

THE HOUSE OF REPRESENTATIVES  
Thursday, February 19, 2009

House Bill No. 1320

HOUSE BILL NO. 1320 - By: REYNOLDS of the House.

An Act relating to public utilities; creating the Affordable Energy Act; establishing procedure and notice for proceeding on application for power plant using nuclear material as fuel; making the Corporation Commission the sole forum for such proceedings; specifying certain criteria to be considered by the Commission; setting time frame for hearing and final determination; listing certain information to be included in certain petitions; listing certain matters for the Commission to take into account in making a determination; creating a presumption; making the Commission order final; providing for certain appeal process; limiting challenge of right to recover certain costs; making an exception; providing definitions; directing the Commission to establish an alternative cost recovery mechanism for recovery of certain costs of a nuclear power plant; specifying certain recovery mechanisms; providing for filing a petition for cost recovery; allowing an increase in base rate charges to recover certain costs; providing for calculation of rate of return on capital investments; requiring certain annual reporting to the Commission; allowing for recovery of certain cost if construction of the nuclear power plant is not completed; providing for codification; and providing an effective date.

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

1           SECTION 1.   NEW LAW   A new section of law to be codified in the Oklahoma  
2 Statutes as Section 287.1 of Title 17, unless there is created a duplication in numbering,  
3 reads as follows:

4           This act shall be known and may be cited as the “Affordable Energy Act”.

1           SECTION 2.   NEW LAW   A new section of law to be codified in the Oklahoma  
2 Statutes as Section 287.2 of Title 17, unless there is created a duplication in numbering,  
3 reads as follows:

4           A. On request by an applicant or on its own motion, the Corporation Commission  
5 shall begin a proceeding to determine the need for an electrical power plant using  
6 nuclear material as fuel.

7           B. The applicant shall publish a notice of the proceeding in a newspaper of general  
8 circulation in each county in which the proposed electrical power plant will be located.  
9 The notice shall be at least one-quarter (1/4) of a page and published at least twenty-one  
10 (21) to forty-five (45) days prior to the scheduled date for the proceeding.

11          C. The Commission shall be the sole forum for the determination of this matter,  
12 which accordingly shall not be raised in any other forum or in the review of proceedings  
13 in such other forum. In making its determination, the Commission shall take into  
14 account the need for electric system reliability and integrity, the need for adequate  
15 electricity at a reasonable cost, the need for fuel diversity and supply reliability, and  
16 whether the proposed plant is the most cost-effective alternative available. The  
17 Commission shall also expressly consider the conservation measures taken by or  
18 reasonably available to the applicant or its members which might mitigate the need for  
19 the proposed plant and other matters within its jurisdiction which it deems relevant.  
20 The determination by the Commission of the need for an electrical power plant shall  
21 create a presumption of public need and necessity.

1 D. In making its determination on a proposed electrical power plant using nuclear  
2 materials as fuel, the Commission shall hold a hearing within ninety (90) days after the  
3 filing of the petition to determine need and shall issue an order granting or denying the  
4 petition within one hundred thirty-five (135) days after the date of the filing of the  
5 petition.

6 E. The petition for a proposed electrical power plant using nuclear material as fuel  
7 shall include:

- 8 1. A description of the need for the generation capacity;
- 9 2. A description of how the proposed nuclear power plant will enhance the  
10 reliability of electric power production within the state by improving the balance of  
11 power plant fuel diversity and reducing the dependence of Oklahoma on coal, fuel oil and  
12 natural gas;
- 13 3. A description of and a nonbinding estimate of the cost of the nuclear power plant;
- 14 4. The annualized base revenue requirement for the first twelve (12) months of  
15 operation of the nuclear power plant; and
- 16 5. Information on whether there were any discussions with any electric utilities  
17 regarding ownership of a portion of the plant by the electric utilities.

18 F. In making its determination, the Commission shall take into account matters  
19 within its jurisdiction, which it deems relevant, including whether the nuclear power  
20 plant will:

- 21 1. Provide needed base-load capacity;

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1           2. Enhance the reliability of electric power production within the state by  
2 improving the balance of power plant fuel diversity and reducing the dependence of  
3 Oklahoma on coal, fuel oil and natural gas; and

4           3. Provide the most cost-effective source of power, taking into account the need to  
5 improve the balance of fuel diversity, reduce the dependence of Oklahoma on coal, fuel oil  
6 and natural gas, reduce air emission compliance costs, and contribute to the long-term  
7 stability and reliability of the electric grid.

8           G. An applicant for a proposed electrical power plant using nuclear energy  
9 materials as fuel shall not otherwise be required to secure competitive proposals for  
10 power supply prior to making application under this act or receiving a determination of  
11 need from the Commission.

12           H. A determination of need by the Commission for a nuclear power plant shall  
13 create a presumption of public need and necessity. An order entered pursuant to this  
14 section constitutes final agency action. Any petition for reconsideration of a final order  
15 on a petition for need determination shall be filed within five (5) days after the date of  
16 the order. The final order issued by the Commission, including any order on  
17 reconsideration, shall be reviewable on appeal by the Oklahoma Supreme Court.  
18 Inasmuch as delay in the determination of need will delay siting of a nuclear power plant  
19 or diminish the opportunity for savings to customers under the federal Energy Policy Act  
20 of 2005, the Supreme Court shall proceed to hear and determine the action as  
21 expeditiously as practicable and give the action precedence over matters not accorded  
22 similar precedence by law.

1 I. After a petition for determination of need for a nuclear power plant has been  
2 granted, the right of a utility to recover any costs incurred prior to commercial operation,  
3 including, but not limited to, costs associated with the siting, design, licensing or  
4 construction of the plant, shall not be subject to challenge unless and only to the extent  
5 the Commission finds, based on a preponderance of the evidence adduced at a hearing  
6 before the Commission, that certain costs were imprudently incurred. Proceeding with  
7 the construction of the nuclear power plant following an order by the Commission  
8 approving the need for the nuclear power plant as provided for pursuant to this act shall  
9 not constitute or be evidence of imprudence. Imprudence shall not include any cost  
10 increases due to events beyond the control of the utility. Further, the right of a utility to  
11 recover costs associated with a nuclear power plant may not be raised in any other forum  
12 or in the review of proceedings in such other forum. Costs incurred prior to commercial  
13 operation shall be recovered pursuant to Section 3 of this act.

14 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma  
15 Statutes as Section 287.3 of Title 17, unless there is created a duplication in numbering,  
16 reads as follows:

17 A. As used in the Affordable Energy Act:

18 1. "Cost" means, but is not limited to, all capital investments, including rate of  
19 return, any applicable taxes and all expenses, including operation and maintenance  
20 expenses related to or resulting from the siting, licensing, design, construction, or  
21 operation of the nuclear power plant;

1           2. “Nuclear power plant” or “plant” means an electrical power plant that uses  
2 nuclear materials for fuel; and

3           3. “Preconstruction” means that period of time after a site has been selected,  
4 through and including the date the utility completes site clearing work. Preconstruction  
5 costs shall be afforded deferred accounting treatment and shall accrue a carrying charge  
6 equal to the utility’s allowance for funds during construction (AFUDC) rate until  
7 recovered in rates.

8           B. Within six (6) months after the enactment of this act, the Corporation  
9 Commission shall establish alternative cost recovery mechanisms for the recovery of  
10 costs incurred in the siting, design, licensing, and construction of a nuclear power plant.  
11 The mechanisms shall be designed to promote utility investment in nuclear power plants  
12 and allow for the recovery in rates all prudently incurred costs, and shall include, but are  
13 not limited to:

- 14           1. Recovery through the capacity cost recovery clause of any preconstruction costs;  
15 and
- 16           2. Recovery through an incremental increase in the utility’s capacity cost recovery  
17 clause rates of the carrying costs on the utility’s projected construction cost balance  
18 associated with the nuclear power plant. To encourage investment and provide  
19 certainty, for nuclear power plant need petitions submitted on or before December 31,  
20 2012, associated carrying costs shall be equal to the pretax allowance for funds during  
21 construction (AFUDC) in effect upon this act becoming law. For nuclear power plants for  
22 which need petitions are submitted after December 31, 2012, the existing pretax AFUDC

1 rate of the utility is presumed to be appropriate unless determined otherwise by the  
2 Commission in the determination of need for the nuclear power plant.

3 C. After a petition for determination of need is granted, a utility may petition the  
4 Commission for cost recovery as permitted by this section and Commission rules.

5 D. When the nuclear power plant is placed in commercial service, the utility shall  
6 be allowed to increase its base rate charges by the projected annual revenue  
7 requirements of the nuclear power plant based on the jurisdictional annual revenue  
8 requirements of the plant for the first twelve (12) months of operation. The rate of  
9 return on capital investments shall be calculated using the rate of return for the utility  
10 last approved by the Commission prior to the commercial in-service date of the nuclear  
11 power plant. If any existing generating plant is retired as a result of operation of the  
12 nuclear power plant, the Commission shall allow for the recovery, through an increase in  
13 base rate charges, of the net book value of the retired plant over a period not to exceed  
14 five (5) years.

15 E. The utility shall report to the Commission annually the budgeted and actual  
16 costs as compared to the estimated in-service cost of the nuclear power plant provided by  
17 the utility until the commercial operation of the nuclear power plant. The utility shall  
18 provide such information on an annual basis following the final order by the Commission  
19 approving the determination of need for the nuclear power plant with the understanding  
20 that some costs may be higher than estimated and other costs may be lower.

21 F. In the event the utility elects not to complete or is precluded from completing  
22 construction of the nuclear power plant, the utility shall be allowed to recover all prudent

1 preconstruction and construction costs incurred following the issuance of a final order by  
2 the Commission granting a determination of need for the nuclear power plant. The  
3 utility shall recover the costs through the capacity cost recovery clause over a period  
4 equal to the period during which the costs were incurred or five (5) years, whichever is  
5 greater. The unrecovered balance during the recovery period will accrue interest at the  
6 utility's weighted average cost of capital as reported in the earnings report for the prior  
7 year.

8 SECTION 4. This act shall become effective November 1, 2009.

9 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY  
10 REGULATION, dated 02-18-09 - DO PASS.