

1 ENGROSSED HOUSE
2 BILL NO. 1750

By: Martin (Scott) and Derby of
the House

3 and

4 Bingman of the Senate

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6
7 (nuclear energy - Nuclear Energy Incentive Act -
8 amending 11 O.S., Sections 24-105, 24- 105.1 and 24-
9 117 - nuclear generation facilities - codification -
10 noncodification -

11 effective date)

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

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:

As used in the Nuclear Energy Incentive Act:

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

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

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

18 4. "Preconstruction" means that period of time, and activities
19 completed during that period of time, after selection of a site for
20 the construction and location of a nuclear power plant, including
21 any related electrical transmission lines or facilities, through and
22 including the period of time involving site-clearing work.
23 Preconstruction costs shall be afforded deferred accounting
24 treatment and shall accrue a carrying charge equal to the allowance

1 for funds used during construction (AFUDC) rate for the utility
2 allowed by the Commission in the most recent rate proceeding for the
3 utility until recovered in rates, except as modified by paragraph 3
4 of subsection A of Section 4 of this act; and

5 5. "Commission" shall mean the Corporation Commission of the
6 State of Oklahoma.

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

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

23 B. The Commission shall be the sole forum for the determination
24 of this matter and the issues addressed in the application, which

1 accordingly shall not be reviewed in any other forum, or in the
2 review of proceedings in the other forum.

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

8 D. The application shall include:

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

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

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

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

21 5. A report of any discussions with other electric utilities
22 regarding the potential of joint ownership of the nuclear power
23 plant.

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

- 4 1. Provide needed capacity and energy;
- 5 2. Enhance the reliability of electric power production within
6 the state by improving the balance of fuel diversity for electric
7 generation facilities; and
- 8 3. Provide a cost-effective source of energy, taking into
9 account the need to reduce air emission compliance costs, and
10 enhance the long-term stability and reliability of the electric
11 grid.

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

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

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

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

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

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

20 2. Recovery through an incremental increase in the periodic
21 rate adjustment rates of the utility of the carrying costs on the
22 projected construction cost balance associated with the nuclear
23 power plant. To encourage investment and provide certainty, for
24 applications submitted to the Commission pursuant to the Nuclear

1 Energy Incentive Act, the associated carrying costs shall be equal
2 to the existing pretax AFUDC rate for the utility which is presumed
3 to be appropriate, unless determined otherwise by the Commission,
4 and as modified by paragraph 3 of this subsection; and

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

13 B. When the nuclear power plant is placed in commercial
14 service, the utility shall be allowed to increase its base rate
15 charges by the projected annual revenue requirements of the nuclear
16 power plant based on the annual revenue requirements of the plant
17 for the first twelve (12) months of operation. The rate of return
18 on the nuclear power plant for the first portion of the service life
19 on the nuclear power plant shall be calculated using the enhanced
20 rate of return calculated by adding two hundred (200) basis points
21 to the last general or overall rate of return for the utility
22 approved by the Commission prior to the commercial in-service date
23 of the nuclear power plant or to the overall rate of return approved
24 in the most recent rate case following commercial operation. If an

1 existing electric generating power plant, owned by the utility and
2 operated to provide power to its customers, is retired as a result
3 of operation of the nuclear power plant, the Commission shall allow
4 for the recovery, through an increase in charges, of the net book
5 value of the retired plant, over a period not to exceed five (5)
6 years.

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

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

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1 The unrecovered balance during the recovery period will accrue
2 interest at the weighted average cost of capital for the utility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) "Board of Directors" shall mean the Board of Directors
24 elected by the election committee as set forth in Section ~~4~~ 24-104

1 of this ~~act~~ title which shall exercise all the powers and manage and
2 control all the affairs and property of the Authority unless
3 otherwise specifically provided herein or in the bylaws of the
4 Authority as in effect from time to time.

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

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

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

1 existing under the laws of the United States or any state; or (vi)
2 any foreign country, any political subdivision or governmental unit
3 of any foreign country or any corporation, not for profit
4 corporation, firm, partnership, cooperative association, electric
5 cooperative or business trust of any nature whatsoever organized and
6 existing under the laws of any foreign country or of any political
7 subdivision or governmental entity thereof.

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

1 ~~additional unit at the site of an already existing unit which will~~
2 ~~use in common any of the existing facilities at such site.~~

3 (g) "Public trust" shall mean any public trust created and
4 existing under the provisions of the Trusts for Furtherance of
5 Public Functions Law, as provided by Sections 176 et seq. of Title
6 60 of the Oklahoma Statutes, and the Oklahoma Trust Act, as provided
7 by Sections 175 et seq. of Title 60 of the Oklahoma Statutes, which
8 has as its beneficiary a municipality and which owns, maintains or
9 operates an electrical energy generation, transmission or
10 distribution system serving the residents and consumers of such
11 municipality and existing on the date on which this act becomes law
12 or created hereafter with an eligible public agency as the
13 beneficiary.

14 SECTION 7. REPEALER 11 O.S. 2001, Sections 24-105.1 and
15 24-117, are hereby repealed.

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

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