

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 2043

By: Reynolds

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5
6 AS INTRODUCED

7 An Act relating to public utilities; creating the
8 Affordable Energy Act; establishing procedure and
9 notice for proceeding on application for power plant
10 using nuclear material as fuel; making the
11 Corporation Commission the sole forum for such
12 proceedings; specifying certain criteria to be
13 considered by the Commission; setting time frame for
14 hearing and final determination; listing certain
15 information to be included in certain petitions;
16 listing certain matters for the Commission to take
17 into account in making a determination; creating a
18 presumption; making the Commission order final;
19 providing for certain appeal process; limiting
20 challenge of right to recover certain costs; making
21 an exception; providing definitions; directing the
22 Commission to establish an alternative cost recovery
23 mechanism for recovery of certain costs of a nuclear
24 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.

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 288.1 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Affordable
5 Energy Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 288.2 of Title 17, unless there
8 is created a duplication in numbering, reads as follows:

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

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

18 C. The Commission shall be the sole forum for the determination
19 of this matter, which accordingly shall not be raised in any other
20 forum or in the review of proceedings in such other forum. In
21 making its determination, the Commission shall take into account the
22 need for electric system reliability and integrity, the need for
23 adequate electricity at a reasonable cost, the need for fuel
24 diversity and supply reliability, and whether the proposed plant is

1 the most cost-effective alternative available. The Commission shall
2 also expressly consider the conservation measures taken by or
3 reasonably available to the applicant or its members which might
4 mitigate the need for the proposed plant and other matters within
5 its jurisdiction which it deems relevant. The determination by the
6 Commission of the need for an electrical power plant shall create a
7 presumption of public need and necessity.

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

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

- 16 1. A description of the need for the generation capacity;
- 17 2. A description of how the proposed nuclear power plant will
18 enhance the reliability of electric power production within the
19 state by improving the balance of power plant fuel diversity and
20 reducing the dependence of Oklahoma on coal, fuel oil and natural
21 gas;
- 22 3. A description of and a nonbinding estimate of the cost of
23 the nuclear power plant;

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

3 5. Information on whether there were any discussions with any
4 electric utilities regarding ownership of a portion of the plant by
5 the electric utilities.

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

9 1. Provide needed base-load capacity;

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

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

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

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

15 I. After a petition for determination of need for a nuclear
16 power plant has been granted, the right of a utility to recover any
17 costs incurred prior to commercial operation, including, but not
18 limited to, costs associated with the siting, design, licensing or
19 construction of the plant, shall not be subject to challenge unless
20 and only to the extent the Commission finds, based on a
21 preponderance of the evidence adduced at a hearing before the
22 Commission, that certain costs were imprudently incurred.
23 Proceeding with the construction of the nuclear power plant
24 following an order by the Commission approving the need for the

1 nuclear power plant as provided for pursuant to this act shall not
2 constitute or be evidence of imprudence. Imprudence shall not
3 include any cost increases due to events beyond the control of the
4 utility. Further, the right of a utility to recover costs
5 associated with a nuclear power plant may not be raised in any other
6 forum or in the review of proceedings in such other forum. Costs
7 incurred prior to commercial operation shall be recovered pursuant
8 to Section 3 of this act.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 288.3 of Title 17, unless there
11 is created a duplication in numbering, reads as follows:

12 A. As used in the Affordable Energy Act:

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

18 2. "Nuclear power plant" or "plant" means an electrical power
19 plant that uses nuclear materials for fuel; and

20 3. "Preconstruction" means that period of time after a site has
21 been selected, through and including the date the utility completes
22 site-clearing work. Preconstruction costs shall be afforded
23 deferred accounting treatment and shall accrue a carrying charge
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1 equal to the utility's allowance for funds during construction
2 (AFUDC) rate until recovered in rates.

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

10 1. Recovery through the capacity cost recovery clause of any
11 preconstruction costs; and

12 2. Recovery through an incremental increase in the utility's
13 capacity cost recovery clause rates of the carrying costs on the
14 utility's projected construction cost balance associated with the
15 nuclear power plant. To encourage investment and provide certainty,
16 for nuclear power plant need petitions submitted on or before
17 December 31, 2013, associated carrying costs shall be equal to the
18 pretax allowance for funds during construction (AFUDC) in effect
19 upon this act becoming law. For nuclear power plants for which need
20 petitions are submitted after December 31, 2013, the existing pretax
21 AFUDC rate of the utility is presumed to be appropriate unless
22 determined otherwise by the Commission in the determination of need
23 for the nuclear power plant.

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

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

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

1 F. In the event the utility elects not to complete or is
2 precluded from completing construction of the nuclear power plant,
3 the utility shall be allowed to recover all prudent preconstruction
4 and construction costs incurred following the issuance of a final
5 order by the Commission granting a determination of need for the
6 nuclear power plant. The utility shall recover the costs through
7 the capacity cost recovery clause over a period equal to the period
8 during which the costs were incurred or five (5) years, whichever is
9 greater. The unrecovered balance during the recovery period will
10 accrue interest at the utility's weighted average cost of capital as
11 reported in the earnings report for the prior year.

12 SECTION 4. This act shall become effective November 1, 2011.

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