

**GENERAL ASSEMBLY OF NORTH CAROLINA  
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**HOUSE BILL 951  
Committee Substitute Favorable 7/13/21  
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Short Title: Modernize Energy Generation.

(Public)

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Sponsors:

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Referred to:

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May 12, 2021

A BILL TO BE ENTITLED  
AN ACT TO MODERNIZE NORTH CAROLINA'S GENERATION AND GRID  
RESOURCES AND RATE MAKING AND TO INVEST IN CRITICAL ENERGY  
INFRASTRUCTURE FOR THE BENEFIT OF CUSTOMERS.

The General Assembly of North Carolina enacts:

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

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

- (1) In order to ensure predictable and low customer electricity costs, promote economic development, protect the continued long-term reliability of electric service, and protect the environment, it is in the public interest of the State to seek to continue the transition away from coal-fired electricity generation in an orderly and disciplined manner.
- (2) Overreliance on coal-fired electricity generation carries financial and operational risks in light of the future potential for limited coal supply options due to coal market consolidation, future potential coal market constraints, and coal price unpredictability. These risks are increased when combined with the effects of likely future stringent federal environmental regulations, including future potential tax or other costs, direct or indirect, imposed on coal-fired electricity generation.
- (3) In transitioning away from coal-fired electricity generation, given uncertainty of long-term fuel supply and environmental regulation, it is in the public interest and the policy of the State that maintaining predictable and affordable customer electricity costs and maintaining continued long-term reliability of the electric grid are the most significant factors in determining replacement generating resources.
- (4) It is in the public interest for the electric public utilities to accelerate retirement of certain coal-fired electric generating facilities in an orderly and disciplined manner that (i) ensures continued electric system reliability for all customers, (ii) mitigates the financial and operational risks associated with potential rapid coal-fired electric generating facility retirement over a short period of time in the future, (iii) seeks to maximize the overall value and lower the overall cost of such future transition, (iv) seeks to reduce the risk of future rate shock 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 sixty-one percent (61%) over  
4 2005 levels.

5 (5) The plan set forth herein is generally consistent with the electric public  
6 utilities' current integrated resource plan, and this act will allow the electric  
7 public utilities to implement their integrated resource plans in a more efficient  
8 manner.

9 (6) The plan set forth herein will provide an "all of the above" approach to  
10 replacing a limited number of coal-fired power plants with a combination of  
11 natural gas, nuclear, solar, and storage generating technologies.

12 (7) It is in the public interest to decrease the number of rate cases and reduce the  
13 regulatory lag that currently delays and hinders certain capital investments  
14 which would bring or maintain benefit to customers served by the electric  
15 public utilities.

16 (8) To facilitate the investments necessary to transition from coal-fired electricity  
17 generation in a manner that ensures predictable and affordable customer  
18 electricity costs, the General Assembly declares that it is in the public interest  
19 for the North Carolina Utilities Commission to authorize the use of  
20 performance-based regulation for electric utilities in order to achieve and  
21 encourage all of the following:

22 a. Alignment of electric public utilities' incentives with customer and  
23 societal interests through regulatory mechanisms that reward  
24 improved operations and increased program effectiveness.

25 b. Electric public utilities' innovation in service delivery to customers.

26 c. Electric public utilities' investments to make the grid smarter, more  
27 resilient to adverse weather and to cyber and physical security threats,  
28 and capable of accommodating more renewable and distributed energy  
29 resources onto the system.

30 d. More efficient use of energy by customers by decoupling electric  
31 public utility revenues from customer consumption.

32 e. Multiyear rate planning to maintain predictable and affordable rates  
33 and reduce regulatory lag on necessary investments.

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

36 (1) "Coal retirement and replacement plan" means a plan, as described further in  
37 subsection (d) of this section, for retiring a subcritical coal-fired electric  
38 generating facility located in North Carolina by December 31, 2030, and the  
39 replacement of such facility with a new source of energy and capacity.

40 (2) "Designated replacement resources" means those resources that are prescribed  
41 in subsection (c) of this section and those replacement resources that are  
42 approved by the Commission pursuant to subsection (d) of this section to  
43 replace the capacity and energy lost by the retirement of the remaining  
44 subcritical coal-fired generating facility.

45 (3) "Energy storage system" or "ESS" means a system, equipment, facility, or  
46 technology relating to the electric grid that (i) is capable of absorbing or  
47 receiving electrical energy, storing such energy for a period of time, and  
48 dispatching electrical energy after storage, and (ii) uses a mechanical,  
49 electrical, chemical, electrochemical, or thermal process to store such energy.

50 (4) "Subcritical coal-fired generating facilities" means the remaining units of the  
51 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 overreliance 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 megawatts  
15 alternating current (MW AC)/80 megawatt hours (MWh). The applicable  
16 electric public utility shall exert reasonable efforts to ensure that the  
17 designated replacement resources are constructed according to a time line that  
18 allows for retirement of the coal-fired generating facility by the targeted  
19 retirement dates, and the utility shall provide updates to the Utilities  
20 Commission regarding the status of such efforts in its integrated resource  
21 plans.

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

37 (3) Roxboro Plant. – A coal retirement and replacement plan shall be filed for the  
38 Roxboro Plant on or before September 1, 2024. With respect to the designated  
39 replacement resource for the Roxboro Plant, the replacement resource shall be  
40 a generating facility located on the Roxboro Plant site or, in the event that the  
41 applicable electric public utility, in its reasonable discretion, determines that  
42 it will be unable or infeasible to procure or construct a generating facility at  
43 the Roxboro Plant site, at another location in Person County that satisfies all  
44 of the following criteria:

- 45 a. The resource has continuous generating and dispatch capabilities and  
46 other operating characteristics that provide system reliability benefits  
47 that are equal to or greater than the retiring Roxboro Plant.
- 48 b. The resource provides effective load carrying capability sufficient to  
49 ensure continued reliability of the system.

- 1 c. The resource has the ability to deliver continuous power at or near the  
2 maximum capacity of the resource for a continuous period of one week  
3 or longer without reliance on other grid resources.
- 4 (4) Cliffside Unit 5. – A coal retirement and replacement plan shall be filed for  
5 Cliffside Unit 5 on or before September 1, 2027. With respect to designated  
6 replacement resources for the facility, the replacement resource shall be an  
7 energy storage system to be procured and owned by the applicable electric  
8 public utility. The applicable electric public utility shall seek to locate a  
9 substantial portion of the ESS on the Cliffside Unit 5 site, but shall be  
10 permitted to site such ESS on or near other electric public utility property  
11 where such siting will provide increased benefit to customers.
- 12 (5) Mayo Plant. – A coal retirement and replacement plan shall be filed for the  
13 Mayo Plant on or before September 1, 2027. With respect to designated  
14 replacement resources for these facilities, the replacement resource for each  
15 facility shall be an ESS to be procured and owned by the applicable electric  
16 public utility. The applicable electric public utility shall seek to locate a  
17 substantial portion of the ESS on the site of the applicable subcritical  
18 coal-fired generating facility but shall be permitted to site such ESS on or near  
19 other electric public utility property where such siting will provide increased  
20 benefit to customers.

21 **SECTION 1.(d) Coal Retirement and Replacement Plans Generally. –**

- 22 (1) A coal retirement and replacement plan shall include all of the following:
- 23 a. The proposed retirement date for the applicable subcritical coal-fired  
24 generating facility and the reasons for that proposed retirement date.
- 25 b. The proposed type, size, and location of the replacement resource or  
26 resources intended to replace the energy and capacity of the subcritical  
27 coal-fired generating facility in order to ensure safe, reliable, and  
28 cost-effective service to the electric public utility's customers and the  
29 projected timing of the commercial operation of such replacement  
30 resource or resources.
- 31 c. A forecast of capital costs, fuel costs, other operation and maintenance  
32 costs, and the capacity factors of the proposed replacement resource,  
33 as well as any assumptions about future regulatory compliance costs.
- 34 d. In the case of replacement resources that would require a certificate  
35 under G.S. 62-110.1 or otherwise, to the extent not already required  
36 above, the information that would be required in connection with an  
37 application for certificate of a generating facility under G.S. 62-110.1,  
38 except that the information required under or in connection with  
39 G.S. 62-110.1(d) shall not be required.
- 40 (2) After receipt of a coal retirement and replacement plan, the Commission shall  
41 do all of the following:
- 42 a. Establish a procedural schedule to allow interested parties to intervene  
43 in the proceeding, to facilitate discovery of evidence between and  
44 among parties to the proceeding, and to receive comments of the  
45 parties and the filing of any direct or rebuttal expert witness testimony.
- 46 b. Hold one or more public hearings and require the applicant to publish  
47 a single notice of the public hearing in a newspaper of general  
48 circulation in the county in which the subcritical coal-fired generating  
49 facility is located.
- 50 c. Schedule an evidentiary hearing to allow for the cross-examination of  
51 expert witnesses, to resolve all contested issues between the parties to

1 the proceeding, and to address any questions or issues the Commission  
2 may raise upon its own motion.

3 (3) After completion of the process described in subdivision (2) of this subsection,  
4 the Commission shall issue an order approving, modifying, or rejecting an  
5 electric public utility's coal retirement and replacement plan within 180 days  
6 after the filing thereof. The Commission shall approve a coal retirement and  
7 replacement plan if it finds all of the following:

8 a. The coal retirement and replacement plan complies with the applicable  
9 requirements set forth in this subsection.

10 b. The replacement resource proposed in a coal retirement and  
11 replacement plan is sized appropriately to (i) ensure sufficient energy  
12 on an hourly basis over an annual period and ensure sufficient capacity  
13 to serve anticipated peak electrical load plus an adequate planning  
14 reserve margin based upon the applicable electric public utility's then  
15 current projections of customer load requirements and (ii) provide  
16 equivalent ancillary services and ensure compliance with any  
17 applicable reliability standards, including the North American Electric  
18 Reliability Corporation's (NERC) reliability standards.

19 c. The electric public utility has reasonably and prudently utilized  
20 competitive equipment procurement practices to ensure that the  
21 projected cost of the proposed replacement resource is reasonable in  
22 accordance with the requirements set forth in subdivisions (3) through  
23 (5) of subsection (c) of this section

24 (4) In a decision issued pursuant to subdivision (3) of this subsection approving  
25 any replacement resource, the Commission shall include an approved  
26 construction cost for each such replacement resource. If a replacement  
27 resource requires a certificate of public convenience and necessity under  
28 G.S. 62-110.1 or otherwise, and is approved by the Commission under this  
29 section, such replacement resource shall be deemed consistent with the public  
30 convenience and necessity and public interest for purposes of G.S. 62-110.1,  
31 and the Commission shall issue a certificate of public convenience and  
32 necessity for such replacement resources at the time of its approval, and no  
33 further process shall be required under G.S. 62-110.1 except as otherwise  
34 addressed herein.

35 **SECTION 1.(e) General Provisions Applicable to Retirement of Subcritical**  
36 **Coal-Fired Generating Facilities. –**

37 (1) Notwithstanding any date established under subsection (c) or (d) of this  
38 section that requires retirement of a subcritical coal-fired generating facility,  
39 in the event the applicable electric public utility determines that the retirement  
40 of any such facility would have the potential to compromise reliability of the  
41 electric public utility's service, or otherwise impact the ability of the electric  
42 public utility to comply with any applicable reliability requirements, the  
43 electric public utility shall file notice with the Commission describing the  
44 reliability issues preventing compliance with the requirement for retirement  
45 by the date specified and requesting a delay of retirement date. Upon receipt  
46 of a notice and request for retirement delay as authorized by this subdivision,  
47 the Commission may conduct a hearing regarding such delay and shall issue  
48 an order approving or rejecting the request for delay within 90 days of receipt  
49 of such notice and request.

50 (2) In order to ensure the continued reliability of the electric system, no subcritical  
51 coal-fired generating facilities shall be retired unless and until the applicable

1 designated replacement resource has been placed in-service; provided,  
2 however, that the electric public utility shall be authorized to retire the  
3 subcritical coal-fired generating facility prior to the in-service date of the  
4 applicable designated replacement resource if the electric public utility  
5 determines that it will be able to maintain reliable service in that circumstance.

- 6 (3) In the case of each subcritical coal-fired generating facility that is retired  
7 pursuant to this section, the applicable electric public utility shall be permitted  
8 to establish a regulatory asset for the remaining net book value of each  
9 subcritical coal-fired generating facility and amortize the regulatory asset at  
10 the same rate the subcritical coal-fired generating facility was previously  
11 being depreciated. The regulatory asset shall be included in rate base for  
12 rate-making purposes, and in a future general rate proceeding the Commission  
13 shall establish an amortization period for recovery and allow a return on the  
14 unamortized balance at the electric public utility's then authorized, net-of-tax,  
15 weighted average cost of capital.

16 **SECTION 1.(f)** General Provisions Applicable to Designated Replacement  
17 Resources Purchased and Owned by the Electric Public Utilities Pursuant to Subsection (c) of  
18 this Section. –

- 19 (1) In order to ensure predictable and affordable customer electricity costs for all  
20 customers and to ensure an orderly and disciplined transition, the applicable  
21 electric utility shall:
- 22 a. In the case of the nonrenewable generating facilities procured pursuant  
23 to subsection (c) of this section, utilize competitive procurement for  
24 the design, engineering, and construction of such generating facilities.
  - 25 b. In the case of any renewable energy facilities procured pursuant to  
26 subsection (c) of this section, competitively procure and purchase such  
27 facilities from third parties utilizing the procedures set forth and in  
28 compliance with the requirements of G.S. 62-110.8 for procurements  
29 occurring after January 1, 2022; provided, however, that (i) the  
30 procuring electric public utility shall own and operate all of the  
31 renewable energy facilities procured pursuant to this section and the  
32 percentage allocation of ownership between third parties and the  
33 electric public utilities for procurements commencing after January 1,  
34 2021, that is specified in subsection (b1) of G.S. 62-110.8 for  
35 renewable generating facilities shall not apply to procurements of  
36 renewable energy facilities pursuant to subsection (c) of this section  
37 and (ii) the cost cap specified in subsection (g1) of G.S. 62-110.8 shall  
38 not apply to the procurement of renewable energy facilities pursuant  
39 to subsection (c) of this section.
  - 40 c. In the case of the ESS procured pursuant to subsection (c) of this  
41 section, competitively procure and purchase such facilities from third  
42 parties utilizing the procurement procedures and requirements for  
43 independent oversight set forth in G.S. 62-110.8 for procurements  
44 occurring after January 1, 2022; provided, however, that (i) the  
45 procuring electric public utility shall own and operate all of the ESS  
46 procured pursuant to this section and the percentage allocation of  
47 ownership between third parties and the electric public utilities for  
48 procurements commencing after January 1, 2021, that is specified in  
49 subsection (b1) of G.S. 62-110.8 for renewable generating facilities  
50 shall not apply to procurements of ESS pursuant to subsection (c) of  
51 this section and (ii) the cost cap specified in subsection (g1) of

- 1 G.S. 62-110.8 shall not apply to the procurement of ESS pursuant to  
2 subsection (c) of this section.
- 3 (2) The designated replacement resources identified in subsection (c) of this  
4 section that require a certificate of public convenience and necessity under  
5 G.S. 62-110.1, or otherwise, shall be deemed consistent with the public  
6 convenience and necessity and public interest for purposes of G.S. 62-110.1  
7 so long as the applicable electric public utility reasonably and prudently  
8 procures such replacement generation in a manner consistent with subdivision  
9 (1) of this subsection.
- 10 (3) Notwithstanding G.S. 62-110.1, the Commission shall provide an expedited  
11 decision on an application for a certificate of public convenience for all such  
12 resources. The Commission shall render its decision on an application for a  
13 certificate, including any related transmission line needed for the new  
14 generation facility, within 90 days of the date the application is filed. An  
15 application for a certificate of public convenience and necessity to construct  
16 or procure those designated replacement resources identified in subsection (c)  
17 of this section that require a certificate of public convenience and necessity  
18 and the renewable generating facilities purchased and owned by the electric  
19 public utilities pursuant to G.S. 62-110.8 through procurements occurring  
20 after January 1, 2021, shall be subject to all of the following:
- 21 a. The applicable electric public utility shall provide written notice to the  
22 Commission of the date the electric public utility intends to file an  
23 application no less than 30 days prior to the submission of the  
24 application.
- 25 b. When the electric public utility applies for a certificate as provided in  
26 this subdivision, it shall submit to the Commission an estimate of the  
27 costs of construction of the generating facility in such detail as the  
28 Commission may require.
- 29 c. G.S. 62-110.1(d) and (e) and G.S. 62-82(a) shall not apply to such  
30 applications.
- 31 d. The Commission shall hold a single public hearing for such  
32 applications and require the applicant to publish a single notice of the  
33 public hearing in a newspaper of general circulation in the county in  
34 which the generating facility is located.
- 35 (4) The electric public utilities shall be permitted to recover from its customers  
36 the reasonably and prudently incurred cost of all generation facilities and  
37 energy storage systems purchased or constructed pursuant to subsection (c) or  
38 (d) of this section. In the case of an energy storage system approved by the  
39 Commission pursuant to subsection (d) of this section, there shall be a  
40 rebuttable presumption that the electric public utility's actual costs are  
41 reasonable and prudent if such actual costs are at or below the projected costs  
42 approved by the Commission. In the case of a certificated generation facility  
43 approved by the Commission pursuant to this subsection or subsection (d) of  
44 this section or procured pursuant to G.S. 62-110.8, notwithstanding  
45 G.S. 62-110.1(f1), there shall be a rebuttable presumption that the electric  
46 public utility's actual costs are reasonable and prudent if such actual costs are  
47 at or below the projected costs approved by the Commission, provided that  
48 upon the request of the electric public utility or upon its own motion pursuant  
49 to G.S. 62-110.1(f), the Commission may conduct an ongoing review of  
50 construction of the facility under G.S. 62-110.1(f), in which case the cost  
51 recovery provisions of G.S. 62-110.1(f1) shall apply except that the electric

1 public utility may seek cost recovery in a rate case under either G.S. 62-133  
2 or G.S. 62-133.16. The electric public utilities shall be permitted to establish  
3 a regulatory asset and defer to such regulatory asset the incremental costs of  
4 all such costs incurred pursuant to this section until such time as the costs can  
5 be reflected in customer rates. The types of incremental costs that may be  
6 deferred include, but are not limited to, operation and maintenance expenses,  
7 administration costs, property tax, depreciation expenses, income taxes,  
8 carrying costs related to electric plant investments, and regulatory assets at the  
9 electric public utility's then authorized, net-of-tax, weighted average cost of  
10 capital.

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

12 **"§ 62-110.8. Competitive procurement of renewable energy.**

13 (a) Each electric public utility shall file for Commission approval a program for the  
14 competitive procurement of energy and capacity from renewable energy facilities with the  
15 purpose of adding renewable energy to the State's generation portfolio in a manner that allows  
16 the State's electric public utilities to continue to reliably and cost-effectively serve customers'  
17 future energy needs. Renewable energy facilities eligible to participate in the competitive  
18 procurement shall include those facilities that use renewable energy resources identified in  
19 G.S. 62-133.8(a)(8) ~~but~~ but, except as provided in subsection (b1) of this section, shall be limited  
20 to facilities with a nameplate capacity rating of 80 megawatts ~~(MW)~~ alternating current (MW  
21 AC) or less that are placed in service after the date of the electric public utility's initial  
22 competitive procurement. Subject to the limitations set forth in subsections (b) and (c) of this  
23 section, the electric public utilities shall issue requests for proposals to procure and shall procure,  
24 energy and capacity from renewable energy facilities in the aggregate amount of ~~2,660 megawatts~~  
25 ~~(MW), and the total amount shall be reasonably allocated over a term of 45 months beginning~~  
26 ~~when the Commission approves the program.~~ 7,327 megawatts alternating current (MW AC),  
27 and the total amount shall be reasonably allocated over a term of 106 months beginning when  
28 the Commission approves the program; provided, however, that the electric public utilities shall  
29 conduct an annual procurement of approximately 777 megawatts alternating current (MW AC)  
30 each calendar year beginning in 2021 and concluding in 2026. The electric public utilities shall  
31 be permitted to petition the Commission for approval to modify the procurement schedule  
32 established herein in the event that administration of annual procurements becomes impractical  
33 due to the need to align with then existing interconnection study processes or other factors beyond  
34 the utilities' control, and the Commission shall approve such modifications if it determines that  
35 the modifications would be in the public interest. The Commission shall require the additional  
36 competitive procurement of renewable energy capacity by the electric public utilities in an  
37 amount that includes all of the following: (i) any unawarded portion of the initial competitive  
38 procurement required by this subsection; (ii) any deficit in renewable energy capacity identified  
39 pursuant to subdivision (1) of subsection (b)(b2) of this section; and (iii) any capacity reallocated  
40 pursuant to G.S. 62-159.2. In addition, at the termination of the initial competitive procurement  
41 period of 45 months, the offering of a new renewable energy resources competitive procurement  
42 and the amount to be procured shall be determined by the Commission, based on a showing of  
43 need evidenced by the electric public utility's most recent biennial integrated resource plan or  
44 annual update approved by the Commission pursuant to G.S. 62-110.1(e). 106 months, the  
45 Commission shall determine whether it is in the interest of ratepayers to require further  
46 competitive procurement of renewable generating facilities by the electric public utilities under  
47 this subsection, and shall also determine the amount to be procured beyond that required by this  
48 subsection, and the allocation of ownership between third parties and electric public utilities. The  
49 Commission's determination shall be based on the electric public utility's most recent biennial  
50 integrated resource plan or annual update accepted or approved by the Commission, provided  
51 that such plan assures adequate, reliable utility service.



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

13 (b1) All procurements required by subsection (a) of this section commencing after January  
14 1, 2021, and continuing through December 31, 2026, shall be subject to the following  
15 requirements:

16 (1) Forty-five percent (45%) of the total megawatts alternating current (MW AC)  
17 of renewable energy facilities scheduled to be procured in procurements  
18 commencing after January 1, 2021, shall be supplied through the execution of  
19 power purchase agreements with third parties pursuant to which the electric  
20 public utility purchases of renewable energy, capacity, and environmental and  
21 renewable attributes from renewable energy facilities owned and operated by  
22 third parties that commit to allow the procuring electric public utility rights to  
23 dispatch, operate, and control the solicited renewable energy facilities in the  
24 same manner as the utility's own generating resources.

25 (2) Fifty-five percent (55%) of the total megawatts alternating current (MW AC)  
26 of renewable energy facilities scheduled to be procured through procurements  
27 commencing after January 1, 2021, shall be supplied from renewable energy  
28 facilities purchased from third parties and owned and operated by the  
29 soliciting electric public utility. The cap on facility nameplate capacity of 80  
30 megawatts alternating current (MW AC) or less established by subsection (a)  
31 of this section shall not apply to facilities procured pursuant to this  
32 subdivision.

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

35 (1) ~~If prior to the end of the initial 45-month competitive procurement period the~~  
36 ~~public utilities subject to this section have executed power purchase~~  
37 ~~agreements and interconnection agreements for renewable energy capacity~~  
38 ~~within their balancing authority areas that are not subject to economic dispatch~~  
39 ~~or curtailment and were not procured pursuant to G.S. 62-159.2 having an~~  
40 ~~aggregate capacity in excess of 3,500 megawatts (MW), the Commission shall~~  
41 ~~reduce the competitive procurement aggregate amount by the amount of such~~  
42 ~~exceedance. If the aggregate capacity of such renewable energy facilities is~~  
43 ~~less than 3,500 megawatts (MW) at the end of the initial 45-month competitive~~  
44 ~~procurement period, the Commission shall require the electric public utilities~~  
45 ~~to conduct an additional competitive procurement in the amount of such~~  
46 ~~deficit.~~ In the event that it is reasonably projected that, on or before January 1,  
47 2027, the electric public utilities subject to the procurement obligation under  
48 subsection (a) of this section will have executed power purchase agreements  
49 and interconnection agreements with renewable generating facilities within  
50 their balancing authority areas having an aggregate megawatts alternating  
51 current (MW AC) capacity in excess of 3,500 megawatts alternating current

1 (MW AC), exclusive of power purchase agreements entered into pursuant to  
2 this section, G.S. 62-159.2, and G.S. 62-126.8B, the Commission shall reduce  
3 the total aggregate megawatts alternating current (MW and AC) capacity of  
4 renewable generating facilities required for procurement under this section by  
5 an amount equal to the difference between (i) the amount of aggregate  
6 megawatts alternating current (MW AC) capacity of renewable generating  
7 facilities with executed power purchase agreements and interconnection  
8 agreements, including all such renewable generating facilities located in the  
9 electric public utility's balancing authority area, whether located inside or  
10 outside the geographic boundaries of the State but exclusive of power  
11 purchase agreements entered into pursuant to this section, G.S. 62-159.2, and  
12 G.S. 62-126.8B and (ii) 3,500 megawatts alternating current (MW AC).

13 (2) To ensure the cost-effectiveness of ~~procured~~ new renewable energy resources,  
14 each public utility's procurement obligation the price to be paid under any  
15 power purchase agreements for third-party owned resources, combined with  
16 the cost of any necessary transmission or distribution upgrade, shall be capped  
17 by the public utility's current forecast of its avoided cost calculated over the  
18 term of the power purchase agreement. The public utility's current forecast of  
19 its avoided cost shall be consistent with the Commission-approved avoided  
20 cost methodology.

21 (3) Each public utility shall submit to the Commission for approval and make  
22 publicly available at 30 days prior to each competitive procurement  
23 solicitation a pro forma ~~contract~~ power purchase agreement to be utilized for  
24 the purpose of informing market participants of terms and conditions of the  
25 competitive procurement. Each pro forma ~~contract~~ power purchase agreement  
26 shall define limits and compensation for resource dispatch and ~~curtailments.~~  
27 curtailments; provided, however, that curtailment shall be limited to a  
28 percentage of the expected output of the generation facility that is determined  
29 by the Commission to be in the public interest. The pro forma ~~contract~~ power  
30 purchase agreement shall be for a term of 20 years; provided, however, the  
31 Commission may approve a contract term of a different duration if the  
32 Commission determines that it is in the public interest to do so.

33 (4) ~~No~~ With respect only to those procurements commencing prior to January 1,  
34 2021, more than thirty percent (30%) of an electric public utility's competitive  
35 procurement requirement may be satisfied through the utility's own  
36 development of renewable energy facilities offered by the electric public  
37 utility or any subsidiary of the electric public utility that is located within the  
38 electric public utility's service territory. This limitation shall not apply to any  
39 renewable energy facilities acquired by an electric public utility that are  
40 selected through the competitive procurement and are located within the  
41 electric public utility's service territory.

42 (c) Subject to the aggregate competitive procurement requirements established by this  
43 section, the electric public utilities shall have the authority to determine the location and allocated  
44 amount of the competitive procurement within their respective balancing authority areas, whether  
45 located inside or outside the geographic boundaries of the State, taking into consideration (i) the  
46 State's desire to foster diversification of siting of renewable energy resources throughout the  
47 State; (ii) the efficiency and reliability impacts of siting of additional renewable energy facilities  
48 in each public utility's service territory; and (iii) the potential for increased delivered cost to a  
49 public utility's customers as a result of siting additional renewable energy facilities in a public  
50 utility's service territory, including additional costs of ancillary services that may be imposed due  
51 to the operational or locational characteristics of a specific renewable energy resource

1 technology, such as nondispatchability, unreliability of availability, and creation or exacerbation  
2 of system congestion that may increase redispatch costs. In the case of renewable energy facilities  
3 to be procured and owned by the electric public utilities pursuant to this section, the electric  
4 public utilities shall be permitted through the competitive processes described herein to solicit  
5 bids for the construction of such renewable energy facilities on or near property owned or  
6 controlled by the electric public utility, including the site of any retiring subcritical coal-fired  
7 generating facility, where such sites will provide benefits to customers, including through  
8 reduced interconnection or infrastructure costs.

9 (d) ~~The~~ For all procurements commencing prior to January 1, 2022, the competitive  
10 procurement of renewable energy capacity established pursuant to this section shall be  
11 independently administered by a third-party entity to be approved by the Commission. The  
12 third-party entity shall Commission, provided that in the case of any procurement commencing  
13 after January 1, 2021, but prior to January 1, 2022, the electric public utilities shall be permitted  
14 to directly assist the third-party entity and provide input on all aspects of the procurement and  
15 shall collaborate with the third-party entity to develop and publish the methodology used to  
16 evaluate responses received pursuant to a competitive procurement solicitation and to ensure that  
17 all responses are treated equitably. For all procurements commencing after January 1, 2022, the  
18 competitive procurement of renewable energy capacity required pursuant to this section shall be  
19 administered by the electric public utilities in accordance with the rules to be adopted pursuant  
20 to subdivision (1) of subsection (h) of this section, and subject to oversight and evaluation by a  
21 third-party entity to be approved by the Commission. All reasonable and prudent administrative  
22 and related expenses incurred to implement this subsection shall be recovered from market  
23 participants through administrative fees levied upon those that participate in the competitive  
24 bidding process, as approved by the Commission.

25 (e) ~~An~~ With respect only to those procurements commencing prior to January 1, 2021,  
26 an electric public utility may participate in any competitive procurement process, but shall only  
27 participate within its own assigned service territory. If the public utility uses nonpublicly  
28 available information concerning its own distribution or transmission system in preparing a  
29 proposal to a competitive procurement, the public utility shall make such information available  
30 to third parties that have notified the public utility of their intention to submit a proposal to the  
31 same request for proposals.

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

35 (e2) The renewable generating facilities purchased and owned by the electric public  
36 utilities pursuant to this section through procurements occurring after January 1, 2021, shall be  
37 deemed consistent with the public convenience and necessity and public interest for purposes of  
38 G.S. 62-110.1 so long as the renewable generating facilities were procured in compliance with  
39 the procurement process established under this section.

40 (f) For purposes of this section, the term "balancing authority" means the entity that  
41 integrates resource plans ahead of time, maintains load-interchange-generation balance within a  
42 balancing authority area, and supports interconnection frequency in real time, and the term  
43 "balancing authority area" means the collection of generation, transmission, and loads within the  
44 metered boundaries of the balancing authority, and the balancing authority maintains  
45 load-resource balance within this area.

46 (g) An electric public utility shall be authorized to recover the costs of all purchases of  
47 energy, capacity, and environmental and renewable attributes from third-party renewable energy  
48 facilities and to recover the authorized revenue of any utility-owned assets ~~that are~~ procured  
49 pursuant to this section prior to January 1, 2021, through an annual rider approved by the  
50 Commission and reviewed annually. Provided it is in the public interest, the authorized revenue  
51 for any such renewable energy facilities owned by an electric public utility and procured pursuant

1 to this section prior to January 1, 2021, may be calculated on a market basis in lieu of  
2 cost-of-service based recovery, using data from the applicable competitive procurement to  
3 determine the market price in accordance with the methodology established by the Commission  
4 pursuant to subsection (h) of this section. The annual increase in the aggregate amount of these  
5 costs that are recoverable by an electric public utility pursuant to this subsection shall not exceed  
6 one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross  
7 revenues for the preceding calendar year.

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

21 (g2) In determining the most cost-effective proposals in any procurement process under  
22 this section, the electric public utility shall take into account the cost of any needed transmission  
23 or distribution upgrades but, in the case of any proposals selected by the electric public utility,  
24 such transmission or distribution upgrades costs shall not be directly assigned to the bidder but  
25 instead shall be included in the electric public utility's rate base for rate-making purposes. In  
26 addition, the electric public utility shall be permitted to establish a regulatory asset and defer to  
27 such regulatory asset the incremental cost of all such upgrades, along with associated carrying  
28 costs based on the electric public utility's then authorized net-of-tax, weighted average cost of  
29 capital, until such time as the costs can be reflected in customer rates. In a future general rate  
30 proceeding, the Commission shall establish an amortization period for recovery and allow a  
31 return on the unamortized balance at the electric public utility's then authorized, net-of-tax,  
32 weighted average cost of capital.

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

- 35 (1) Oversight of the competitive procurement ~~program-program~~ by the  
36 Commission and by independent third parties. No later than May 1, 2022, the  
37 Commission's rules shall be amended to provide for (i) administration of the  
38 procurement process, including establishing the selection methodology and  
39 selection of projects, by the electric public utilities subject to the oversight of  
40 an independent evaluator retained by the utilities pursuant to a contract  
41 approved by the Commission, (ii) approval by the Commission of the electric  
42 public utilities' selection methodology and the independent evaluator's review  
43 procedures, (iii) detailed reports by the independent evaluator to the  
44 Commission regarding the results of each procurement, and (iv) any further  
45 changes related to the foregoing, including modification of communication  
46 restrictions deemed appropriate by the Commission.
- 47 (2) To provide for a waiver of regulatory conditions or code of conduct  
48 requirements that would unreasonably restrict a public utility or its affiliates  
49 from participating in the competitive procurement ~~process,~~ with respect to  
50 procurements occurring under this section prior to January 1, 2021, unless the

1 Commission finds that such a waiver would not hold the public utility's  
2 customers harmless.

3 (3) Establishment of a procedure for expedited review and approval of certificates  
4 of public convenience and necessity, or the transfer thereof, for renewable  
5 energy facilities owned by the public utility and procured pursuant to this  
6 section. The Commission shall issue an order not later than 30 days after a  
7 petition for a certificate is filed by the public utility.

8 (4) Establishment of a methodology to allow an electric public utility to recover  
9 its costs pursuant to ~~subsection (g)~~ subsections (g), (g1), and (g2) of this  
10 section.

11 (5) Establishment of a procedure for the Commission to modify or delay  
12 implementation of the provisions of this section in whole or in part if the  
13 Commission determines that it is in the public interest to do so.

14 ...."

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

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

19 **"§ 62-133.2. Fuel and fuel-related charge adjustments for electric utilities.**

20 ...

21 (d) The Commission shall provide for notice of a public hearing with reasonable and  
22 adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the  
23 Commission shall receive evidence from the utility, the Public Staff, and any intervenor desiring  
24 to submit evidence, and from the public generally. In reaching its decision, the Commission shall  
25 consider all evidence required under subsection (c) of this section as well as any and all other  
26 competent evidence that may assist the Commission in reaching its decision including changes  
27 in the cost of fuel consumed and fuel-related costs that occur within a reasonable time, as  
28 determined by the Commission, after the test period is closed. The Commission shall incorporate  
29 in its cost of fuel and fuel-related costs determination under this subsection the experienced  
30 over-recovery or under-recovery of reasonable costs of fuel and fuel-related costs prudently  
31 incurred during the test period, based upon the prudent standards set pursuant to subsection (d1)  
32 of this section, in fixing an increment or decrement rider. Upon request of the electric public  
33 utility, the Commission shall also incorporate in this determination the experienced  
34 over-recovery or under-recovery of costs of fuel and fuel-related costs through the date that is 30  
35 calendar days prior to the date of the hearing, provided that the reasonableness and prudence of  
36 these costs shall be subject to review in the utility's next annual hearing pursuant to this section.  
37 The Commission shall use deferral accounting, and consecutive test periods, in complying with  
38 this subsection, and the over-recovery or under-recovery portion of the increment or decrement  
39 shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a  
40 general rate case. The burden of proof as to the correctness and reasonableness of the charge and  
41 as to whether the cost of fuel and fuel-related costs were reasonable and prudently incurred shall  
42 be on the utility. The Commission shall allow only that portion, if any, of a requested cost of fuel  
43 and fuel-related costs adjustment that is based on adjusted and reasonable cost of fuel and  
44 fuel-related costs prudently incurred under efficient management and economic operations.  
45 Efficient management and economic operations include actions and decisions that modify  
46 commitment and dispatch to manage seasonal demand, mitigate fuel supply security and  
47 transportation risk, and maintain dispatchable capacity value. In evaluating whether cost of fuel  
48 and fuel-related costs were reasonable and prudently incurred, the Commission shall apply the  
49 rule adopted pursuant to subsection (d1) of this section. To the extent that the Commission  
50 determines that an increment or decrement to the rates of the utility due to changes in the cost of  
51 fuel and fuel-related costs over or under base fuel costs established in the preceding general rate

1 case is just and reasonable, the Commission shall order that the increment or decrement become  
2 effective for all sales of electricity and remain in effect until changed in a subsequent general rate  
3 case or annual proceeding under this section.

4 ...."

5 **SECTION 1.(j)** This section is effective when it becomes law.

6  
7 **AUTHORIZE FINANCING OF CERTAIN ENERGY TRANSITION COSTS**

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

10 **"§ 62-173. Financing for certain energy transition costs.**

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

12 (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve  
13 account, surety bond, interest rate lock or swap arrangement, hedging  
14 arrangement, liquidity or credit support arrangement, or other financial  
15 arrangement entered into in connection with energy transition bonds.

16 (2) Assignee. – A legally recognized entity to which a public utility assigns, sells,  
17 or transfers, other than as security, all or a portion of its interest in or right to  
18 energy transition property. The term includes a corporation, limited liability  
19 company, general partnership or limited partnership, public authority, trust,  
20 financing entity, or any entity to which an assignee assigns, sells, or transfers,  
21 other than as security, its interest in or right to energy transition property.

22 (3) Bondholder. – A person who holds an energy transition bond.

23 (4) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.

24 (5) Commission. – The North Carolina Utilities Commission.

25 (6) Energy transition bonds. – Bonds, debentures, notes, certificates of  
26 participation, certificates of beneficial interest, certificates of ownership, or  
27 other evidences of indebtedness or ownership that are issued by a public utility  
28 or an assignee pursuant to a financing order, the proceeds of which are used  
29 directly or indirectly to recover, finance, or refinance Commission-approved  
30 energy transition costs and financing costs, and that are secured by or payable  
31 from energy transition property. If certificates of participation or ownership  
32 are issued, references in this section to principal, interest, or premium shall be  
33 construed to refer to comparable amounts under those certificates.

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

45 (8) Energy transition costs. – A cost other than a monetary penalty, fine, or  
46 forfeiture assessed against a public utility by a government agency or court  
47 under a federal or State environmental statute, rule, or regulation for  
48 retirement of Marshall Units 1 and 2, the Allen Plant, the Roxboro Plant, the  
49 Cliffside Unit 5 Plant, and the Mayo Plant. The total amount that shall be  
50 securitized as provided by this subdivision shall be five hundred million  
51 dollars (\$500,000,000), which shall be allocated among these plants in a

1 manner that realizes the greatest cost savings to ratepayers as determined by  
2 the Commission. Such costs include:

3 a. An amount determined and approved by the Commission not to exceed  
4 the total aggregate unrecovered net book value, plus the costs set forth  
5 in sub-subdivisions b., c., and d. of this subdivision, of the subcritical  
6 coal-fired electric generating facilities at Marshall Units 1 and 2, the  
7 Allen Plant, the Roxboro Plant, the Cliffside Unit 5 Plant, and the  
8 Mayo Plant.

9 b. The following costs the public utility has incurred or will incur caused  
10 by, associated with, or that remain as a result of the early retirement of  
11 electric generating facilities at Marshall Units 1 and 2, the Allen Plant,  
12 the Roxboro Plant, the Cliffside Unit 5 Plant, and the Mayo Plant:

13 1. All incremental costs, including capital costs, appropriate for  
14 recovery from existing and future retail customers receiving  
15 transmission or distribution service from the electric public  
16 utility that the utility has incurred or expects to incur as a result  
17 of the early retirement of the Marshall Units 1 and 2, the Allen  
18 Plant, the Roxboro Plant, the Cliffside Unit 5 Plant, and the  
19 Mayo Plant, including the costs of decommissioning and  
20 restoring the site of such early retired electric generating  
21 facilities, except for costs incurred pursuant to  
22 G.S. 130A-309.200 through G.S. 130A-309.226 or 40 C.F.R.  
23 Subpart D, which are not subject to this section.

24 2. The electric public utility's cost of capital from the date this  
25 section becomes effective to the date the energy transition  
26 bonds are issued, calculated using the public utility's weighted  
27 average cost of capital as defined in its most recent base rate  
28 case proceeding before the Commission net of applicable  
29 income tax savings related to the interest component. Such  
30 costs also include other applicable capital and operating costs,  
31 accrued carrying charges, deferred expenses, reductions for  
32 applicable insurance and salvage proceeds and the costs of  
33 retiring any existing indebtedness, fees, costs, and expenses to  
34 modify existing debt agreements or for waivers or consents  
35 related to existing debt agreements.

36 c. Energy transition costs shall be net of applicable insurance proceeds,  
37 tax benefits, and any other amounts intended to reimburse the public  
38 utility for energy transition activities such as government grants, or aid  
39 of any kind and where determined appropriate by the Commission, and  
40 may include adjustments for capital replacement and operating costs  
41 previously considered in determining normal amounts in the public  
42 utility's most recent general rate case proceeding.

43 d. With respect to energy transition costs that the public utility expects to  
44 incur, any difference between costs expected to be incurred and actual,  
45 reasonable, and prudent costs incurred, or any other rate-making  
46 adjustments appropriate to fairly and reasonably assign or allocate  
47 energy transition cost recovery to customers over time, shall be  
48 addressed in a future general rate proceeding, as may be facilitated by  
49 other orders of the Commission issued at the time or prior to such  
50 proceeding; provided, however, that the Commission's adoption of a

- 1 financing order and approval of the issuance of energy transition bonds  
2 may not be revoked or otherwise modified.
- 3 (9) Energy transition property. – All of the following:  
4 a. All rights and interests of a public utility or successor or assignee of  
5 the public utility under a financing order, including the right to impose,  
6 bill, charge, collect, and receive energy transition charges authorized  
7 under the financing order and to obtain periodic adjustments to such  
8 charges as provided in the financing order.  
9 b. All revenues, collections, claims, rights to payments, payments,  
10 money, or proceeds arising from the rights and interests specified in  
11 the financing order, regardless of whether such revenues, collections,  
12 claims, rights to payment, payments, money, or proceeds are imposed,  
13 billed, received, collected, or maintained together with or commingled  
14 with other revenues, collections, rights to payment, payments, money,  
15 or proceeds.
- 16 (10) Financing costs. – The term includes all of the following:  
17 a. Interest and acquisition, defeasance, or redemption premiums payable  
18 on energy transition bonds.  
19 b. Redemption premiums or make-whole payments related to the early  
20 redemption of the public utility's first mortgage bonds or other debt  
21 associated with the retired electric generating facility.  
22 c. Any payment required under an ancillary agreement and any amount  
23 required to fund or replenish a reserve account or other accounts  
24 established under the terms of any indenture, ancillary agreement, or  
25 other financing documents pertaining to energy transition bonds.  
26 d. Any other cost related to issuing, supporting, repaying, refunding, and  
27 servicing energy transition bonds, including servicing fees, accounting  
28 and auditing fees, trustee fees, legal fees, consulting fees, structuring  
29 adviser fees, administrative fees, placement and underwriting fees,  
30 independent director and manager fees, capitalized interest, rating  
31 agency fees, stock exchange listing and compliance fees, security  
32 registration fees, filing fees, information technology programming  
33 costs, and any other costs necessary to otherwise ensure the timely  
34 payment of energy transition bonds or other amounts or charges  
35 payable in connection with the bonds, including costs related to  
36 obtaining the financing order.  
37 e. Any taxes and license fees or other fees imposed on the revenues  
38 generated from the collection of the energy transition charge or  
39 otherwise resulting from the collection of energy transition charges, in  
40 any such case whether paid, payable, or accrued.  
41 f. Any State and local taxes, franchise, gross receipts, and other taxes or  
42 similar charges, including regulatory assessment fees, whether paid,  
43 payable, or accrued.  
44 g. Any costs incurred by the Commission or public staff for any outside  
45 consultants or counsel retained in connection with the securitization of  
46 energy transition costs.
- 47 (11) Financing order. – An order that authorizes the issuance of energy transition  
48 bonds; the imposition, collection, and periodic adjustments of an energy  
49 transition charge; the creation of energy transition property; and the sale,  
50 assignment, or transfer of energy transition property to an assignee.



- 1           (12) Financing party. – Bondholders and trustees, collateral agents, any party under  
2 an ancillary agreement, or any other person acting for the benefit of  
3 bondholders.  
4           (13) Financing statement. – Defined in Article 9 of the Code.  
5           (14) Pledgee. – A financing party to which a public utility or its successors or  
6 assignees mortgages, negotiates, pledges, or creates a security interest or lien  
7 on all or any portion of its interest in or right to energy transition property.  
8           (15) Public utility. – A public utility, as defined in G.S. 62-3, that sells electric  
9 power to retail electric customers in the State.

10       (b) Financing Orders. –

- 11       (1) A public utility shall petition the Commission for a financing order for energy  
12 transition costs. The petition shall include all of the following:  
13       a. The energy transition costs incurred by the utility and an estimate of  
14 the costs that are being undertaken but are not completed.  
15       b. An estimate of the financing costs related to the energy transition  
16 bonds.  
17       c. An estimate of the energy transition charges necessary to recover the  
18 energy transition costs and financing costs and the proposed period for  
19 recovery of such costs.  
20       d. A comparison between the net present value of the costs to customers  
21 that are estimated to result from the issuance of energy transition bonds  
22 and the costs that would result from the application of the traditional  
23 method of financing and recovering energy transition costs from  
24 customers. The comparison shall demonstrate that the issuance of  
25 energy transition bonds and the imposition of energy transition  
26 charges are expected to provide quantifiable benefits to customers.  
27       e. Direct testimony and exhibits supporting the petition.  
28       (2) If a public utility is subject to a settlement agreement that governs the type  
29 and amount of principal costs that could be included in energy transition costs,  
30 and the principal costs are not already subject to review and approval by the  
31 Commission in a separate proceeding, then the public utility shall file a  
32 petition with the Commission for review and approval of those principal costs  
33 no later than 90 days before filing a petition for a financing order pursuant to  
34 this section.  
35       (3) Petition and order. –  
36       a. Proceedings on a petition submitted pursuant to this subdivision begin  
37 with the petition by a public utility, initially filed on or before January  
38 1, 2023, subject to the time frame specified in subdivision (2) of this  
39 subsection, if applicable, and shall be disposed of in accordance with  
40 the requirements of this Chapter and the rules of the Commission,  
41 except as follows:  
42           1. Within 14 days after the date the petition is filed, the  
43 Commission shall establish a procedural schedule that permits  
44 a Commission decision no later than 135 days after the date the  
45 petition is filed.  
46           2. No later than 135 days after the date the petition is filed, the  
47 Commission shall issue a financing order or an order rejecting  
48 the petition. If a petition for a financing order is rejected, the  
49 Commission shall include in its order the reasons for the  
50 rejection, and the utility shall resubmit a petition within 60  
51 days of the order rejecting the earlier petition. A party to the



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8. How energy transition charges will be allocated among customer classes.
  9. A requirement that, after the final terms of an issuance of energy transition bonds have been established and before the issuance of energy transition bonds, the public utility determines the resulting initial energy transition charge in accordance with the financing order and that such initial energy transition charge be final and effective upon the issuance of such energy transition bonds without further Commission action so long as the energy transition charge is consistent with the financing order.
  10. A requirement that the public utility, simultaneously with the inception of the collection of energy transition charges, reduce its rates through a reduction in base rates or by a negative rider on customer bills in an amount equal to the revenue requirement in customer rates associated with the utility assets being financed by energy transition bonds. The public utility shall propose the method to reduce its rates in accordance with this sub-sub-subdivision in its petition.
  11. A method of tracing funds collected as energy transition charges, or other proceeds of energy transition property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any energy transition property subject to a financing order under applicable law.
  12. Establishment of a bond team consisting of representatives of the public utility and its consultant, the Public Staff and its consultant, and the Commission with a designated Commissioner and the Commission's consultant and counsel.
  13. A direction for the bond team to work together and make all decisions as to the structuring, marketing, and pricing of the energy transition bonds; the selection of the underwriters; and the approval of the transaction documents. The Commission shall have final decision-making authority on all matters considered by the bond team.
  14. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.
- c. A financing order issued to a public utility may provide that creation of the public utility's energy transition property is conditioned upon, and simultaneous with, the sale or other transfer of the energy transition property to an assignee and the pledge of the energy transition property to secure energy transition bonds.
- d. If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of energy transition charges and the

- 1 amount of an adjustment. The adjustments shall ensure the recovery  
2 of revenues sufficient to provide for the payment of principal, interest,  
3 acquisition, defeasance, financing costs, or redemption premium and  
4 other fees, costs, and charges in respect of energy transition bonds  
5 approved under the financing order. Within 30 days after receiving a  
6 public utility's request pursuant to this paragraph, the Commission  
7 shall either approve the request or inform the public utility of any  
8 mathematical or clerical errors in its calculation. If the Commission  
9 informs the utility of mathematical or clerical errors in its calculation,  
10 the utility may correct its error and refile its request. The time frames  
11 previously described in this paragraph shall apply to a refiled request.
- 12 e. Subsequent to the transfer of energy transition property to an assignee  
13 or the issuance of energy transition bonds authorized thereby,  
14 whichever is earlier, a financing order is irrevocable and, except for  
15 changes made pursuant to the formula-based mechanism authorized in  
16 this section, the Commission may not amend, modify, or terminate the  
17 financing order by any subsequent action or reduce, impair, postpone,  
18 terminate, or otherwise adjust energy transition charges approved in  
19 the financing order. After the issuance of a financing order, the public  
20 utility retains sole discretion regarding whether to assign, sell, or  
21 otherwise transfer energy transition property.
- 22 (4) At the request of a public utility, the Commission may commence a  
23 proceeding and issue a subsequent financing order that provides for  
24 refinancing, retiring, or refunding the energy transition bonds issued pursuant  
25 to the original financing order if the Commission finds that the subsequent  
26 financing order satisfies all of the criteria specified in this section for a  
27 financing order. Effective upon retirement of the refunded energy transition  
28 bonds and the issuance of new energy transition bonds, the Commission shall  
29 adjust the related energy transition charges accordingly.
- 30 (5) Within 60 days after the Commission issues a financing order or a decision  
31 denying a request for reconsideration or, if the request for reconsideration is  
32 granted, within 30 days after the Commission issues its decision on  
33 reconsideration, an adversely affected party may petition for judicial review  
34 in the Supreme Court of North Carolina. Review on appeal shall be based  
35 solely on the record before the Commission and briefs to the court and is  
36 limited to determining whether the financing order, or the order on  
37 reconsideration, conforms to the State Constitution and State and federal law  
38 and is within the authority of the Commission under this section.
- 39 (6) Duration of financing order. –
- 40 a. A financing order remains in effect and energy transition property  
41 under the financing order continues to exist until energy transition  
42 bonds issued pursuant to the financing order have been paid in full or  
43 defeased and, in each case, all Commission-approved financing costs  
44 of such energy transition bonds have been recovered in full.
- 45 b. A financing order issued to a public utility remains in effect and  
46 unabated notwithstanding the reorganization, bankruptcy or other  
47 insolvency proceedings, merger, or sale of the public utility or its  
48 successors or assignees.
- 49 (c) Exception to Commission Jurisdiction. – The Commission may not, in exercising its  
50 powers and carrying out its duties regarding any matter within its authority pursuant to this  
51 Chapter, consider the energy transition bonds issued pursuant to a financing order to be the debt

1 of the public utility other than for federal income tax purposes, consider the energy transition  
2 charges paid under the financing order to be the revenue of the public utility for any purpose, or  
3 consider the energy transition costs or financing costs specified in the financing order to be the  
4 costs of the public utility, nor may the Commission determine any action taken by a public utility  
5 which is consistent with the financing order to be unjust or unreasonable.

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

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

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

21 (e) Energy Transition Property. –

22 (1) Provisions applicable to energy transition property. –

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

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

39 c. All or any portion of energy transition property specified in a financing  
40 order issued to a public utility may be transferred, sold, conveyed, or  
41 assigned to a successor or assignee that is wholly owned, directly or  
42 indirectly, by the public utility and created for the limited purpose of  
43 acquiring, owning, or administering energy transition property or  
44 issuing energy transition bonds under the financing order. All or any  
45 portion of energy transition property may be pledged to secure energy  
46 transition bonds issued pursuant to the financing order, amounts  
47 payable to financing parties and to counterparties under any ancillary  
48 agreements, and other financing costs. Any transfer, sale, conveyance,  
49 assignment, grant of a security interest in, or pledge of energy  
50 transition property by a public utility, or an affiliate of the public  
51 utility, to an assignee, to the extent previously authorized in a financing

- 1                    order, does not require the prior consent and approval of the  
2                    Commission.
- 3                    d. If a public utility defaults on any required payment of charges arising  
4                    from energy transition property specified in a financing order, a court,  
5                    upon application by an interested party, and without limiting any other  
6                    remedies available to the applying party, shall order the sequestration  
7                    and payment of the revenues arising from the energy transition  
8                    property to the financing parties or their assignees. Any such financing  
9                    order remains in full force and effect notwithstanding any  
10                   reorganization, bankruptcy, or other insolvency proceedings with  
11                   respect to the public utility or its successors or assignees.
- 12                   e. The interest of a transferee, purchaser, acquirer, assignee, or pledgee  
13                   in energy transition property specified in a financing order issued to a  
14                   public utility, and in the revenue and collections arising from that  
15                   property, is not subject to setoff, counterclaim, surcharge, or defense  
16                   by the public utility or any other person or in connection with the  
17                   reorganization, bankruptcy, or other insolvency of the public utility or  
18                   any other entity.
- 19                   f. Any successor to a public utility, whether pursuant to any  
20                   reorganization, bankruptcy, or other insolvency proceeding or whether  
21                   pursuant to any merger or acquisition, sale, or other business  
22                   combination, or transfer by operation of law, as a result of public  
23                   utility restructuring or otherwise, must perform and satisfy all  
24                   obligations of, and have the same rights under a financing order as, the  
25                   public utility under the financing order in the same manner and to the  
26                   same extent as the public utility, including collecting and paying to the  
27                   person entitled to receive the revenues, collections, payments, or  
28                   proceeds of the energy transition property. Nothing in this  
29                   sub-subdivision is intended to limit or impair any authority of the  
30                   Commission concerning the transfer or succession of interests of  
31                   public utilities.
- 32                   g. Energy transition bonds shall be nonrecourse to the credit or any assets  
33                   of the public utility other than the energy transition property as  
34                   specified in the financing order and any rights under any ancillary  
35                   agreement.
- 36                   (2) Provisions applicable to security interests. –
- 37                   a. The creation, perfection, and enforcement of any security interest in  
38                   energy transition property to secure the repayment of the principal and  
39                   interest and other amounts payable in respect of energy transition  
40                   bonds; amounts payable under any ancillary agreement and other  
41                   financing costs are governed by this subsection and not by the  
42                   provisions of the Code.
- 43                   b. A security interest in energy transition property is created, valid, and  
44                   binding and perfected at the later of the time (i) the financing order is  
45                   issued, (ii) a security agreement is executed and delivered by the  
46                   debtor granting such security interest, (iii) the debtor has rights in such  
47                   energy transition property or the power to transfer rights in such  
48                   energy transition property, or (iv) value is received for the energy  
49                   transition property. The description of energy transition property in a  
50                   security agreement is sufficient if the description refers to this section  
51                   and the financing order creating the energy transition property.

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

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

- 45           a.     Any sale, assignment, or other transfer of energy transition property  
46                 shall be an absolute transfer and true sale of, and not a pledge of or  
47                 secured transaction relating to, the seller's right, title, and interest in,  
48                 to, and under the energy transition property if the documents  
49                 governing the transaction expressly state that the transaction is a sale  
50                 or other absolute transfer other than for federal and State income tax  
51                 purposes. For all purposes other than federal and State income tax

1 purposes, the parties' characterization of a transaction as a sale of an  
2 interest in energy transition property shall be conclusive that the  
3 transaction is a true sale and that ownership has passed to the party  
4 characterized as the purchaser, regardless of whether the purchaser  
5 has possession of any documents evidencing or pertaining to the  
6 interest. A transfer of an interest in energy transition property may be  
7 created only when all of the following have occurred (i) the financing  
8 order creating the energy transition property has become effective, (ii)  
9 the documents evidencing the transfer of energy transition property  
10 have been executed by the assignor and delivered to the assignee, and  
11 (iii) value is received for the energy transition property. After such a  
12 transaction, the energy transition property is not subject to any claims  
13 of the transferor or the transferor's creditors, other than creditors  
14 holding a prior security interest in the energy transition property  
15 perfected in accordance with subdivision (2) of this subsection.

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

- 20 1. Commingling of energy transition charges with other amounts.
- 21 2. The retention by the seller of (i) a partial or residual interest,  
22 including an equity interest, in the energy transition property,  
23 whether direct or indirect, or whether subordinate or otherwise,  
24 or (ii) the right to recover costs associated with taxes, franchise  
25 fees, or license fees imposed on the collection of energy  
26 transition charges.
- 27 3. Any recourse that the purchaser may have against the seller.
- 28 4. Any indemnification rights, obligations, or repurchase rights  
29 made or provided by the seller.
- 30 5. The obligation of the seller to collect energy transition charges  
31 on behalf of an assignee.
- 32 6. The transferor acting as the servicer of the energy transition  
33 charges or the existence of any contract that authorizes or  
34 requires the public utility, to the extent that any interest in  
35 energy transition property is sold or assigned, to contract with  
36 the assignee or any financing party that it will continue to  
37 operate its system to provide service to its customers, will  
38 collect amounts in respect of the energy transition charges for  
39 the benefit and account of such assignee or financing party, and  
40 will account for and remit such amounts to or for the account  
41 of such assignee or financing party.
- 42 7. The treatment of the sale, conveyance, assignment, or other  
43 transfer for tax, financial reporting, or other purposes.
- 44 8. The granting or providing to bondholders a preferred right to  
45 the energy transition property or credit enhancement by the  
46 public utility or its affiliates with respect to such energy  
47 transition bonds.
- 48 9. Any application of the formula-based adjustment mechanism  
49 as provided in this section.

50 c. Any right that a public utility has in the energy transition property  
51 before its pledge, sale, or transfer or any other right created under this



1 section or created in the financing order and assignable under this  
2 section or assignable pursuant to a financing order is property in the  
3 form of a contract right or a chose in action. Transfer of an interest in  
4 energy transition property to an assignee is enforceable only upon the  
5 later of (i) the issuance of a financing order, (ii) the assignor having  
6 rights in such energy transition property or the power to transfer rights  
7 in such energy transition property to an assignee, (iii) the execution and  
8 delivery by the assignor of transfer documents in connection with the  
9 issuance of energy transition bonds, and (iv) the receipt of value for  
10 the energy transition property. An enforceable transfer of an interest  
11 in energy transition property to an assignee is perfected against all  
12 third parties, including subsequent judicial or other lien creditors,  
13 when a notice of that transfer has been given by the filing of a  
14 financing statement in accordance with sub-subdivision c. of  
15 subdivision (2) of this subsection. The transfer is perfected against  
16 third parties as of the date of filing.

17 d. The Secretary of State shall maintain any financing statement filed to  
18 perfect any sale, assignment, or transfer of energy transition property  
19 under this section in the same manner that the Secretary maintains  
20 financing statements filed by transmitting utilities under the Code. The  
21 filing of any financing statement under this section shall be governed  
22 by the provisions regarding the filing of financing statements in the  
23 Code. The filing of such a financing statement is the only method of  
24 perfecting a transfer of energy transition property.

25 e. The priority of a transfer perfected under this section is not impaired  
26 by any later modification of the financing order or energy transition  
27 property or by the commingling of funds arising from energy transition  
28 property with other funds. Any other security interest that may apply  
29 to those funds, other than a security interest perfected under  
30 subdivision (2) of this subsection, is terminated when they are  
31 transferred to a segregated account for the assignee or a financing  
32 party. If energy transition property has been transferred to an assignee  
33 or financing party, any proceeds of that property must be held in trust  
34 for the assignee or financing party.

35 f. The priority of the conflicting interests of assignees in the same  
36 interest or rights in any energy transition property is determined as  
37 follows:

- 38 1. Conflicting perfected interests or rights of assignees rank  
39 according to priority in time of perfection. Priority dates from  
40 the time a filing covering the transfer is made in accordance  
41 with sub-subdivision c. of subdivision (2) of this subsection.
- 42 2. A perfected interest or right of an assignee has priority over a  
43 conflicting unperfected interest or right of an assignee.
- 44 3. A perfected interest or right of an assignee has priority over a  
45 person who becomes a lien creditor after the perfection of such  
46 assignee's interest or right.

47 (f) Description or Indication of Property. – The description of energy transition property  
48 being transferred to an assignee in any sale agreement, purchase agreement, or other transfer  
49 agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other  
50 security document, or indicated in any financing statement is only sufficient if such description  
51 or indication refers to the financing order that created the energy transition property and states

1 that the agreement or financing statement covers all or part of the property described in the  
2 financing order. This section applies to all purported transfers of, and all purported grants or liens  
3 or security interests in, energy transition property, regardless of whether the related sale  
4 agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement,  
5 or other security document was entered into, or any financing statement was filed.

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

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

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

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

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

28 (2) Banks and bankers, savings and loan associations, credit unions, trust  
29 companies, savings banks and institutions, investment companies, insurance  
30 companies, insurance associations, and other persons carrying on a banking  
31 or insurance business.

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

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

35 (k) Obligation of Nonimpairment. –

36 (1) The State and its agencies, including the Commission, pledge and agree with  
37 bondholders, the owners of the energy transition property, and other financing  
38 parties that the State and its agencies will not take any action listed in this  
39 subdivision. This paragraph does not preclude limitation or alteration if full  
40 compensation is made by law for the full protection of the energy transition  
41 charges collected pursuant to a financing order and of the bondholders and  
42 any assignee or financing party entering into a contract with the public utility.  
43 The prohibited actions are as follows:

44 a. Alter the provisions of this section, which authorize the Commission  
45 to create an irrevocable contract right or a chose in action by the  
46 issuance of a financing order, to create energy transition property, and  
47 make the energy transition charges imposed by a financing order  
48 irrevocable, binding, or nonbypassable charges.

49 b. Take or permit any action that impairs or would impair the value of  
50 energy transition property or the security for the energy transition

bonds or revises the energy transition costs for which recovery is authorized.

c. In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.

d. Except for changes made pursuant to the formula-based adjustment mechanism authorized under this section, reduce, alter, or impair energy transition charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related energy transition bonds have been paid and performed in full.

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

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

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

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

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

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

"§ 25-9-109. **Scope.**

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

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by ~~contract;~~contract.

(2) An agricultural ~~lien;~~lien.

(3) A sale of accounts, chattel paper, payment intangibles, or promissory ~~notes;~~notes.

(4) A ~~consignment;~~consignment.

(5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), as provided in ~~G.S. 25-9-110;~~ and G.S. 25-9-110.

(6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.

(b) Security interest in secured obligation. – The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) Extent to which Article does not apply. – This Article does not apply to the extent ~~that;~~that any one or more of the following conditions are met:

(1) A statute, regulation, or treaty of the United States preempts this ~~Article;~~Article.

(2) Repealed by Session Laws 2001-218, s. 2, effective July 1, 2001.

- 1 (3) A statute of another state, a foreign country, or a governmental unit of another  
 2 state or a foreign country, other than a statute generally applicable to security  
 3 interests, expressly governs creation, perfection, priority, or enforcement of a  
 4 security interest created by the state, country, or governmental ~~unit; or unit.~~  
 5 (4) The rights of a transferee beneficiary or nominated person under a letter of  
 6 credit are independent and superior under G.S. 25-5-114.
- 7 (d) Inapplicability of Article. – This Article does not apply ~~to~~ to any of the following:
- 8 (1) A landlord's lien, other than an agricultural ~~lien; lien.~~  
 9 (2) A lien, other than an agricultural lien, given by statute or other rule of law for  
 10 services or materials, but G.S. 25-9-333 applies with respect to priority of the  
 11 ~~lien; lien.~~  
 12 (3) An assignment of a claim for wages, salary, or other compensation of an  
 13 ~~employee; employee.~~  
 14 (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as  
 15 part of a sale of the business out of which they ~~arose; arose.~~  
 16 (5) An assignment of accounts, chattel paper, payment intangibles, or promissory  
 17 notes which is for the purpose of collection ~~only; only.~~  
 18 (6) An assignment of a right to payment under a contract to an assignee that is  
 19 also obligated to perform under the ~~contract; contract.~~  
 20 (7) An assignment of a single account, payment intangible, or promissory note to  
 21 an assignee in full or partial satisfaction of a preexisting  
 22 ~~indebtedness; indebtedness.~~  
 23 (8) A transfer of an interest in or an assignment of a claim under a policy of  
 24 insurance, other than an assignment by or to a health-care provider of a  
 25 health-care-insurance receivable and any subsequent assignment of the right  
 26 to payment, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to  
 27 proceeds and priorities in ~~proceeds; proceeds.~~  
 28 (9) An assignment of a right represented by a judgment, other than a judgment  
 29 taken on a right to payment that was ~~collateral; collateral.~~  
 30 (10) A right of recoupment or setoff, ~~but; but~~ (i) G.S. 25-9-340  
 31 ~~a. G.S. 25-9-340~~ applies with respect to the effectiveness of rights of  
 32 recoupment or setoff against deposit ~~accounts; and~~ accounts and (ii)  
 33 G.S. 25-9-404  
 34 ~~b. G.S. 25-9-404~~ applies with respect to defenses or claims of an account  
 35 debtor; debtor.  
 36 (11) The creation or transfer of an interest in or lien on real property, including a  
 37 lease or rents thereunder, except to the extent that provision is made ~~for; for~~  
 38 the following:  
 39 a. Liens on real property in G.S. 25-9-203 and  
 40 ~~G.S. 25-9-308; G.S. 25-9-308.~~  
 41 b. Fixtures in ~~G.S. 25-9-334; G.S. 25-9-334.~~  
 42 c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and  
 43 ~~25-9-519; and 25-9-519.~~  
 44 d. Security agreements covering personal and real property in  
 45 ~~G.S. 25-9-604; G.S. 25-9-604.~~  
 46 (12) An assignment of a claim arising in tort, other than a commercial tort claim,  
 47 but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and  
 48 priorities in ~~proceeds; proceeds.~~  
 49 (13) An assignment of a deposit account in a consumer transaction, but  
 50 G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities  
 51 in ~~proceeds; proceeds.~~

- 1 (14) The creation, perfection, priority, or enforcement of any lien on, assignment  
2 of, pledge of, or security in, any revenues, rights, funds, or other tangible or  
3 intangible assets created, made, or granted by this State or a governmental unit  
4 in this State, including the assignment of rights as secured party in security  
5 interests granted by any party subject to the provisions of this Article to this  
6 State or a governmental unit in this State, to secure, directly or indirectly, any  
7 bond, note, other evidence of indebtedness, or other payment obligations for  
8 borrowed money issued by, or in connection with, installment or lease  
9 purchase financings by, this State or a governmental unit in this State.  
10 However, notwithstanding this subdivision, this Article does apply to the  
11 creation, perfection, priority, and enforcement of security interests created by  
12 this State or a governmental unit in this State in equipment or ~~fixtures;~~  
13 ~~or fixtures.~~
- 14 (15) The creation, perfection, priority, or enforcement of any sale, assignment of,  
15 pledge of, security interest in, or other transfer of, any interest or right or  
16 portion of any interest or right in any storm recovery property as defined in  
17 G.S. 62-172.
- 18 (16) The creation, perfection, priority, or enforcement of any sale, assignment of,  
19 pledge of, security interest in, or other transfer of, any interest or right or  
20 portion of any interest or right in any energy transition property as defined in  
21 G.S. 62-173."

22 **SECTION 2.(c)** This section is effective when it becomes law.  
23

## 24 **ADVANCED NUCLEAR EARLY SITE PERMIT AND SUBSEQUENT LICENSE** 25 **RENEWAL**

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

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

49 **SECTION 3.(c)** This section is effective when it becomes law.  
50

1 **PART II. RATE-MAKING MODERNIZATION/AUTHORIZE**  
2 **PERFORMANCE-BASED REGULATION OF ELECTRIC PUBLIC UTILITIES**

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

5 **"§ 62-133.16. Performance-based regulation authorized.**

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

- 7 (1) "Cost causation principle" means establishment of a causal link between a  
8 specific customer class, how that class uses the electric system, and costs  
9 incurred by the electric public utility for the provision of electric service.
- 10 (2) "Decoupling rate-making mechanism" means a rate-making mechanism  
11 intended to break the link between an electric public utility's revenue and the  
12 level of consumption of electricity on a per customer basis by its residential  
13 customers.
- 14 (3) "Distributed energy resource" or "DER" means a device or measure that  
15 produces electricity or reduces electricity consumption and is connected to the  
16 electric distribution system, either on the customer's premises, or on the  
17 electric public utility's primary distribution system. A DER may include any  
18 of the following: energy efficiency, distributed generation, demand response,  
19 microgrids, energy storage, energy management systems, and electric  
20 vehicles.
- 21 (4) "Earnings sharing mechanism" means an annual rate-making mechanism that  
22 shares surplus earnings between the electric public utility and customers over  
23 the period of time covered by a MYRP.
- 24 (5) "Multiyear rate plan" or "MYRP" means a rate-making mechanism under  
25 which the Commission sets base rates for a multiyear period that includes  
26 authorized periodic changes in base rates without the need for the electric  
27 public utility to file a subsequent general rate application pursuant to  
28 G.S. 62-133, along with an earnings sharing mechanism.
- 29 (6) "Performance incentive mechanism" or "PIM" means a rate-making  
30 mechanism that links electric public utility revenue or earnings to electric  
31 public utility performance in targeted areas consistent with policy goals, as  
32 that term is defined by this section, approved by the Commission, and includes  
33 specific performance metrics and targets against which electric public utility  
34 performance is measured.
- 35 (7) "Performance-based regulation" or "PBR" means an alternative rate-making  
36 approach that includes decoupling, one or more performance incentive  
37 mechanisms, and a multiyear rate plan, including an earnings sharing  
38 mechanism, or such other alternative regulatory mechanisms as may be  
39 proposed by an electric public utility.
- 40 (8) "Policy goal" means the expected or anticipated achievement of operational  
41 efficiency, cost savings, or reliability of electric service that is greater than  
42 that which already is required by State or federal law or regulation, including  
43 standards the Commission has established by order prior to and independent  
44 of a PBR application, provided that, with respect to environmental standards,  
45 the Commission may not approve a policy goal that is more stringent than is  
46 established (i) by State law, (ii) by federal law, (iii) by the Environmental  
47 Management Commission pursuant to G.S. 143B-282, or (iv) by the United  
48 States Environmental Protection Agency.
- 49 (9) "Rate year" means the year of the MYRP for which base rates are effective.
- 50 (10) "Tracking metric" means a methodology for tracking and quantitatively  
51 measuring and monitoring outcomes or electric public utility performance.

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

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

20           **(1) The following shall apply to a MYRP:**

21           **a.** The base rates for the first rate year of a MYRP shall be fixed in the  
22 manner prescribed under G.S. 62-133, including actual changes in  
23 costs, revenues or the cost of the electric public utility's property used  
24 and useful, or to be used and useful within a reasonable time after the  
25 test period, plus costs associated with a known and measurable set of  
26 capital investments, net of operating benefits, associated with a set of  
27 discrete and identifiable capital spending projects to be placed in  
28 service during the first rate year. Subsequent changes in base rates in  
29 the second and third rate years of the MYRP shall be based on  
30 projected incremental Commission-authorized capital investments  
31 that will be used and useful during the rate year and associated  
32 expenses, net of operating benefits, including operation and  
33 maintenance savings, and depreciation of rate base associated with the  
34 capital investments, that are incurred or realized during each rate year  
35 of the MYRP period; provided that the amount of increase in the  
36 second rate year under the MYRP shall not exceed four percent (4%)  
37 of the electric public utility's North Carolina retail jurisdictional  
38 revenue requirement that is used to fix rates during the first year of the  
39 MYRP pursuant to G.S. 62-133 excluding any revenue requirement  
40 for the capital spending projects to be placed in service during the first  
41 rate year. The amount of increase for the third rate year under the  
42 MYRP shall not exceed four percent (4%) of the electric public  
43 utility's North Carolina retail jurisdictional revenue requirement that is  
44 used to fix rates during the first year of the MYRP pursuant to  
45 G.S. 62-133, excluding any revenue requirement for the capital  
46 spending projects placed in service during the first rate year. The  
47 revenue requirements associated with any single new generation plant  
48 placed in service during the MYRP for which the total plant in service  
49 balance exceeds five hundred million dollars (\$500,000,000) shall not  
50 be included in a MYRP. Instead, the utility may request and the  
51 Commission may grant, if it deems appropriate, permission to

1 establish a regulatory asset and defer to such regulatory asset  
2 incremental costs related to such electric generation investments to be  
3 considered for recovery in a future rate proceeding. In setting the  
4 electric public utility's authorized rate of return on equity for an MYRP  
5 period, the Commission shall consider any increased or decreased risk  
6 to either the electric public utility or its ratepayers that may result from  
7 having an approved MYRP.

8 b. In a proceeding authorizing a MYRP, the Commission shall establish  
9 a rider to refund amounts related to the earnings sharing mechanism,  
10 and to refund or collect amounts related to PIM rewards or penalties,  
11 and decoupling adjustments.

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

14 1. Examine the earnings of the electric public utility during the  
15 rate year to determine if the earnings exceeded the authorized  
16 rate of return on equity determined by the Commission in the  
17 proceeding establishing the PBR. If the weather-normalized  
18 earnings exceed the authorized rate of return on equity plus 50  
19 basis points, the excess earnings above the authorized rate of  
20 return on equity plus 50 basis points will be refunded to  
21 customers in the rider established by the Commission. If the  
22 weather-normalized earnings fall below the authorized rate of  
23 return on equity, the electric public utility may file a rate case  
24 pursuant to G.S. 62-133. Any penalties or rewards from PIM  
25 incentives and any incentives related to demand-side  
26 management and energy efficiency measures pursuant to  
27 G.S. 62-133.9(f) will be excluded from the determination of  
28 any refund pursuant to earnings sharing mechanism.

29 2. Evaluate the performance of the electric public utility with  
30 respect to Commission approved PIMs applicable in the rate  
31 year. Any financial rewards shall be collected from customers  
32 and any penalties refunded to customers, in each case, through  
33 the rider established by the Commission.

34 3. Evaluate the decoupling rate-making mechanism, and refund  
35 or collect, as applicable, a corresponding amount from  
36 residential customers through the rider established by the  
37 Commission.

38 (2) The proposed decoupling mechanism shall only be applied to residential  
39 customer classes. The Commission shall establish an annual revenue  
40 requirement per residential customer and an appropriate distribution of said  
41 revenue requirement per customer in each month of the year. The established  
42 monthly revenue requirements times the actual number of residential  
43 customers each month shall become the target revenue for the residential  
44 class. Each month, the electric public utility shall defer to a regulatory asset  
45 or liability account the difference between the actual revenue and the target  
46 revenue for the residential class. The changes in revenue requirements for the  
47 second and third rate years shall be allocated to the residential customer class  
48 and divided by the number of residential customers to determine the  
49 appropriate adjustment to the annual revenue requirement per residential  
50 customer that is used to establish the target revenues for the residential class  
51 in the second and third rate years of a MYRP. The electric public utility may



- 1 exclude rate schedules or riders for electric vehicle charging, including EV  
2 charging during off-peak periods on time-of-use rates, from the decoupling  
3 mechanism to preserve the electric public utility's incentive to encourage  
4 electric vehicle adoption.
- 5 (3) The policy goal targeted by a PIM shall be clearly defined, measurable with a  
6 defined performance metric, and solely or primarily within the electric public  
7 utility's control.
- 8 (4) Any PIM shall be structured to ensure that, pursuant to subdivisions (1) and  
9 (2) of this subsection, any penalty shall be refunded to customers and any  
10 reward shall be collected from customers and shall be limited such that the  
11 total of all potential and actual PIM incentives or penalties does not exceed  
12 one percent (1%) of the electric public utility's total annual revenue  
13 requirement that is used to fix rates during the first year of the MYRP pursuant  
14 to G.S. 62-133, excluding any revenue requirement for the capital spending  
15 projects to be placed in service during the first rate year, where the PIM is  
16 approved. Any incentives related to demand-side management and energy  
17 efficiency measures pursuant to G.S. 62-133.9(f) shall be excluded from the  
18 limits established in this section and shall continue to be recovered through  
19 the demand-side management and energy efficiency (DSM/EE) rider.
- 20 (5) Subject to the limitations set out in the preceding subdivision, any PIMs  
21 proposed by an electric public utility shall include one or more of the  
22 following:
- 23 a. Rewards based on the sharing of savings achieved by meeting or  
24 exceeding a specific policy goal.
- 25 b. Rewards or penalties based on differentiated authorized rates of return  
26 on common equity to encourage utility investments or operational  
27 changes to meet a specific policy goal, which shall not be greater than  
28 25 basis points.
- 29 c. Fixed financial rewards to encourage achievement of specific policy  
30 goals, or fixed financial penalties for failure to achieve policy goals.
- 31 (d) Commission Action on Application. –
- 32 (1) The Commission shall approve a PBR application by an electric public utility  
33 only upon a finding that a proposed PBR would result in just and reasonable  
34 rates, is in the public interest, and is consistent with the criteria established in  
35 this section and rules adopted thereunder. In reviewing any such PBR  
36 application under this section, the Commission shall consider whether the  
37 PBR application:
- 38 a. Assures that no customer or class of customers is unreasonably harmed  
39 and that the rates are fair both to the electric public utility and to the  
40 customer.
- 41 b. Reasonably assures the continuation of safe and reliable electric  
42 service.
- 43 c. Will not unreasonably prejudice any class of electric customers and  
44 result in sudden substantial rate increases or "rate shock" to customers.
- 45 (2) In reviewing any such PBR application under this section, the Commission  
46 may consider whether the PBR application:
- 47 a. Encourages peak load reduction or efficient use of the system.  
48 b. Encourages utility-scale renewable energy and storage.  
49 c. Encourages DERs.  
50 d. Reduces low-income energy burdens.  
51 e. Encourages energy efficiency.

- 1           f.       Encourages carbon reductions.
- 2           g.       Encourages beneficial electrification, including electric vehicles.
- 3           h.       Supports equity in contracting.
- 4           i.       Promotes resilience and security of the electric grid.
- 5           j.       Maintains adequate levels of reliability and customer service.
- 6           k.       Promotes rate designs that yield peak load reduction or beneficial
- 7                 load-shaping.

8           (3)     When an electric public utility files with the Commission an application for a  
9                 general rate case pursuant to G.S. 62-133 and that application includes a PBR  
10                application, the Commission shall institute proceedings on the application as  
11                provided in this subdivision. The electric public utility shall not make any  
12                changes in any rate or implement a PBR except upon 30 days' notice to the  
13                Commission, and the Commission may require the electric public utility to  
14                provide notice of the pending PBR application to the same extent as provided  
15                in G.S. 62-134(a) and may suspend the effect of the proposed base rates and  
16                PBR implementation pending investigation in the same manner as provided  
17                in G.S. 62-134(b), provided that, the Commission may suspend the  
18                implementation of the proposed base rates for no longer than 300 days. The  
19                electric public utility's application shall plainly state the changes in base rates  
20                and the time when the change in rates will go into effect and shall include  
21                schedules in the same manner required pursuant to G.S. 62-134(a). The  
22                Commission shall, upon reasonable notice, conduct a hearing concerning the  
23                lawfulness of the proposed base rates and the PBR application. After hearing,  
24                the Commission shall issue an order approving or rejecting the electric public  
25                utility's PBR application. The Commission shall not be permitted to modify  
26                the PBR application. In the event that the Commission rejects a PBR  
27                application, the Commission shall nevertheless establish the electric public  
28                utility's base rates in accordance with G.S. 62-133 based on the PBR  
29                application. If the Commission rejects the PBR application, it shall provide an  
30                explanation of the deficiency and an opportunity for the electric public utility  
31                to refile, or for the electric public utility and the stakeholders to collaborate to  
32                cure the identified deficiency and refile.

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

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

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

48           (h)     Utility Reporting. – For purposes of measuring an electric public utility's earnings  
49                 under a PBR application approved under this section, an electric public utility shall make an  
50                 annual filing that sets forth the electric public utility's earned return on equity, the electric public  
51                 utility's revenue requirement trued-up with the actual electric public utility revenue, the amount

1 of revenue adjustment in terms of customer refund or surcharge, if applicable, and the  
2 adjustments reflecting rewards or penalties provided for in PIMs approved by the Commission.

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

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

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

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

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

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

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

34 **SECTION 4.(c)** This section is effective when it becomes law and applies to any  
35 rate-making mechanisms filed by an electric public utility on or after the date that rules adopted  
36 pursuant to G.S. 62-133.16, as enacted by subsection (a) of this section, become effective.  
37

### 38 **PART III. CUSTOMER RENEWABLES PROGRAMS**

#### 39 **GREEN SOURCE ADVANTAGE**

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

41 **"§ 62-159.2. Direct renewable energy procurement for major military installations, public**  
42 **universities, and large customers.**

43 (a) Each electric public utility providing retail electric service to more than 150,000  
44 North Carolina retail jurisdictional customers as of January 1, 2017, shall file with the  
45 Commission an application requesting approval of a new program applicable to major military  
46 installations, as that term is defined in G.S. 143-215.115(1), The University of North Carolina,  
47 as established in Article 1 of Chapter 116 of the General Statutes, and other new and existing  
48 nonresidential customers with either a contract demand (i) equal to or greater than one megawatt  
49 (MW) or (ii) at multiple service locations that, in aggregate, is equal to or greater than five  
50 megawatts (MW).  
51

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

10 (c) ~~Each contracted amount of capacity shall be limited to no more than one hundred~~  
11 ~~twenty five percent (125%) of the maximum annual peak demand of the eligible customer~~  
12 ~~premises. All agreements executed under this program prior to January 1, 2021, shall remain in~~  
13 ~~full force and effect and shall not be deemed modified or altered in any respect.~~

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

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

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

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

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

39 (d) The program shall be offered by the electric public utilities subject to this section for  
40 a period of five years or until December 31, 2022, whichever is later, and shall not exceed a  
41 combined 600 megawatts ~~(MW)~~ alternating current (MW AC) of total capacity. For the public  
42 utilities subject to this section, where a major military installation is located within its  
43 Commission-assigned service territory, at least 100 megawatts (MW) of new renewable energy  
44 facility capacity offered under the program shall be reserved for participation by major military  
45 installations. At least 250 megawatts ~~(MW)~~ alternating current (MW AC) of new renewable  
46 energy facility capacity offered under the programs shall also be reserved for participation by  
47 The University of North Carolina. Major military installations and The University of North  
48 Carolina must fully subscribe to all their allocations prior to December 31, 2020, ~~or a period of~~  
49 ~~no more than three years after approval of the program, whichever is later.~~ 2022. If any portion  
50 of total capacity set aside to major military installations or The University of North Carolina is  
51 not used, it shall be reallocated for use by any eligible program participant. If any portion of the

1 600 megawatts (~~MW~~) alternating current (MW AC) of renewable energy capacity provided for  
2 in this section is not awarded prior to the expiration of the program, it shall be reallocated to and  
3 included in a competitive procurement in accordance with G.S. 62-110.8(a).

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

14 (1) A bill credit equal to the hourly real time avoided cost or day ahead avoided  
15 cost.

16 (2) A bill credit equal to avoided cost as determined in a manner consistent with  
17 the most recent Commission-approved methodology for a period of two, five,  
18 or 10 years, as selected by the customer.

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

22 (1) On or before December 31, 2021, The University of North Carolina may  
23 provide written notice to the electric public utility of its intent to participate in  
24 the program and its desired capacity amount, not to exceed 250 megawatts  
25 alternating current (MW AC) of renewable energy capacity, and major  
26 military installations may provide written notice to the electric public utility  
27 of their intent to participate in the program and their desired capacity amount,  
28 not to exceed 100 megawatts alternating current (MW AC) of renewable  
29 energy capacity.

30 (2) Upon receipt of written notice provided in accordance with subdivision (1) of  
31 this subsection, the electric public utility shall competitively procure from  
32 independent third parties renewable energy and capacity from one or more  
33 renewable energy facilities to provide the total amount of renewable energy  
34 capacity requested by The University of North Carolina and major military  
35 installations utilizing the competitive procurement process set forth in  
36 G.S. 62-110.8 for procurements occurring on or after January 1, 2022. The  
37 electric public utility shall enter into a power purchase agreement with one or  
38 more renewable facilities selected through such competitive procurement,  
39 provided that the price to be paid under the power purchase agreement,  
40 inclusive of network upgrades, shall not exceed the electric public utility's  
41 avoided cost as determined in a manner consistent with the most recent  
42 Commission-approved methodology for a period of 20 years. The applicable  
43 power purchase agreement shall allow the procuring electric public utility  
44 rights to dispatch, operate, and control the renewable energy facilities in the  
45 same manner as the electric public utility's own generating resource. Where  
46 necessary, the electric public utility may allocate a renewable energy facility  
47 between the major military installations and The University of North Carolina.  
48 In the event that an insufficient amount of qualifying bids are received in the  
49 initial procurement event or the electric public utility is otherwise unable to  
50 procure the requested amount of capacity, the electric public utility may

1 conduct subsequent procurements at a reasonably determined time to attempt  
 2 to procure the full amount of requested capacity.

3 (3) In addition to their normal retail bill, the major military installations and The  
 4 University of North Carolina shall pay a product charge equal to the price  
 5 established through the competitive procurement for the renewable energy  
 6 facility or facilities procured for them, respectively. The electric public utility  
 7 shall pay the owner of the renewable energy facility or facilities selected  
 8 through such competitive procurement at the price established through the  
 9 competitive procurement. The major military installations and The University  
 10 of North Carolina shall be entitled to a bill credit equal to the price established  
 11 through the competitive procurement for the renewable energy facility or  
 12 facilities procured for them, respectively.

13 (4) In the event that the electric public utility is prohibited, for purposes of  
 14 compliance with a future federal or State law, rule, or regulation relating to air  
 15 emissions or renewable energy or clean energy, from relying on or otherwise  
 16 receiving credit for any renewable generating facility procured under this  
 17 program for a major military installation or The University of North Carolina,  
 18 the electric public utility shall be entitled after the first two years of the  
 19 contract term to terminate the agreement with the participating customer on  
 20 90 days' written notice to the participating customer if the Commission  
 21 determines that the offering utility will incur incremental compliance costs  
 22 due to its inability to rely on or otherwise receive credit for such renewable  
 23 generation resource or the output of such renewable generation resource. In  
 24 the event of any such termination, to the greatest extent reasonably possible  
 25 and subject to Commission approval, the utility shall seek to enter into a  
 26 replacement arrangement with such customer that provides the customer with  
 27 a set of rights that is as close as possible to the initial arrangement while still  
 28 allowing the utility to comply with the federal or State law, rule, or regulation  
 29 related to air emissions or renewable energy or clean energy generation."  
 30

## 31 SHARED SOLAR/COMMUNITY SOLAR GARDENS

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

### 33 "§ 62-126.3. Definitions.

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

- 35 (1) Affiliate. – Any entity directly or indirectly controlling or controlled by or  
 36 under direct or indirect common control with an electric power supplier.
- 37 (2) Commission. – The North Carolina Utilities Commission.
- 38 (3) ~~Community solar energy facility. – A solar energy facility whose output is~~  
 39 ~~shared through subscriptions.~~
- 40 (4) Customer generator. – An owner, operator, or customer-generator lessee of a  
 41 solar energy facility or other renewable energy facility, including any  
 42 equipment that enhances the use of that facility such as an energy storage  
 43 device, provided that the storage device is charged solely from that facility,  
 44 that is taking service under the terms and conditions of a net metering tariff  
 45 approved by the Commission, including a tariff authorized under  
 46 G.S. 62-126.4A.
- 47 (4a) Customer generator lessee. – A lessee of a solar energy facility.
- 48 (5) Electric generator lessor. – The owner of solar energy facility that leases the  
 49 facility to a customer generator lessee, including any agents who act on behalf  
 50 of the electric generator lessor. For purposes of this Article, an electric  
 51 generator lessor shall not be considered a public utility under G.S. 62-3(23).

- 1 (6) Electric power supplier. – A public utility, an electric membership  
2 corporation, or a municipality that sells electric power to retail electric  
3 customers in the State.
- 4 (7) Electric public utility. – A public utility as defined by G.S. 62-3(23) that sells  
5 electric power to retail electric customers in the State.
- 6 (7a) Government customer. – A governmental customer that receives retail electric  
7 service from an electric public utility.
- 8 (7b) Large commercial or industrial customer. – A commercial or industrial retail  
9 customer of an electric public utility whose annual peak demand is more than  
10 5 megawatts.
- 11 ...
- 12 (9) Net metering. – To use electrical metering equipment to measure the  
13 difference between the electrical energy supplied to a retail electric customer  
14 by an electric power supplier and the electrical energy supplied by the retail  
15 electric customer to the electric power supplier over the applicable billing  
16 period. A solar choice tariff authorized under G.S. 62-126.4A shall  
17 prospectively constitute an electric public utility's net metering arrangement  
18 for new customer participation after its effective date.
- 19 (10) Offering utility. – ~~Any~~ Except as specifically defined in G.S. 62-126.4A and  
20 G.S. 62-126.8A, an offering utility is any electric public utility as defined in  
21 G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional  
22 customers as of January 1, 2017-2021. The term shall not include any other  
23 electric public utility, electric membership corporation, or municipal electric  
24 supplier authorized to provide retail electric service within the State. An  
25 offering utility's participation in this Article as an electric generator lessor  
26 shall not otherwise alter its status as a public utility with respect to any other  
27 provision of this Chapter. An offering utility's participation in this Article shall  
28 be regulated pursuant to the provisions of this Article.
- 29 ...
- 30 (13a) Small commercial or industrial customer. – A commercial or industrial retail  
31 customer of an electric public utility whose annual peak demand is less than  
32 or equal to 5 megawatts but excluding government customers.

33 ...."

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

36 **"§ 62-126.8B. Shared solar program.**

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

- 46 (1) The offering utilities shall enter into power purchase agreements (PPA) with  
47 the selected solar generating facilities. PPAs shall be for a period of 20 years  
48 and shall provide for the purchase of all the energy, capacity, and all  
49 environmental and renewable energy attributes. The applicable PPA shall  
50 allow the procuring electric public utility rights to dispatch, operate, and

- 1 control the renewable energy facilities in the same manner as the electric  
2 public utility's own generating resources.
- 3 (2) The offering utilities may require the renewable generation facilities procured  
4 hereunder to meet commercially reasonable performance standards. The  
5 offering utilities and their affiliates shall not participate as bidders in the  
6 competitive solicitation process required under this section.
- 7 (3) Renewable generation facilities procured pursuant to this subsection shall be  
8 new solar generating facilities and located within the respective balancing  
9 authority areas of the electric public utilities, whether located inside or outside  
10 the geographic boundaries of the State. Each facility shall be connected to the  
11 electric public utility's transmission system and shall have a capacity of no  
12 more than 80 megawatts alternating current (MW AC). The price paid under  
13 the PPA shall not exceed the electric public utility's current forecast of its  
14 avoided cost calculated over the term of the PPA, inclusive of any upgrade  
15 costs. The electric public utility's current forecast of its avoided cost shall be  
16 consistent with the Commission-approved avoided cost methodology.
- 17 (b) Each offering utility shall file with the Commission an application requesting  
18 approval of a shared solar program. The Commission shall issue a final decision approving,  
19 modifying, or rejecting the program within 120 days of receipt of the application. Each shared  
20 solar program shall conform with all of the following:
- 21 (1) Participating customers' premises shall be located in the State of North  
22 Carolina and in the retail service territory of the offering utility, and  
23 participating customers may only participate in the program offered by the  
24 electric public utility that provides such customer with retail service.
- 25 (2) Capacity under the program shall be opened for a defined initial enrollment  
26 period during each program procurement cycle. If any program class is  
27 oversubscribed during the initial enrollment period, all of the following shall  
28 apply:
- 29 a. In the case of large commercial or industrial customers and  
30 government customers, the available capacity shall be allocated to all  
31 eligible customers that applied on a proportional basis based on the  
32 requested subscription amount of each customer.
- 33 b. In the case of small commercial or industrial and residential customers,  
34 the available capacity shall be allocated through a random selection  
35 process.
- 36 (3) The total program volume shall be allocated as follows: seventy percent (70%)  
37 to large commercial or industrial customers and small commercial or  
38 industrial customers, twenty percent (20%) to government customers, and ten  
39 percent (10%) to residential customers. To the extent that any customer class  
40 has not fully subscribed to its respective allocation within the initial  
41 enrollment period, any unsubscribed amount shall be made available to all  
42 eligible customers through a second enrollment period and, if oversubscribed  
43 during such second enrollment period, shall be allocated through a random  
44 selection process. Thereafter, any remaining capacity from such procurement  
45 cycle shall be made available on a first come, first served basis.
- 46 (4) The reasonably projected first year's annual energy output from a participating  
47 customer's capacity allocation from the program shall not exceed the average  
48 annual energy consumption of the eligible customer premises for the most  
49 recent three calendar years, or, in the case of premises not in operation for  
50 three years, the reasonably projected average annual energy consumption for  
51 the first three years of operation.



- 1           (5) Once a subscription has been awarded, the subscription shall remain in place  
2 until the earlier of the following:  
3           a. The customer terminates their subscription.  
4           b. The customer cancels their retail service.  
5           c. Twenty years after the solar generating facility to which such customer  
6 has been subscribed achieved commercial operation.  
7           (6) Each participating customer shall pay a product charge equal to the average  
8 contract price for all facilities with which the offering utility has contracted in  
9 a particular procurement cycle pursuant to the applicable competitive  
10 solicitation.  
11           (7) Each participating customer shall receive a bill credit equal to the product  
12 charge for such customer.  
13           (8) All environmental and renewable energy attributes produced by any shared  
14 renewables facility associated with the customer's participation in the program  
15 shall be retired by the offering utility on behalf of the participating customer  
16 or, at the election of a nonresidential participating customer, be conveyed to  
17 the customer for retirement, at the customer's expense, in which case, the  
18 customer must provide proof of retirement within 90 days. In the event that  
19 the utility is prohibited, for purposes of compliance with a future federal or  
20 State law or regulation relating to air emissions or renewable energy or clean  
21 energy, from relying on or otherwise receiving credit for a renewable  
22 generating facility that is procured under this program, the utility shall be  
23 entitled after the first two years of the program term to terminate the  
24 agreement with such participating customer on 90 days' written notice to the  
25 participating customer if the Commission determines that the utility will incur  
26 incremental compliance costs due to its inability to rely on or otherwise  
27 receive credit for such renewable generation resource or the output of such  
28 renewable generation resource. In the event of any such termination, to the  
29 greatest extent reasonably possible and subject to Commission approval, the  
30 utility shall seek Commission approval of a replacement arrangement with  
31 such customer that provides the customer with a set of rights that is as close  
32 as possible to the initial arrangement while still allowing the utility to comply  
33 with such federal or State law or regulation related to air emissions or  
34 renewable energy or clean energy generation.  
35           (9) 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 **SECTION 6.(c)** G.S. 62-126.8 is repealed.

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

41 **"§ 62-126.8A. Community solar gardens.**

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

- 50           (1) Electric public utilities providing retail electric service to more than 150,000  
51 North Carolina retail jurisdictional customers as of January 1, 2021, shall

1 jointly or separately complete a competitive procurement seeking up to 50  
2 megawatts (MW) of new distribution-connected solar generation to be  
3 utility-owned. To the extent practicable, approximately equal amounts of solar  
4 generation shall be procured under this program in each of their respective  
5 service territories.

6 (2) An electric public utility providing retail electric service to more than 100,000  
7 and fewer than 150,000 North Carolina retail jurisdictional customers as of  
8 January 1, 2021, may elect to offer a competitive procurement seeking up to  
9 10 megawatts (MW) of new distribution-connected solar generation to be  
10 utility-owned. For purposes of this section, such electric utility shall also be  
11 an "offering utility."

12 (b) The initial procurements required by this section shall be completed within 60 days  
13 of the date on which the Commission approves the program pursuant to subsection (c) of this  
14 section. Each offering utility implementing this section shall attempt to procure at least  
15 twenty-five percent (25%) of its total procurement amount from projects that are capable of being  
16 placed into service on or before December 31, 2023, for the purpose of offering a community  
17 solar gardens program for participation by its small commercial and industrial, government, and  
18 residential customers. Each offering utility shall be permitted to require that solar generation  
19 facilities procured under this section meet commercially reasonable performance and technical  
20 standards. An offering utility and its affiliates shall not participate as bidders in the competitive  
21 request for proposals process required under this section. In the event that an insufficient number  
22 of eligible solar generating facilities are procured through such process, an offering utility shall  
23 be permitted to propose self-developed solar generating facilities if the capital costs are below  
24 the cost cap specified in subsection (e) of this section. To the extent that an offering utility is  
25 unable to procure viable projects meeting the required criteria and meeting the total procurement  
26 amount specified in subdivisions (1) and (2) of subsection (a) of this section through the initial  
27 procurement, and there are no self-developed facilities meeting the criteria identified in this  
28 section, the offering utility shall be permitted to conduct another procurement at a later date to  
29 meet the total procurement amount.

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

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

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

44 (2) The reasonably projected first year's annual energy output from a participating  
45 customer's capacity allocation from the program shall not exceed the average  
46 annual energy consumption of the eligible customer premises for the most  
47 recent three calendar years, or, in the case of premises not in operation for  
48 three years, the reasonably projected average annual energy consumption for  
49 the first three years of operation.

- 1           (3)   No single participating customer subscription shall account for more than fifty  
2           percent (50%) interest in a single facility, and each facility shall have a  
3           minimum of five subscribers.
- 4           (4)   Participating customers' premises shall be located in the State of North  
5           Carolina and in the retail service territory of the offering utility offering the  
6           program. Participating customers may only participate in the program offered  
7           by the electric public utility that provides such customer with retail service.
- 8           (5)   Once a subscription has been awarded, such subscription shall remain in place  
9           until the earlier of the following:
- 10           a.     The customer terminates their subscription.  
11           b.     The customer cancels their retail service.  
12           c.     Twenty years after the solar generating facility to which such customer  
13           has been subscribed achieved commercial operation.
- 14           (6)   Each participating customer shall pay a monthly product charge equal to its  
15           pro rata share of the offering utility's monthly levelized revenue requirement  
16           for all of the community solar garden facilities serving the relevant offering  
17           utility's community solar garden program.
- 18           (7)   Each participating customer shall pay a reasonable administration fee  
19           approved by the Commission in order for the offering utility to recover the  
20           administrative costs of the program.
- 21           (8)   Each offering utility shall provide to each participating customer a monthly  
22           bill credit in an amount equal to its pro rata share of the offering utility's  
23           monthly levelized revenue requirement for all of the community solar garden  
24           facilities. The renewable energy certificates produced by the community solar  
25           garden facility associated with the customer's subscription shall be retired by  
26           the offering utility on the customer's behalf, provided that government  
27           customers may elect to have certificates transferred by the electric public  
28           utilities to an account the customer controls but shall be responsible for the  
29           cost of such transfer and must provide proof of retirement of the certificates  
30           to the electric public utilities within 90 days of receipt, provided, further that  
31           in the event that the offering utility is prohibited, for purposes of compliance  
32           with a future federal or State law or regulation relating to air emissions or  
33           renewable energy or clean energy from relying on or otherwise receiving  
34           credit for any solar generating facility procured under the community solar  
35           gardens program, the offering utility shall be entitled after the first two years  
36           of the program to terminate such program on 90 days written notice to the  
37           participating customers if the Commission determines that the offering utility  
38           will incur incremental compliance costs due to its inability to rely on or  
39           otherwise receive credit for such renewable generation resource or the output  
40           of such renewable generation resource.
- 41           (e)   Cost Recovery. – The capital cost for the construction of projects procured or  
42           constructed under this section shall not exceed one dollar and ninety cents (\$1.90) per watt AC,  
43           inclusive of interconnection costs. If a solar generating facility has been identified for selection  
44           and use in the program in accordance with the terms of this section and satisfies the forgoing cost  
45           cap, such solar generating facility shall be deemed consistent with the public convenience and  
46           necessity for purposes of G.S. 62-110.1, and the Commission shall issue a certificate of public  
47           convenience and necessity for such replacement resources in accordance with the process set  
48           forth in G.S. 62-111.9(13)(a), and no further process shall be required under G.S. 62-110.1  
49           except as otherwise addressed therein. Each offering utility shall be permitted to establish a  
50           regulatory asset and defer to such regulatory asset the incremental costs of all solar generating  
51           facilities procured or built under this section until such time as the costs can be reflected in

1 customer rates. The types of incremental costs that may be deferred include operations and  
 2 maintenance expenses, administration costs, property tax, depreciation expense, income taxes,  
 3 and carrying costs related to electric plant investments and regulatory assets at the offering  
 4 utility's then authorized, net-of-tax, weighted average cost of capital.

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

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

## 16 SOLAR CHOICE TARIFF

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

### 18 "§ 62-2. Declaration of policy.

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

24 ...

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

30 (4a) To provide just and reasonable time-variant rates and other dynamic price  
 31 offerings to utility customers that are designed to optimize the total cost of  
 32 energy consumption rather than the total volume of energy consumed;

33 (4b) To assure that facilities necessary to meet future growth can be financed by  
 34 the utilities operating in this State on terms which are reasonable and fair to  
 35 both the customers and existing investors of such utilities; and to that end to  
 36 authorize fixing of rates in such a manner as to result in lower costs of new  
 37 facilities and lower rates over the operating lives of such new facilities by  
 38 making provisions in the rate-making process for the investment of public  
 39 utilities in plants under construction;

40 ...."

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

### 42 "§ 62-126.2. Declaration of policy.

43 The General Assembly of North Carolina finds that as a matter of public policy it is in the  
 44 interest of the State to encourage time-variant pricing structures to promote net energy metering  
 45 options and to authorize the leasing of solar energy facilities for retail customers and subscription  
 46 to shared community solar energy facilities. The General Assembly further finds and declares  
 47 that in encouraging the time-variant pricing structures to promote net energy metering options  
 48 and the leasing of and subscription to solar energy facilities pursuant to this act,  
 49 cross-subsidization should be avoided by holding harmless electric public utilities' customers that  
 50 do not participate in such arrangements to the greatest extent practicable when balancing the  
 51 goals of this act. The General Assembly recognizes that due to substantive differences in size,

1 customer bases, access to low-carbon generation, and other factors, this declaration of policy  
2 does not apply to electric membership corporations, State-owned electric suppliers, or  
3 municipalities that sell electric power to retail customers in the State."

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

6 **"§ 62-126.4A. Solar choice tariff.**

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

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

- 16 (1) Provides for monthly netting with net exports credited at  
17 Commission-approved avoided cost in light of the costs and benefits of the  
18 solar choice tariff achieving the objectives of a net metering program except  
19 as provided in subdivision (2) of this subsection.
- 20 (2) Provides for monthly netting within each pricing period for time-variant and  
21 dynamic pricing structures with net exports credited at Commission-approved  
22 avoided cost.
- 23 (3) Provides rate design options that align the customer generator's ability to  
24 achieve bill savings with long-term reductions in the overall cost the offering  
25 utility will incur in providing electric service, including, but not limited to,  
26 time-variant and dynamic pricing structures.
- 27 (4) Reduces cross-subsidization by non-participants through mechanisms that  
28 allow offering utilities the opportunity to recover customer costs and  
29 distribution costs, including a minimum monthly bill, grid access fee for  
30 oversized systems, and non-bypassable charges to recover storm recovery,  
31 cybersecurity, and public purpose charges for ratepayer funded programs like  
32 energy efficiency, demand side management, and resiliency. Such recovery  
33 mechanisms shall not, however, include a standby charge where billing is  
34 based on the capacity of the renewable energy system.
- 35 (5) Minimizes, to the greatest extent practicable, any intraclass  
36 cross-subsidization identified using the offering utility's most recently  
37 approved embedded cost of service study.
- 38 (6) Encourages customer adoption of other energy savings, demand reduction, or  
39 grid services technologies and participation in cost-effective programs that  
40 can be offered in conjunction with a solar choice tariff to help lower the cost  
41 of providing service and maximize grid benefits.

42 (c) Customer generators taking service under a preexisting net metering tariff prior to  
43 Commission approval of a solar choice tariff pursuant to this section shall have the option to  
44 transition to the new solar choice tariff or continue to take service under the offering utility's  
45 pre-existing net metering tariff in effect at the time of interconnection of that customer generator's  
46 net metering facility until January 1, 2040. After January 1, 2027, a non-bypassable charge based  
47 upon the DC capacity of the facility will be added for customers who remain on a pre-existing  
48 net metering tariff. This charge shall be designed to collect the base rate increase approved by  
49 the Commission after January 1, 2027, that would otherwise not be collected from customer  
50 generators taking service under a pre-existing net metering tariff after January 1, 2027.

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

5       (e) An offering utility offering a solar choice tariff approved pursuant to this section shall  
 6 continue to be authorized to fully recover its cost of service, including, but not limited to, (i) all  
 7 costs to effectuate the solar choice tariff and (ii) any unrecovered non-fuel and variable operations  
 8 and maintenance costs due to customer generators' participation in the solar choice tariff.  
 9 Notwithstanding the foregoing, customers participating in a retail demand electric tariff in effect  
 10 on or before July 1, 2021, or a customer who elects to take service under such retail demand  
 11 tariff, shall be exempt from cost recovery authorized by this subsection."

12       **SECTION 7.(d)** G.S. 62-126.5(d) reads as rewritten:

13       "**§ 62-126.5. Scope of leasing program in offering utilities' service areas.**

14       ...

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

27       **SECTION 7.(e)** G.S. 62-133.8(a) reads as rewritten:

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

29       ...

30       (4) "Energy efficiency measure" means an equipment, physical, behavioral, or  
 31 program change implemented by a retail electric customer after January 1,  
 32 2007, that ~~results in less energy used~~ reduces the customer's energy  
 33 requirements from the electric power supplier needed to perform the same  
 34 function. "Energy efficiency measure" includes, but is not limited to, energy  
 35 produced from a combined heat and power system that uses nonrenewable  
 36 energy ~~resources~~ resources, and energy produced by a customer generator as  
 37 that term is defined under 62-126.3(4). "Energy efficiency measure" does not  
 38 include demand-side ~~management~~ management or the net monthly exports of  
 39 energy by a customer under a tariff approved pursuant to G.S. 62-126.4(b).

40       ...."

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

43       "**§ 62-126.4B. Standby service required in certain circumstances.**

44       For any customer participating in an offering utility's net metering tariff or solar choice tariff,  
 45 standby service shall be required for customers installing solar or other behind-the-meter  
 46 generation with a nameplate generation capacity over 100 kW. For behind-the-meter generation  
 47 with a planning capacity factor of less than sixty percent (60%), the offering utility shall calculate  
 48 standby service cost using the customer's standby service demand for the billing month set based  
 49 on either the nameplate capacity of the installed generation or, where the customer has additional  
 50 metering equipment installed at the customer's expense, then the standby service demand shall  
 51 equal the generator gross output that occurs at the billing interval coincident with the customer's

1 maximum demand for the billing month under the participating customer's applicable rate  
2 schedule. Notwithstanding the foregoing, customers participating in a retail demand electric tariff  
3 in effect on or before July 1, 2021, or a customer who elects to take service under such retail  
4 demand tariff, shall be exempt from the standby charge authorized by this section."

5 **SECTION 7.(g)** This section is effective when it becomes law. The solar choice  
6 tariff required to be filed with the Utilities Commission pursuant to G.S. 62-126.4A, as enacted  
7 by subsection (c) of this section, shall be filed by each offering utility no later than 120 days after  
8 the effective date of this section, and the Commission shall issue an order to approve, modify, or  
9 deny the program no later than 90 days after the submission of the program by the electric public  
10 utility.

11  
12 **POTENTIAL MODIFICATION OF CERTAIN EXISTING POWER PURCHASE**  
13 **AGREEMENTS WITH SMALL POWER PRODUCERS**

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

- 20 (1) Provide small power producers a one-time option to elect, within 180 days of  
21 a Commission order authorizing such action, to amend their existing power  
22 purchase agreement, extending into a new longer term power purchase  
23 agreement for a term equal to the remaining term of the existing power  
24 purchase agreement plus an additional 10 years, notwithstanding the contract  
25 term limits prescribed in G.S. 62-156(c);
- 26 (2) Establish capacity and energy rates to be paid by the electric public utilities  
27 that are designed to take into consideration the currently contracted capacity  
28 and energy rates, capacity and energy rates to be computed at the time the  
29 small power producer elects to exercise the option to amend their existing  
30 power purchase agreement as provided for in subdivision (1) of this  
31 subsection. In developing these rates, stakeholders shall consider whether use  
32 of the developed rates, for purchases from small power producers for an  
33 extended future term, are just and reasonable to the electric consumer of the  
34 electric utility, and in the public interest.

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

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

- 45 (1) The Public Staff.  
46 (2) Electric public utilities obligated to purchase capacity and energy from small  
47 power producers pursuant to G.S. 62-156.  
48 (3) Small power producers.

49 **SECTION 8.(d)** Within 180 days of the Commission's initiation of the stakeholder  
50 process, the stakeholders shall present, jointly or separately, their recommendations to the  
51 Commission. The Commission shall approve the proposed rates and resulting amended power

1 purchase agreements if the Commission finds that the proposed methodology (i) reduces costs to  
2 customers in the short term and over the life of the amended power purchase agreement,  
3 evaluated from the date of the amendment through to the end of the amended agreement, (ii)  
4 fairly compensates small power producers that elect such treatment, and (iii) is just and  
5 reasonable and in the public interest. Notwithstanding the foregoing, it is hereby declared  
6 appropriate, in the public interest and promoting of regulatory economy, for small power  
7 producers and the electric public utilities to negotiate amendments to the power purchase  
8 agreements of such small power producers in lieu of the aforementioned stakeholder process,  
9 provided that the intent and objectives of this section are accomplished through such negotiation.

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

15  
16 **PROHIBIT UNAUTHORIZED EXECUTIVE BRANCH ACTIONS TO PARTICIPATE**  
17 **IN THE REGIONAL GREENHOUSE GAS INITIATIVE (RGGI)**

18 **SECTION 8.1.**

19 (a) The General Assembly finds the following:

- 20 (1) The Regional Greenhouse Gas Initiative (RGGI) is a regional, "market-based"  
21 carbon dioxide (CO<sub>2</sub>) emissions reduction program among certain states to  
22 cap and reduce CO<sub>2</sub> emissions from the fossil fuel-fired electric power  
23 generators located within those states. Under the program, fossil fuel-fired  
24 electric power generators with a capacity of 25 megawatts (MW) or greater  
25 located in signatory states are required to obtain allowances to offset their CO<sub>2</sub>  
26 emissions.
- 27 (2) Art. 1, § 6 of the State's Constitution provides "[t]he legislative, executive,  
28 and supreme judicial powers of the State government shall be forever separate  
29 and distinct from each other."
- 30 (3) The General Assembly, which comprises the legislative branch, enacts laws  
31 that "protect or promote the health, morals, order, safety, and general welfare  
32 of society." *State v. Ballance*, 229 N.C. 764, 769, 51 S.E.2d 731, 734 (1949);  
33 see also N.C. Const. art. II, §§ 1, 20. The executive branch, which the  
34 Governor leads, faithfully executes, or gives effect to, these laws. See N.C.  
35 Const. art. III, §§ 1, 5(4). *McCrary v. Berger*, 368 N.C. 633, 781 S.E.2d 248  
36 (2016).
- 37 (4) The General Assembly has not enacted legislation that would authorize the  
38 executive branch to enter into an agreement to participate in RGGI, or similar  
39 agreement on behalf of the State, nor implement requirements for emissions  
40 limitations and cap and trade attendant with the RGGI program. Absent  
41 authorization through an act of the General Assembly, such action by the  
42 executive branch would constitute an impermissible infringement of the  
43 General Assembly's duty to enact laws that "protect or promote the health,  
44 morals, order, safety, and general welfare of society." *State v. Ballance*, 229  
45 N.C. 764, 769, 51 S.E.2d 731, 734 (1949); see also N.C. Const. art. II, §§ 1,  
46 20.

47 (b) Until such time as the General Assembly enacts legislation to authorize the State's  
48 participation in RGGI, and implementation of emissions limitations and cap and trade  
49 requirements attendant with the RGGI program, the executive branch shall be prohibited from  
50 taking such action.

51



1 **PART IV. SEVERABILITY CLAUSE AND EFFECTIVE DATE**

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

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