

ESB 831

THE HOUSE OF REPRESENTATIVES
Monday, March 30, 2009

ENGROSSED

Senate Bill No. 831

ENGROSSED SENATE BILL NO. 831 - By: BINGMAN AND MAZZEI of the Senate and MARTIN (SCOTT) of the House.

(nuclear energy - construct nuclear power plant – codification –
noncodification – repealer -
effective date)

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".

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

8 As used in the Nuclear Energy Incentive Act:

9 1. "Cost" means, but is not limited to, all capital-related costs, including the
10 depreciation or amortization of, return on, and taxes associated with, the operation and
11 maintenance expenses, and the administrative and general expenses related to or
12 resulting from the siting, licensing, design, construction, or operation of nuclear power

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

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

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

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

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

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

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

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

14 C. In determining whether there is a need for the nuclear power plant, the
15 Commission shall consider, at a minimum, the cost of power and energy from the nuclear
16 power plant compared to alternatives, the benefits of fuel diversity, and other operational
17 and cost considerations the 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,
20 including the utility's power needs for power and the cost of nuclear power compared to
21 alternatives;

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

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

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

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

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

14 1. Provide needed capacity and energy;

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

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

20 F. No provision of the Commission's rules regarding competitive procurement,
21 including provisions for cost recovery, shall be applicable to a nuclear power plant
22 authorized by this act. A utility shall not be required to secure competitive proposals for

1 power supply prior to making application under this act or receiving a determination of
2 need from the Commission.

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

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

1 of the nuclear power plant shall be recovered pursuant to the provisions of Section 4 of
2 this act.

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

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

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

18 2. Recovery through an incremental increase in the utility's periodic rate
19 adjustment rates of the carrying costs on the utility's projected construction cost balance
20 associated with the nuclear power plant. To encourage investment and provide
21 certainty, for applications submitted to the Commission pursuant to the Nuclear Energy
22 Incentive Act, such associated carrying costs shall be equal to the utility's existing pretax

1 AFUDC rate which is presumed to be appropriate, unless determined otherwise by the
2 Commission, and as modified by paragraph 3 of this subsection;

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

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

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

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

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

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

20 (a) 1. "Authority" ~~shall mean~~ means the Oklahoma Municipal Power Authority
21 hereby created and any successor or successors thereto. Any change in name or
22 composition of the Authority shall in no way affect the vested rights of any person under

1 the provisions of this act or impair the obligations of any contracts existing under this
2 act.

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

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

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

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

- 16 a. any natural person; ~~(ii),~~
- 17 b. any eligible public agency as defined herein; ~~(iii),~~
- 18 c. any public trust as defined herein; ~~(iv),~~
- 19 d. the United States, any state, any municipality, political subdivision,
20 municipal corporation, unit of local government, governmental unit or
21 public corporation created by or pursuant to the laws of the United
22 States or any state, or any board, corporation or other entity or body

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

1 declared by the laws of the United States or any state to be a
2 department, agency or instrumentality thereof; ~~(v)~~,
3 e. any corporation, not for profit corporation, firm, partnership,
4 cooperative association, electric cooperative or business trust of any
5 nature whatsoever organized and existing under the laws of the United
6 States or any state; ~~(vi)~~
7 f. any foreign country, any political subdivision or governmental unit of
8 any foreign country or any corporation, not for profit corporation, firm,
9 partnership, cooperative association, electric cooperative or business
10 trust of any nature whatsoever organized and existing under the laws
11 of any foreign country or of any political subdivision or governmental
12 entity thereof.

13 ~~(f)~~ g. "Project" ~~shall mean~~ means any plant, works, system, facilities and real and
14 personal property of any nature whatsoever, together with all parts thereof and
15 appurtenances thereto, located within or without the State of Oklahoma, used or useful
16 in the generation, production, transmission, purchase, sale, exchange or interchange of
17 electrical energy and in the acquisition, extraction, processing, transportation or storage
18 ~~or~~ of fuel of any kind for any such purposes or any interest in, or right to the use,
19 services, output or capacity, of any such plant, works, system or facilities; ~~provided,~~
20 ~~however, a project shall not include (i) any interest in any plant for the generation of~~
21 ~~electrical energy which is to be owned jointly with any investor-owned utility if such~~
22 ~~plant is not existing on May 10, 1981, or (ii) any interest in any nuclear powered~~

1 generating plant. For purposes of this definition, a plant shall be considered to be
2 existing if construction shall have been commenced at the plant site, if orders have been
3 placed for major components of equipment or if the plant is to consist of an additional
4 unit at the site of an already existing unit which will use in common any of the existing
5 facilities at such site.

6 ~~(g)~~ 7. "Public trust" shall ~~mean~~ means any public trust created and existing under
7 the provisions of the Trusts for Furtherance of Public Functions Law, as provided by
8 ~~Sections~~ Section 176 et seq. of Title 60 of the Oklahoma Statutes, and the Oklahoma
9 Trust Act, as provided by ~~Sections 175~~ Section 175.1 et seq. of Title 60 of the Oklahoma
10 Statutes, which has as its beneficiary a municipality and which owns, maintains or
11 operates an electrical energy generation, transmission or distribution system serving the
12 residents and consumers of such municipality and existing on the date on which this act
13 becomes law or created hereafter with an eligible public agency as the beneficiary.

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

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

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

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

- 1 2. Two members shall be appointed by the Governor;
2 3. Three members shall be appointed by the President Pro Tempore of the Senate;
3 and
4 4. Three members shall be appointed by the Speaker of the House of
5 Representatives.

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

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

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND UTILITY
17 REGULATION, dated 03-26-09 - DO PASS, As Amended.