



# HOUSE BILL 951: Energy Solutions for North Carolina.

2021-2022 General Assembly

<b>Committee:</b>		<b>Date:</b>	February 2, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Jennifer McGinnis Staff Attorney
<b>Analysis of:</b>	S.L. 2021-165		

**OVERVIEW:** *S.L. 2021-165 does the following:*

- *Requires the Utilities Commission (Commission) to take all reasonable steps to achieve a 70% reduction in emissions of carbon dioxide from electric public utilities from 2005 levels by the year 2030, and carbon neutrality by the year 2050.*
- *Authorizes the Commission to use "performance-based regulation" for the electric public utilities operating in the State, meaning an alternative ratemaking approach that includes decoupling revenue from electricity consumption, one or more performance incentive mechanisms, and a multi-year rate plan, including an earnings sharing mechanism, or such other alternative regulatory mechanisms as can be proposed by an electric public utility.*
- *Requires the Commission to adopt rules on various matters, including to require an electric public utility to use bond financing (securitization) of costs associated with early retirement of subcritical coal fired electric generating facilities, with such costs to be securitized at 50% of the remaining net book value of all subcritical coal fired electric generating facilities to be retired to achieve the authorized carbon reduction goals set forth in the act.*
- *Authorizes the Commission to allow potential modification of certain existing power purchase agreements with eligible small power producers.*

*This act became effective October 13, 2021.*

**BILL ANALYSIS/EXISTING LAW/BACKGROUND:**

**PART I. Carbon Reduction/Fuel Transition/Decommissioning**

**SECTION 1** of the act requires the Utilities Commission (Commission) to take all reasonable steps to achieve a 70% reduction in emissions of carbon dioxide (CO<sub>2</sub>) emitted in the State from electric generating facilities owned or operated by electric public utilities<sup>1</sup> from 2005 levels by the year 2030, and carbon neutrality<sup>2</sup> by the year 2050. In achieving the authorized carbon reduction goals, the Utilities Commission must:

<sup>1</sup> "Electric public utility" as defined in the act means any electric public utility as defined in G.S. 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2021.

<sup>2</sup> "Carbon neutrality" as defined in the act means for every ton of CO<sub>2</sub> emitted in the State from electric generating facilities owned or operated by or on behalf of electric public utilities, an equivalent amount of CO<sub>2</sub> is reduced, removed, prevented, or offset, provided that the offsets are verifiable and do not exceed five percent (5%) of the authorized reduction goal.

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- Develop a plan (the Carbon Plan), no later than December 31, 2022, with the electric public utilities, including stakeholder input, for the utilities to achieve the authorized reduction goals, which must be reviewed every two years thereafter and can be adjusted as necessary in the determination of the Commission and the electric public utilities.
- Comply with current law and practice with respect to the least cost planning for generation, as required by statute, in achieving the authorized carbon reduction goals and determining generation and resource mix for the future. Any new generation facilities or other resources selected by the Commission in order to achieve the authorized reduction goals for electric public utilities must be owned and recovered on a cost of service basis by the applicable electric public utility except that:
  - Existing law must apply with respect to energy efficiency measures and demand-side management.
  - To the extent that new solar generation is selected by the Commission, in adherence with least cost requirements, the solar generation selected must be subject to the following: (i) 45% of the total megawatts alternating current (MW AC) of any solar energy facilities established pursuant to this section must be supplied through the execution of power purchase agreements with third parties pursuant to which the electric public utility purchases solar energy, capacity, and environmental and renewable attributes from solar energy facilities owned and operated by third parties that are 80 MW AC or less that commit to allow the procuring electric public utility rights to dispatch, operate, and control the solicited solar energy facilities in the same manner as the utility's own generating resources and (ii) 55% of the total MW AC of any solar energy facilities established pursuant to this section must be supplied from solar energy facilities that are utility-built or purchased by the utility from third parties and owned and operated and recovered on a cost of service basis by the soliciting electric public utility. These ownership requirements are applicable to solar energy facilities (i) paired with energy storage and (ii) procured in connection with any voluntary customer program.
- Ensure any generation and resource changes maintain or improve upon the adequacy and reliability of the existing grid.
- Retain discretion to determine optimal timing and generation and resource-mix to achieve the least cost path to compliance with the authorized carbon reduction goals, including discretion in achieving the authorized carbon reduction goals by the dates specified in order to allow for implementation of solutions that would have a more significant and material impact on carbon reduction; provided, however, the Commission cannot exceed the dates specified to achieve the authorized carbon reduction goals by more than two years, except in the event the Commission authorizes construction of a nuclear facility or wind energy facility that would require additional time for completion due to technical, legal, logistical, or other factors beyond the control of the electric public utility, or in the event necessary to maintain the adequacy and reliability of the existing grid. In making such determinations, the Utilities Commission must receive and consider stakeholder input.

**Section 2(a)** of the act eliminates language enacted in 2017 in [House Bill 589 \(S.L. 2017-192\)](#) that authorized the Commission to order additional amounts of new renewable energy resources to be competitively procured at the termination of the initial competitive procurement period of 45 months required by the 2017 legislation, based on a showing of need evidenced by the electric public utility's most recent biennial integrated resource plan or annual update.

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**Section 2(b)** of the act eliminates language enacted in HB 589 that required the Commission to adopt rules to establish a procedure for the Commission to modify or delay implementation of the requirements for competitive procurement of renewable energy resources in whole or in part if the Commission determines that it is in the public interest to do so.

**Section 2(c)** of the act authorizes the Commission to direct the procurement of solar energy facilities by the electric public utilities in 2022 if, after stakeholder participation and review of preliminary analysis developed in preparation of the initial Carbon Plan, the Commission finds that such solar energy facilities will be needed in accordance with the criteria and requirements set forth in Section 1 to achieve the authorized carbon reduction goals.

**Section 3** of the act requires the Department of Environmental Quality to, no later than March 1, 2022, develop a plan to ensure adequate financial resources for the decommissioning of utility-scale solar projects to be submitted to the General Assembly for legislative action.

## **PART II. Authorize Performance-Based Regulation of Electric Public Utilities**

**Section 4** of the act provides that notwithstanding the methods for fixing rates established under the general ratemaking statute (G.S. 62-133), upon application of an electric public utility, the Commission can authorize "performance based regulation" or "PBR," which means an alternative ratemaking approach that includes decoupling<sup>3</sup>, one or more performance incentive mechanisms<sup>4</sup>, and a multi-year rate plan (MYRP)<sup>5</sup>, including an earnings sharing mechanism<sup>6</sup>, or such other alternative regulatory mechanisms as can be proposed by an electric public utility. Any PBR application approved can remain in effect for a plan period of not more than 36 months. With regard to Commission consideration of a PBR application:

- The Commission can approve a PBR application by an electric public utility only upon a finding that a proposed PBR would result in just and reasonable rates, is in the public interest, and is consistent with criteria otherwise established in the act or rules adopted thereunder.
- The Commission must conduct a hearing on a PBR application.
- After a hearing, the Commission must issue an order approving or rejecting the electric public utility's PBR application. The Commission would also be permitted to modify the PBR application.
- In reviewing any such PBR application under this section, the Commission must consider whether the PBR application:
  - Assures that no customer or class of customers is unreasonably harmed and that the rates are fair both to the electric public utility and to the customer.
  - Reasonably assures the continuation of safe and reliable electric service.

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<sup>3</sup> "Decoupling ratemaking mechanism" means a ratemaking mechanism intended to break the link between an electric public utility's revenue and the level of consumption of electricity on a per customer basis by its residential customers.

<sup>4</sup> "Performance incentive mechanism" or "PIM" means a ratemaking mechanism that links electric public utility revenue or earnings to electric public utility performance in targeted areas consistent with policy goals, as that term is defined by this section, approved by the Commission, and includes specific performance metrics and targets against which electric public utility performance is measured.

<sup>5</sup> "Multi-year rate plan" or "MYRP" means a ratemaking mechanism under which the Commission sets base rates for a multi-year period that includes authorized periodic changes in base rates without the need for the electric public utility to file a subsequent general rate application pursuant to G.S. 62-133, along with an earnings sharing mechanism.

<sup>6</sup> "Earnings sharing mechanism" means an annual ratemaking mechanism that shares surplus earnings between the electric public utility and customers over the period of time covered by a MYRP.

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- Will not unreasonably prejudice any class of electric customers and result in sudden substantial rate increases or "rate shock" to customers.
- The Commission can also consider whether the PBR application:
  - Encourages peak load reduction or efficient use of the system.
  - Encourages utility-scale renewable energy and storage.
  - Encourages distributed energy resources.
  - Reduces low-income energy burdens.
  - Encourages energy efficiency.
  - Encourages carbon reductions.
  - Encourages beneficial electrification, including electric vehicles.
  - Supports equity in contracting.
  - Promotes resilience and security of the electric grid.
  - Maintains adequate levels of reliability and customer service.
  - Promotes rate designs that yield peak load reduction or beneficial load-shaping.

The following apply to a MYRP:

- The base rates for the first rate year of a MYRP must be fixed in the manner prescribed under the general ratemaking statute, including actual changes in costs, revenues or the cost of the electric public utility's property used and useful, or to be used and useful within a reasonable time after the test period, plus costs associated with a known and measurable set of capital investments, net of operating benefits, associated with a set of discrete and identifiable capital spending projects to be placed in service during the first rate year.
- Subsequent changes in base rates in the second and third rate years of the MYRP must be based on projected incremental Commission-authorized capital investments that will be used and useful during the rate year and associated expenses, net of operating benefits, including operation and maintenance savings, and depreciation of rate base associated with the capital investments, that are incurred or realized during each rate year of the MYRP period.
- The amount of increase in the second and third rate years under the MYRP cannot exceed 4% of the electric public utility's North Carolina retail jurisdictional revenue requirement that is used to fix rates during the first year of the MYRP, excluding any revenue requirement for the capital spending projects to be placed in service during the first rate year.
- The revenue requirements associated with any single new generation plant placed in service during the MYRP for which the total plant in service balance exceeds \$500 million cannot be included in a MYRP. Instead, the utility can request and the Commission can grant, if it deems appropriate, permission to establish a regulatory asset and defer to such regulatory asset incremental costs related to such electric generation investments to be considered for recovery in a future rate proceeding.
- In setting the electric public utility's authorized rate of return on equity for a MYRP period, the Commission must consider any increased or decreased risk to either the electric public utility or its ratepayers that can result from having an approved MYRP.
- In a proceeding authorizing a MYRP, the Commission must establish a rider to refund amounts related to the earnings sharing mechanism, and to refund or collect amounts related to PIM rewards or penalties, and decoupling adjustments.

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- Within 60 days of the conclusion of each rate year, the Commission must establish a proceeding to:
  - Examine the earnings of the electric public utility during the rate year to determine if the earnings exceeded the authorized rate of return on equity determined by the Commission in the proceeding establishing the PBR. If the weather normalized earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points will be refunded to customers in the rider established by the Commission. If the weather normalized earnings fall below the authorized rate of return on equity, the electric public utility can file a rate case pursuant to G.S. 62-133.
  - Evaluate the performance of the electric public utility with respect to Commission-approved PIMs applicable in the rate year. Any financial rewards must be collected from customers and any penalties refunded to customers, in each case, through the rider established by the Commission.
  - Evaluate the decoupling ratemaking mechanism, and refund or collect, as applicable, a corresponding amount from residential customers through the rider established by the Commission.

The following apply to PIMs:

- PIMs proposed by an electric public utility must include one or more of the following:
  - Rewards based on the sharing of savings achieved by meeting or exceeding a specific policy goal.
  - Rewards or penalties based on differentiated authorized rates of return on common equity to encourage utility investments or operational changes to meet a specific policy goal, which must not be greater than 25 basis points.
  - Fixed financial rewards to encourage achievement of specific policy goals, or fixed financial penalties for failure to achieve policy goals.
- The policy goal targeted by a PIM must be clearly defined, measurable with a defined performance metric, and solely or primarily within the electric public utility's control.
- Any PIM must be structured to ensure that any penalty would be refunded to customers and any reward would be collected from customers and must be limited such that the total of all potential and actual PIM incentives or penalties does not exceed 1.0% of the electric public utility's total annual revenue requirement that is used to fix rates during the first year of the MYRP, excluding any revenue requirement for the capital spending projects to be placed in service during the first rate year, where the PIM is approved.

At any time prior to expiration of a PBR plan period, the Commission, with good cause and upon its own motion or petition by the Public Staff, can examine the reasonableness of an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIMs as necessary.

The Commission must adopt rules to implement the requirements of the section no later than 120 days after October 13, 2021 (the date this section became law).

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This section became effective October 13, 2021, and applies to any ratemaking mechanisms filed by an electric public utility on or after the date that rules adopted by the Commission, as required by this section, become effective.

## PART III. Rulemaking

**Section 5** of the act authorizes and requires the Commission to:

- Within 180 days of October 13, 2021 (the effective date of this section), and with stakeholder input and participation, establish rules to require an electric public utility to use bond financing (securitization) of costs associated with early retirement of subcritical coal-fired electric generating facilities, with such costs to be securitized at 50% of the remaining net book value of all subcritical coal-fired electric generating facilities to be retired to achieve the authorized carbon reduction goals set forth in Section 1 of the act. The act requires that these rules, and all procedures, obligations, and protections adopted for securitization of these costs be substantively identical to the provisions of [Section 1 of S.L. 2019-244/S559 \(Storm Securitization\)](#), except with respect to the purposes for which securitization may be used under that section. Such financing mechanisms do not create any indebtedness for the State or any of its political subdivisions. Key components of the 2019 securitization legislation include:
  - Bonds issued must be secured through a dedicated charge (authorized through the legislation) that is separate and distinct from the utility's base rate. The charge generates revenue, which can be pledged as security for any bonds issued. Since this property right cannot be governed by the Uniform Commercial Code (UCC), the legislation established the procedures for creating, perfecting, and enforcing the security interest in storm recovery property. To ensure the credibility of the any bonds issued, the legislation includes a state non-impairment obligation. If bonds are issued, the State and its agencies, including the Commission, cannot to take any action that would limit or alter the authorized charges (which is the property right securing the bonds) until the bonds have been paid and performed in full. The legislation provides that the authorized charge must be:
    - Imposed on all customer bills collected by the public utility or its successors or assignees. The charge must be stated as a separate, itemized charge on customer bills that is separate and apart from the public utility's base rate.
    - Paid by all existing or future retail customers receiving transmission or distribution service from the public utility, even if a customer elects to purchase electricity from an alternative electricity supplier. (nonbypassability).
  - A process by which a public utility that sells electric power to retail electric customers in the State may petition the Commission for a financing order. The financing order sets forth specific transaction terms and related provisions. Before granting a financing order, the Commission must find that the issuance of bonds and the imposition charges are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of bonds.
  - A requirement that the public utility file with the Commission at least annually a petition or letter applying a formula-based mechanism, and request adjustments to the authorized recovery charge, if necessary, to a sufficient level to ensure the bond payment obligations.

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The Commission does not have the discretion to disapprove or alter the true-up calculation, except to correct mathematical and clerical errors. The adjustment of the authorized charge through this mechanism is the most significant credit component of these transactions.

- Evaluate and modify as necessary existing standby service charges.
- Revise net metering rates.
- Establish an on-utility-bill repayment program related to energy efficiency investments.
- Establish a rider for a voluntary program that will allow industrial, commercial, and residential customers who elect to purchase from the electric public utility renewable energy or renewable energy credits to offset their energy consumption, which must ensure that customers who voluntarily elect to purchase renewable energy or renewable energy credits through such programs bear the full direct and indirect cost of those purchases, and that customers that do not participate in such arrangements are held harmless, and neither advantaged nor disadvantaged, from the impacts of the renewable energy procured on behalf of the program customer, and no cross-subsidization occurs.

## **PART IV. Potential Modification of Certain Existing Power Purchase Agreements with Eligible Small Power Producers**

**Section 6** of the act requires the Commission to initiate a docket, within 120 days after October 13, 2021 (the effective date of the act), to establish the rates to be paid by the electric public utilities in connection with a one-time option to modify certain existing power purchase agreements (PPAs) with eligible small power producers<sup>7</sup> that accomplishes all of the following:

- Provides eligible small power producers a one-time option to elect, within 180 days of a Commission order authorizing such action, to amend their existing PPAs, extending into a new longer term PPA a term equal to the remaining term of the existing PPA plus an additional 10 years.
- Establishes capacity and energy rates to be paid by the electric public utilities under such amended PPA that:
  - Take into consideration (i) the currently contracted capacity and energy rates relative to the currently contracted term of the applicable PPA; and (ii) capacity and energy rates at the time the eligible small power producer elects to exercise the option to amend their existing PPA as provided for in this section relative to the additional 10-year term.
  - Are just and reasonable to all classes of customers of the electric public utilities and in the public interest.
  - Result in (i) an immediate reduction in the cost of electricity for all classes of customers of the electric public utilities and (ii) a reduction in the estimated long-term cost of electricity for all classes of customers of the electric public utilities.

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<sup>7</sup>"Eligible small power producers," as defined in the section, means small power producers, as that term is defined under G.S. 62-3(27a), generating solar electricity with a total capacity equal to or less than 5 megawatts alternating current (MW AC) that established a legally enforceable obligation in accordance with the Commission's then applicable requirements on or before November 15, 2016, and have entered into a long-term contract exceeding two years to sell their full output to the interconnected electric public utility under section 210 of the Public Utility Regulatory Policies Act of 1978.

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The section also includes language declaring it appropriate to encourage small power producers and the electric public utilities to negotiate amendments to the PPAs of such eligible small power producers in lieu of the aforementioned proceeding, provided that the intent and objectives of this section are accomplished through such negotiation and electing eligible small power producers are treated in a nondiscriminatory manner.

**EFFECTIVE DATE:** This act became effective October 13, 2021.

*Cindy Avrette, counsel to the Senate Committee on Finance, substantially contributed to this summary.*