

R1-16 PLEDGING ASSETS, ISSUING SECURITIES, ASSUMING OBLIGATIONS

(a) No public utility except Payphone Service Providers, Competing Local Providers, and utilities providing only intraLATA long distance service, interLATA long distance service and/or long distance operator service, and local exchange carriers that have elected regulation pursuant to G.S. § 62-133.5(h) or (m) shall pledge its assets, issue securities, or assume liabilities of the character specified in G.S. 62-161, except after application to and approval by the Commission. Such applications shall be made under oath, filed with the Commission and shall contain the following specific information:

- (1) The existing conditions relied upon to support the Commission in making the specific findings required by G.S. 62-161. The application shall set forth the particular facts and circumstances showing that the proposed issuance of securities, pledging of assets, or assumption of liabilities and obligations (i) is for some lawful object within the corporate purposes of the public utility, (ii) is compatible with the public interest, (iii) is necessary or appropriate for or consistent with the public performance by such utility of its service to the public, (iv) will not impair its ability to perform that service, and (v) is reasonably necessary and appropriate for the purposes for which it is issued.
 - (2) The class and principal amount or par value of any securities to be issued or assumed.
 - (3) An estimate of the expenses to be incurred in connection with the pledging of assets, the issuance and sale of securities, or the assumption of liabilities.
 - (4) In case of the sale of securities, whether the sale will be to the public, to institutional investors, or otherwise, and whether the sale will be consummated by means of public bidding or by means of a negotiated transaction. If the sale is by means of a negotiated transaction, the application shall contain the proposed unit sale price of any securities to be issued together with the interest or dividend rate (common stock excepted) to be incurred thereon.
 - (5) The purpose or purposes to which the proceeds obtained are to be used. If the purpose or purposes for which the proceeds obtained are to be used is to refinance or pay off short term indebtedness as defined in G.S. 62-167 and not heretofore approved by order of the Commission, the application shall set forth the purpose or purposes for which said outstanding indebtedness was incurred, and if said original indebtedness was spent on construction, the application shall list amounts by the major construction accounts and the total construction expenditures for which the proceeds of the original indebtedness were expended.
 - (6) A balance sheet and an income statement for a recent representative period. The application shall also include a pro forma balance sheet and income statement showing the balance sheet and the income statement as they would be after the issuance of said security.
 - (7) In any case where the applicant has filed or subsequently files a prospectus or other similar document with the Securities and Exchange Commission or with prospective investors for private placement in connection with said issue, a copy of such prospectus or document shall be filed with the North Carolina Utilities Commission at the time the application is filed with the Securities and Exchange Commission or with private investors.
 - (8) A statement of the source and application of funds, sometimes referred to as cash flow, showing the amounts available from all sources since the last finance application, to meet any part of the purposes or projects for which the financing or issue is required, including contributions from customers or others, salvage proceeds, depreciation reserve accruals, any unused balances in prior financing applications, and retained earnings, as available for payment of construction expenditures reported under subsection (a)(5).
 - (9) In the case of the sale of securities through private placement or the entering into an agreement for the sale and lease-back of assets or any other financing transaction for which the effective date of the consummation and/or implementation of the transaction is expected to take place as much as three months after the negotiation of the interest cost or other financing cost of the transaction is determined, that the utilities shall file with the Commission for approval of the proposed transaction as soon as the rates of interest and/or other financing costs are tentatively agreed on. All the other requirements under R1-16 are applicable to this particular type transaction and are to be included in the filing with a special emphasis on supporting the basis for the proposed rates of interest and financing the cost for which approval is sought.
- (b) This rule does not apply to short term loans as defined in G.S. 62-167.

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 20, 9/3/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 67, 4/27/76; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. P-100, Sub 72b, 01/02/04; NCUC Docket No. P-100, Subs 165 & 165a; P-75, Sub 82; P-76, Sub 71; P-60, Sub 89 & P-21, Sub 78, 5/14/2019; NCUC Docket No. M-100, Sub 147, 9/15/2023.)