



# SENATE BILL 305: NCEMPA Asset Sale

**This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.**

2015-2016 General Assembly

<b>Committee:</b>	Senate Finance	<b>Date:</b>	March 23, 2015
<b>Introduced by:</b>	Sens. Newton, Pate, Bryant	<b>Prepared by:</b>	Heather Fennell Committee Counsel
<b>Analysis of:</b>	PCS to First Edition S305-CSTDx-5		

**SUMMARY:** *Senate Bill 305 enacts legislative changes needed to effectuate the sale of the ownership interest in electric generation facilities of a municipal power agency to an investor-owned utility. The first part of the bill provides cost recovery for a public utility that purchases generation assets from a municipal power agency. The second part of the bill authorizes the municipal power agency to issue bonds to pay the difference in price paid for the assets and any outstanding amount owed on the assets. The second part of the bill also provides bonding authority and other statutory changes necessary to allow the power agencies to enter into power purchase agreements to replace the electricity that had been provided through the ownership interest in the electric generation facilities.*

**The PCS incorporates the amendment that was adopted by the Committee at the March 19, 2015 meeting.**

**CURRENT LAW:** Investor-owned public utilities (IOUs) are private entities that are regulated by the North Carolina Utilities Commission. In general, an electric public utility can expect to recover the reasonable and prudent costs of electric generation, including the cost of purchasing electric generation facilities. Absent a special proceeding, the cost of purchasing a facility would be recovered in a general rate case.

Municipalities with electric distribution systems are authorized to form joint agencies to jointly own electric generation facilities with private entities. Rather than build electric generation facilities to provide electricity for their retail customers on their own, these municipalities sought to jointly own generation assets with the IOUs. Along with additional electricity purchased from IOUs, the electricity generated from their ownership interest in the electric generation facilities is used by the cities to serve the retail electric customers of the cities.

The joint agencies formed by the cities to own the electric generation facilities are referred to as "Municipal Power Agencies" or "MPAs." The MPAs are authorized to issue revenue bonds to finance the costs of constructing or purchasing generation facilities. Currently there are two joint agencies in the State that own interests in generation facilities, North Carolina Municipal Power Agency #1 (NCMPA1), and the North Carolina Eastern Municipal Power Agency (NCEMPA).

NCMPA1 consists of 19 member cities that jointly have a 75% ownership interest in Catawba Nuclear Station Unit 2, operated by Duke Power in York County, S.C. NCMPA1 also has an agreement with Duke that provides for electric power through the McGuire Nuclear Station and Catawba Unit 1 should Catawba 2 be unavailable for service.

NCEMPA consists of 32 municipalities that jointly own interests in five generating units built and operated by Duke Progress. These facilities include three nuclear units: 2 units at the Brunswick Plant in



# Senate Bill 305

Page 2

Brunswick County, and 1 unit at Shearon Harris Plant in Wake County, and an interest in two coal-fired plants in Person County, Roxboro Unit 4, and Mayo.<sup>1</sup>

G.S. 159B-39 restricts how cities that are members of NCEMPA can use funds derived from electric service. Those cities are limited to using these funds for the direct and indirect costs of operating the system, making debt service payments, or transferring an amount that represents the rate of return on the system. The total amount transferred as a rate of return on the municipality's investment in the electric system is limited to either 3% of gross capital assets of the system in the prior year, or 5% of the annual gross revenues of the system in the prior year.

## **BILL ANALYSIS:**

### **Cost Recovery for Purchase of Municipal Power Agency Interest in Generating Facility**

Section 1 of Senate Bill 305 would authorize the recovery of costs incurred by a utility to purchase the electric generation facilities of a MPA in an annual rider, rather than a general rate case. The purchasing utility would be allowed to recover the actual amount paid for the assets, including any amount above book value. The Utilities Commission must adopt rules to implement the rider, and any rider would not be authorized until after a hearing.

The costs authorized for recovery in the rider are:

- The purchase price of the assets, levelized over the useful life of the assets.<sup>2</sup>
- Financing costs.
- Operating costs.

The ride will also include adjustments to reflect the changes in the proportion of wholesale to retail load in the State after the sale of the assets, and will utilize the customer allocations that were set in the utility's last rate case.

The rider will be adjusted annually, after a hearing by the Utilities Commission. To determine the annual amount of the rider the utility must submit information to the Commission including any under- or over-recovery from the prior year, changes in recoverable costs over the prior year, and any changes to the cost of capital that applies to the purchase price.

The rider will expire at the end of the useful life of the assets.

### **MPA Authority to Finance the Sale of the Electric Generation Facilities**

Sections 2 – 8 of Senate Bill 305 would authorize a MPA that has purchased electric generation facilities to finance the sale of the assets, and enter into support contracts to provide for payment of any obligation incurred as a result of the sale of the assets. These sections also authorize financing that may be required to purchase additional electricity to replace the electricity that had been provided through the ownership interest in the electric generating facilities.

Section 2 amends the purpose and findings of Chapter 159B to include financing the sale of the assets and support contracts.

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<sup>1</sup> An overview of the history of the joint municipal power agencies is provided in the "Background" section at the end of the summary.

<sup>2</sup> The useful life of the assets owned by NCEMPA are: Roxboro Unit 4 – 20 years, Mayo – 20 years, Brunswick Unit 1 – 21 years, Brunswick Unit 2 – 19 years, and Shearon Harris – 31 years

# Senate Bill 305

Page 3

Section 3 amends the statutory duties of MPAs to authorize the MPAs to set rates and collect payments for the support contracts.

Section 4 authorizes the MPAs to enter into support contracts if the MPA seeks to sell generation assets. Individual cities that are members of the MPA will make payments under the support contract to pay the costs of bonds necessary to finance any amount necessary for the sale of existing assets, to finance collateral posting requirements of power supply arrangements, and to finance any required reserves. A support contract may extend up to 30 years, and may require each city subject to the contract to agree to pay a proportionate share of the defaulted amount if any other city subject to the agreement defaults on payments. Payments required under support contracts are considered operational expenses of a city's public enterprise and revenues from the electric system must be used to first pay operational expenses before any other payments may be made.

Section 5 authorizes MPAs to issue bonds for the financing costs of a generation project that is sold and for financing collateral posting requirements of replacement power supply arrangements. Contracts to purchase additional electricity to replace the electricity that had been supplied from the electric generation facilities require the posting of collateral. The revenues pledged for the authorized bonds are the revenues from the individual city's retail electric system and revenues from the support contract payments made by the cities.

Sections 6, 7, and 8 provide that the revenues pledged for bonds issued under Chapter 159B can include payments under support contracts.

**EFFECTIVE DATE:** This act is effective when it becomes law.

**BACKGROUND:** In 1975, the General Assembly enacted the "Joint Municipal Power and Energy Act" that authorized municipalities to jointly own electric generation facilities with private entities. The Act enabled local government units with municipal power distribution systems to form a joint agency to own and operate electric generation facilities. Joint agencies created under the Act were authorized to issue revenue bonds to finance the costs of constructing or purchasing generation facilities. Shortly after the Act, NCMPA1 and NCEMPA were formed. In 1977, the people of North Carolina approved an amendment to the North Carolina Constitution to allow the MPAs to own jointly own generation facilities with other municipalities, and to share ownership of the facilities with private companies.

At the time of the enactment of the Act, municipalities had compelling economic motives for seeking ownership interest in power plants. In the 1970s, fuel and electricity prices were climbing while demand for energy was growing. By purchasing interest in generation facilities, the municipalities sought to guarantee a source of electricity that was less expensive than purchases on the wholesale market. By the 1980s many of the economic motives that led to the original purchase of the generation facilities had changed. Demand for electricity fell as energy conservation became more common. At the same time fuel prices declined. Most importantly, the regulatory environment for nuclear facilities changed after the incident at the Three Mile Island facility in Pennsylvania. These regulatory changes increased the construction costs for nuclear facilities while financing costs were also increased due to the historically high interest rates of the early 1980s.

# Senate Bill 305

Page 4

## NCEMPA Debt Responsibility by Power Agency Participants, as of 1/2/2015

Total Debt Outstanding: \$1,721,650,000.00

City	Percentage	Responsibility
Apex	0.7056 %	\$12,147,962
Ayden	1.1340 %	\$19,523,511
Belhaven	0.4090 %	\$7,041,549
Benson	0.5773 %	\$9,939,085
Clayton	0.7448 %	\$12,822,849
Edenton	1.5961 %	\$27,479,256
Elizabeth City	4.2510 %	\$73,187,342
Farmville	1.2901 %	\$22,211,007
Fremont	0.3062 %	\$5,271,692
Greenville	16.1343 %	\$277,776,176
Hamilton	0.0783 %	\$1,348,052
Hertford	0.4124 %	\$7,100,085
Hobgood	0.0913 %	\$1,571,866
Hookerton	0.1550 %	\$2,668,558
Kinston	8.6678 %	\$149,229,179
LaGrange	0.5014 %	\$8,632,353
Laurinburg	2.2675 %	\$39,038,414
Louisburg	0.8577 %	\$14,766,592
Lumberton	5.1568 %	\$88,782,047
New Bern	6.3676 %	\$109,627,785
Pikeville	0.2046 %	\$3,522,496
Red Springs	0.5798 %	\$9,982,127
Robersonville	0.5066 %	\$8,721,879
Rocky Mount	16.0260 %	\$275,911,629
Scotland Neck	0.5762 %	\$9,920,147
Selma	0.8102 %	\$13,948,808
Smithfield	2.0056 %	\$34,529,412
Southport	0.7139 %	\$12,290,859
Tarboro	4.7427 %	\$81,652,695
Wake Forest	0.7262 %	\$12,502,622
Washington	5.8920 %	\$101,439,618
Wilson	15.5120 %	\$267,062,348