

**§ 62-133.9. Cost recovery for demand-side management and energy efficiency measures.**

(a) The definitions set out in G.S. 62-133.8 apply to this section. As used in this section, "new," used in connection with demand-side management or energy efficiency measure, means a demand-side management or energy efficiency measure that is adopted and implemented on or after January 1, 2007, including subsequent changes and modifications.

(b) Each electric power supplier shall implement demand-side management and energy efficiency measures and use supply-side resources to establish the least cost mix of demand reduction and generation measures that meet the electricity needs of its customers. An electric membership corporation or municipality that qualifies as an electric power supplier may satisfy the requirements of this section through its purchases from a wholesale supplier of electric power that uses supply-side resources and demand-side management to meet all or a portion of the supply needs of its members and their retail customers, and that, by aggregating and promoting demand-side management and energy efficiency measures for its members, meets the requirements of this section.

(c) Each electric power supplier to which G.S. 62-110.1 applies shall include an assessment of demand-side management and energy efficiency in its resource plans submitted to the Commission and shall submit cost-effective demand-side management and energy efficiency options that require incentives to the Commission for approval.

(d) The Commission shall, upon petition of an electric public utility, approve an annual rider to the electric public utility's rates to recover all reasonable and prudent costs incurred for adoption and implementation of new demand-side management and new energy efficiency measures. Recoverable costs include, but are not limited to, all capital costs, including cost of capital and depreciation expenses, administrative costs, implementation costs, incentive payments to program participants, and operating costs. In determining the amount of any rider, the Commission:

- (1) Shall allow electric public utilities to capitalize all or a portion of those costs to the extent that those costs are intended to produce future benefits.
- (2) May approve other incentives to electric public utilities for adopting and implementing new demand-side management and energy efficiency measures. Allowable incentives may include:
  - a. Appropriate rewards based on the sharing of savings achieved by the demand-side management and energy efficiency measures.
  - b. Appropriate rewards based on capitalization of a percentage of avoided costs achieved by demand-side management and energy efficiency measures.
  - c. Any other incentives that the Commission determines to be appropriate.

(e) The Commission shall determine the appropriate assignment of costs of new demand-side management and energy efficiency measures for electric public utilities and shall assign the costs of the programs only to the class or classes of customers that directly benefit from the programs.

(f) None of the costs of new demand-side management or energy efficiency measures of an electric power supplier shall be assigned to any industrial customer that notifies the industrial customer's electric power supplier that, at the industrial customer's own expense, the industrial customer has implemented at any time in the past or, in accordance with stated, quantified goals for demand-side management and energy efficiency, will implement alternative demand-side management and energy efficiency measures and that the industrial customer elects not to participate in demand-side management or energy efficiency measures under this section. The electric power supplier that provides electric service to the industrial customer, an industrial customer that receives electric service from the electric power supplier,

the Public Staff, or the Commission on its own motion, may initiate a complaint proceeding before the Commission to challenge the validity of the notification of nonparticipation. The procedures set forth in G.S. 62-73, 62-74, and 62-75 shall govern any such complaint. The provisions of this subsection shall also apply to commercial customers with significant annual usage at a threshold level to be established by the Commission.

(g) An electric public utility shall not charge an industrial or commercial customer for the costs of installing demand-side management equipment on the customer's premises if the customer provides, at the customer's expense, equivalent demand-side management equipment.

(h) The Commission shall adopt rules to implement this section.

(i) The Commission shall submit to the Governor and to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources a summary of the proceedings conducted pursuant to this section during the preceding two fiscal years on or before September 1 of odd-numbered years. (2007-397, s. 4(a); 2011-291, s. 2.14; 2017-57, s. 14.1(p).)