

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 831

6 By: Bingman

7 COMMITTEE SUBSTITUTE

8 [nuclear energy - construct nuclear power plant -
9 codification - noncodification - effective date]

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

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

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

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

19 As used in the Nuclear Energy Incentive Act:

20 1. "Cost" means, but is not limited to, all capital-related
21 costs, including the depreciation or amortization of, return on, and
22 taxes associated with, the operation and maintenance expenses, and
23 the administrative and general expenses related to or resulting from
24

1 the siting, licensing, design, construction, or operation of nuclear
2 power plants and any new, enlarged, or relocated electrical
3 transmission lines or facilities of any size which are associated
4 with construction of or operation of nuclear power plants;

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

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

14 4. "Preconstruction" means that period of time, and activities
15 completed during that period of time, after selection of a site for
16 the construction and location of a nuclear power plant, including
17 any related electrical transmission lines or facilities, through and
18 including the period of time involving site-clearing work.

19 Preconstruction costs shall be afforded deferred accounting
20 treatment and shall accrue a carrying charge equal to the utility's
21 allowance for funds used during construction (AFUDC) rate allowed by
22 the Commission in the utility's most recent rate proceeding until
23 recovered in rates, except as modified by paragraph 3 of subsection
24 A of Section 4 of this act; and

1 5. "Commission" shall mean the Corporation Commission of the
2 State of Oklahoma.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 180.23 of Title 17, unless there
5 is created a duplication in numbering, reads as follows:

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

19 B. The Commission shall be the sole forum for the determination
20 of this matter and the issues addressed in the application, which
21 accordingly shall not be reviewed in any other forum, or in the
22 review of proceedings in such other forum.

23 C. In determining whether there is a need for the nuclear power
24 plant, the Commission shall consider, at a minimum, the cost of

1 power and energy from the nuclear power plant compared to
2 alternatives, the benefits of fuel diversity, and other operational
3 and cost considerations the Commission deems relevant and necessary.

4 D. The application shall include:

5 1. The reasons why the utility is proposing to build the
6 nuclear power plant, including the utility's power needs for power
7 and the cost of nuclear power compared to alternatives;

8 2. A description of how the proposed nuclear power plant will
9 enhance the reliability of electric power production within the
10 state and improve the balance of power plant fuel diversity;

11 3. A nonbinding estimate of the cost of the nuclear power
12 plant, including any costs associated with new, enlarged, or
13 relocated electrical transmission lines or facilities that are
14 necessary for the nuclear power plant to deliver power and energy;

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

17 5. A report of any discussions with other electric utilities
18 regarding the potential of joint ownership of the nuclear power
19 plant.

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

23 1. Provide needed capacity and energy;

24

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

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

8 F. No provision of the Commission's rules regarding competitive
9 procurement, including provisions for cost recovery, shall be
10 applicable to a nuclear power plant authorized by this act. A
11 utility shall not be required to secure competitive proposals for
12 power supply prior to making application under this act or receiving
13 a determination of need from the Commission.

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

22 H. After the Commission issues an order determining there is
23 need for construction of a nuclear power plant, the right of a
24 utility to recover any costs incurred prior to commercial operation,

1 including, but not limited to, costs associated with the siting,
2 design, licensing, or construction of the plant and new, expanded,
3 or relocated electrical transmission lines or facilities of any size
4 necessary to serve the nuclear power plant, shall not be subject to
5 challenge unless, and only to the extent, the Commission finds,
6 based on a preponderance of the evidence adduced at a hearing before
7 the Commission, that certain costs were imprudently incurred.
8 Proceeding with the construction of the nuclear power plant
9 following an order by the Commission finding the need for the
10 nuclear power plant pursuant to the provisions of this act, shall
11 not constitute or be evidence of imprudence. Imprudence shall not
12 include any cost increases due to events beyond the utility's
13 control. Further, a utility's right to recover costs associated
14 with a nuclear power plant may not be raised in any other forum or
15 in the review of proceedings in such other forum. Costs incurred
16 prior to the commencement of commercial operation of the nuclear
17 power plant shall be recovered pursuant to the provisions of Section
18 4 of this act.

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

22 A. Within six (6) months following the effective date of this
23 act, the Corporation Commission shall promulgate rules providing for
24 alternative cost recovery mechanisms, including a periodic rate

1 adjustment, for the recovery of costs incurred by a public utility
2 in the siting, design, licensing, and construction of a nuclear
3 power plant, including new, expanded, or relocated electrical
4 transmission lines and facilities necessary to deliver electric
5 power to or from, or to interconnect with, a nuclear power plant.

6 Such cost recovery mechanisms shall be designed to promote utility
7 investment in nuclear power plants and allow for the recovery in
8 rates of all prudently incurred costs, and shall include, but not be
9 limited to:

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

14 2. Recovery through an incremental increase in the utility's
15 periodic rate adjustment rates of the carrying costs on the
16 utility's projected construction cost balance associated with the
17 nuclear power plant. To encourage investment and provide certainty,
18 for applications submitted to the Commission pursuant to the Nuclear
19 Energy Incentive Act, such associated carrying costs shall be equal
20 to the utility's existing pretax AFUDC rate which is presumed to be
21 appropriate, unless determined otherwise by the Commission, and as
22 modified by paragraph 3 of this subsection;

23 3. Recovery through a periodic rate adjustment of an enhanced
24 rate of return during the preconstruction period and the first

1 portion of the service life of the facility, which shall be between
2 twelve (12) and twenty-five (25) years as determined by the
3 Commission. Such enhanced rate of return shall be calculated by
4 adding 200 basis points to the utility's approved general or overall
5 rate of return, and shall apply only to the facility that is the
6 subject of such rate adjustment clause.

7 B. When the nuclear power plant is placed in commercial
8 service, the utility shall be allowed to increase its base rate
9 charges by the projected annual revenue requirements of the nuclear
10 power plant based on the annual revenue requirements of the plant
11 for the first twelve (12) months of operation. The rate of return
12 on the nuclear power plant for the first portion of the service life
13 on the nuclear power plant shall be calculated using the utility's
14 enhanced rate of return calculated by adding 200 basis points to the
15 last general or overall rate of return approved by the Commission
16 prior to the commercial in service date of the nuclear power plant
17 or to the overall rate of return approved in the most recent rate
18 case following commercial operation. If an existing electric
19 generating power plant, owned by the utility and operated to provide
20 power to its customers, is retired as a result of operation of the
21 nuclear power plant, the Commission shall allow for the recovery,
22 through an increase in charges, of the net book value of the retired
23 plant, over a period not to exceed five (5) years.

24

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

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

20 SECTION 5. AMENDATORY 11 O.S. 2001, Section 24-105, is
21 amended to read as follows:

22 Section 24-105. As used in ~~this act~~ the Oklahoma Municipal
23 Power Authority Act ~~the following words shall have the following~~
24 ~~meanings unless the context clearly indicates otherwise:~~

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

7 ~~(b)~~ 2. "Board of Directors" ~~shall mean~~ means the Board of
8 Directors elected by the election committee as set forth in Section
9 4 24-104 of this ~~act~~ title which shall exercise all the powers and
10 manage and control all the affairs and property of the Authority
11 unless otherwise specifically provided herein or in the bylaws of
12 the Authority as in effect from time to time.

13 ~~(c)~~ 3. "Bonds" ~~shall mean~~ means any revenue bonds, notes or
14 other evidences of obligations of the Authority issued by the
15 Authority under the provisions of this act, including, without
16 limitation, bond anticipation notes and refunding bonds.

17 ~~(d)~~ 4. "Eligible public agency" ~~shall mean~~ means any
18 municipality, authority or other public body which owns, maintains
19 or operates an electrical energy generation, transmission or
20 distribution system within the State of Oklahoma on the date on
21 which this act becomes law.

22 ~~(e)~~ 5. "Person" ~~shall mean~~ ~~(i)~~ means:

23 a. any natural person; ~~(ii)~~,

24 b. any eligible public agency as defined herein; ~~(iii)~~,

1 c. any public trust as defined herein, ~~(iv)~~,

2 d. the United States, any state, any municipality,
3 political subdivision, municipal corporation, unit of
4 local government, governmental unit or public
5 corporation created by or pursuant to the laws of the
6 United States or any state, or any board, corporation
7 or other entity or body declared by the laws of the
8 United States or any state to be a department, agency
9 or instrumentality thereof, ~~(v)~~,

10 e. any corporation, not for profit corporation, firm,
11 partnership, cooperative association, electric
12 cooperative or business trust of any nature whatsoever
13 organized and existing under the laws of the United
14 States or any state, or ~~(vi)~~

15 f. any foreign country, any political subdivision or
16 governmental unit of any foreign country or any
17 corporation, not for profit corporation, firm,
18 partnership, cooperative association, electric
19 cooperative or business trust of any nature whatsoever
20 organized and existing under the laws of any foreign
21 country or of any political subdivision or
22 governmental entity thereof.

23 ~~(f)~~ 6. "Project" shall ~~mean~~ means any plant, works, system,
24 facilities and real and personal property of any nature whatsoever,

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

18 ~~(g)~~ 7. "Public trust" ~~shall mean~~ means any public trust created
19 and existing under the provisions of the Trusts for Furtherance of
20 Public Functions Law, as provided by ~~Sections~~ Section 176 et seq. of
21 Title 60 of the Oklahoma Statutes, and the Oklahoma Trust Act, as
22 provided by ~~Sections 175~~ Section 175.1 et seq. of Title 60 of the
23 Oklahoma Statutes, which has as its beneficiary a municipality and
24 which owns, maintains or operates an electrical energy generation,

1 transmission or distribution system serving the residents and
2 consumers of such municipality and existing on the date on which
3 this act becomes law or created hereafter with an eligible public
4 agency as the beneficiary.

5 SECTION 6. NEW LAW A new section of law not to be
6 codified in the Oklahoma Statutes reads as follows:

7 A. No later than thirty (30) days following the effective date
8 of this act, a task force shall be appointed to determine an
9 appropriate income tax credit for entities developing a nuclear
10 power plant and authorizing an income tax credit at least equal to
11 the credit provided in Section 2357.32A of Title 68 of the Oklahoma
12 Statutes for the purchase of electricity generated by a nuclear
13 power plant located in this state.

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

15 1. The Secretary of Energy shall be the chair of the task
16 force;

17 2. Two members shall be appointed by the Governor;

18 3. Three members shall be appointed by the President Pro
19 Tempore of the Senate; and

20 4. Three members shall be appointed by the Speaker of the House
21 of Representatives.

22 C. Each appointing authority shall appoint members with
23 knowledge of the electric generation industry and/or financial
24 expertise relating to this issue.

1 D. Members shall serve without compensation. Staffing and
2 administrative duties shall be provided as directed by the Secretary
3 of Energy.

4 E. The task force shall report its recommendations to the
5 Governor, the President Pro Tempore of the Senate and the Speaker of
6 the House of Representatives no later than December 1, 2010.

7 SECTION 7. REPEALER 11 O.S. 2001, Sections 24-105.1 and
8 24-117, are hereby repealed.

9 SECTION 8. This act shall become effective November 1, 2009.

10

11 52-1-1632 MJM 3/4/2009 2:11:18 PM

12

13

14

15

16

17

18

19

20

21

22

23

24