GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-397
SENATE BILL 3

AN ACT TO: (1) PROMOTE THE DEVELOPMENT OF RENEWABLE ENERGY AND ENERGY EFFICIENCY IN THE STATE THROUGH IMPLEMENTATION OF A RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS), (2) ALLOW RECOVERY OF CERTAIN NONFUEL UTILITY COSTS THROUGH THE FUEL CHARGE ADJUSTMENT PROCEDURE, (3) PROVIDE FOR ONGOING REVIEW OF CONSTRUCTION COSTS AND FOR RECOVERY OF COSTS IN RATES IN A GENERAL RATE CASE, (4) ADJUST THE PUBLIC UTILITY AND ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEES, (5) PROVIDE FOR THE PHASEOUT OF THE TAX ON THE SALE OF ENERGY TO NORTH CAROLINA FARMERS AND MANUFACTURERS, AND (6) ALLOW A TAX CREDIT TO CONTRIBUTORS TO 501(C)(3) ORGANIZATIONS FOR RENEWABLE ENERGY PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2(a) 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:

…

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; ~~and~~

(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities ~~Commission.~~Commission; and

(10) To promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:

a. Diversify the resources used to reliably meet the energy needs of consumers in the State.

b. Provide greater energy security through the use of indigenous energy resources available within the State.

c. Encourage private investment in renewable energy and energy efficiency.

d. Provide improved air quality and other benefits to energy consumers and citizens of the State."

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

"**§ 62-133.7. Renewable Energy and Energy Efficiency Portfolio Standard (REPS).**

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

(1) 'Combined heat and power system' means a system that uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility.

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

(3) 'Electric power supplier' means a public utility, an electric membership corporation, or a municipality that sells electric power to retail electric power customers in the State.

(4) 'Energy efficiency measure' means an equipment, physical, or program change implemented after 1 January 2007 that results in less energy used to perform the same function. 'Energy efficiency measure' includes, but is not limited to, energy produced from a combined heat and power system that uses nonrenewable energy resources. 'Energy efficiency measure' does not include demand-side management.

(5) 'New renewable energy facility' means a renewable energy facility that either:

a. Was placed into service on or after 1 January 2007.

b. Delivers or has delivered electric power to an electric power supplier pursuant to a contract with NC GreenPower Corporation that was entered into prior to 1 January 2007.

c. Is a hydroelectric power facility with a generation capacity of 10 megawatts or less that delivers electric power to an electric power supplier.

(6) 'Renewable energy certificate' means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of this section as determined by the Commission. A 'renewable energy certificate' does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.

(7) 'Renewable energy facility' means a facility, other than a hydroelectric power facility with a generation capacity of more than 10 megawatts, that either:

a. Generates electric power by the use of a renewable energy resource.

b. Generates useful, measurable combined heat and power derived from a renewable energy resource.

c. Is a solar thermal energy facility.

(8) 'Renewable energy resource' means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a

retail electric customer's facility; or hydrogen derived from a renewable energy resource. 'Renewable energy resource' does not include peat, a fossil fuel, or nuclear energy resource.

(b) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Public Utilities. –

(1) Each electric public utility in the State shall be subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018	10% of 2017 North Carolina retail sales
2021 and thereafter	12.5% of 2020 North Carolina retail sales

(2) An electric public utility may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Use a renewable energy resource to generate electric power at a generating facility other than the generation of electric power from waste heat derived from the combustion of fossil fuel.

c. Reduce energy consumption through the implementation of an energy efficiency measure; provided, however, an electric public utility subject to the provisions of this subsection may meet up to twenty-five percent (25%) of the requirements of this section through savings due to implementation of energy efficiency measures. Beginning in calendar year 2021 and each year thereafter, an electric public utility may meet up to forty percent (40%) of the requirements of this section through savings due to implementation of energy efficiency measures.

d. Purchase electric power from a new renewable energy facility. Electric power purchased from a new renewable energy facility located outside the geographic boundaries of the State shall meet the requirements of this section if the electric power is delivered to a public utility that provides electric power to retail electric customers in the State; provided, however, the electric public utility shall not sell the renewable energy certificates created pursuant to this paragraph to another electric public utility.

e. Purchase renewable energy certificates derived from in-State or out-of-state new renewable energy facilities. Certificates derived from out-of-state new renewable energy facilities shall not be used to meet more than twenty-five percent (25%) of the requirements of this section, provided that this limitation shall not apply to an electric public utility with less than 150,000 North Carolina retail jurisdictional customers as of 31 December 2006.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

(c) Renewable Energy and Energy Efficiency Standards (REPS) for Electric Membership Corporations and Municipalities. –

(1) Each electric membership corporation or municipality that sells electric power to retail electric power customers in the State shall be

subject to a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) according to the following schedule:

Calendar Year	REPS Requirement
2012	3% of 2011 North Carolina retail sales
2015	6% of 2014 North Carolina retail sales
2018 and thereafter	10% of 2017 North Carolina retail sales

(2) An electric membership corporation or municipality may meet the requirements of this section by any one or more of the following:

a. Generate electric power at a new renewable energy facility.

b. Reduce energy consumption through the implementation of demand-side management or energy efficiency measures.

c. Purchase electric power from a renewable energy facility or a hydroelectric power facility, provided that no more than thirty percent (30%) of the requirements of this section may be met with hydroelectric power, including allocations made by the Southeastern Power Administration.

d. Purchase renewable energy certificates derived from in-State or out-of-state renewable energy facilities. An electric power supplier subject to the requirements of this subsection may use certificates derived from out-of-state renewable energy facilities to meet no more than twenty-five percent (25%) of the requirements of this section.

e. Acquire all or part of its electric power through a wholesale purchase power agreement with a wholesale supplier of electric power whose portfolio of supply and demand options meets the requirements of this section.

f. Use electric power that is supplied by a new renewable energy facility or saved due to the implementation of demand-side management or energy efficiency measures that exceeds the requirements of this section for any calendar year as a credit towards the requirements of this section in the following calendar year or sell the associated renewable energy certificates.

(d) Compliance With REPS Requirement Through Use of Solar Energy Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State, or an equivalent amount of energy, shall be supplied by a combination of new solar electric facilities and new metered solar thermal energy facilities that use one or more of the following applications: solar hot water, solar absorption cooling, solar dehumidification, solar thermally driven refrigeration, and solar industrial process heat. The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy; provided, the Commission shall develop a procedure to determine if an electric power supplier is in compliance with the provisions of this subsection if a new solar electric facility or a new metered solar thermal energy facility fails to meet the terms of its contract with the electric power supplier. As used in this subsection, 'new' means a facility that was first placed into service on or after 1 January 2007. The electric power suppliers shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Solar Energy Resources
2010	0.02%
2012	0.07%
2015	0.14%
2018	0.20%

(e) Compliance With REPS Requirement Through Use of Swine Waste Resources. – For calendar year 2018 and for each calendar year thereafter, at least two-tenths of one percent (0.2%) of the total electric power in kilowatt hours sold to retail electric customers in the State shall be supplied, or contracted for supply in each year, by swine waste. The electric power suppliers, in the aggregate, shall comply with the requirements of this subsection according to the following schedule:

Calendar Year	Requirement for Swine Waste Resources
2012	0.07%
2015	0.14%
2018	0.20%

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

Calendar Year	Requirement for Poultry Waste Resources
2012	170,000 megawatt hours
2013	700,000 megawatt hours
2014	900,000 megawatt hours

(g) Control of Emissions. – As used in this subsection, Best Available Control Technology (BACT) means an emissions limitation based on the maximum degree a reduction in the emission of air pollutants that is achievable for a facility, taking into account energy, environmental, and economic impacts and other costs. A biomass combustion process at any new renewable energy facility that delivers electric power to an electric power supplier shall meet BACT. The Environmental Management Commission shall determine on a case-by-case basis the BACT for a facility that would not otherwise be required to comply with BACT pursuant to the Prevention of Significant Deterioration (PSD) emissions program. The Environmental Management Commission may adopt rules to implement this subsection. In adopting rules, the Environmental Management Commission shall take into account cumulative and secondary impacts associated with the concentration of biomass facilities in close proximity to one another. In adopting rules the Environmental Management Commission shall provide for the manner in which a facility that would not otherwise be required to comply with BACT pursuant to the PSD emissions programs shall meet the BACT requirement.

(h) Cost Recovery and Customer Charges. –

(1) For the purposes of this subsection, the term 'incremental costs' means all reasonable and prudent costs incurred by an electric power supplier to:

a. Comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section that are in excess of the electric power supplier's avoided costs other than those costs recovered pursuant to G.S. 62-133.8.

b. Fund research that encourages the development of renewable energy, energy efficiency, or improved air quality, provided those costs do not exceed one million dollars ($1,000,000) per year.

c. Comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of this section that exceed the costs that the electric power supplier would have incurred under those subsections in the absence of the federal mandate.

(2) All reasonable and prudent costs incurred by an electric power supplier to comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of this section, including, but not limited to, the avoided costs associated with a federal mandate that exceeds the avoided costs that the electric power supplier would have incurred pursuant to subsections (b), (c), (d), (e), and (f) of this section in the absence of the federal mandate, shall be recovered by the electric power supplier in an annual rider charge assessed in accordance with the schedule set out in subdivision (4) of this subsection increased by the Commission on a pro rata basis to allow for full and complete recovery of all reasonable and prudent costs incurred to comply with the federal mandate.

(3) Except as provided in subdivision (2) of this subsection, the total annual incremental cost to be incurred by an electric power supplier and recovered from the electric power supplier's retail customers shall not exceed an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of 31 December of the previous calendar year. An electric power supplier shall be conclusively deemed to be in compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section if the electric power supplier's total annual incremental costs incurred equals an amount equal to the per-account annual charges set out in subdivision (4) of this subsection applied to the electric power supplier's total number of customer accounts determined as of 31 December of the previous calendar year. The total annual incremental cost recoverable by an electric power supplier from an individual customer shall not exceed the per-account charges set out in subdivision (4) of this subsection except as these charges may be adjusted in subdivision (2) of this subsection.

(4) An electric power supplier shall be allowed to recover the incremental costs incurred to comply with the requirements of subsections (b), (c), (d), (e), and (f) of this section and fund research as provided in subdivision (1) of this subsection through an annual rider not to exceed the following per-account annual charges:

Customer Class	2008-2011	2012-2014	2015 and thereafter
Residential per account	$10.00	$12.00	$34.00
Commercial per account	$50.00	$150.00	$150.00
Industrial per account	$500.00	$1,000.00	$1,000.00

(5) The Commission shall adopt rules to establish a procedure for the annual assessment of the per-account charges set out in this subsection to an electric public utility's customers to allow for timely recovery of all reasonable and prudent costs of compliance with the requirements of subsections (b), (c), (d), (e), and (f) of this section and to fund research as provided in subdivision (1) of this subsection. The Commission shall ensure that the costs to be recovered from individual customers on a per-account basis pursuant to subdivisions (2) and (3) of this subsection are in the same proportion as the per-account annual charges for each customer class set out in subdivision (4) of this subsection.

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

(1) Provide for the monitoring of compliance with and enforcement of the requirements of this section.

(2) Include a procedure to modify or delay the provisions of subsections (b), (c), (d), (e), and (f) of this section in whole or in part if the Commission determines that it is in the public interest to do so. The procedure adopted pursuant to this subdivision shall include a requirement that the electric power supplier demonstrate that it made a reasonable effort to meet the requirements set out in this section.

(3) Ensure that energy credited toward compliance with the provisions of this section not be credited toward any other purpose, including another renewable energy portfolio standard or voluntary renewable energy purchase program in this State or any other state.

(4) Establish standards for interconnection of renewable energy facilities and other nonutility-owned generation with a generation capacity of 10 megawatts or less to an electric public utility's distribution system; provided, however, that the Commission shall adopt, if appropriate, federal interconnection standards.

(5) Ensure that the owner and operator of each renewable energy facility that delivers electric power to an electric power supplier is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.

(6) Consider whether it is in the public interest to adopt rules for electric public utilities for net metering of renewable energy facilities with a generation capacity of one megawatt or less.

(7) Develop procedures to track and account for renewable energy certificates, including ownership of renewable energy certificates that are derived from a customer owned renewable energy facility as a result of any action by a customer of an electric power supplier that is independent of a program sponsored by the electric power supplier.

(j) Report. – No later than 1 October of each year, the Commission shall submit a report on the activities taken by the Commission to implement, and by electric power suppliers to comply with, the requirements of this section to the Governor, the Environmental Review Commission, and the Joint Legislative Utility Review Committee. The report shall include any public comments received regarding direct, secondary, and cumulative environmental impacts of the implementation of the requirements of this section. In developing the report, the Commission shall consult with the Department of Environment and Natural Resources."

SECTION 2.(b) The Commission shall submit the first report required by G.S. 62-133.7(j), as enacted by subsection (a) of this section, no later than 1 October 2008.

SECTION 2.(c) G.S. 143B-282(a) reads as rewritten:

"(a) There is hereby created the Environmental Management Commission of the Department of Environment and Natural Resources with the power and duty to promulgate rules to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

…

(6) The Commission may establish a procedure for evaluating renewable energy technologies that are, or are proposed to be, employed as part of a renewable energy facility, as defined in G.S. 62-133.7; establish standards to ensure that renewable energy technologies do not harm the environment, natural resources, cultural resources, or public health, safety, or welfare of the State; and, to the extent that there is not an environmental regulatory program, establish an environmental regulatory program to implement these protective standards."

SECTION 3. If the federal government imposes requirements similar to those set out in G.S. 62-133.7 on electric power suppliers in the State, the Utilities Commission shall determine the applicability of federal and State requirements so as to apply the more stringent requirements except to the extent that State requirements may be specifically preempted by federal law. The Commission shall adopt rules to establish a procedure as an alternative to the procedure set out in G.S. 62-133 to annually adjust the rates of electric public utilities to allow timely recovery of all reasonable costs of compliance with the federal and State requirements pursuant to G.S. 62-133.7(h), as enacted by Section 2 of this act. In adopting rules to establish the procedure, the Commission shall incorporate the provisions of this act in accordance with this section and the public interest.

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

"**§ 62-133.8. Cost recovery for demand-side management and energy efficiency measures.**

(a) The definitions set out in G.S. 62-133.7 apply to this section. As used in this section, 'new,' used in connection with demand-side management or energy efficiency measure, means a demand-side management or energy efficiency measure that is adopted and implemented on or after 1 January 2007, including subsequent changes and modifications.

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

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

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

(1) Shall allow electric public utilities to capitalize all or a portion of those costs to the extent that those costs are intended to produce future benefits.

(2) May approve other incentives to electric public utilities for adopting and implementing new demand-side management and energy efficiency measures. Allowable incentives may include:

a. Appropriate rewards based on the sharing of savings achieved by the demand-side management and energy efficiency measures.

b. Appropriate rewards based on capitalization of a percentage of avoided costs achieved by demand-side management and energy efficiency measures.

c. Any other incentives that the Commission determines to be appropriate.

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

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

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

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

(i) The Commission shall submit to the Governor and to the Joint Legislative Utility Review Committee a summary of the proceedings conducted pursuant to this section during the preceding two fiscal years on or before 1 September of odd-numbered years."

SECTION 4.(b) The Utilities Commission shall submit the first report required by G.S. 62-133.8(i), as enacted by subsection (a) of this section, no later than 1 September 2009.

SECTION 4.(c) The Utilities Commission shall prepare an analysis of whether rate structures, policies, and measures, including decoupling, in place in other states and countries that promote a mix of generation involving renewable energy sources and demand reduction should be implemented in this State. The Commission shall submit this analysis to the Governor, Environmental Review Commission, and the Joint Legislative Utility Review Committee no later than 1 September 2008.

SECTION 5. G.S. 62-133.2 reads as rewritten:

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

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

(a1) As used in this section, 'cost of fuel and fuel-related costs' means all of the following:

(1) The cost of fuel burned.

(2) The cost of fuel transportation.

(3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.

(4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric

public utility, that are subject to economic dispatch or economic curtailment.

(5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. § 796, that are subject to economic dispatch by the electric public utility.

(6) Except for those costs recovered pursuant to G.S. 62-133.7(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.7 or to comply with any federal mandate that is similar to the requirements of subsections (b), (c), (d), (e), and (f) of G.S. 62-133.7.

(7) The fuel cost component of other purchased power.

(8) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components.

(9) Cost of fuel and fuel-related costs shall be adjusted for any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(a2) For those costs identified in subdivisions (4), (5), and (6) of subsection (a1) of this section, the annual increase in the aggregate amount of these costs that are recoverable by an electric public utility pursuant to this section shall not exceed two percent (2%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year. The costs described in subdivisions (4), (5), and (6) of subsection (a1) of this section shall be recoverable from each class of customers as a separate component of the rider as follows:

(1) For the costs described in subdivision (4) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the electric public utility's North Carolina energy usage for the prior year, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after 1 January 2008.

(2) For the costs described in subdivisions (5) and (6) of subsection (a1) of this section, the specific component for each class of customers shall be determined by allocating these costs among customer classes based on the electric public utility's North Carolina peak demand for the prior year, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after 1 January 2008.

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

component for each class of customers shall be determined by allocating these costs among customer classes based on the electric public utility's North Carolina peak demand for the prior year, as determined by the Commission, until the Commission determines how these costs shall be allocated in a general rate case for the electric public utility commenced on or after 1 January 2008.

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

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

(1) ~~Purchased cost~~Cost of fuel and fuel-related costs used in each generating facility owned in whole or in part by the utility.
(2) Fuel procurement practices and fuel inventories for each facility.
(3) Burned cost of fuel used in each generating facility.
(4) Plant capacity factor for each generating facility.
(5) Plant availability factor for each generating plant.
(6) Generation mix by types of fuel used.
(7) Sources and fuel cost component of purchased power used.
(8) Recipients of and revenues received for power sales and times of power sales.
(9) Test period ~~kilowatt hour~~kilowatt-hour sales for the utility's total system and on the total system separated for North Carolina jurisdictional sales.
(10) Procurement practices and inventories for: fuel burned and for ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
(11) The cost incurred at each generating facility of fuel burned and of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
(12) Any net gains or losses resulting from any sales by the electric public utility of fuel or other fuel-related costs components.
(13) Any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(d) The Commission shall provide for notice of a public hearing with reasonable and adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the Commission shall receive evidence from the utility, the ~~public staff,~~Public Staff, and any intervenor desiring to submit evidence, and from the public generally. In reaching its decision, the Commission shall consider all evidence required under subsection (c) of this section as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the ~~price of fuel consumed and changes in the price of the fuel in the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed.~~cost of fuel consumed and fuel-related costs that occur within a reasonable time, as determined by the Commission, after the test period is closed. The Commission shall incorporate in its ~~fuel~~ cost of fuel and fuel-related costs determination under this subsection the experienced over-recovery or under-recovery of reasonable

costs of fuel and fuel-related costs ~~expenses~~ prudently incurred during the test period, based upon the prudent standards set pursuant to subsection (d1) of this section, in fixing an increment or decrement rider. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of costs of fuel and fuel-related costs through the date that is 30 calendar days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual hearing pursuant to this section. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case. The burden of proof as to the correctness and reasonableness of the charge and as to whether the cost of fuel ~~charges~~ and fuel-related costs were reasonably and prudently incurred shall be on the utility. The Commission shall allow only that portion, if any, of a requested cost of fuel and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel ~~expenses~~ and fuel-related costs prudently incurred under efficient management and economic operations. In evaluating whether cost of fuel ~~expenses~~ and fuel-related costs were reasonable and prudently incurred, the Commission shall apply the rule adopted pursuant to subsection ~~(d1).~~(d1) of this section. To the extent that the Commission determines that an increment or decrement to the rates of the utility due to changes in the cost of fuel and ~~the fuel cost component of purchased power~~fuel-related costs over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

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

(e) If the Commission has not issued an order pursuant to this section within ~~120~~ 180 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested cost of fuel and fuel-related costs adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

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

(g) ~~On July 1, 1993 and every two years thereafter,~~On 1 July of every odd-numbered year, the Utilities Commission shall provide a report to the Joint Legislative Utility Review Committee summarizing the ~~procedures~~ proceedings conducted pursuant to ~~G.S. 62-133.2~~this section during the preceding two years."

SECTION 6. G.S. 62-110.1 reads as rewritten:

"**§ 62-110.1. Certificate for construction of generating facility; analysis of long-range needs for expansion of ~~facilities.~~facilities; ongoing review of construction costs; inclusion of approved construction costs in rates.**

(a) Notwithstanding the proviso in G.S. 62-110, no public utility or other person shall begin the construction of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility be for furnishing the service already being rendered, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction.

(b) For the purpose of subsections (a), (c), and (d) of this section, "public utility" shall include any electric membership corporation operating within this State, and the term "public utility service" shall include the service rendered by any such electric membership corporation.

(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal ~~Power~~ Energy Regulatory Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal ~~Power~~ Energy Regulatory Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan.

(d) In acting upon any petition for the construction of any facility for the generation of electricity, the Commission shall take into account the applicant's arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power and other methods for providing reliable, ~~efficient~~ efficient, and economical electric service.

(e) As a condition for receiving ~~such certificate~~ a certificate, the applicant shall file an estimate of construction costs in such detail as the Commission may require. The Commission shall hold a public hearing on each ~~such~~ application and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that ~~such~~ construction will be consistent with the Commission's plan for expansion of electric generating capacity. A certificate for the construction of a coal or nuclear facility shall be granted only if the applicant demonstrates and the Commission finds that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest. In making its determination, the Commission shall consider resource and fuel diversity and reasonably anticipated future operating costs. Once the Commission grants a certificate, no public utility shall cancel construction of a generating unit or facility without approval from the Commission based upon a finding that the construction is no longer in the public interest.

(e1) Upon the request of the public utility or upon its own motion, the Commission may review the certificate to determine whether changes in the probable future growth of the use of electricity indicate that the public convenience and necessity require modification or revocation of the certificate. If the Commission finds that

completion of the generating facility is no longer in the public interest, the Commission may modify or revoke the certificate.

(f) ~~The Commission shall maintain an ongoing review of such construction as it proceeds and the applicant shall submit each year during construction a progress report and any revisions in the cost estimates for the construction.~~ The public utility shall submit a progress report and any revision in the cost estimate for the construction approved under subsection (e) of this section during each year of construction. Upon the request of the public utility or upon its own motion, the Commission may conduct an ongoing review of construction of the facility as the construction proceeds. If the Commission approves any revised construction cost estimate and finds that incurrence of the cost of that portion of the construction of the facility under review was reasonable and prudent, the certificate shall remain in effect. If the Commission disapproves any part of the revised cost estimate or finds that the incurrence of the cost of that portion of the construction of the facility then under review was unreasonable or imprudent, the Commission may modify or revoke the certificate.

(f1) The public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the actual costs it has incurred in constructing a generating facility in reliance on a certificate issued under this section as provided in this subsection, unless new evidence is discovered (i) that could not have been discovered by due diligence at an earlier time and (ii) that reasonably tends to show that a previous determination by the Commission that a material item of cost was just and reasonable and prudently incurred was erroneous. If the Commission determines that evidence has been submitted that meets the requirements of this subsection, the public utility shall have the burden of proof to demonstrate that the material item of cost was in fact just and reasonable and prudently incurred.

(1) When a facility has been completed, and the construction of the facility has been subject to ongoing review under subsection (f) of this section, the reasonable and prudent costs of construction approved by the Commission during the ongoing review shall be included in the public utility's rate base without further review by the Commission.

(2) If a facility has not been completed, and the construction of the facility has been subject to ongoing review under subsection (f) of this section, the reasonable and prudent costs of construction approved by the Commission during the ongoing review shall be included in the public utility's rate base without further review by the Commission.

(3) If a facility is under construction or has been completed and the construction of the facility has not been subject to ongoing review under subsection (f) of this section, the costs of construction shall be included in the public utility's rate base if the Commission finds that the incurrence of these costs is reasonable and prudent.

(f2) If the construction of a facility is cancelled, including cancellation as a result of modification or revocation of the certificate under subsection (e1) of this section, and the construction of the facility has been subject to ongoing review under subsection (f), absent newly discovered evidence (i) that could not have been discovered by due diligence at an earlier time and (ii) that reasonably tends to show that a previous determination by the Commission that a material item of cost was just and reasonable and prudently incurred was erroneous, the public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the costs of construction approved by the Commission during the ongoing review that were actually incurred prior to cancellation, amortized over a reasonable time as determined by the Commission. In the general rate case, the Commission shall make any adjustment that may be required because costs of construction previously added to the utility's rate base pursuant to subsection (f1) of this section are removed from the rate base and recovered in accordance with this subsection. Any costs of construction actually incurred, but not previously approved by the Commission, shall be recovered only if they are found by

the Commission to be reasonable and prudent. If the Commission determines that evidence has been submitted that meets the requirements of this subsection, the public utility shall have the burden of proof to demonstrate that the material item of cost was just and reasonable and prudently incurred.

(f3) If the construction of a facility is cancelled, including cancellation as a result of the modification or revocation of the certificate under subsection (e1) of this section, and the construction of the facility has not been subject to ongoing review under subsection (f) of this section, the public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the costs of construction that were actually incurred prior to the cancellation and are found by the Commission to be reasonable and prudent, amortized over a reasonable time as determined by the Commission. In the general rate case, the Commission shall make any adjustment that may be required because costs of construction previously added to the utility's rate base pursuant to subsection (f1) of this section are removed from the rate base and recovered in accordance with this subsection.

(g) The certification requirements of this section shall not apply to a nonutility-owned generating facility fueled by renewable energy resources under two megawatts in capacity or to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; provided, however, that such persons shall, nevertheless, be required to report to the Utilities Commission the proposed construction of such a facility before beginning construction thereof."

SECTION 7. Article 6 of Chapter 62 of the General Statutes is amended by adding two new sections to read:

"**§ 62-110.6. Rate recovery for construction costs of out-of-state electric generating facilities.**

(a) The Commission shall, upon petition of a public utility, determine the need for and, if need is established, approve an estimate of the construction costs and construction schedule for an electric generating facility in another state that is intended to serve retail customers in this State.

(b) The petition may be filed at any time after an application for a certificate or license for the construction of the facility has been filed in the state in which the facility will be sited. The petition shall contain a showing of need for the facility, an estimate of the construction costs, and the proposed construction schedule for the facility.

(c) The Commission shall conduct a public hearing to consider and determine the need for the facility and the reasonableness of the construction cost estimate and proposed construction schedule. If the Commission finds that the construction will be needed to assure the provision of adequate public utility service within North Carolina, the Commission shall approve a construction cost estimate and a construction schedule for the facility. In making its determinations under this section, the Commission may consider whether the state in which the facility will be sited has issued a certificate or license for construction of the facility and approved a construction cost estimate and construction schedule for the facility. The Commission shall issue its order not later than 180 days after the public utility files its petition.

(d) G.S. 62-110.1(f) shall apply to the construction cost estimate determined by the Commission to be appropriate, and the actual costs the public utility incurs in constructing the facility shall be recoverable through rates in a general rate case pursuant to G.S. 62-133 as provided in G.S. 62-110.1(f1).

(e) If the construction of a facility is cancelled, the public utility shall recover through rates in a general rate case conducted pursuant to G.S. 62-133 the costs of construction that were actually incurred prior to the cancellation and are found by the Commission to be reasonable and prudent, as provided in subsections (f2) and (f3) of G.S. 62-110.1.

"**§ 62-110.7. Project development cost review for a nuclear facility.**

(a) For purposes of this section, "project development costs" mean all capital costs associated with a potential nuclear electric generating facility incurred before (i) issuance of a certificate under G.S. 62-110.1 for a facility located in North Carolina or (ii) issuance of a certificate by the host state for an out-of-state facility to serve North Carolina retail customers, including, without limitation, the costs of evaluation, design, engineering, environmental analysis and permitting, early site permitting, combined operating license permitting, initial site preparation costs, and allowance for funds used during construction associated with such costs.

(b) At any time prior to the filing of an application for a certificate to construct a potential nuclear electric generating facility, either under G.S. 62-110.1 or in another state for a facility to serve North Carolina retail customers, a public utility may request that the Commission review the public utility's decision to incur project development costs. The public utility shall include with its request such information and documentation as is necessary to support approval of the decision to incur proposed project development costs. The Commission shall hold a hearing regarding the request. The Commission shall issue an order within 180 days after the public utility files its request. The Commission shall approve the public utility's decision to incur project development costs if the public utility demonstrates by a preponderance of evidence that the decision to incur project development costs is reasonable and prudent; provided, however, the Commission shall not rule on the reasonableness or prudence of specific project development activities or recoverability of specific items of cost.

(c) All reasonable and prudent project development costs, as determined by the Commission, incurred for the potential nuclear electric generating facility shall be included in the public utility's rate base and shall be fully recoverable through rates in a general rate case proceeding pursuant to G.S. 62-133.

(d) If the public utility is allowed to cancel the project, the Commission shall permit the public utility to recover all reasonable and prudently incurred project development costs in a general rate case proceeding pursuant to G.S. 62-133 amortized over a period equal to the period during which the costs were incurred, or five years, whichever is greater."

SECTION 8. G.S. 62-133(b) reads as rewritten:

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

(1) Ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within the State, less that portion of the cost ~~which~~ that has been consumed by previous use recovered by depreciation ~~expense plus the reasonable original cost of investment in plant under construction (construction work in progress). In ascertaining the cost of the public utility's property, construction work in progress as of the effective date of this subsection shall be excluded until such plant comes into service but reasonable and prudent expenditures for construction work in progress after the effective date of this subsection may be included, to the extent the Commission considers such inclusion in the public interest and necessary to the financial stability of the utility in question, subject to the provisions of subparagraph (b)(4a) of this section.~~expense. In addition, construction work in progress may be included in the cost of the public utility's property under any of the following circumstances:

a. To the extent the Commission considers inclusion in the public interest and necessary to the financial stability of the utility in question, reasonable and prudent expenditures for construction work in progress may be included, subject to the provisions of subdivision (4a) of this subsection.

b. For baseload electric generating facilities, reasonable and prudent expenditures shall be included pursuant to subdivisions

(2) or (3) of G.S. 62-110.1(f1), whichever applies, subject to the provisions of subdivision (4a) of this subsection.

(1a) Apply the rate of return established under subdivision (4) of this subsection to rights-of-way acquired through agreements with the Department of Transportation pursuant to G.S. 136-19.5(a) if acquisition is consistent with a definite plan to provide service within five years of the date of the agreement and if such right-of-way acquisition will result in benefits to the ratepayers. If a right-of-way is not used within a reasonable time after the expiration of the five-year period, it may be removed from the rate base by the Commission when rates for the public utility are next established under this section.

(2) Estimate such public utility's revenue under the present and proposed rates.

(3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

(4) Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) of this subsection as will enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, including, but not limited to, the inclusion of construction work in progress in the utility's property under sub-subdivision b. of subdivision (1) of this subsection, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms ~~which~~ that are reasonable and ~~which~~ that are fair to its customers and to its existing investors.

(4a) Require each public utility to discontinue capitalization of the composite carrying cost of capital funds used to finance construction (allowance for funds) on the construction work in progress included in its rate based upon the effective date of the first and each subsequent general rate order issued with respect to it after the effective date of this subsection; allowance for funds may be capitalized with respect to expenditures for construction work in progress not included in the utility's property upon which the rates were fixed. In determining net operating income for return, the Commission shall not include any capitalized allowance for funds used during construction on the construction work in progress included in the utility's rate base.

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

SECTION 9.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve one-hundredths of one percent (0.12%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after 1 July 2007.

SECTION 9.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2007-2008 fiscal year is two hundred thousand dollars ($200,000).

SECTION 10.(a) G.S. 105-164.4(a)(1i) is repealed.

SECTION 10.(b) G.S. 105-164.4(a)(1f) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-quarter percent (4.25%).

…

(1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~described in this subdivision and~~ that is measured by a separate meter or another separate ~~device:~~device and sold to a commercial laundry or to a pressing and dry-cleaning establishment for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.

~~a. Sales of electricity to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.~~

b. Repealed.

~~c. Sales of electricity to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.~~"

SECTION 10.(c) G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-quarter percent (4.25%).

…

(1j) The rate of one and eight-tenths percent (1.8%) applies to the sales price of electricity described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants.

b. Sales of electricity to farmers to be used by them for any farming purposes other than preparing food, heating dwellings, and other household purposes."

SECTION 10.(d) G.S. 105-164.4(a)(1j), as enacted by subsection (c) of this section, reads as rewritten:

"(1j) The rate of ~~one and eight-tenths percent (1.8%)~~ one and four-tenths percent (1.4%) applies to the sales price of electricity described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants.

b. Sales of electricity to farmers to be used by them for any farming purposes other than preparing food, heating dwellings, and other household purposes."

SECTION 10.(e) G.S. 105-164.4(a)(1j), as enacted by subsection (c) of this section and amended by subsection (d) of this section, reads as rewritten:

"(1j) The rate of ~~one and four-tenths percent (1.4%)~~ eight-tenths percent (0.8%) applies to the sales price of electricity described in this subdivision and measured by a separate meter or another separate device:

a. Sales of electricity to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants.
b. Sales of electricity to farmers to be used by them for any farming purposes other than preparing food, heating dwellings, and other household purposes."

SECTION 10.(f) G.S. 105-164.4(a)(1j), as enacted by this section, is repealed.

SECTION 10.(g) G.S. 105-164.13(1) reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

Agricultural Group.

(1) Any of the following items sold to a farmer for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758.
a. Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, and seeds.
b. Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
c. A horse or mule.
d. ~~Fuel other than electricity.~~Fuel."

SECTION 10.(h) G.S. 105-164.13 is amended by adding two new subdivisions to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property and services are specifically exempted from the tax imposed by this Article:

…

(1b) Electricity sold to a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes.

…

(56) Fuel and electricity sold to a manufacturer for use in connection with the operation of a manufacturing facility."

SECTION 10.(i) Subsections (a), (b), and (c) of this section become effective 1 October 2007 and apply to sales occurring on or after that date. Subsection (d) of this section becomes effective 1 July 2008 and applies to sales occurring on or after that date. Subsection (e) of this section becomes effective 1 July 2009 and applies to sales occurring on or after that date. Subsections (f), (g), and (h) of this section become effective 1 July 2010 and apply to sales occurring on or after that date. The remainder of this section is effective when it becomes law.

SECTION 11.(a) G.S. 105-187.41 reads as rewritten:

"**§ 105-187.41. Tax imposed on piped natural gas.**

(a) Scope. – An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. – The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.047
201 to 15,000	.035
15,001 to 60,000	.024
60,001 to 500,000	.015
Over 500,000	.003

(c) Gas City Exemption. – The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

(d) Reduced Rate. – Piped natural gas received by a manufacturer for use in connection with the operation of a manufacturing facility or by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes is taxable at a reduced rate as provided in this subsection. To be eligible for the reduced tax rate, a person must have a manufacturer's certificate or a farmer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$.032
201 to 15,000	.024
15,001 to 60,000	.016
60,001 to 500,000	.010
Over 500,000	.002"

SECTION 11.(b) G.S. 105-187.41(d), as enacted by subsection (a) of this section, reads as rewritten:

"(d) Reduced Rate. – Piped natural gas received by a manufacturer for use in connection with the operation of a manufacturing facility and by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes is taxable as provided in this subsection. To be eligible for the reduced tax rate, a person must have a manufacturer's certificate or a farmer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas.

Monthly Volume of Therms Received	Rate Per Therm
First 200	~~$.032~~.025
201 to 15,000	~~.024~~.019
15,001 to 60,000	~~.016~~.013
60,001 to 500,000	~~.010~~.008
Over 500,000	~~.002~~.002"

SECTION 11.(c) G.S. 105-187.41(d), as enacted by subsection (a) of this section and amended by subsection (b) of this section, reads as rewritten:

"(d) Reduced Rate. – Piped natural gas received by a manufacturer for use in connection with the operation of a manufacturing facility and by a farmer to be used for

any farming purpose other than preparing food, heating dwellings, and other household purposes is taxable as provided in this subsection. To be eligible for the reduced tax rate, a person must have a manufacturer's certificate or a farmer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas.

Monthly Volume of Therms Received	Rate Per Therm
First 200	$~~.025~~.014
201 to 15,000	~~.019~~.010
15,001 to 60,000	~~.013~~.007
60,001 to 500,000	~~.008~~.004
Over 500,000	~~.002~~.001"

SECTION 11.(d) G.S. 105-187.41(d), as enacted by this section, is repealed.

SECTION 11.(e) G.S. 105-187.41(c) reads as rewritten:

"(c) ~~Gas City Exemption.~~ Exemptions. – The tax imposed by this section does not apply to ~~piped~~ any of the following:

(1) Piped natural gas received by a gas city for consumption by that ~~city or to piped~~ city.

(2) Piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

(3) Piped natural gas received by a manufacturer for use in connection with the operation of the manufacturing facility. To be eligible for the exemption, a person must have a manufacturer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas.

(4) Piped natural gas received by a farmer to be used for any farming purpose other than preparing food, heating dwellings, and other household purposes. To be eligible for the exemption, a person must have a farmer's certificate issued under G.S. 105-164.28A. A person who uses piped natural gas for an unauthorized purpose is liable for any tax due on the gas."

SECTION 11.(f) Subsection (a) of this section becomes effective 1 October 2007 and applies to bills issued on or after that date. Subsection (b) of this section becomes effective 1 July 2008 and applies to bills issued on or after that date. Subsection (c) of this section becomes effective 1 July 2009 and applies to bills issued on or after that date. Subsections (d) and (e) of this section become effective 1 July 2010 and apply to bills issued on or after that date. The remainder of this section is effective when it becomes law.

SECTION 12.(a) G.S. 105-187.51A reads as rewritten:

"**§ 105-187.51A. Tax imposed on manufacturing fuel.**

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is ~~one percent (1%)~~ seven-tenths percent (0.7%) of the sales price of the fuel. The tax does not apply to electricity or piped natural gas."

SECTION 12.(b) G.S. 105-187.51A, as amended by subsection (a) of this section, reads as rewritten:

"**§ 105-187.51A. Tax imposed on manufacturing fuel.**

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is ~~seven-tenths percent~~ five-tenths percent (0.5%) of the sales price of the fuel. The tax does not apply to electricity or piped natural gas."

SECTION 12.(c) G.S. 105-187.51A, as amended by subsection (a) of this section, reads as rewritten:

"**§ 105-187.51A. Tax imposed on manufacturing fuel.**

A privilege tax is imposed on a manufacturing industry or plant that purchases fuel to operate the industry or plant. The tax is ~~five-tenths percent (0.5%)~~ three-tenths

percent (0.3%) of the sales price of the fuel. The tax does not apply to electricity or piped natural gas."

SECTION 12.(d) G.S. 105-187.51A is repealed.

SECTION 12.(e) Subsection (a) of this section becomes effective 1 October 2007 and applies to fuel purchased on or after that date. Subsection (b) of this section becomes effective 1 July 2008 and applies to fuel purchased on or after that date. Subsection (c) of this section becomes effective 1 July 2009 and applies to fuel purchased on or after that date. Subsection (d) of this section becomes effective 1 July 2010. The remainder of this section is effective when it becomes law.

SECTION 13.(a) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16G. Credit for donating funds to a nonprofit organization to enable the nonprofit to acquire renewable energy property.**

(a) Credit. – A taxpayer who donates money to a tax-exempt nonprofit organization for the purpose of providing funds for the organization to construct, purchase, or lease renewable energy property is allowed a credit under this section if the nonprofit organization uses the donation for its intended purpose. A tax-exempt nonprofit organization is an organization that is exempt from tax under section 501(c)(3) of the Code.

The amount of the credit allowed in this section is the taxpayer's share of the credit the nonprofit organization could claim under G.S. 105-129.16A if the nonprofit organization were subject to tax. The taxpayer's share of the credit is calculated by dividing the taxpayer's donation by the cost of the renewable energy property constructed, purchased, or leased by the nonprofit organization and placed in service during the taxable year and then multiplying this percentage by the amount of the credit the nonprofit organization could claim if it were subject to tax. A taxpayer must take the credit allowed by this section in the year in which the property is placed in service. The installment requirements in G.S. 105-129.16A for nonresidential property do not apply to the credit allowed in this section.

(b) Records. – A nonprofit organization must keep a record of all donations it receives for the purpose of providing funds for the organization to construct, purchase, or lease renewable energy property and of the amount of the donations used for this purpose. If a nonprofit organization places renewable energy property in service that is purchased in whole or in part from donations made for this purpose, the nonprofit organization must give each taxpayer who made a donation a statement setting out the amount of the credit for which the taxpayer qualifies under this section. The statement must describe the renewable energy property placed in service and state the cost of the property, the amount of the credit the nonprofit organization could claim under G.S. 105-129.16A if it were subject to tax, and the taxpayer's share of the credit allowed in this section. If the donations made for the renewable energy property exceed the cost of the property, the nonprofit organization must prorate each taxpayer's share of the credit. The sum of the credits allowed under this section to taxpayers who make donations to a nonprofit organization may not exceed the amount of the credit the nonprofit organization could claim under G.S. 105-129.16A if it were subject to tax.

(c) No Double Benefit. – A taxpayer who claims a credit under this section based on a donation to a nonprofit organization is not allowed to deduct this donation as a charitable contribution."

SECTION 13.(b) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

…

(19) The amount of a donation made to a nonprofit organization for which a credit is claimed under G.S. 1105-129.16G."

SECTION 13.(c) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

…

(5b) The amount of a donation made to a nonprofit organization for which a credit is claimed under G.S. 105-129.16G."

SECTION 13.(d) G.S. 105-259(b) is amended by adding a new section to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

…

(38) To verify with a nonprofit organization information relating to eligibility for a credit under G.S. 105-129.16G."

SECTION 13.(e) This section is effective for taxable years beginning on or after 1 January 2008.

SECTION 14. The Utilities Commission shall submit to the Governor, the Environmental Review Commission, and the Joint Legislative Utility Review Committee a report on the actual results of the cost allocations established pursuant to G.S. 62-133.7(h), as enacted by Section 2 of this act, G.S. 62-133.8(e) and G.S. 62-133.8(f), as enacted by Section 4 of this act, and G.S. 62-133.2(a2) and G.S. 62-133.2(a3), as enacted by Section 5 of this act, during the preceding two fiscal years on or before 1 October of odd-numbered years. The Utilities Commission shall submit the first report required by this section no later than 1 October 2009.

SECTION 15. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

SECTION 16. Sections 1, 2, 6, 7, and 8 of this act become effective 1 January 2008. The provisions of Section 2 of this act that provide for the recovery of costs incurred under Section 2 apply only to costs that are incurred on and after 1 January 2008. Sections 3, 4, 14, 15, and 16 of this act become effective when this act becomes law. The provisions of Section 4 of this act that provide for the recovery of costs incurred under Section 4 apply only to costs that are incurred on and after the date that this act becomes law. Section 5 of this act becomes effective 1 January 2008 provided that (i) the provisions of G.S. 62-133.2, as amended by Section 5 of this act, apply only to fuel and fuel-related costs incurred on and after 1 January 2008 regardless of the test period established by the Utilities Commission, and (ii) the costs described in G.S. 62-133.2(a1)(3) that are incurred on and after the date this act becomes law shall be recoverable as provided in G.S. 62-133.2 as amended by Section 5 of this act. Sections 10, 11, 12, and 13 of this act become effective as provided in those sections. Section 9 of this act becomes effective 1 July 2007.

In the General Assembly read three times and ratified this the 2nd day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:20 p.m. this 20th day of August, 2007