This Bill Analysis reflects the contents of the bill as it was presented in committee.

HOUSE BILL 332: Energy Policy Amendments

2015-2016 General Assembly

Committee:	Senate Commerce	**Date:**	May 19, 2015
Introduced by:	Reps. Hager, Collins, McElraft, Saine	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to Third Edition H332-CSTD		

SUMMARY: The PCS divides House Bill 332 into two parts.

Part I would allow natural gas local distribution companies to recover the infeasible portion of a line extension through its rates for line extensions to companies that will invest at least $200 million in improvements and employ at least 1,500 employees. The PCS makes no changes to Part I of the bill.

Part II was added in the PCS and provides the following:

- ***Maintains the REPS requirements at 6% in perpetuity.***
- ***Amends the costs caps for REPS cost recovery.***
- ***Allows a greater percentage of energy efficiency to be used to meet the REPS requirements.***
- ***Amends the requirements for standard contracts available for qualifying facilities.***

Part I – Natural Gas Economic Development Infrastructure

CURRENT LAW: The rates for natural gas local distribution companies (LDCs) are regulated by the Utilities Commission under G.S. 62-133 and 62-133.4. The rates include the wholesale cost of gas and the "margin." The margin amount includes the prudently incurred costs for delivering the gas sold and a rate of return on the capital investment made by the company. The wholesale cost of the natural gas distributed is passed through directly to the customer. Natural gas local distribution companies do not profit from fluctuations in the wholesale price of natural gas.

When service of natural gas is extended to a new customer, the LDC will calculate what portion of the cost of the line extension will be recovered through the margin generated by the increase in gas distributed through the line extension. The cost of the line extension that would be recovered through the margin is considered "feasible" where the cost of the line extension that would not be recovered through the margin is considered "infeasible." The customer requesting the line extension must cover the infeasible costs of the line extension.

The General Assembly has created several economic development tools to provide funding to expand natural gas for job creation:

- Industrial Development Fund Utility Account. Funds can be used to construct or improve gas lines in economically distressed counties.
- Site Infrastructure Development Fund. Grants authorized for site development for businesses that will invest $100 million and employ 100 new employees.

- Expanded Gas Products Service to Agriculture Fund. In Section 15.13 of S.L. 2014-100 the General Assembly allocated $5 million for grants to expand natural gas service to agricultural projects under G.S. 143B-437.020.

BILL ANALYSIS: The PCS for House Bill 332 would allow a LDC to recover the infeasible portion of natural gas infrastructure to eligible projects in rates through an annual rider.

Commerce Approval: The Department of Commerce must first determine that the natural gas infrastructure is for an eligible project. To be eligible, a project must meet all of the following conditions:

- The project will provide opportunities for natural gas usage, jobs and other economic development benefits.
- The business has invested or intends to invest at least $200 million in private funds for real and personal property.
- The business will employ or intends to employ at least 1,500 full time employees.

The business must also meet a wage standard of 110% of the average wage in the county where the project is located, the business must pay at least 50% of the premiums for health insurance coverage for its employees, must not have any safety and health program violations, and must not have a disqualifying environmental event as determined by the Department of Environment and Natural Resources.

Utilities Commission: Costs for natural gas infrastructure may be recovered in a rider by an LDC for infrastructure related to projects approved by the Department of Commerce, if the Commission determines the project meets all of the following conditions:

- The project is located in an area where the natural gas infrastructure for the project is not economically feasible.
- The developer of the project, the prospective customer, or the occupant of the project provides a binding commitment that the project will use the natural gas service for at least 10 years.
- The projected margin generated by the eligible project will not cover the cost of the natural gas infrastructure.

Once approved, the economically infeasible costs of the infrastructure will be recovered in a rider. The costs recovered in the rider will include the costs normally recovered for infrastructure, including the planning and development costs, construction costs, financing costs, depreciation, and property taxes.

The Commission is directed to adopt rules to implement the rider mechanism. The rider may be allowed on an annual or semiannual basis, and will be subject to periodic reconciliation. The rider will terminate when the costs are fully recovered, or with the LDC's next general rate case, whichever occurs first. A LDC may not invest more than $25 million a year in infrastructure development costs, and the amount recovered in the rider may not exceed 5% of the margin revenues approved in the last rate case of the LDC. The total amount of infrastructure costs that can be recovered by all LDC's in the state is limited to $75 million.

EFFECTIVE DATE: This Part is effective when it becomes law and expires July 1, 2020.

Part II – Energy Policy Amendments

CURRENT LAW: In 2007, the General Assembly enacted a Renewable Energy Portfolio Standard (REPS) requirement for electric power suppliers.[1] REPS require electric power suppliers to provide a designated amount or percentage of power from renewable energy resources as a portion of their overall provision of electricity.

Types of Renewable Energy: Renewable energy resources that can be used to meet the REPS requirements are:

- Solar electric, solar thermal, wind, hydropower, geothermal, or ocean current or wave energy resource.
- A biomass resource, including agricultural waste, animal waste, wood waste, spent pulping liquors, combustible residues, combustible liquids, combustible gases, energy crops, or landfill methane.
- Waste heat derived from a renewable energy resource and used to produce electricity or useful, measurable thermal energy at a retail electric customer's facility.
- Hydrogen derived from a renewable energy resource.

"Renewable energy resource" does not include peat, a fossil fuel, or nuclear energy resource.

REPS Requirements: The REPS requirements vary based on the type of electric supplier, and is as follows:

Calendar Year	Electric Public Utilities
2012	3% of 2011 retail sales
2015	6% of 2014 retail sales
2018	10% of 2017 retail sales
2021 and thereafter	12.5% of 2020 retail sales

Calendar Year	EMCs and Municipalities
2012	3% of 2011 retail sales
2015	6% of 2014 retail sales
2018 and thereafter	10% of 2017 retail sales

All electric power suppliers may meet the REPS requirements by:

- Generating electric power at a new renewable energy facility.
- Reducing energy consumption through the implementation of an energy efficiency measure.
- Purchasing electric power from a new renewable energy facility.
- Purchasing renewable energy certificates derived from in-state or out-of-state new renewable energy facilities.
- Using electric power that is supplied by a new renewable energy facility or saved due to the implementation of an energy efficiency measure that exceeds the REPS requirements for any calendar year as a credit towards meeting the REPS requirements in the following calendar year or sell the associated renewable energy certificates.
- Reducing electricity demand with a program that is voluntary, under the real-time control of both the electric power supplier and the retail electric customer, and measured in real time, using two-way communications devices that communicate on the basis of standards.

[1] S.L. 2007-397, also known as "Senate Bill 3."

Electric public utilities may also meet the REPS requirements by using a renewable energy resource to generate electric power at a generating facility. Electric membership corporations and municipalities may also meet the REPS requirements by purchasing electricity from renewable energy facilities, and acquiring all or part of its electric power from an electric power supplier who meets the REPS requirements.

Set-Asides: Commonly known as set-asides, part of the REPS requirements must be met with solar, poultry waste, and swine waste resources in the following amounts:

Solar		Swine Waste		Poultry Waste	
2010	0.02%	2012	0.07%	2012	170,000 MW hrs
2012	0.07%			2013	700,000 MW hrs
2015	0.14%	2015	0.14%	2014, and thereafter	700,000 MW hrs
2018 and thereafter	0.20%	2018 and thereafter	0.20%		

Off-Ramp: The Utilities Commission (Commission) may provide for a procedure to modify or delay compliance with the REPS provisions, if the Commission determines it is in the public interest to do so.

Cost Cap: Electric power suppliers are allowed to recover costs of compliance with the REPS requirements through an annual rider proceeding. The recovery of costs may not exceed an amount equal to the per-customer annual charges in the following schedule:

Customer Class	2008-2011	2012-2014	2015 and thereafter
Residential, per acct	$10	$12	$34
Commercial, per acct	$50	$150	
Industrial, per acct	$500	$1000	

PURPA and Qualifying Facilities

The Public Utilities Regulatory Policy Act of 1978 (PURPA) was enacted by Congress to reduce dependence on foreign oil and promote renewable energy. PURPA requires utilities to purchase energy generated by qualified facilities at a rate based on "avoided cost." The avoided cost is "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source."

BILL ANALYSIS: Part II of the PCS to H332 does all of the following:

Updated REPS requirements: Section 2.1 amends the REPS requirements to create a permanent requirement of 6% of 2014 retail sales. In 2007, the General Assembly enacted a Renewable Energy Portfolio Standard (REPS) requirement for electric power suppliers. REPS require electric power suppliers to provide a designated amount or percentage of power from renewable energy resources as a portion of their overall provision of electricity. This section amends the REPS requirements to maintain the requirements at the current level, resulting in a permanent REPS requirement of 6% of 2014 retail sales for electric public utilities, electric membership corporations, and municipalities.

Amend Cost Caps for REPS Compliance: Section 2.2 amends the cost caps for REPS compliance. Electric public utilities are allowed to recover costs of compliance with the REPS requirements through an annual rider proceeding. The recovery of costs may not exceed the amount equal to the per-customer annual charges set in the statute. This part freezes the cost caps at the 2014 level. The 2014 cost caps are $12 for residential, $150 for commercial, and $1000 for industrial accounts per year. For 2015, the residential cost cap was scheduled to increase to $34. For 2015, the commercial and industrial cost caps are unchanged from 2014 levels.

Energy Efficiency for REPS Compliance: Section 2.3 increases the percentage that energy efficiency measures can be used to meet the REPS requirements to 50%. Under current law public utilities can meet up to 25% of the REPS requirements with energy efficiency measures through 2021, and up to 40% after 2021.

Cost Recovery and Hold Harmless: Section 2.3 provides the incremental costs incurred by an electric power supplier to comply with any provision modified or repealed by this act can be recovered as provided in the REPS statute.

Standard Contracts for Small Power Producers: Section 2.5 amends provisions related to qualifying facilities. **Effective for facilities that apply for a certificate to build on or after January 1, 2017,** provisions related to qualifying facilities are amended in the following ways:

- Conforms the definition of small power producer with the definition of renewable energy resources in the REPS requirements. Under current law, the definition of small power producer was limited to producers of electricity from hydroelectric sources.
- Provides the Commission may provide standard contracts for the purchase of power from small power producers, but utilities are only required to provide the standard contracts to the following facilities:
    - Swine and poultry waste facilities with a capacity of 5 MW or less.
    - Facilities that produce electricity from all other renewable energy resources with a capacity of 100 kw or less.
- Also provides that the standard contract for the purchase of power from small power producers that produce electricity from renewable resources other than swine and poultry waste shall not require payments for capacity in years the utility does not require the capacity.

Study of REPS requirements: Section 2.6. directs the Joint Legislative Commission on Energy Policy to study reforms to the REPS requirements, issues related to grid security and stability related to dispatchable versus non-dispatchable power, and any other matters related to the energy needs of the State.

EFFECTIVE DATE: Unless otherwise provided, this act is effective when it becomes law.