

# spotlight

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## ELECTRIC SHOCK

North Carolinians would be required to pay for electricity in other states

**KEY FACTS:** • The legislature passed a law, SB 3, which would require North Carolinians to pay for electricity used by out-of-state residents.

• SB 3, which is the new, hastily drafted energy bill, was touted as requiring utilities to provide at least 7.5% of their electricity from renewable resources. However, North Carolinians likely will not be the recipient of a significant amount of this electricity.

• Since there is not enough renewable energy in the state, SB 3 allows utilities to buy what are called renewable energy certificates that promote investment in renewable energy in other states, without providing electricity to North Carolinians.

• To pay for the electricity of out-of-state residents, North Carolinians could pay as much as \$125 million a year.

• Even assuming that renewable energy helps the environment, this additional cost for paying for out-of-state renewable energy has no impact on North Carolina's environment and will not reduce the need for coal-fired power plants in the state.

• Some legislators may have thought forcing North Carolinians to pay the electricity bills for people outside the state was good policy, but hopefully this requirement will come as a shock to legislators as much as it will to the public.

• These mistakes are a result of rushed, special-interest-drafted legislation that ignored the most important stakeholder: the electricity customer.

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**t**he legislature just passed a law that would require North Carolinians to pay for electricity used by out-of-state residents. It is unclear whether most legislators realized that when they voted for SB 3, the hastily enacted energy bill,<sup>1</sup> they also would be requiring state citizens to help pay the electricity bill for Texans, Californians, or other out-of-state individuals.<sup>2</sup>

Some legislators may have thought it was fine to force North Carolinians to help out-of-state individuals pay for their electricity. One hopes, however, that

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for most legislators, it was a mistake that will shock them as much as it will shock the public. Regardless, this outcome was a result of a bipartisan rush to pass extremely complex legislation that organizations from across the ideological spectrum indicated was flawed.

SB 3 was touted as a bill that would require utilities to provide customers at least 7.5% of the electricity through renewable resources. There was a slight catch. The legislation does not require that all the customers have to live in North Carolina.

This *Spotlight* will explain the relevant legislative provisions, the costs, and how such an outcome could possibly have happened.

### **How The Legislation Works**

SB 3 has a 7.5% renewable energy requirement. This means that utilities have to produce or buy at least 7.5% of their electricity from renewable resources. However, not all of the electricity has to be provided to North Carolinians.<sup>3</sup>

Utilities are allowed to meet part (about 40%)<sup>4</sup> of the renewable requirement by purchasing renewable energy certificates from out-of-state renewable energy facilities. These certificates are tradable instruments that are designed to allow for investments in renewable energy when electricity from renewable sources is not available inside the state.<sup>5</sup> The electricity that is purchased through these certificates likely will never reach North Carolinians.

A recent article in the *Charlotte Observer* is very revealing. The director of South Carolina's energy office, John Clark, blasted SB 3—and he is someone who promotes renewable energy. According to the article:

But he [Clark] wants nothing to do with the sort of law that requires utilities to produce a certain amount of electricity each year from renewable energy...Clark doesn't like the requirements because utilities often end up buying out-of-state green energy certificates through national trading systems. For N.C. utilities, it's an important allowance in the legislation because the state doesn't produce enough renewable energy to fully meet the standard [the 7.5% requirement].<sup>6</sup>

### **Ignoring the Limitations on In-State Renewable Energy**

Utilities would not be able to meet a 7.5% renewable requirement *unless* they purchased electricity from out-of-state. The North Carolina Utilities Commission's own consultant on renewable energy, La Capra Associates, directly told the legislature that a 5% renewable requirement was the proper target.<sup>7</sup> However, the legislature ignored that.

North Carolina does not have a lot of potential for in-state renewable energy. The reason why Southeastern states do not have renewable energy requirements has nothing to do with being "backwards"—it is because there are extensive physical limitations on renewable energy in the region. For example, North Carolina does not have the same type of wind resources as many other states.

This year, the state of North Carolina, along with the Southeastern Association of Regulatory Utility Commissioners and eight other states, sent a letter to Congress regarding a federal renewable energy requirement, noting:

The reality is that not all states are fortunate enough to have abundant traditional renewable energy resources, such as wind ... this is especially true in the Southeast and large parts of the Midwest.<sup>8</sup>

Instead of simply reducing the 7.5% requirement (or better yet eliminating the requirement), the legislature kept this artificial number, presumably to make it look like more effort was being made to promote renewable energy.

This is a charade that exists at the expense of North Carolinians. Utilities will buy renewable electricity certificates

that will provide electricity for out-of-state residents, all at the expense of North Carolina electricity ratepayers.

### **The Cost to Buy Electricity for Out-of-State Electricity Customers**

La Capra has estimated that the renewable requirement would cost North Carolina ratepayers about \$300 million a year. Applying this number, if utilities purchased as many out-of-state renewable energy certificates as permitted, and all the certificate-related electricity remained out-of-state, both reasonable assumptions, then it would cost North Carolina ratepayers about \$125 million a year to pay for the electricity use of people in other states.<sup>9</sup>

### **Unnecessary Cost**

The additional cost to help pay for the electricity of out-of-state individuals is not the only problem arising from these certificates. Assuming that renewable energy would help North Carolina (or other states), this extra cost does nothing to help North Carolina's environment. It does nothing to reduce the need for coal-fired power plants. *In other words, this cost is completely pointless.*

### **How Could This Have Happened?**

The problems with the certificates was not easy to catch, so at least some legislators likely will be shocked to learn what this bill does to North Carolinians. The bill summaries<sup>10</sup> by the legislative staff explain that out-of-state renewable energy certificates could be purchased. There is nothing, though, about the "minor point" that this electricity generally will go to out-of-state individuals. In all fairness to staff, they also may not have known.

The Utilities Commission should have been stressing this problem with the bill. The Public Staff, which is an independent agency that is supposed to be the consumer advocate on utility matters, should have been alerting legislators to this problem. The very reason why the Public Staff exists is to have expertise and protect the interests of consumers on utility-related matters.<sup>11</sup>

SB 3 was developed through a "stakeholder" process where the primary special interests represented were the utilities and environmental groups. "Stakeholder" is just a euphemism for special interests. The private "sidebar" meetings, as they were called, were not open to the public. Residential customers were not represented in these back-room deals. Many of the problems with SB 3, including those that have yet to be identified, are a result of this process where special interests crafted language to meet their needs and likely attempted to hide problems in plain sight.

Legislation is, however, the responsibility of the legislature—the buck stops with them. They should have taken the time to examine the legislation and recognize that a special-interest-drafted bill may not be in the best interests of electricity customers.

Instead, during discussions on SB 3, legislators constantly repeated the talking point that it was a stakeholder-supported bill, which was not even true. Many of the "stakeholders" did not support this special-interest bill. The improper reliance on the "stakeholders" led to a bill that forces the most important stakeholder, electricity customers, to pay for the electricity of out-of-state individuals.

The bill was a "house of cards." Legislators did not want to touch the bill in any way because one little change could have destroyed it, since special interests then would try to kill the legislation. As a result, the bill was pushed through the process as quickly as possible. Even now, after the bill has passed, there has been very little analysis done to assess its impact on customers.

### **Conclusion**

As of now, barring a governor's veto or the legislature fixing this problem, North Carolinians will be mandated by

its own legislature to pay for public services in other states. In the future, one has to wonder if North Carolinians will be paying for roads in Wyoming, schools in Tennessee, and other public projects that do not benefit the state.

This new mandate is either a dangerous precedent or a mistake resulting from trying to rush special-interest legislation through the legislature. Either way, it is an embarrassment for North Carolina.

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## End Notes

1. North Carolina Senate Bill 3 (2007), [www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=sb3](http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2007&BillID=sb3).
2. Most of the out-of-state purchases would come from western states, especially Texas. See, e.g., Christopher D. Kirkpatrick, "Can NC unzip its own green possibilities?," *Charlotte Observer*, August 2, 2007, [www.charlotte.com/business/story/220998.html](http://www.charlotte.com/business/story/220998.html).
3. *Op. cit.*, note 1 at § 62-133.7(b)(2)(e).
4. Utilities are required to meet a 12.5% REPS. The renewable energy certificates can meet up to 25% of this requirement, which means 3.125%. The total renewable requirement of the REPS is 7.5%. The certificates help to meet this 7.5%. To determine the percentage of the 7.5% that can be met through certificates, 3.125% was divided by 7.5%, which equals 41.6%.
5. See, e.g., "Greening EPA Glossary" web page, United States Environmental Protection Agency, [www.epa.gov/greeningepa/glossary.htm#recerts](http://www.epa.gov/greeningepa/glossary.htm#recerts).
6. *Op. cit.*, note 2.
7. La Capra Associates, "Supplemental Responses to Senate Agricultural Committee Meeting and House Energy and Energy Efficiency Committee Meeting," March 15, 2007.
8. Southeastern Utility Commissioners to Congress: RPS Means Higher Prices for Consumers: Nine SE States Urge Congress to Reject Federal RPS, [www.energy.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease\\_id=235307&Month=6&Year=2007](http://www.energy.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=235307&Month=6&Year=2007).
9. La Capra's \$300 million number assumed a 7.5% renewable energy requirement. The certificates can account for up to 41.6% of the 7.5% requirement. To determine the cost, \$300 million was multiplied by 41.6%, which equals \$125 million. The \$125 million number is likely low because La Capra's \$300 million calculation (the best estimate available), according to the Utilities Commission, did not consider renewable energy certificates being used. If certificates were considered, this likely would increase the \$300 million number because LaCapra had assumed that the use of in-state renewable resources would offset the need for and cost of construction of conventional power plants. Since there would be less in-state renewable energy and more plant construction costs due to certificates, this likely would increase the \$300 million number. Taking 41.6% of a higher number than \$300 million would yield a higher number than \$125 million.
10. See, e.g., General Assembly of North Carolina, Session 2007, Bill Analysis for Senate Bill 3, Summary by Jeff Hudson, June 26, 2007.
11. Both the Utilities Commission and the Public Staff were involved in the drafting of the bill.