

CS for SB 831

1 THE STATE SENATE
2 Monday, February 23, 2009

3 Committee Substitute for
4 Senate Bill No. 831

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 831 - By: Bingman of the
6 Senate and Martin (Scott) of the House.

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

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

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

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

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

18 As used in the Nuclear Energy Incentive Act:

19 1. "Cost" means, but is not limited to, all capital-related
20 costs, including the depreciation or amortization of, return on, and
21 taxes associated with, the operation and maintenance expenses, and
22 the administrative and general expenses related to or resulting from
23 the siting, licensing, design, construction, or operation of nuclear
24 power plants and any new, enlarged, or relocated electrical

1 transmission lines or facilities of any size which are associated
2 with construction of or operation of nuclear power plants;

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

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

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

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

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

6 D. The application shall include:

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

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

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

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

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

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's 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 Commission's final order, including any order on
19 reconsideration, shall be reviewable on appeal to the State Supreme
20 Court. Since delay in the determination of need will delay siting
21 of a nuclear power plant or diminish the opportunity for savings to
22 customers under the federal Energy Policy Act of 2005, the Supreme
23 Court shall proceed to hear and determine the action as

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 utility's
18 control. Further, a utility's right to recover costs associated
19 with a nuclear power plant may not be raised in any other forum or
20 in the review of proceedings in such other forum. Costs incurred
21 prior to the commencement of commercial operation of the nuclear
22 power plant shall be recovered pursuant to the provisions of Section
23 4 of this act.

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 Such 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 utility's
21 periodic rate adjustment rates of the carrying costs on the
22 utility's projected construction cost balance associated with the
23 nuclear power plant. To encourage investment and provide certainty,

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

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

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

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

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

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

1 the costs were incurred, or five (5) years, whichever is greater.
2 The unrecovered balance during the recovery period will accrue
3 interest at the utility's weighted average cost of capital.

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

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

9 ~~(a)~~ 1. "Authority" ~~shall mean~~ means the Oklahoma Municipal
10 Power Authority hereby created and any successor or successors
11 thereto. Any change in name or composition of the Authority shall in
12 no way affect the vested rights of any person under the provisions
13 of this act or impair the obligations of any contracts existing
14 under this act.

15 ~~(b)~~ 2. "Board of Directors" ~~shall mean~~ means the Board of
16 Directors elected by the election committee as set forth in Section
17 4 24-104 of this ~~act~~ title which shall exercise all the powers and
18 manage and control all the affairs and property of the Authority
19 unless otherwise specifically provided herein or in the bylaws of
20 the Authority as in effect from time to time.

21 ~~(c)~~ 3. "Bonds" ~~shall mean~~ means any revenue bonds, notes or
22 other evidences of obligations of the Authority issued by the

1 Authority under the provisions of this act, including, without
2 limitation, bond anticipation notes and refunding bonds.

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

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

- 9 a. any natural person, ~~(ii)~~,
- 10 b. any eligible public agency as defined herein, ~~(iii)~~,
- 11 c. any public trust as defined herein, ~~(iv)~~,
- 12 d. the United States, any state, any municipality,
13 political subdivision, municipal corporation, unit of
14 local government, governmental unit or public
15 corporation created by or pursuant to the laws of the
16 United States or any state, or any board, corporation
17 or other entity or body declared by the laws of the
18 United States or any state to be a department, agency
19 or instrumentality thereof, ~~(v)~~,
- 20 e. any corporation, not for profit corporation, firm,
21 partnership, cooperative association, electric
22 cooperative or business trust of any nature whatsoever

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

11 ~~(f)~~ 6. "Project" ~~shall mean~~ means any plant, works, system,
12 facilities and real and personal property of any nature whatsoever,
13 together with all parts thereof and appurtenances thereto, located
14 within or without the State of Oklahoma, used or useful in the
15 generation, production, transmission, purchase, sale, exchange or
16 interchange of electrical energy and in the acquisition, extraction,
17 processing, transportation or storage ~~of~~ of fuel of any kind for any
18 such purposes or any interest in, or right to the use, services,
19 output or capacity, of any such plant, works, system or facilities,
20 ~~provided, however, a project shall not include (i) any interest in~~
21 ~~any plant for the generation of electrical energy which is to be~~
22 ~~owned jointly with any investor owned utility if such plant is not~~
23 ~~existing on May 10, 1981, or (ii) any interest in any nuclear~~

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

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

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

20 A. No later than thirty (30) days following the effective date
21 of this act, a task force shall be appointed to determine an
22 appropriate income tax credit for entities developing a nuclear
23 power plant and authorizing an income tax credit at least equal to

1 the credit provided in Section 2357.32A of Title 68 of the Oklahoma
2 Statutes for the purchase of electricity generated by a nuclear
3 power plant located in this state.

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

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

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

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

10 4. Three members shall be appointed by the Speaker of the House
11 of Representatives.

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

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

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

21 SECTION 7. REPEALER 11 O.S. 2001, Sections 24-105.1 and
22 24-117, are hereby repealed.

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

1 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated
2 2-19-09 - DO PASS, As Amended and Coauthored.