

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE  
4 FOR  
5 HOUSE BILL NO. 1750

By: Martin (Scott)

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7 COMMITTEE SUBSTITUTE

8 An Act relating to nuclear energy; creating the Nuclear Energy Incentive Act;  
9 providing short title; defining terms; authorizing electric utilities to apply to the  
10 Corporation Commission for determination of need to construct nuclear power  
11 plant; stating procedures for determining need; providing for recovery of costs;  
12 authorizing Commission to promulgate rules for certain cost recovery  
13 mechanisms; providing for recovery of costs resulting from incompleteness of  
14 certain project; providing for the creation of a task force to study tax credits for  
15 nuclear power plants; stating duties; providing for membership; requiring certain  
16 qualifications; providing for travel reimbursement and staffing; requiring a  
17 report; amending 11 O.S. 2001, Section 24-105, which relates to the Oklahoma  
18 Municipal Power Authority; removing prohibition from owning interest in  
19 nuclear power plants; repealing 11 O.S. 2001, Sections 24-105.1 and 24-117,  
20 which relate to prohibiting public power ownership of nuclear generation  
21 facilities; providing for codification; providing for noncodification; and  
22 providing an effective date.

23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as  
Section 180.21 of Title 17, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Nuclear Energy Incentive Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as  
Section 180.22 of Title 17, unless there is created a duplication in numbering, reads as follows:

1 As used in the Nuclear Energy Incentive Act:

2 1. "Cost" means, but is not limited to, all capital-related costs, including the depreciation or  
3 amortization of, return on, and taxes associated with, the operation and maintenance expenses, and the  
4 administrative and general expenses related to or resulting from the siting, licensing, design,  
5 construction, or operation of nuclear power plants and any new, enlarged, or relocated electrical  
6 transmission lines or facilities of any size which are associated with construction of or operation of  
7 nuclear power plants;

8 2. "Public utility" or "utility" means any corporation organized or doing business in this state  
9 that now owns or hereafter may own, operate, or manage any plant or equipment for the manufacture,  
10 production, transmission, delivery, or furnishing of electric current for light, heat, or power to the  
11 public;

12 3. "Nuclear power plant", "power plant" or "plant" means any physical facility, plant, or  
13 equipment for the generation or production of electricity or electric power using nuclear materials as a  
14 source of fuel, power, or energy;

15 4. "Preconstruction" means that period of time, and activities completed during that period of  
16 time, after selection of a site for the construction and location of a nuclear power plant, including any  
17 related electrical transmission lines or facilities, through and including the period of time involving  
18 site-clearing work. Preconstruction costs shall be afforded deferred accounting treatment and shall  
19 accrue a carrying charge equal to the allowance for funds used during construction (AFUDC) rate for  
20 the utility allowed by the Commission in the most recent rate proceeding for the utility until recovered  
21 in rates, except as modified by paragraph 3 of subsection A of Section 4 of this act; and

22 5. "Commission" shall mean the Corporation Commission of the State of Oklahoma.  
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1 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as  
2 Section 180.23 of Title 17, unless there is created a duplication in numbering, reads as follows:

3 A. An electric utility subject to rate regulation by the Corporation Commission, or other  
4 lawfully organized electric service provider, may elect to file an application seeking a determination of  
5 need to construct a nuclear power plant. If the Commission approves the application and enters an  
6 order determining a need for construction of a nuclear power plant, the power plant will be considered  
7 used and useful and its costs shall be subject to cost recovery rules promulgated by the Commission,  
8 including, but not limited to, rules governing periodic rate adjustment, as provided in Section 4 of this  
9 act. The Commission shall enter an order on an application filed pursuant to this subsection within one  
10 hundred eighty days (180) of the filing of the application, following notice and hearing.

11 B. The Commission shall be the sole forum for the determination of this matter and the issues  
12 addressed in the application, which accordingly shall not be reviewed in any other forum, or in the  
13 review of proceedings in the other forum.

14 C. In determining whether there is a need for the nuclear power plant, the Commission shall  
15 consider, at a minimum, the cost of power and energy from the nuclear power plant compared to  
16 alternatives, the benefits of fuel diversity, and other operational and cost considerations the  
17 Commission deems relevant and necessary.

18 D. The application shall include:

19 1. The reasons why the utility is proposing to build the nuclear power plant, including the power  
20 needs of the utility and the cost of nuclear power compared to alternatives;

21 2. A description of how the proposed nuclear power plant will enhance the reliability of electric  
22 power production within the state and improve the balance of power plant fuel diversity;  
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1           3. A nonbinding estimate of the cost of the nuclear power plant, including any costs associated  
2 with new, enlarged, or relocated electrical transmission lines or facilities that are necessary for the  
3 nuclear power plant to deliver power and energy;

4           4. The annualized base revenue requirement for the first twelve (12) months of operation of the  
5 nuclear power plant; and

6           5. A report of any discussions with other electric utilities regarding the potential of joint  
7 ownership of the nuclear power plant.

8           E. In making its determination, the Commission shall take into account any matters within its  
9 jurisdiction, which it deems relevant, including whether the nuclear power plant will:

10           1. Provide needed capacity and energy;

11           2. Enhance the reliability of electric power production within the state by improving the balance  
12 of fuel diversity for electric generation facilities; and

13           3. Provide a cost-effective source of energy, taking into account the need to reduce air emission  
14 compliance costs, and enhance the long-term stability and reliability of the electric grid.

15           F. No provision of the Commission rules regarding competitive procurement, including  
16 provisions for cost recovery, shall be applicable to a nuclear power plant authorized by this act. A  
17 utility shall not be required to secure competitive proposals for power supply prior to making  
18 application under this act or receiving a determination of need from the Commission.

19           G. The final order of the Commission, including any order on reconsideration, shall be  
20 reviewable on appeal to the Oklahoma Supreme Court. Since delay in the determination of need will  
21 delay siting of a nuclear power plant or diminish the opportunity for savings to customers under the  
22 federal Energy Policy Act of 2005, the Supreme Court shall proceed to hear and determine the action  
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1 as expeditiously as practicable and give the action precedence over matters not accorded similar  
2 precedence by law.

3 H. After the Commission issues an order determining there is need for construction of a nuclear  
4 power plant, the right of a utility to recover any costs incurred prior to commercial operation,  
5 including, but not limited to, costs associated with the siting, design, licensing, or construction of the  
6 plant and new, expanded, or relocated electrical transmission lines or facilities of any size necessary to  
7 serve the nuclear power plant, shall not be subject to challenge unless, and only to the extent, the  
8 Commission finds, based on a preponderance of the evidence adduced at a hearing before the  
9 Commission, that certain costs were imprudently incurred. Proceeding with the construction of the  
10 nuclear power plant following an order by the Commission finding the need for the nuclear power  
11 plant pursuant to the provisions of this act, shall not constitute or be evidence of imprudence.  
12 Imprudence shall not include any cost increases due to events beyond the control of the utility.  
13 Further, the right to recover costs associated with a nuclear power plant by a utility may not be raised  
14 in any other forum or in the review of proceedings in the other forum. Costs incurred prior to the  
15 commencement of commercial operation of the nuclear power plant shall be recovered pursuant to the  
16 provisions of Section 4 of this act.

17 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as  
18 Section 180.24 of Title 17, unless there is created a duplication in numbering, reads as follows:

19 A. Within six (6) months following the effective date of this act, the Corporation Commission  
20 shall promulgate rules providing for alternative cost recovery mechanisms, including a periodic rate  
21 adjustment, for the recovery of costs incurred by a public utility in the siting, design, licensing, and  
22 construction of a nuclear power plant, including new, expanded, or relocated electrical transmission  
23 lines and facilities necessary to deliver electric power to or from, or to interconnect with, a nuclear  
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1 power plant. The cost recovery mechanisms shall be designed to promote utility investment in nuclear  
2 power plants and allow for the recovery in rates of all prudently incurred costs, and shall include, but  
3 not be limited to:

4 1. Recovery through a periodic rate adjustment of any preconstruction costs, which periodic  
5 adjustment and cost recovery shall begin before commercial operation or completion of the nuclear  
6 power plant;

7 2. Recovery through an incremental increase in the periodic rate adjustment rates of the utility of  
8 the carrying costs on the projected construction cost balance associated with the nuclear power plant.

9 To encourage investment and provide certainty, for applications submitted to the Commission pursuant  
10 to the Nuclear Energy Incentive Act, the associated carrying costs shall be equal to the existing pretax  
11 AFUDC rate for the utility which is presumed to be appropriate, unless determined otherwise by the  
12 Commission, and as modified by paragraph 3 of this subsection; and

13 3. Recovery through a periodic rate adjustment of an enhanced rate of return during the  
14 preconstruction period and the first portion of the service life of the facility, which shall be between  
15 twelve (12) and twenty-five (25) years as determined by the Commission. The enhanced rate of return  
16 shall be calculated by adding two hundred (200) basis points to the approved general or overall rate of  
17 return for the utility, and shall apply only to the facility that is the subject of the rate adjustment clause.

18 B. When the nuclear power plant is placed in commercial service, the utility shall be allowed to  
19 increase its base rate charges by the projected annual revenue requirements of the nuclear power plant  
20 based on the annual revenue requirements of the plant for the first twelve (12) months of operation.

21 The rate of return on the nuclear power plant for the first portion of the service life on the nuclear  
22 power plant shall be calculated using the enhanced rate of return calculated by adding two hundred  
23 (200) basis points to the last general or overall rate of return for the utility approved by the  
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1 Commission prior to the commercial in-service date of the nuclear power plant or to the overall rate of  
2 return approved in the most recent rate case following commercial operation. If an existing electric  
3 generating power plant, owned by the utility and operated to provide power to its customers, is retired  
4 as a result of operation of the nuclear power plant, the Commission shall allow for the recovery,  
5 through an increase in charges, of the net book value of the retired plant, over a period not to exceed  
6 five (5) years.

7 C. Following the final order by the Commission approving the determination of need for the  
8 nuclear power plant and until the commencement of commercial operation of the nuclear power plant,  
9 the utility shall annually report to the Commission the budgeted and actual costs of the nuclear power  
10 plant as compared to the estimated in-service costs of the nuclear power plant provided by the utility as  
11 required by this act.

12 D. If the utility elects not to complete or is precluded from completing construction of the  
13 nuclear power plant, including any new, expanded, or relocated electrical transmission lines or  
14 facilities, the utility shall be allowed to recover all prudent preconstruction and construction costs  
15 incurred following the issuance of a final order by the Commission determining there is a need for the  
16 nuclear power plant and electrical transmission lines and facilities. The utility shall recover the costs  
17 through a rate adjustment mechanism over a period equal to the period during which the costs were  
18 incurred, or five (5) years, whichever is greater. The unrecovered balance during the recovery period  
19 will accrue interest at the weighted average cost of capital for the utility.

20 SECTION 5. NEW LAW A new section of law not to be codified in the Oklahoma Statutes  
21 reads as follows:

22 A. No later than thirty (30) days following the effective date of this act, a task force shall be  
23 appointed to study and make recommendations on an appropriate tax credit for entities investing in a  
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1 nuclear power plant located in this state. The task force shall review the tax credit provided in Section  
2 2357.32A of Title 68 of the Oklahoma Statutes for the production and sale of electricity by zero-  
3 emission facilities located in this state and determine if that tax credit or a similar tax credit at least  
4 equal to that tax credit should be extended for the purchase of electricity generated by a nuclear power  
5 plant located in this state.

6 B. Nine (9) members shall be appointed as follows:

- 7 1. The Secretary of Energy shall be the chair of the task force;
- 8 2. Two members shall be appointed by the Governor;
- 9 3. Three members shall be appointed by the President Pro Tempore of the Senate; and
- 10 4. Three members shall be appointed by the Speaker of the House of Representatives.

11 C. Each appointing authority shall appoint members with knowledge of the electric generation  
12 industry or financial expertise relating to electric generation.

13 D. Members shall serve without compensation but shall be eligible for travel reimbursement in  
14 accordance with the State Travel Reimbursement Act to be paid by the appointing authority.

15 E. Staffing and administrative duties shall be provided as directed by the Secretary of Energy.

16 F. The task force shall report its recommendations to the Governor, the President Pro Tempore  
17 of the Senate and the Speaker of the House of Representatives no later than December 1, 2010.

18 SECTION 6. AMENDATORY 11 O.S. 2001, Section 24-105, is amended to read as  
19 follows:

20 Section 24-105. Definitions. As used in this act the following words shall have the following  
21 meanings unless the context clearly indicates otherwise:

22 (a) "Authority" shall mean the Oklahoma Municipal Power Authority hereby created and any  
23 successor or successors thereto. Any change in name or composition of the Authority shall in no way  
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1 affect the vested rights of any person under the provisions of this act or impair the obligations of any  
2 contracts existing under this act.

3 (b) "Board of Directors" shall mean the Board of Directors elected by the election committee as  
4 set forth in Section 4 24-104 of this ~~act~~ title which shall exercise all the powers and manage and  
5 control all the affairs and property of the Authority unless otherwise specifically provided herein or in  
6 the bylaws of the Authority as in effect from time to time.

7 (c) "Bonds" shall mean any revenue bonds, notes or other evidences of obligations of the  
8 Authority issued by the Authority under the provisions of this act, including, without limitation, bond  
9 anticipation notes and refunding bonds.

10 (d) "Eligible public agency" shall mean any municipality, authority or other public body which  
11 owns, maintains or operates an electrical energy generation, transmission or distribution system within  
12 the State of Oklahoma on the date on which this act becomes law.

13 (e) "Person" shall mean (i) any natural person; (ii) any eligible public agency as defined herein;  
14 (iii) any public trust as defined herein; (iv) the United States, any state, any municipality, political  
15 subdivision, municipal corporation, unit of local government, governmental unit or public corporation  
16 created by or pursuant to the laws of the United States or any state, or any board, corporation or other  
17 entity or body declared by the laws of the United States or any state to be a department, agency or  
18 instrumentality thereof; (v) any corporation, not for profit corporation, firm, partnership, cooperative  
19 association, electric cooperative or business trust of any nature whatsoever organized and existing  
20 under the laws of the United States or any state; or (vi) any foreign country, any political subdivision  
21 or governmental unit of any foreign country or any corporation, not for profit corporation, firm,  
22 partnership, cooperative association, electric cooperative or business trust of any nature whatsoever  
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1 organized and existing under the laws of any foreign country or of any political subdivision or  
2 governmental entity thereof.

3 (f) "Project" shall mean any plant, works, system, facilities and real and personal property of any  
4 nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without  
5 the State of Oklahoma, used or useful in the generation, production, transmission, purchase, sale,  
6 exchange or interchange of electrical energy and in the acquisition, extraction, processing,  
7 transportation or storage of fuel of any kind for any such purposes or any interest in, or right to the  
8 use, services, output or capacity, of any such plant, works, system or facilities; ~~provided, however, a~~  
9 ~~project shall not include (i) any interest in any plant for the generation of electrical energy which is to~~  
10 ~~be owned jointly with any investor-owned utility if such plant is not existing on May 10, 1981, or (ii)~~  
11 ~~any interest in any nuclear powered generating plant. For purposes of this definition, a plant shall be~~  
12 ~~considered to be existing if construction shall have been commenced at the plant site, if orders have~~  
13 ~~been placed for major components of equipment or if the plant is to consist of an additional unit at the~~  
14 ~~site of an already existing unit which will use in common any of the existing facilities at such site.~~

15 (g) "Public trust" shall mean any public trust created and existing under the provisions of the  
16 Trusts for Furtherance of Public Functions Law, as provided by Sections 176 et seq. of Title 60 of the  
17 Oklahoma Statutes, and the Oklahoma Trust Act, as provided by Sections 175 et seq. of Title 60 of the  
18 Oklahoma Statutes, which has as its beneficiary a municipality and which owns, maintains or operates  
19 an electrical energy generation, transmission or distribution system serving the residents and  
20 consumers of such municipality and existing on the date on which this act becomes law or created  
21 hereafter with an eligible public agency as the beneficiary.

22 SECTION 7. REPEALER 11 O.S. 2001, Sections 24-105.1 and 24-117, are hereby  
23 repealed.  
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1 SECTION 8. This act shall become effective November 1, 2009.

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