



generation, power purchases, demand response, energy efficiency and renewable energy resources.

The State's three electric public utilities, the North Carolina Electric Membership Corporation and ElectriCities of North Carolina have all issued "requests for proposals" for electricity produced from renewable energy facilities. The Commission expects that the utilities will report on the status of those RFPs in their compliance plans filed September 1, 2008.

Under the new rules, beginning in 2009, each electric power supplier will also file an annual REPS "compliance report," demonstrating the actions it has taken to comply with the REPS requirement of Senate Bill 3. The Commission declined to adopt specific penalties or an alternative compliance payment for noncompliance with the REPS requirement. Noting that "the electric power suppliers are expected to comply with this statute as they would any other," the Commission will use its existing authority under Chapter 62, if necessary, to enforce compliance.

Consistent with the provisions of Senate Bill 3, those utilities whose rates are regulated by the Commission may seek to recover costs for renewable energy, energy efficiency programs, and research related to renewable energy, efficiency and air quality improvements. Senate Bill 3 limits REPS cost recovery for utilities, so that residential customers will pay no more than \$10 each year per account through 2011, \$12 each year through 2014, and \$34 each year starting in 2015. Annual commercial and industrial per-account customer charges are initially capped at \$50 and \$500, respectively, rising to \$150 and \$1,000, respectively, starting in 2015. Cost recovery via the REPS "rider" will be trued up annually based upon the utility's actual costs and revenues.

The Commission's new rules measure compliance with the REPS requirement via "renewable energy certificates" (REC) earned after January 1, 2008. RECs may be earned by "renewable energy facilities" by generating electricity or, in some cases, thermal energy using renewable energy resources. The Commission will pursue a third-party REC tracking system, finding that such a system "would be beneficial in assisting the Commission and stakeholders in tracking the creation, retirement and ownership of RECs for compliance with Senate Bill 3." The Commission was not persuaded, however, that it should develop or require participation in a REC trading platform at this time.

RECs earned by a renewable energy facility may be used for REPS compliance only if the facility is registered with the Commission. Under the new rules, the Commission will revoke that registration if the facility fails to comply with environmental laws, remarkets or resells renewable energy certificates that have already been sold, or fails to allow access to its books and records.

Under Senate Bill 3, a nonutility-owned renewable energy facility with a generating capacity of less than two megawatts is not required to obtain from the Commission a Certificate of Public Convenience and Necessity prior to construction. The Commission amended its rules to clarify the information that must be provided in a "report of proposed construction" for facilities exempt from the certification requirement, including such small renewable energy facilities and generating facilities built to serve the owner's own electric load.

The new law also allows North Carolina utilities to request a determination by the Commission that an electric generating facility built in another state is needed to serve customers in North Carolina. "If the Commission finds that the construction will be needed to assure the provision of adequate public utility service within North Carolina, the Commission shall approve a construction cost estimate and a construction schedule for the facility." Senate Bill 3 and the Commission's amended rules provide for updates of new plant cost estimates, which, if approved by the Commission, would help ensure that the public utility will be able to recover those costs from customers. As required by the statute, the Commission's new rules provide further, however, that, if a public utility requests approval from the Commission to build a new coal or nuclear power plant, the utility must demonstrate "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."

Lastly, the new rules implement a provision in Senate Bill 3 that allows electric public utilities to request from the Commission a review of their decision to incur project development costs for a potential nuclear power plant built either in North Carolina or out-of-state. Senate Bill 3 provides that "all reasonable and prudent project development costs, as determined by the Commission, incurred for the potential nuclear electric generating facility shall be included in the public utility's rate base and shall be fully recoverable through rates in a general rate case proceeding." If the utility is allowed to cancel the project, the Commission shall allow it to recover reasonable and prudently incurred costs.

"To the extent it was able to do so at this early juncture, the Commission sought to resolve the issues raised by the parties in the rulemaking proceeding," stated Chairman Finley. "As to some issues, however, a resolution now is premature and, instead, should be left for future resolution on a case-by-case basis. The Commission recognizes that implementation of Senate Bill 3 will require substantial ongoing regulatory oversight and anticipates that these rules will be readdressed and modified, as necessary, in accordance with sound regulatory policy."

The full Order is available on the Commission's Web site at <http://www.ncuc.net>.

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