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

SENATE BILL 678: Clean Energy/Other Changes.

2023-2024 General Assembly

Committee:	House Energy and Public Utilities	**Date:**	June 27, 2023
Introduced by:	Sens. P. Newton, B. Newton, Craven	**Prepared by:**	Jennifer McGinnis Staff Attorney
Analysis of:	PCS to Third Edition S678-CSRIf-20		

OVERVIEW: The Proposed Committee Substitute (PCS) for Senate Bill 678 would:

- ***Change references across the statutes[1] from "renewable energy" to "clean energy."***
- ***Modify the definition of "renewable energy resource" (or, as would be changed by the bill, "clean energy resource") to provide that the term includes nuclear resources and fusion energy.***
- ***Add definitions for "fusion" and "fusion energy."***
- ***Modify a provision governing issuance of certificates of public convenience and necessity (CPCN) to, among other things, require that all electric generating facilities be a subject to a Commission finding that energy efficiency measures; demand side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost effective and reliable generation system and that the construction and operation of the facility is in the public interest.***
- ***Change the reference to "renewable energy" in the statute to "clean energy" in conformance with the changes made in Section 1.***

The PCS would add several provisions that would:

- ***Extend closure deadlines for certain coal combustion residuals surface impoundments.***
- ***Increase application fees for dam construction, repair, alteration, or removal under the Dam Safety Act.***
- ***Add the contents of House Bill 535 (Solar Capacity Limit Increase) that passed the House and is currently in the Senate Rules Committee, which includes the following provisions:***
  - ***Increase the maximum authorized total installed capacity of all leased solar facilities on an offering utility's system from 1% to 10% of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand.[2]***

[1] With the exception of the term "renewable energy certificate," which is a recognized industry term.

[2] Under current law, the total installed capacity of all leased solar energy facilities on an offering utility's system may not exceed one percent (1%) of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. A leased solar energy facility may only serve one premises.
An "offering utility" is defined as "[a]ny electric public utility… serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017." The only offering utilities in the State are Duke Energy Progress and Duke Energy Carolinas.

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- ***Clarify that leased solar energy facilities may not exceed 1,000kW or 100% of contract demand for nonresidential customers, or 20kW or 100% of estimated electrical demand for residential customers.***

CURRENT LAW/BILL ANALYSIS:

Section 1

The term "renewable energy resource" is defined in the statute establishing the State's Renewable Energy Portfolio Standard (REPS) as follows:

> "Renewable energy resource" means a solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource; a biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane; waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility; or hydrogen derived from a renewable energy resource. "Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource."

Among other things, REPS requires electric power suppliers to provide a designated amount or percentage of power from renewable energy resources as a portion of their overall provision of electricity.

Section 1 of the bill would:

- Change all references to "renewable energy" (and variations of that term, including "renewable energy resource," etc.[3]) throughout Chapter 62 of the General Statutes (Public Utilities) and several other statues outside of Chapter 62, to "clean energy."
- Modify the definition of "renewable energy resources" (which would become "clean energy resources," per the prior bullet) in the REPS statute to:
  - Include "nuclear energy resources, including an uprate to a nuclear energy facility" and "fusion energy."
  - Establish definitions for "fusion" and "fusion energy" as follows:
    - "Fusion" means a reaction in which at least one heavier, more stable nucleus is produced from two lighter, less stable nuclei, typically through high temperatures and pressures, emitting energy as a result.
    - "Fusion energy" means the product of fusion reactions inside a "fusion device," used for the purpose of generating electricity or other commercially usable forms of energy.

Section 2

Section 2 would amend the statute governing issuance of CPCNs for electric generating facilities. The statute currently provides that a CPCN for the construction of a **coal or nuclear facility** can be granted

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The term "coincident retail peak demand" refers to the demand of all retail customers at the time of the electric system's peak demand.

[3] See first footnote.

only if the applicant demonstrates and the Commission finds that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest. The statute goes on to provide that in making this determination, the Commission must consider resource and fuel diversity and reasonably anticipated future operating costs.

Section 2 of the bill would:

- Would eliminate the reference to "coal or nuclear" and require that all electric generating facilities be a subject to a Commission finding that energy efficiency measures; demand side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost effective and reliable generation system and that the construction and operation of the facility is in the public interest.
- Change the reference to "renewable energy" in the statute to "clean energy" in conformance with the changes made in Section 1.

Section 3

Section 3 of the bill would modify the closure deadlines for certain coal combustion residuals (CCR) surface impoundments as follows:

- H.F. Lee Steam Station owned and operated by Duke Energy Progress, and located in Wayne County, December 31, 2035.
- Cape Fear Steam Station, owned and operated by Duke Energy Progress, and located in Chatham County, December 31, 2035.

  Current closure deadline for these impoundments: The H.F. Lee and Cape Fear Steam Stations are ash beneficiation sites selected pursuant to subsection G.S. 130A-309.216. The statute requires an impoundment owner to use commercially reasonable efforts to produce 300,000 tons of usable CCR at each site annually, and requires that the CCR surface impoundments located at a site at which an ash beneficiation project is installed and operating must be closed no later than December 31, 2029.

- Allen Steam Station owned and operated by Duke Energy Carolinas, and located in Gaston County, December 31, 2038.
- Belews Creek Steam Station owned and operated by Duke Energy Carolinas, and located in Stokes County, December 31, 2034.
- Buck Steam Station owned and operated by Duke Energy Carolinas, and located in Rowan County, December 31, 2035.
- Rogers Energy Complex (formerly Cliffside Steam Station) owned and operated by Duke Energy Carolinas, and located in Cleveland County and Rutherford County, December 31, 2029.
- Marshall Steam Station owned and operated by Duke Energy Carolinas, and located in Catawba County, December 31, 2035.
- Mayo Steam Station owned and operated by Duke Energy Progress, and located in Person County, December 31, 2029.
- Roxboro Steam Station owned and operated by Duke Energy Progress, and located in Person County, December 31, 2036.

Current closure deadline for these impoundments: Paragraph 24 of a Consent Order executed between the Department of Environmental Quality, Duke Energy Progress, and a number of plaintiff-intervenors, which became effective on February 5, 2020, governs the closure deadlines for the impoundments listed above, which provides:

> "24. **Deadline for Closure.** Duke Energy Carolinas projects that it will require until December 3, 2037, to complete all excavation as required in Paragraphs 22 and 23 and the Parties understand that Duke Energy Carolinas will request variances to meet the deadline imposed by this Consent Order. Duke Energy Carolinas shall complete all excavation required in Paragraphs 22 and 23 by the statutory deadline set forth in CAMA, as amended by House Bill 630, or as may further be amended from time to time, and subject to any variances granted pursuant to N.C. Gen. Stat. § 1 30A-309.215, but in any event not later than December 31, 2038."

Section 3 would also authorize the Environmental Management Commission to adopt permanent rules governing permitting for closure and post-closure of coal combustion residuals surface impoundments and landfills in accordance with the provisions of the Administrative Procedure Act, except the Commission would be exempt from the APA's fiscal note requirement and from review of the rules by the Rules Review Commission.

Section 4

Section 4 of the bill would modify application fees for the construction, repair, alteration, breach, or removal of a dam under the Dam Safety Act.

Under current law, the Department of Environmental Quality is authorized to charge an application approval fee not to exceed the larger of $200.00 or 2% of the actual cost of construction or removal of the applicable dam. The fee for notification of a professionally supervised dam removal is $500.00. The statute provides that the total amount of fees collected in any fiscal year may not exceed one third of the total personnel and administrative costs incurred by the Department for processing the applications and for related compliance activities in the prior fiscal year.

The bill would repeal the current fee provisions, and establish a nonrefundable application processing and compliance fee, in the amount of 2.25% of the actual cost of construction, repair, alteration, breach, or removal of the applicable dam. The maximum fee could not exceed $50,000.

Section 5

Section 5 of the bill would:

- Increase the maximum authorized total installed capacity of all leased solar facilities on an offering utility's system from 1% to 10% of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand.[4]

[4] Under current law, the total installed capacity of all leased solar energy facilities on an offering utility's system may not exceed one percent (1%) of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. A leased solar energy facility may only serve one premises.

- Clarify that leased solar energy facilities may not exceed 1,000kW or 100% of contract demand for nonresidential customers, or 20kW or 100% of estimated electrical demand for residential customers.

This section would become effective August 1, 2023, and apply to solar energy facility leases executed on or after that date.

EFFECTIVE DATE: Except as otherwise provided, the bill would be effective when it becomes law.

An "offering utility" is defined as "[a]ny electric public utility… serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2017." The only offering utilities in the State are Duke Energy Progress and Duke Energy Carolinas.

The term "coincident retail peak demand" refers to the demand of all retail customers at the time of the electric system's peak demand.