installation or The University of North Carolina,  
34 the electric public utility shall be entitled after the first two years of the  
35 contract term to terminate the agreement with the participating customer on  
36 90 days' written notice to the participating customer if the Commission  
37 determines that the offering utility will incur incremental compliance costs  
38 due to its inability to rely on or otherwise receive credit for such renewable  
39 generation resource or the output of such renewable generation resource. In  
40 the event of any such termination, to the greatest extent reasonably possible  
41 and subject to Commission approval, the utility shall seek to enter into a  
42 replacement arrangement with such customer that provides the customer with  
43 a set of rights that is as close as possible to the initial arrangement while still  
44 allowing the utility to comply with the federal or State law, rule, or regulation  
45 related to air emissions or renewable energy or clean energy generation."

#### 47 SHARED SOLAR/COMMUNITY SOLAR GARDENS

48 SECTION 6.(a) G.S. 62-126.3 reads as rewritten:

#### 49 "§ 62-126.3. Definitions.

50 For purposes of this Article, the following definitions apply:

- 1 (1) Affiliate. – Any entity directly or indirectly controlling or controlled by or  
2 under direct or indirect common control with an electric power supplier.
- 3 (2) Commission. – The North Carolina Utilities Commission.
- 4 ~~(3) Community solar energy facility. – A solar energy facility whose output is~~  
5 ~~shared through subscriptions.~~
- 6 (4) Customer generator. – An owner, operator, customer-generator lessee of a  
7 solar energy facility or other renewable energy facility, including any  
8 equipment that enhances the use of that facility such as an energy storage  
9 device, provided that the storage device is charged solely from that facility,  
10 that is taking service under the terms and conditions of a net metering tariff  
11 approved by the Commission, including a tariff authorized under  
12 G.S. 62-126.4A.
- 13 (4a) Customer generator lessee. – A lessee of a solar energy facility.
- 14 (5) Electric generator lessor. – The owner of solar energy facility that leases the  
15 facility to a customer generator lessee, including any agents who act on behalf  
16 of the electric generator lessor. For purposes of this Article, an electric  
17 generator lessor shall not be considered a public utility under G.S. 62-3(23).
- 18 (6) Electric power supplier. – A public utility, an electric membership  
19 corporation, or a municipality that sells electric power to retail electric  
20 customers in the State.
- 21 (7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that sells  
22 electric power to retail electric customers in the State.
- 23 (7a) Government customer. – A governmental customer that receives retail electric  
24 service from an electric public utility.
- 25 (7b) Large commercial or industrial customer. – A commercial or industrial retail  
26 customer of an electric public utility whose annual peak demand is more than  
27 five megawatts.
- 28 ...
- 29 (9) Net metering. – To use electrical metering equipment to measure the  
30 difference between the electrical energy supplied to a retail electric customer  
31 by an electric power supplier and the electrical energy supplied by the retail  
32 electric customer to the electric power supplier over the applicable billing  
33 period. A solar choice tariff authorized under G.S. 62-126.4A shall  
34 prospectively constitute an electric public utility's net metering arrangement  
35 for new customer participation after its effective date.
- 36 (10) Offering utility. – Except as specifically defined in G.S. 62-126.4A and  
37 62-126.8A, an offering utility is anyAny electric public utility as defined in  
38 G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional  
39 customers as of January 1, ~~2017~~.2021. The term shall not include any other  
40 electric public utility, electric membership corporation, or municipal electric  
41 supplier authorized to provide retail electric service within the State. An  
42 offering utility's participation in this Article as an electric generator lessor  
43 shall not otherwise alter its status as a public utility with respect to any other  
44 provision of this Chapter. An offering utility's participation in this Article shall  
45 be regulated pursuant to the provisions of this Article.
- 46 ....
- 47
- 48 (13a) Small commercial or industrial customer. – A commercial or industrial retail  
49 customer of an electric public utility whose annual peak demand is less than  
50 or equal to five megawatts but excluding government customers.
- 51 ...."

1 SECTION 6.(b) Article 6B of Chapter 62 of the General Statutes is amended by  
2 adding a new section to read:

3 **§ G.S. 62-126.8B. Shared solar program.**

4 (a) It is the policy of the State to encourage electric public utilities to provide expanded  
5 renewable energy options for North Carolina large commercial or industrial customers, small  
6 commercial or industrial customers, units of local government, and residential customers and to  
7 foster the use of renewable energy as part of the electric public utilities' generation mix.  
8 Therefore, electric public utilities providing retail electric service to more than 150,000 North  
9 Carolina retail jurisdictional customers as of January 1, 2021 shall jointly or separately, complete  
10 a competitive procurement seeking new solar resources in a total amount of approximately 750  
11 megawatts alternating current (MW AC) procured over a period of approximately three years.  
12 All the following shall apply to such procurements:

- 13 (1) The offering utilities shall enter into power purchase agreements (PPA) with  
14 the selected solar generating facilities. PPAs shall be for a period of twenty  
15 years and shall provide for the purchase of all the energy, capacity, and all  
16 environmental and renewable energy attributes. The applicable PPA shall  
17 allow the procuring electric public utility rights to dispatch, operate, and  
18 control the renewable energy facilities in the same manner as the electric  
19 public utility's own generating resources.
- 20 (2) The offering utilities may require the renewable generation facilities procured  
21 hereunder to meet commercially reasonable performance standards. The  
22 offering utilities and their affiliates shall not participate as bidders in the  
23 competitive solicitation process required under this section.
- 24 (3) Renewable generation facilities procured pursuant to this subsection shall be  
25 new solar generating facilities and located within the respective balancing  
26 authority areas of the electric public utilities, whether located inside or outside  
27 the geographic boundaries of the State. Each facility shall be connected to the  
28 electric public utility's transmission system and shall have a capacity of no  
29 more than 80 MW AC. The price paid under the PPA shall not exceed the  
30 electric public utility's current forecast of its avoided cost calculated over the  
31 term of the PPA, inclusive of any upgrade costs. The electric public utility's  
32 current forecast of its avoided cost shall be consistent with the  
33 Commission-approved avoided cost methodology.

34 (b) Each offering utility shall file with the Commission, an application requesting  
35 approval of a shared solar program. The Commission shall issue a final decision approving,  
36 modifying, or rejecting the program within 120 days of receipt of the application. Each shared  
37 solar program shall conform with all the following:

- 38 (1) Participating customers' premises shall be located in the State of North  
39 Carolina and in the retail service territory of the offering utility and  
40 participating customers may only participate in the program offered by the  
41 electric public utility that provides such customer with retail service.
- 42 (2) Capacity under the program shall be opened for a defined initial enrollment  
43 period during each program procurement cycle. If any program class is  
44 over-subscribed during the initial enrollment period, all the following shall  
45 apply:
- 46 (a) In the case of large commercial or industrial customers and  
47 government customers, the available capacity shall be allocated to all  
48 eligible customers that applied on a proportional basis based on the  
49 requested subscription amount of each customer.



1                   (b) In the case of small commercial or industrial and residential customers,  
2                   the available capacity shall be allocated through a random selection  
3                   process.

4                   (3) The total program volume shall be allocated as follows: 70% to large  
5                   commercial or industrial customers and small commercial or industrial  
6                   customers, 20% to government customers, and 10% to residential customers.  
7                   To the extent that any customer class has not fully subscribed to its respective  
8                   allocation within the initial enrollment period, any unsubscribed amount shall  
9                   be made available to all eligible customers through a second enrollment period  
10                  and, if oversubscribed during such second enrollment period, shall be  
11                  allocated through a random selection process. Thereafter, any remaining  
12                  capacity from such procurement cycle shall be made available on a first come,  
13                  first served basis.

14                  (4) The reasonably projected first year's annual energy output from a participating  
15                  customer's capacity allocation from the program shall not exceed the average  
16                  annual energy consumption of the eligible customer premises for the most  
17                  recent three calendar years, or, in the case of premises not in operation for  
18                  three years, the reasonably projected average annual energy consumption for  
19                  the first three years of operation.

20                  (5) Once a subscription has been awarded, the subscription shall remain in place  
21                  until the earlier of the following:

22                   a. The customer terminates their subscription.

23                   b. The customer cancels their retail service.

24                   c. Twenty years after the solar generating facility to which such customer  
25                   has been subscribed achieved commercial operation.

26                  (6) Each participating customer shall pay a product charge equal to the average  
27                  contract price for all facilities with which the offering utility has contracted in  
28                  a particular procurement cycle pursuant to the applicable competitive  
29                  solicitation.

30                  (7) Each participating customer shall receive a bill credit equal to the product  
31                  charge for such customer.

32                  (8) All environmental and renewable energy attributes produced by any shared  
33                  renewables facility associated with the customer's participation in the program  
34                  shall be retired by the offering utility on behalf of the participating customer  
35                  or, at the election of a non-residential participating customer, be conveyed to  
36                  the customer for retirement, at the customer's expense, in which case, the  
37                  customer must provide proof of retirement within 90 days. In the event that  
38                  the utility is prohibited, for purposes of compliance with a future federal or  
39                  State law or regulation relating to air emissions or renewable energy or clean  
40                  energy, from relying on or otherwise receiving credit for a renewable  
41                  generating facility that is procured under this program, the utility shall be  
42                  entitled after the first two years of the program term to terminate the  
43                  agreement with such participating customer on 90 days written notice to the  
44                  participating customer if the Commission determines that the utility will incur  
45                  incremental compliance costs due to its inability to rely on or otherwise  
46                  receive credit for such renewable generation resource or the output of such  
47                  renewable generation resource. In the event of any such termination, to the  
48                  greatest extent reasonably possible and subject to Commission approval, the  
49                  utility shall seek Commission approval of a replacement arrangement with  
50                  such customer that provides the customer with a set of rights that is as close  
51                  as possible to the initial arrangement while still allowing the utility to comply

1 with such federal or State law or regulation related to air emissions or  
2 renewable energy or clean energy generation.

- 3 (9) Each participating customer shall pay a reasonable administration fee  
4 approved by the Commission in order for the offering utility to recover the  
5 administrative costs of the program."

6 SECTION 6.(c) G.S. 62-126.8 is repealed.

7 SECTION 6.(d) Article 6B of Chapter 62 of the General Statutes is amended by  
8 adding a new section to read:

9 "**§ G.S. 62-126.8A. Community solar gardens**

10 (a) Procurement. – In order to provide expanded solar energy options for North Carolina  
11 small commercial and industrial customers and residential customers and to foster the use of solar  
12 energy as part of the electric public utilities' generation mix, electric public utilities subject to  
13 this section shall undertake a competitive procurement of solar energy for the purpose of offering  
14 a community solar gardens program for participation by small commercial and industrial,  
15 government, and residential customers. For purposes of this section, an "offering utility" includes  
16 any electric public utility serving more than 100,000 retail electric customers in the State as of  
17 January 1, 2021. Aggregate procurement shall be as follows:

- 18 (1) Electric public utilities providing retail electric service to more than 150,000  
19 North Carolina retail jurisdictional customers as of January 1, 2021 shall  
20 jointly or separately complete a competitive procurement seeking up to 50  
21 megawatts (MW) of new distribution-connected solar generation to be  
22 utility-owned. To the extent practicable, approximately equal amounts of solar  
23 generation shall be procured under this program in each of their respective  
24 service territories.

- 25 (2) An electric public utility providing retail electric service to more than 100,000  
26 and fewer than 150,000 North Carolina retail jurisdictional customers as of  
27 January 1, 2021 may elect to offer a competitive procurement seeking up to  
28 10 megawatts (MW) of new distribution-connected solar generation to be  
29 utility-owned. For purposes of this section, such electric utility shall also be  
30 an "offering utility."

31 (b) The initial procurements required by this section shall be completed within 60 days  
32 of the date on which the Commission approves the program pursuant to subsection (c) of this  
33 section. Each offering utility implementing this section shall attempt to procure at least  
34 twenty-five percent (25%) of its total procurement amount from projects that are capable of being  
35 placed into service on or before December 31, 2023 for the purpose of offering a community  
36 solar gardens program for participation by its small commercial and industrial, government, and  
37 residential customers. Each offering utility shall be permitted to require that solar generation  
38 facilities procured under this section meet commercially reasonable performance and technical  
39 standards. An offering utility and its affiliates shall not participate as bidders in the competitive  
40 request for proposals process required under this section. In the event that an insufficient number  
41 of eligible solar generating facilities are procured through such process, an offering utility shall  
42 be permitted to propose self-developed solar generating facilities if the capital costs are below  
43 the cost cap specified in subsection (e) of this section. To the extent that an offering utility is  
44 unable to procure viable projects meeting the required criteria and meeting the total procurement  
45 amount specified in subdivisions (1) and (2) of subsection (a) of this section through the initial  
46 procurement, and there are no self-developed facilities meeting the criteria identified in this  
47 section, the offering utility shall be permitted to conduct another procurement at a later date to  
48 meet the total procurement amount.

49 (c) Eligible projects. – Solar generation facilities procured pursuant to subsection (a) of  
50 this section shall be new solar capacity and located in the State of North Carolina. Each such  
51 facility shall be interconnected to the relevant offering utility's distribution system.

1       (d) Application. – Within 180 days of the effective date of this section, each offering  
2 utility shall file with the Commission an application requesting approval of a community solar  
3 gardens program. Each community solar gardens program shall conform with the following:

4       (1) The program volume shall be allocated as follows: thirty-five percent (35%)  
5 to small commercial and industrial customers, thirty percent (30%) to  
6 government customers, and thirty-five percent (35%) to residential customers.  
7 To the extent that any customer class has not fully subscribed to its respective  
8 allocation within one year of the opening of the application period, any  
9 unsubscribed amount shall be made available to all program applicants based  
10 on the priority of their applications, or, to the extent necessary, by random  
11 selection process.

12       (2) The reasonably projected first year's annual energy output from a participating  
13 customer's capacity allocation from the program shall not exceed the average  
14 annual energy consumption of the eligible customer premises for the most  
15 recent three calendar years, or, in the case of premises not in operation for  
16 three years, the reasonably projected average annual energy consumption for  
17 the first three years of operation.

18       (3) No single participating customer subscription shall account for more than fifty  
19 percent (50%) interest in a single facility, and each facility shall have a  
20 minimum of five subscribers.

21       (4) Participating customers' premises shall be located in the State of North  
22 Carolina and in the retail service territory of the offering utility offering the  
23 program. Participating customers may only participate in the program offered  
24 by the electric public utility that provides such customer with retail service.

25       (5) Once a subscription has been awarded, such subscription shall remain in place  
26 until the earlier of the following:

27       a. The customer terminates their subscription.

28       b. The customer cancels their retail service.

29       c. Twenty years after the solar generating facility to which such customer  
30 has been subscribed achieved commercial operation.

31       (6) Each participating customer shall pay a monthly product charge equal to its  
32 pro rata share of the offering utility's monthly levelized revenue requirement  
33 for all of the community solar garden facilities serving the relevant offering  
34 utility's community solar garden program.

35       (7) Each participating customer shall pay a reasonable administration fee  
36 approved by the Commission in order for the offering utility to recover the  
37 administrative costs of the program.

38       (8) Each offering utility shall provide to each participating customer a monthly  
39 bill credit in an amount equal to its pro rata share of the offering utility's  
40 monthly levelized revenue requirement for all of the community solar garden  
41 facilities. The renewable energy certificates produced by the community solar  
42 garden facility associated with the customer's subscription shall be retired by  
43 the offering utility on the customer's behalf; provided that government  
44 customers may elect to have certificates transferred by the electric public  
45 utilities to an account the customer controls but shall be responsible for the  
46 cost of such transfer and must provide proof of retirement of the certificates  
47 to the electric public utilities within 90 days of receipt, provided, further that  
48 in the event that the offering utility is prohibited, for purposes of compliance  
49 with a future federal or State law or regulation relating to air emissions or  
50 renewable energy or clean energy from relying on or otherwise receiving  
51 credit for any solar generating facility procured under the community solar

gardens program, the offering utility shall be entitled after the first two years of the program to terminate such program on 90 days written notice to the participating customers if the Commission determines that the offering utility will incur incremental compliance costs due to its inability to rely on or otherwise receive credit for such renewable generation resource or the output of such renewable generation resource.

(e) Cost recovery. – The capital cost for the construction of projects procured or constructed under this section shall not exceed one dollar and ninety cents (\$1.90) per watt, inclusive of interconnection costs. If a solar generating facility has been identified for selection and use in the program in accordance with the terms of this section, and satisfies the forgoing cost cap, such solar generating facility shall be deemed consistent with the public convenience and necessity for purposes of G.S. 62-110.1, and the Commission shall issue a certificate of public convenience and necessity for such replacement resources in accordance with the process set forth in G.S. 62-111.9(13)(a), and no further process shall be required under G.S. 62-110.1 except as otherwise addressed therein. Each offering utility shall be permitted to establish a regulatory asset and defer to such regulatory asset the incremental costs of all solar generating facilities procured or built under this section until such time as the costs can be reflected in customer rates. The types of incremental costs that may be deferred include operations and maintenance expenses, administration costs, property tax, depreciation expense, income taxes, and carrying costs related to electric plant investments and regulatory assets at the offering utility's then authorized, net-of-tax, weighted average cost of capital.

(f) Bill credit adjustment. – If, at any point after the date that is two years from the date on which the program is opened for subscriptions, less than fifty percent (50%) of the available subscriptions have been claimed, any party may petition the Commission to modify a community solar garden program as needed to enhance participation through adjustments to the participating customer product charge and bill credit, and the Commission may so modify the program if the Commission determines that it is in the public interest to do so."

**SECTION 6.(e)** This section is effective when it becomes law. The applications required to be filed with the Utilities Commission pursuant to G.S. 62-126.8B(b), as enacted by subsection (b) of this section, and G.S. 62-126.8A, as enacted by subsection (d) of this section, shall be filed by the offering utilities no later than 180 days after the effective date of this section.

**SOLAR CHOICE TARIFF**

**SECTION 7.(a)** G.S. 62-2 reads as rewritten:

**"§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

...  
 (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and ~~conservation~~ efficient use of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(4a) To provide just and reasonable time-variant rates and other dynamic price offerings to utility customers that are designed to optimize the total cost of energy consumption rather than the total volume of energy consumed;

1           (4b) To assure that facilities necessary to meet future growth can be financed by  
2 the utilities operating in this State on terms which are reasonable and fair to  
3 both the customers and existing investors of such utilities; and to that end to  
4 authorize fixing of rates in such a manner as to result in lower costs of new  
5 facilities and lower rates over the operating lives of such new facilities by  
6 making provisions in the rate-making process for the investment of public  
7 utilities in plants under construction;

8           ...."

9           SECTION 7.(b) G.S. 126-2 reads as rewritten:

10       **"§ 62-126.2. Declaration of policy.**

11       The General Assembly of North Carolina finds that as a matter of public policy it is in the  
12 interest of the State to encourage time-variant pricing structures to promote net energy metering  
13 options, and to authorize the leasing of solar energy facilities for retail customers and subscription  
14 to shared community solar energy facilities. The General Assembly further finds and declares  
15 that in encouraging the time-variant pricing structures to promote net energy metering options  
16 and the leasing of and subscription to solar energy facilities pursuant to this act,  
17 cross-subsidization should be avoided to the greatest extent practicable when balancing the goals  
18 of this act by holding harmless electric public utilities' customers that do not participate in such  
19 arrangements. The General Assembly recognizes that due to substantive differences in size,  
20 customer bases, access to low-carbon generation, and other factors, this declaration of policy  
21 does not apply to electric membership corporations, state-owned electric suppliers, or  
22 municipalities that sell electric power to retail customers in the State."

23       SECTION 7.(c) G.S. 62-126.4 is repealed.

24       SECTION 7.(d) Article 6B of Chapter 62 of the General Statutes is amended by  
25 adding a new section to read:

26       **"§ 62-126.4A. Solar choice tariff.**

27       (a) Each offering utility shall file for Commission approval a solar choice tariff that shall  
28 become the exclusive option available to customers that apply for net metering service after  
29 Commission approval pursuant to this section. For purposes of this section, an "offering utility"  
30 includes all electric public utilities serving more than 100,000 retail electric customer in the State  
31 as of January 1, 2021.

32       (b) To allow the market for customer-sited renewable energy facilities to continue to  
33 mature without disruption and in a sustainable manner for participating and non-participating  
34 customers, and the State economy as a whole, the Commission shall approve an offering utility's  
35 application to establish a solar choice tariff that meets all of the following objectives:

36       (1) Provides for monthly netting with net exports credited at  
37 Commission-approved avoided cost in light of the costs and benefits of the  
38 solar choice tariff achieving the objectives of a net metering program except  
39 as provided in subdivision (2) of this subsection.

40       (2) Provides for monthly netting within each pricing period for time-variant and  
41 dynamic pricing structures with net exports credited at Commission-approved  
42 avoided cost.

43       (3) Provides rate design options that align the customer generator's ability to  
44 achieve bill savings with long-term reductions in the overall cost the offering  
45 utility will incur in providing electric service, including, but not limited to,  
46 time-variant and dynamic pricing structures.

47       (4) Reduces cross-subsidization by non-participants through mechanisms that  
48 allow offering utilities the opportunity to recover customer costs and  
49 distribution costs, including a minimum monthly bill, grid access fee for  
50 oversized systems, and non-bypassable charges to recover storm recovery,  
51 cybersecurity, and public purpose charges for ratepayer funded programs like

1 energy efficiency, demand side management, and resiliency. Such recovery  
2 mechanisms shall not, however, include a standby charge where billing is  
3 based on the capacity of the renewable energy system.

4 (5) Minimizes, to the greatest extent practicable, any intra-class  
5 cross-subsidization identified using the offering utility's most recently  
6 approved embedded cost of service study.

7 (6) Encourages customer adoption of other energy savings, demand reduction, or  
8 grid services technologies and participation in cost-effective programs that  
9 can be offered in conjunction with a solar choice tariff to help lower the cost  
10 of providing service and maximize grid benefits.

11 (c) Customer generators taking service under a pre-existing net metering tariff prior to  
12 Commission approval of a solar choice tariff pursuant to this section shall have the option to  
13 transition to the new solar choice tariff or continue to take service under the offering utility's  
14 pre-existing net metering tariff in effect at the time of interconnection of that customer generator's  
15 net metering facility until January 1, 2040. After January 1, 2027, a non-by-passable charge based  
16 upon the DC capacity of the facility will be added for customers who remain on a pre-existing  
17 net metering tariff. This charge shall be designed to collect the base rate increase approved by  
18 the Commission after January 1, 2027, that would otherwise not be collected from customer  
19 generators taking service under a pre-existing net metering tariff after January 1, 2027.

20 (d) Nothing in this section prohibits a customer generator that is participating in the  
21 offering utility's net metering tariff or solar choice tariff from also participating in a  
22 Commission-approved energy efficiency program, grid services program, or other type of  
23 distributed energy resource aggregation program.

24 (e) An offering utility offering a solar choice tariff approved pursuant to this section shall  
25 continue to be authorized to fully recover its cost of service, including but not limited to: (i) all  
26 costs to effectuate the solar choice tariff; and (ii) any unrecovered non-fuel and variable  
27 operations and maintenance costs due to customer generators' participation in the solar choice  
28 tariff.

29 SECTION 7.(e) G.S. 62-126.5(d) reads as rewritten:

30 "§ 62-126.5. Scope of leasing program in offering utilities' service areas.

31 ...

32 (d) The total installed capacity of all solar energy facilities on an offering utility's system  
33 that are leased pursuant to this section shall not exceed ~~one percent (1%)~~ five percent (5%) of the  
34 previous five-year average of the North Carolina retail contribution to the offering utility's  
35 coincident retail peak demand. The offering utility may refuse to interconnect customers that  
36 would result in this limitation being exceeded. Each offering utility shall establish a program for  
37 new installations of leased equipment to permit the reservation of capacity by customer generator  
38 lessees, whether participating in a public utility or nonutility lessor's leasing program, on its  
39 system, including provisions to prevent or discourage abuse of such programs. Such programs  
40 must provide that only prospective individual customer generator lessees may apply for, receive,  
41 and hold reservations to participate in the offering utility's leasing program. Each reservation  
42 shall be for a single customer premises only and may not be sold, exchanged, traded, or assigned  
43 except as part of the sale of the underlying premises.

44 ..."

45 SECTION 7.(f) G.S. 62-133.8(a) reads as rewritten:

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

47 ...

48 (4) "Energy efficiency measure" means an equipment, physical, behavioral, or  
49 program change implemented by a retail electric customer after January 1,  
50 2007, that reduces the customer's energy requirements from the electric power  
51 supplier needed ~~results in less energy used~~ to perform the same function.

1 "Energy efficiency measure" includes, but is not limited to, energy produced  
2 from a combined heat and power system that uses nonrenewable energy  
3 ~~resources, resources,~~ and energy produced by a customer generator as that term  
4 is defined under 62-126.3(4). "Energy efficiency measure" does not include  
5 demand-side ~~management, management,~~ or the net monthly exports of energy  
6 by a customer under a tariff approved pursuant to G.S. 62-126.4(b).

7 ..."

8 SECTION 7.(g) Article 6B of Chapter 62 of the General Statutes is amended by adding  
9 a new section to read:

10 **"§ 62-126.4B. Standby service required in certain circumstances.**

11 For any customer participating in an offering utility's net metering tariff or solar choice tariff,  
12 standby service shall be required for customers installing solar or other behind-the-meter  
13 generation with a nameplate generation capacity over 100 kW, . For behind-the-meter generation  
14 with a planning capacity factor of less than 60%, the offering utility shall calculate standby  
15 service cost using the customer's standby service demand for the billing month set based on either  
16 the nameplate capacity of the installed generation or, where the customer has additional metering  
17 equipment installed at the customer's expense, then the standby service demand shall equal the  
18 generator gross output that occurs at the billing interval coincident with the customer's maximum  
19 demand for the billing month under the participating customer's applicable rate schedule."

20 SECTION 7.(h) This section is effective when it becomes law. The solar choice tariff  
21 required to be filed with the Utilities Commission pursuant to G.S. 62-126.4A, as enacted by  
22 subsection (d) of this section, shall be filed by each offering utility no later than 120 days after  
23 the effective date of this section, and the Commission shall issue an order to approve, modify, or  
24 deny the program no later than 90 days after the submission of the program by the electric public  
25 utility.

26  
27  
28 **POTENTIAL MODIFICATION OF CERTAIN EXISTING POWER PURCHASE**  
29 **AGREEMENTS WITH SMALL POWER PRODUCERS**

30 SECTION 8.(a) In an effort to reduce cost to customers, within 120 days after the  
31 effective date of this section, the North Carolina Utilities Commission shall initiate a stakeholder  
32 process to provide interested parties the opportunity to establish the rates to be paid by the  
33 electric public utilities in connection with the modification of certain existing power purchase  
34 agreements of small power producers to present to the Commission that would accomplish both  
35 of the following:

- 36 (1) Provide small power producers a one-time option to elect, within 180 days of  
37 a Commission order authorizing such action, to amend their existing power  
38 purchase agreement, extending into a new longer term power purchase  
39 agreement for a term equal to the remaining term of the existing power  
40 purchase agreement plus an additional 10 years, notwithstanding the contract  
41 term limits prescribed in G.S. 62-156(c);
- 42 (2) Establish capacity and energy rates to be paid by the electric public utilities  
43 that are designed to take into consideration the currently contracted capacity  
44 and energy rates, capacity and energy rates to be computed at the time the  
45 small power producer elects to exercise the option to amend their existing  
46 power purchase agreement as provided for in subdivision (1) of this  
47 subsection. In developing these rates, stakeholders shall consider whether use  
48 of the developed rates, for purchases from small power producers for an  
49 extended future term, are just and reasonable to the electric consumer of the  
50 electric utility, and in the public interest

1           **SECTION 8.(b)** For purposes of subsections (a) through (e) of this section, the term  
2 "small power producers" means small power producers, as that term is defined under  
3 G.S. 62-3(27a), generating solar electricity with a total capacity equal to or less than five  
4 megawatts (AC) that established a legally enforceable obligation in accordance with the  
5 Commission's then applicable requirements on or before November 15, 2016 and have entered  
6 into a long-term contract exceeding two years to sell their full output to the interconnected  
7 electric public utility under Section 210 of the Public Utility Regulatory Policies Act of 1978.

8           **SECTION 8.(c)** In conducting the stakeholder process required by this section, the  
9 Commission shall convene representatives from all of the following entities:

10           (1) The Public Staff.

11           (2) Electric public utilities obligated to purchase capacity and energy from small  
12 power producers pursuant to G.S. 62-156.

13           (3) Small power producers.

14           **SECTION 8.(d)** Within 180 days of the Commission's initiation of the stakeholder  
15 process, the stakeholders shall present, jointly or separately, their recommendations to the  
16 Commission. The Commission shall approve the proposed rates and resulting amended power  
17 purchase agreements if the Commission finds that the proposed methodology: (i) reduces costs  
18 to customers in the short term and over the life of the amended power purchase agreement,  
19 evaluated from the date of the amendment through to the end of the amended agreement; (ii)  
20 fairly compensates small power producers that elect such treatment; and (iii) is just and  
21 reasonable and in the public interest. Notwithstanding the foregoing, it is hereby declared  
22 appropriate, in the public interest and promoting of regulatory economy, for small power  
23 producers and the electric public utilities to negotiate amendments to the power purchase  
24 agreements of such small power producers in lieu of the aforementioned stakeholder process,  
25 provided that the intent and objectives of this Section are accomplished through such negotiation.

26           **SECTION 8.(e)** Notwithstanding the foregoing, it is hereby declared appropriate,  
27 in the public interest, and promoting of regulatory economy, for small power producers and the  
28 electric public utilities to negotiate amendments to the power purchase agreements of such small  
29 power producers in lieu of the aforementioned stakeholder process, provided that the intent and  
30 objectives of this section are accomplished through such negotiation.

31  
32  
33 **PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

34           **SECTION 9.** If any provision of this act or the application thereof to any person or  
35 circumstances is held invalid, such invalidity shall not affect other provisions or applications of  
36 this act that can be given effect without the invalid provision or application, and, to this end, the  
37 provisions of this act are declared to be severable.

38           **SECTION 10.** Except as otherwise provided, this act is effective when it becomes  
39 law.