

THE HOUSE OF REPRESENTATIVES  
Thursday, February 19, 2009

Committee Substitute for  
House Bill No. 1750

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1750 - By: MARTIN (SCOTT) of the House.

An Act relating to nuclear energy; creating the Nuclear Energy Incentive Act; providing short title; defining terms; authorizing electric utilities to apply to the Corporation Commission for determination of need to construct nuclear power plant; stating procedures for determining need; providing for recovery of costs; authorizing Commission to promulgate rules for certain cost recovery mechanisms; providing for recovery of costs resulting from incompleteness of certain project; providing for the creation of a task force to study tax credits for nuclear power plants; stating duties; providing for membership; requiring certain qualifications; providing for travel reimbursement and staffing; requiring a report; amending 11 O.S. 2001, Section 24-105, which relates to the Oklahoma Municipal Power Authority; removing prohibition from owning interest in nuclear power plants; repealing 11 O.S. 2001, Sections 24-105.1 and 24-117, which relate to prohibiting public power ownership of nuclear generation facilities; providing for codification; providing for noncodification; 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 180.21 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 "Nuclear Energy Incentive Act".

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

4 As used in the Nuclear Energy Incentive Act:

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

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

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

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

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

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

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

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

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

21 C. In determining whether there is a need for the nuclear power plant, the  
22 Commission shall consider, at a minimum, the cost of power and energy from the nuclear

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

3 D. The application shall include:

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

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

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

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

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

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

20 1. Provide needed capacity and energy;

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

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

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

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

16           H. After the Commission issues an order determining there is need for construction  
17 of a nuclear power plant, the right of a utility to recover any costs incurred prior to  
18 commercial operation, including, but not limited to, costs associated with the siting,  
19 design, licensing, or construction of the plant and new, expanded, or relocated electrical  
20 transmission lines or facilities of any size necessary to serve the nuclear power plant,  
21 shall not be subject to challenge unless, and only to the extent, the Commission finds,  
22 based on a preponderance of the evidence adduced at a hearing before the Commission,

1 that certain costs were imprudently incurred. Proceeding with the construction of the  
2 nuclear power plant following an order by the Commission finding the need for the  
3 nuclear power plant pursuant to the provisions of this act, shall not constitute or be  
4 evidence of imprudence. Imprudence shall not include any cost increases due to events  
5 beyond the control of the utility. Further, the right to recover costs associated with a  
6 nuclear power plant by a utility may not be raised in any other forum or in the review of  
7 proceedings in the other forum. Costs incurred prior to the commencement of  
8 commercial operation of the nuclear power plant shall be recovered pursuant to the  
9 provisions of Section 4 of this act.

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

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

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

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

4           2. Recovery through an incremental increase in the periodic rate adjustment rates  
5 of the utility of the carrying costs on the projected construction cost balance associated  
6 with the nuclear power plant. To encourage investment and provide certainty, for  
7 applications submitted to the Commission pursuant to the Nuclear Energy Incentive Act,  
8 the associated carrying costs shall be equal to the existing pretax AFUDC rate for the  
9 utility which is presumed to be appropriate, unless determined otherwise by the  
10 Commission, and as modified by paragraph 3 of this subsection; and

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

17           B. When the nuclear power plant is placed in commercial service, the utility shall  
18 be allowed to increase its base rate charges by the projected annual revenue  
19 requirements of the nuclear power plant based on the annual revenue requirements of  
20 the plant for the first twelve (12) months of operation. The rate of return on the nuclear  
21 power plant for the first portion of the service life on the nuclear power plant shall be  
22 calculated using the enhanced rate of return calculated by adding two hundred (200)

1 basis points to the last general or overall rate of return for the utility approved by the  
2 Commission prior to the commercial in-service date of the nuclear power plant or to the  
3 overall rate of return approved in the most recent rate case following commercial  
4 operation. If an existing electric generating power plant, owned by the utility and  
5 operated to provide power to its customers, is retired as a result of operation of the  
6 nuclear power plant, the Commission shall allow for the recovery, through an increase in  
7 charges, of the net book value of the retired plant, over a period not to exceed five (5)  
8 years.

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

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

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

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

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

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

- 12 1. The Secretary of Energy shall be the chair of the task force;
- 13 2. Two members shall be appointed by the Governor;
- 14 3. Three members shall be appointed by the President Pro Tempore of the Senate;

15 and

16 4. Three members shall be appointed by the Speaker of the House of  
17 Representatives.

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

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

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

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

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

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

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

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

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

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

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

18 (f) "Project" shall mean any plant, works, system, facilities and real and personal  
19 property of any nature whatsoever, together with all parts thereof and appurtenances  
20 thereto, located within or without the State of Oklahoma, used or useful in the  
21 generation, production, transmission, purchase, sale, exchange or interchange of  
22 electrical energy and in the acquisition, extraction, processing, transportation or storage

1 ~~or~~ of fuel of any kind for any such purposes or any interest in, or right to the use,  
2 services, output or capacity, of any such plant, works, system or facilities; ~~provided,~~  
3 ~~however, a project shall not include (i) any interest in any plant for the generation of~~  
4 ~~electrical energy which is to be owned jointly with any investor-owned utility if such~~  
5 ~~plant is not existing on May 10, 1981, or (ii) any interest in any nuclear powered~~  
6 ~~generating plant. For purposes of this definition, a plant shall be considered to be~~  
7 ~~existing if construction shall have been commenced at the plant site, if orders have been~~  
8 ~~placed for major components of equipment or if the plant is to consist of an additional~~  
9 ~~unit at the site of an already existing unit which will use in common any of the existing~~  
10 ~~facilities at such site.~~

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

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY  
2 REGULATION, dated 02-18-09 - DO PASS, As Amended.