

§ 62-133.6. Environmental compliance costs recovery.

(a) As used in this section:

- (1) "Coal-fired generating unit" means a coal-fired generating unit, as defined by 40 Code of Federal Regulations § 96.2 (July 1, 2001 Edition), that is located in this State and has the capacity to generate 25 or more megawatts of electricity.
- (2) "Environmental compliance costs" means only those capital costs incurred by an investor-owned public utility to comply with the emissions limitations set out in G.S. 143-215.107D that exceed the costs required to comply with 42 U.S.C. § 7410(a)(2)(D)(i)(I), as implemented by 40 Code of Federal Regulations § 51.121 (July 1, 2001 Edition), related federal regulations, and the associated State or Federal Implementation Plan, or with 42 U.S.C. § 7426, as implemented by 40 Code of Federal Regulations § 52.34 (July 1, 2001 Edition) and related federal regulations. The term "environmental compliance costs" does not include:
 - a. Costs required to comply with a final order or judgment rendered by a state or federal court under which an investor-owned public utility is found liable for a failure to comply with any federal or state law, rule, or regulation for the protection of the environment or public health.
 - b. The net increase in costs, above those proposed by the investor-owned public utility as part of its plan to achieve compliance with the emissions limitations set out in G.S. 143-215.107D, that are necessary to comply with a settlement agreement, consent decree, or similar resolution of litigation arising from any alleged failure to comply with any federal or state law, rule, or regulation for the protection of the environment or public health.
 - c. Any criminal or civil fine or penalty, including court costs imposed or assessed for a violation by an investor-owned public utility of any federal or state law, rule, or regulation for the protection of the environment or public health.
 - d. The net increase in costs, above those proposed by the investor-owned public utility as part of its plan to achieve the emissions limitations set out in G.S. 143-215.107D, that are necessary to comply with any limitation on emissions of oxides of nitrogen (NO_x) or sulfur dioxide (SO₂) that are imposed on an individual coal-fired generating unit by the Environmental Management Commission or the Department of Environmental Quality to address any nonattainment of an air quality standard in any area of the State.
- (3) "Investor-owned public utility" means an investor-owned public utility, as defined in G.S. 62-3.

(b) The investor-owned public utilities shall be allowed to accelerate the cost recovery of their estimated environmental compliance costs over a seven-year period, beginning January 1, 2003 and ending December 31, 2009. For purposes of this subsection, an investor-owned public utility subject to the provisions of subsections (b) and (d) of G.S. 143-215.107D shall amortize environmental compliance costs in the amount of one billion five hundred million dollars (\$1,500,000,000) and an investor-owned public utility subject to the provisions of subsections (c) and (e) of G.S. 143-215.107D shall amortize environmental compliance costs in the amount of eight hundred thirteen million dollars (\$813,000,000). During the rate freeze

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period established in subsection (e) of this section, the investor-owned public utilities shall, at a minimum, recover through amortization seventy percent (70%) of the environmental compliance costs set out in this subsection. The maximum amount for each investor-owned public utility's annual accelerated cost recovery during the rate freeze period shall not exceed one hundred fifty percent (150%) of the annual levelized environmental compliance costs set out in this subsection. The amounts to be amortized pursuant to this subsection are estimates of the environmental compliance costs that may be adjusted as provided in this section. The General Assembly makes no judgment as to whether the actual environmental compliance costs will be greater than, less than, or equal to these estimated amounts. These estimated amounts do not define or limit the scope of the expenditures that may be necessary to comply with the emissions limitations set out in G.S. 143-215.107D.

(c) The investor-owned public utilities shall file their compliance plans, including initial cost estimates, with the Commission and the Department of Environmental Quality not later than 10 days after the date on which this section becomes effective. The Commission shall consult with the Secretary of Environmental Quality and shall consider the advice of the Secretary as to whether an investor-owned public utility's proposed compliance plan is adequate to achieve the emissions limitations set out in G.S. 143-215.107D.

(d) Subject to the provisions of subsection (f) of this section, the Commission shall hold a hearing to review the environmental compliance costs set out in subsection (b) of this section. The Commission may modify and revise those costs as necessary to ensure that they are just, reasonable, and prudent based on the most recent cost information available and determine the annual cost recovery amounts that each investor-owned public utility shall be required to record and recover during calendar years 2008 and 2009. In making its decisions pursuant to this subsection, the Commission shall consult with the Secretary of Environmental Quality to receive advice as to whether the investor-owned public utility's actual and proposed modifications and permitting and construction schedule are adequate to achieve the emissions limitations set out in G.S. 143-215.107D. The Commission shall issue an order pursuant to this subsection no later than December 31, 2007.

(e) Notwithstanding G.S. 62-130(d) and G.S. 62-136(a), the base rates of the investor-owned public utilities shall remain unchanged from the date on which this section becomes effective through December 31, 2007. The Commission may, however, consistent with the public interest:

- (1) Allow adjustments to base rates, or deferral of costs or revenues, due to one or more of the following conditions occurring during the rate freeze period:
 - a. Governmental action resulting in significant cost reductions or requiring major expenditures including, but not limited to, the cost of compliance with any law, regulation, or rule for the protection of the environment or public health, other than environmental compliance costs.
 - b. Major expenditures to restore or replace property damaged or destroyed by force majeure.
 - c. A severe threat to the financial stability of the investor-owned public utility resulting from other extraordinary causes beyond the reasonable control of the investor-owned public utility.
 - d. The investor-owned public utility persistently earns a return substantially in excess of the rate of return established and found reasonable by the Commission in the investor-owned public utility's last general rate case.
- (2) Approve any reduction in a rate or rates applicable to a customer or class of customers during the rate freeze period, if requested to do so by an

investor-owned public utility that is subject to the emissions limitations set out in G.S. 143-215.107D.

(f) In any general rate case initiated to adjust base rates effective on or after January 1, 2008, the investor-owned public utility shall be allowed to recover its actual environmental compliance costs in accordance with Article 7 of this Chapter less the cumulative amount of accelerated cost recovery recorded pursuant to subsection (b) of this section.

(g) Consistent with the public interest, the Commission is authorized to approve proposals submitted by an investor-owned public utility to implement optional, market-based rates and services, provided the proposal does not increase base rates during the period of time referred to in subsection (e) of this section.

(h) Nothing in this section shall prohibit the Commission from taking any actions otherwise appropriate to enforce investor-owned public utility compliance with applicable statutes or Commission rules or to order any appropriate remedy for such noncompliance allowed by law.

(i) An investor-owned public utility that is subject to the emissions limitations set out in G.S. 143-215.107D shall submit to the Commission and to the Department of Environmental Quality on or before April 1 of each year a verified statement that contains all of the following:

- (1) A detailed report on the investor-owned public utility's plans for meeting the emissions limitations set out in G.S. 143-215.107D.
- (2) The actual environmental compliance costs incurred by the investor-owned public utility in the previous calendar year, including a description of the construction undertaken and completed during that year.
- (3) The amount of the investor-owned public utility's environmental compliance costs amortized in the previous calendar year.
- (4) An estimate of the investor-owned public utility's environmental compliance costs and the basis for any revisions of those estimates when compared to the estimates submitted during the previous year.
- (5) A description of all permits required in order to comply with the provisions of G.S. 143-215.107D for which the investor-owned public utility has applied and the status of those permits or permit applications.
- (6) A description of the construction related to compliance with the provisions of G.S. 143-215.107D that is anticipated during the following year.
- (7) A description of the applications for permits required in order to comply with the provisions of G.S. 143-215.107D that are anticipated during the following year.
- (8) The results of equipment testing related to compliance with G.S. 143-215.107D.
- (9) The number of tons of oxides of nitrogen (NOx) and sulfur dioxide (SO₂) emitted during the previous calendar year from the coal-fired generating units that are subject to the emissions limitations set out in G.S. 143-215.107D.
- (10) The emissions allowances described in G.S. 143-215.107D(i) that are acquired by the investor-owned public utility that result from compliance with the emissions limitations set out in G.S. 143-215.107D.
- (11) Any other information requested by the Commission or the Department of Environmental Quality.

(j) The Secretary shall review the information submitted pursuant to subsection (i) of this section and determine whether the investor-owned public utility's actual and proposed modifications and permitting and construction schedule are adequate to achieve the emissions

limitations set out in G.S. 143-215.107D and shall advise the Commission as to the Secretary's findings and recommendations.

(k) Any information, advice, findings, recommendations, or determinations provided by the Secretary pursuant to this section shall not constitute a final agency decision within the meaning of Chapter 150B of the General Statutes and shall not be subject to review under that Chapter. (2002-4, s. 9; 2015-241, s. 14.30(u), (v).)