

## **R1-01 DEFINITIONS**

The definitions contained in G.S. 62-3 of the 1963 Public Utilities Act shall be applicable to all rules and regulations of the Commission, and in addition thereto, the following terms shall be construed as herein defined unless the context indicates that a different meaning is intended:

- (1) Public Utility or Utility. - The term "public utility" or "utility" means and includes any person or any business which the Commission is authorized by law to supervise, control or regulate in any manner.
- (2) Examiner. - The term "examiner" means a member of the Commission Staff, or a Hearing Commissioner, to whom the Commission has referred a matter for the purpose of hearing and taking evidence and the making of a report and recommendation of an appropriate order or decision thereon. (G.S. 62-76.)

## **R1-02 OFFICE HOURS AND SESSIONS**

(a) Office Hours. - The offices of the Commission in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, will be open for business daily during regular working hours for departments and agencies of State government, which normally extend from 8:00 a.m. to 5:00 p.m., except Saturdays, Sundays and holidays. Mail should be addressed to the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325 or Public Staff - North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, NC 27699-4326.

(b) Public Sessions. - Public sessions of the Commission will be held in its offices in the city of Raleigh, as the need therefor requires, from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. on Tuesday, Wednesday, Thursday and Friday of each week, and at such other places in the State and at such times as the Commission may from time to time direct. These sessions will be devoted to the general work of the Commission, including hearing complaints, applications and petitions, and holding conferences with individuals and delegations with respect to matters over which the Commission has jurisdiction. Subject to the provisions of G.S. 62-70, persons desiring a conference with the Commission should arrange therefor in advance, as scheduled investigations or hearings will not be interrupted for conferences with other parties except in cases of emergency.

(c) Executive Sessions. - The members of the Commission will devote Monday of each week exclusively to executive sessions, including making and formulating orders and decisions on matters which have been heard, planning and coordinating the work of the Commission, and advising with its staff and employees. Members of the Commission will not be available for other business on Mondays. (NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 128, 04/10/00.)

## **R1-03 PARTIES**

(a) Classification. - Parties to proceedings before the Commission are designated as applicants, petitioners, complainants, defendants, respondents, protestants, or interveners, according to the nature of the proceeding and the relationship of the parties thereto.

(b) Applicants and Petitioners. - Persons filing formal written requests with the Commission for some right, privilege, or authority within the jurisdiction of the Commission to grant are designated as applicants or petitioners. These designations are used synonymously in many sections of the statute.

(c) Public Staff of the Commission. - Persons appearing under statutory authority of G.S. 62-15.

(d) Complainants. - Persons who complain of acts or things done or omitted to be done in violation of some law administered by the Commission, or in violation of some rule, regulation, or order issued by the Commission, are designated as complainants.

(e) Defendants. - Persons against whom a complaint is filed are termed defendants.

(f) Respondents. - Persons named in an order of investigation, rule to show cause, or complaint made by the Commission upon its own motion are termed respondents.

(g) Protestants. - Persons who oppose the granting of an application or petition are designated as protestants.

(h) Intervenors. - Persons, other than the original parties to a pending proceeding, who voluntarily become parties thereto with leave of the Commission, are designated as intervenors. (NCUC Docket No. M-100, Sub 75, 10/27/77.)

## **R1-04 COMMENCEMENT OF PROCEEDINGS**

Proceedings may be instituted before the Commission in the following manner:

- (1) By Informal Proceedings.
  - (a) Whenever practical, informal proceedings are recommended for speedy, amicable adjustments of complaints or controversies which do not necessarily require a formal hearing or a formal order or decision, and to that end, informal complaints may be made to the Commission or Public Staff by letter, or otherwise, setting forth the name and post-office address of the person making the complaint; the name and post-office address of the person or persons against whom the complaint is made; a concise statement of all the facts necessary to an understanding of the situation

presented; and a statement of the relief desired. Matters so presented will be taken up by the Commission or Public Staff with the parties affected, by correspondence, or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint without a formal order or hearing.

- (b) The filing of an informal complaint is without prejudice to the right to thereafter file a formal complaint.
  - (c) An informal complaint will not be docketed for formal hearing and no formal order will be issued thereon, but matters thus presented may be transferred by the Commission to the Formal Docket for formal action by the Commission, in which case the complainant will be required to file a formal complaint.
- (2) By Formal Proceedings. - Matters which require the taking of testimony, a formal hearing and a formal order must be instituted by filing with the Commission a formal application, petition, or complaint, as provided by Rule R1-5.
- (3) By the Commission. - The Commission may institute proceedings upon its own motion, in which case the procedure shall be substantially as follows:
- (a) Allegations. - Any rule to show cause, complaint, order of investigation, or other proceeding instituted by the Commission upon its own motion against any particular person or persons shall set out the grounds therefor with such clarity as to inform the respondent or respondents therein named of the issue involved and the particular information or action required by the Commission. Reasonable time shall be given within which to comply with the Commission's order, or within which to prepare a defense, depending on the nature of the proceeding and the work required.
  - (b) Answers. - Formal written answers or other pleadings need not be filed by respondents in such cases unless so directed by the Commission.
  - (c) Procedure at hearing. - In proceedings instituted by the Commission, evidence will ordinarily be offered in the following order:
    - (1) By the Commission Staff,
    - (2) By the Public Staff, and
    - (3) By the respondents, but the presiding officer in any such proceeding may direct the order in which evidence shall be offered.
  - (d) Parties. - Those having an interest in the subject matter of any proceeding instituted by the Commission may become parties thereto by compliance with Rule R1-19.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R1-04A ADDRESS REQUIREMENTS; SERVICE BY FIRST CLASS MAIL OR ELECTRONIC MAIL**

Within 30 days of the effective date of this Rule, all public utilities, persons or entities otherwise certificated, monitored or regulated by the Commission shall provide the Commission with a designated contact, mailing address and an electronic mailing address. All persons or entities hereinafter seeking certification, monitoring or regulation by the Commission shall provide the same information in the initial application or petition requesting such certification, monitoring or regulation. Within 30 days of changing either the mailing address or the electronic mailing address, such public utilities, persons or entities otherwise affected by this Rule shall notify the Commission of such change. Information required to be provided by this Rule shall be sent to chiefclerksoffice@ncuc.net. Except as prohibited by G.S. 62-63 and G.S. 62-79, the Commission may serve orders, decisions or other documents generated by the Commission on such public utilities, persons or entities by first class mail or electronic mail.

(NCUC Docket No. M-100, Sub 134, 3/11/10.)

#### **R1-04B ELECTRONIC MAIL ADDRESS REQUIREMENTS; EXCEPTIONS**

All public utilities, persons or entities otherwise certificated, monitored or regulated by the Commission, all persons or entities hereinafter seeking certification, monitoring or regulation by the Commission, and all attorneys representing public utilities, persons or entities before the Commission shall comply with the provisions of these Rules requiring an electronic mailing address; provided that, upon good cause shown, the Commission may relieve such party, public utility, person or entity of electronic mailing address requirements imposed by these Rules. Individuals seeking to plead their own cause before the Commission are encouraged but not required to comply with the electronic mailing address requirements herein adopted. The Commission may serve orders, decisions or other documents on individuals choosing to comply with these Rules by first class mail or electronic mail.

(NCUC Docket No. M-100, Sub 134; 3/11/10.)

## **R1-05 PLEADINGS, GENERALLY**

(a) Application of Rule. — This rule applies to all pleadings in formal proceedings, including applications, petitions, complaints, answers, protests, and other formal written statements of facts or law on which the party making the same relies for appropriate action or relief by the Commission.

(b) Contents. — All formal pleadings shall show

- (1) The correct name, post-office address, and electronic mailing address of each party by or for whom the particular pleading is filed, and the name, post-office address and electronic mailing address of their attorney, if any;
- (2) A full and clear statement of facts which said party or parties are prepared to prove by competent evidence at the hearing, the proof of which will warrant the relief sought; and
- (3) A statement of the specific relief sought.

(c) Form and Size. — All pleadings and exhibits in formal proceedings shall be printed, typewritten, or otherwise duplicated in legible form preferably using a font size of at least 12 point but in any event not less than 5 point on white paper. If a party files an exhibit for which it is not possible to meet these legibility requirements, the party shall also file a separate document summarizing or reproducing the information in a way that meets these requirements. If a party is required to provide the Commission a spreadsheet in native Excel format, the party shall (1) electronically file a version of the spreadsheet in a text-based, searchable, noncompressed Portable Document Format (i.e., PDF), if it has not already done so, and (2) shall also submit a copy of the spreadsheet in native Excel format, including all of the supporting tabs and formulas, via electronic mail addressed to NCUCExhibits@ncuc.net. Unless printed, the impression shall be on one side of the paper for the original document and double-sided for any required copies, the pages beginning with the second page shall be numbered, and the lines shall be double spaced, except quotations of two or more lines which shall be single spaced and indented. The use of paper 8-1/2 inch x 11 inch with a left margin of approximately one and one-half inches is required.

(d) Signature and Verification. — Pleadings and amendments thereto shall be signed in ink and verified by one of the parties thereto who is acquainted with the facts. Pleadings filed on behalf of a corporation or an association shall be signed and filed by a member of the Bar of the State of North Carolina admitted and licensed to practice as an attorney at law, and may be verified by an officer, attorney or agent thereof who is acquainted with the facts. This subsection does not apply to pleadings filed by the Commission.

(e) Construction. — All pleadings shall be liberally construed, and errors or defects therein which do not mislead or affect the substantial rights of the parties involved shall be disregarded.

(f) Amendments. — Any pleading may be amended or corrected or any omission supplied prior to notice of hearing. After notice of hearing, it will be in order to move for leave to amend in accordance with Rule R1-7.

(g) Copies Required. — The original paper version of all pleadings shall be filed with the Commission (unless filed electronically pursuant to Rule R1-28 or otherwise provided by Commission Order or Rule ), and shall include a certificate that a copy thereof has been served upon each party of record in the cause or upon counsel of record in accordance with Rule R1-39.

Exception 1. For filings by Class A & B electric, telephone, and natural gas utilities under Rules R1-7, R1-15, R1-17, R1-17B, R1-24, R8-60, and R8-60A an original plus 12 paper copies shall be provided to the Commission.

Exception 2. For filings by Class A and B water and sewer utilities for rate increases or transfers, an original plus 12 paper copies shall be provided to the Commission. For all other filings by Class A and B water and sewer utilities, an original plus 7 copies shall be provided to the Commission.

For filings by Class C water and sewer utilities for rate increases or transfers, an original plus 2 shall be provided to the Commission. For all other filings by Class C water and sewer utilities, an original plus 2 copies shall be provided to the Commission.

Exception 3. For filings of applications by motor carriers under Rule R2-8(a)(1) and (b)(1), an original and 3 copies shall be provided to the Commission.

In addition to the requirements above, when applicable, a single-sided copy of testimony and exhibits of expert witnesses shall be filed for the benefit of the Court Reporter.

NOTE: A photocopy which has been signed after copying shall be considered an original.

(h) Computation of Time. — See Rule R1-27.

(i) Filing by Mail. — See Rule R1-28.

*(NCUC Docket No. M-100, Sub 7, 12/30/65; NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 45, 9/27/71; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 64, 10/28/75; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. W-100, Sub 12, 2/22/94; NCUC Docket*

*No. W-100, Sub 17, 4/8/97; NCUC Docket No. M-100, Sub 128, 11/30/01.; NCUC Docket No. M-100, Sub 133, 2/2/06; NCUC Docket No. M-100, Sub 134, 3/11/10; NCUC Docket No. M-100, Sub 136, 6/26/12; Docket No. M-100, Sub 136, 07/13/12; NCUC Docket No. M-100, Sub 139, 11/13/13, NCUC Docket No. M-100, Sub 147, 6/27/17; NCUC Docket No. M-100, Sub 139 10/14/2022; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

#### **R1-06 PROTESTS, GENERALLY**

Except as provided in these rules in particular proceedings, protests shall comply with Rule R1-5. Protests shall be filed at least ten (10) days prior to the date fixed by the Commission for the hearing of the cause, unless the notice of hearing fixes the time for filing protests, in which case such notice shall govern.

#### **R1-07 MOTIONS**

(a) Purpose. — Motions may be addressed to the Commission:

- (1) To make pleadings more specific, or for a bill of particulars,
- (2) To strike irrelevant or immaterial allegations in pleadings,
- (3) To make additional parties, to strike improper parties, or to substitute parties, or for leave to amend pleadings,
- (4) To dismiss a pending proceeding for want of jurisdiction,
- (5) For postponement of a hearing, or of the effective date of an order, or for an extension of time within which to comply with an order of the Commission, or for such other relief as may be appropriate.

(b) Form. — Motions, unless made during a hearing and dictated into the record, shall be in writing, shall comply with the requirements of Rule R1-5(c), shall be signed by the party making the same or by his attorney, and if based on matters which do not appear of record shall be verified or supported by affidavit. Every written motion shall be clearly and concisely stated in a separate paragraph without argument, explanation, or other extraneous statements. The statement of the motion may be followed by one or more paragraphs of explanations, arguments, and briefs in support thereof as the party may consider appropriate. Motions dictated into the record shall likewise be first clearly stated without arguments or explanations.

(c) Copies; Notice to Parties. — Subject to the provisions of Rule R1-21(c) every motion made in a pending proceeding other than those made before the Commission or an Examiner at the time of the hearing, shall be filed with the Commission, with original plus the number of copies specified in Rule R1-5(g), and shall certify that a copy thereof has been served upon each party of record in the cause, or upon the attorney of record of each such party in accordance with Rule R1-39.

(d) Computation of Time. — See Rule R1-27.

*(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 133, 2/2/06; NCUC Docket No. M-100, Sub 136, 6/26/12.)*

#### **R1-08 DOCKET NUMBERS REQUIRED ON PLEADINGS AND PAPERS**

All pleadings, papers and correspondence relating to formal proceedings to which docket numbers have been assigned shall refer to such docket numbers.

#### **R1-09 COMPLAINTS AND PROCEDURE THEREON; ANSWERS**

(a) Who May Complain. — Complaint may be made by the Commission on its own motion or by the Public Staff or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic, or municipal corporation, or any agency of the State of North Carolina, or any electric membership corporation organized under Chapter 117 of the General Statutes, as amended, having an interest in the subject matter of such complaint, or by any public utility.

(b) Contents. — Rule R1-5 will apply to complaints under this rule and, in addition thereto, complaints under this rule shall set forth in numbered paragraphs:

- (1) The full name, post-office address, and the electronic mailing address of each complainant.
- (2) The name, post office address and electronic mailing address of counsel representing the complainant, if any.
- (3) The full name, post-office address, and, if available, the electronic mailing address of each defendant against whom complaint is made.
- (4) A clear, concise statement of the acts or things done or omitted to be done by any public utility, or the respects in which any rule, regulation, or charge fixed by or for any public utility is in violation of any provision of law or of any order or rule of the Commission, or the respects in which any rate, charge, schedule, classification, rule, regulation, or practice is unjust and unreasonable.

(5) The particular relief desired.

(c) Procedure upon Receipt of Complaint. — Upon receipt of a complaint which is in substantial compliance with these procedural rules and which appears to state a cause of action within the jurisdiction of the Commission, the Commission shall serve a copy thereof on each defendant named in the complaint, together with an order directing that the matters complained of be satisfied or that an answer be filed to the complaint within ten (10) days after such service; provided, that the Commission may in particular cases extend or shorten the time for satisfying the complaint or for filing answer thereto.

(d) Satisfaction of Complaint. — If the defendant desires to satisfy the complaint, he shall submit to the Commission, within the time allowed for satisfaction or answer, an original of a statement of the relief which he is willing to give, a copy of which the Commission will transmit forthwith to the complainant. On acceptance of this offer by the complainant with the approval of the Commission, no further proceedings need be taken.

(e) Answer. — The answer must admit or deny each material allegation of the complaint or allege insufficient information on which to admit or deny the same. It shall set forth any new matter relied upon as a defense and shall be so drawn as to fully advise the complainant and the Commission of the particular grounds of defense. The filing of an answer will not be deemed an admission of the sufficiency of the complaint and shall be without prejudice to the right of the defendant to thereafter file a motion to dismiss the complaint for failure to state a cause of action.

(f) Interveners. — Any person or organization having an interest in the subject matter of the complaint may intervene and be made a party to the proceeding by complying with the provisions of Rule R1-19.

(g) Rescinded by NCUC Docket No. M-100, Sub 147, 9/15/2023.

*(NCUC Docket No. M-100, Sub 7, 12/30/65; NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 134, 3/11/10; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

#### **R1-10 APPLICATIONS FOR MOTOR CARRIER OPERATING RIGHTS OF HOUSEHOLD GOODS OR PASSENGERS**

Applications for motor carrier operating rights of household goods and passengers (certificates) must be made on forms prescribed and published by the Commission. Such forms with instructions will be furnished upon request.

*(NCUC Docket No. T-100, Sub 32, 8/23/95.)*

#### **R1-11 PROTESTS TO MOTOR CARRIER APPLICATIONS**

(a) Contents. — Any person or carrier without specific leave to intervene may protest any motor carrier application for operating rights to transport passengers or household goods, or to an application for approval of a sale, lease, or a merger of motor carrier operating rights of household goods or passengers, upon the filing of a protest, under oath, showing that the protestant has an interest in the subject matter of the application, which protest shall set forth, among other things:

(1) A brief but definite description of the operating rights or of other rights or interests of the protestant which will be adversely affected by the granting of the application.

(2) The particular way and manner and the probable extent to which the protestant will be adversely affected by the granting of the application, and if the application is for operating rights (for a certificate) to transport passengers or household goods, and the protestant is a carrier, the protest shall contain information of the kind and in substantially the form and detail shown by the following illustration:

ILLUSTRATION: That the granting of the application will authorize a transportation service in competition with the transportation service which the Commission has authorized the protestant to perform under (certificate number ...), in that, transportation service of the same kind and class may be provided either by the applicant or by the protestant to, from, and between the following points and places:

(1) On U.S. Highway 64 between Lexington and Raleigh.

(2) On U.S. Highway 220 between Greensboro and Rockingham.

(3) On N.C. Highway 49 between Concord and Burlington.

(4) To, from, and between all points and places in the counties of Montgomery, Moore, Randolph and Davidson.

(b) Time for Filing. — Protests, as herein provided, must be filed with the Commission (original and three (3) copies) not less than ten (10) days prior to the date fixed for the hearing; provided, the notice of hearing may fix the time for filing protests, in which case such notice shall govern. All protests shall be signed and verified as provided in Rule R1-5, and shall certify that a copy thereof has been delivered or mailed to the applicant or to applicant's attorney, if any.

*(NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. M-100, Sub 128, 11/30/01.)*

**R1-12 LEASE, SALE, PLEDGE, MERGER, OR OTHER TRANSFER OF MOTOR CARRIER OPERATING RIGHTS**

No lease, sale, pledge, merger, or other transfer of motor carrier operating rights under any certificate issued by the Commission shall become effective except after application to and written approval by the Commission, which application shall be verified, filed with the Commission (original and three (3) copies), and shall set out, among other things, the following:

- (1) The name and post-office address of each party to the proposed transaction.
- (2) An accurate description of the operating rights involved in the proposed transaction, and the certificate number of such operating rights.
- (3) A clear, concise explanation of the exact nature of the proposed transaction, and its purpose. Attach as exhibits copies of all contracts and agreements between the parties constituting a part of the proposed transaction.
- (4) A statement or an exhibit from which the Commission may determine the extent to which such operating rights have been and are being exercised. This may be shown by giving the bus-miles or truck-miles operated under the rights involved within a given period, the amount of traffic (passengers or tons of freight) handled during said period, and the gross revenue received.
- (5) A statement under oath complying with the requirements of G.S. 62-111 as to the debts and claims, if any, against the owner of said operating rights arising out of the operation.
- (6) A statement from which the Commission may determine that the transferee has the facilities, the business experience, the financial ability, and is otherwise qualified to perform the transportation service in a satisfactory manner.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. M-100, Sub 128, 11/30/01.)

**R1-13 PETITION FOR MOTOR CARRIER TO BECOME SELF-INSURER**

(a) Contents. - A motor carrier seeking authority to become a self-insurer will be required to satisfy the Commission that it is in such financial condition as to be able to pay personal injury and property damage claims, within the limits of the self-insurance proposed, without seriously affecting its financial stability or its continued service to the public. The petition for such authority must be verified, filed in triplicate, and set forth, among other things:

- (1) The correct name and post office address of the motor carrier seeking authority to become a self-insurer, and if not a corporation, and not an individual who is the sole owner of the business, the correct name and post office address of each person owning an interest in the business must be given.
- (2) A brief history of the carrier's operations, giving the length of time the business has been operated under the present management, the number of over-the-road buses or trucks, or other units of rolling equipment used in the operation in North Carolina, the approximate bus-miles or truck-miles operated within the State during the last 12 months for which figures are available.
- (3) A statement showing the amount of insurance premiums paid during each year for a period of three years next preceding the filing of the application and the actual amount paid each year during said period by the applicant and the applicant's insurance carrier in settlement of personal injury and property damage claims.
- (4) The amount in which the applicant proposes to become a self-insurer, and if less than the Commission's minimum insurance requirements as provided in Rule R2-36, the amount of excess insurance applicant proposes to carry.
- (5) The plans applicant now has in effect, or proposes to put into effect if permitted to become a self-insurer, for investigating personal injury and property damage claims arising out of the operation and its plans for making available funds for the settlement of such claims.
- (6) Balance sheet, and income and profit and loss statement for the latest available period.

(b) Hearing. - The Commission may approve an application for permission to become a self-insurer without a hearing, but only upon an application which fully warrants it in finding that the applicant is qualified to become a self-insurer to the limits set out in the application.

(NCUC Docket No. M-100, Sub 40, 6/29/71.)

**R1-14 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

(NCUC Docket No. M-100, Sub 33, 6/12/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. R-100, Sub 4, 03/09/99.)

## **R1-15 INVESTIGATION AND SUSPENSION PROCEEDINGS**

Whenever there shall be filed with the Commission by any public utility or carrier, subject to its jurisdiction, any schedule stating new or changed rate or rates, as provided by G.S. 62-134, 62-135, 62-138, 62-140, 62-142, or 62-146, the Commission may, upon protest or complaint of the Public Staff or of any interested party, or upon its own initiative, suspend such rates or charges pending an investigation of the lawfulness thereof, and to that end the following proceedings will be in order:

- (1) Any public utility filing or applying for an increase in rates for electric, telephone, natural gas, water, or sewer service shall notify its customers proposed to be affected by such increase of such filing within 30 days of such filing, which notice shall state that the Commission shall set and shall conduct a trial or hearing with respect to such filing or application within six months of said filing date. All other public utilities shall give such notice in such manner as shall be prescribed by the Commission.
- (2) **Protests or Complaints.** — Protests or complaints against any tariff or schedule of rates or charges filed with the Commission under the provisions of any of the foregoing sections of the statute should be made in writing and filed with the North Carolina Utilities Commission, Raleigh, North Carolina, with a copy to the Public Staff at least ten (10) days before the effective date of the tariff or schedule. Such protests or complaints should comply with the provisions of Rule R1-5; provided, that, in cases of emergency, notice of intention to file such protests or complaints may be given by telegram to the Commission with a copy to the Public Staff and to the publishing utility carrier, agent, broker, or freight forwarder, within the time limits herein provided, but such notice by telegram must be immediately followed by formal protests or complaints in accordance with this rule.
- (3) **Suspension Order.** — If the Commission determines upon such protest or complaint, or upon its own initiative, to suspend such schedule of rates or charges, it shall issue an order suspending the same for a period and in the manner authorized by statute in such cases. A copy of such order shall be served by the Commission on the party filing such schedule and it shall give notice thereof to such other parties as it deems adequate.
- (4) **Reply.** — Within twenty (20) days after service of the Commission's order suspending said schedule, the party filing such schedule may file with the Commission a reply with a copy to the Public Staff [original plus the number of copies specified in Rule R1-5(g)], under oath, of the particular reasons, or conditions relied upon to warrant the Commission in vacating said suspension order.
- (5) **Notice of Hearing.** — When the time and place of hearing shall have been determined, the Commission shall give due notice thereof to all parties to the proceeding and to such other parties as it deems necessary to bring the matter to the attention of those having an interest in the proceeding.
- (6) **Parties.** — Persons having an interest in the subject matter of proceedings under this rule and who have not filed protests or complaints, as provided by subdivision (1) hereof, may become parties to the proceeding by compliance with Rule R1-17(e).

(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 73, 9/12/77; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 128, 11/30/01.)

## **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.)*

#### **R1-17 FILING OF INCREASED RATES, APPLICATION FOR AUTHORITY TO ADJUST RATES**

(a) Application of Rule. — This rule does not apply to the establishment of a rate or charge for a new service, nor to an adjustment or a change of a particular rate or charge for the purpose of eliminating inequities, preferences, or discriminations. It does apply to all applications for or filings of a general increase in rates, fares, or charges for revenue purposes or to increase the rate of return on investment or to change transportation rates, fares, etc. All Class A and B electric, telephone, natural gas, water, and sewer utilities shall file written letters of intent to file general rate applications with the Commission thirty (30) days in advance of any filing thereof.

(b) Contents of Filing or Application. — The filing or application shall clearly set out the reasons or conditions which, in the opinion of the applicant, warrant an increase in applicant's rates, fares, or charges, whether such increase is to be brought about by a change in rate schedules, by a change in any classification, contract, practice, rule, regulation, or otherwise, and said application shall contain, among other things, the following data, either embodied in the application or attached thereto as exhibits:

- (1) Present Charges. — A statement (not necessarily in tariff form) showing the rates, fares, tolls, or other charges presently in effect which the applicant seeks to increase.

- (2) Proposed Charges. — A statement showing the rates, fares, tolls, or other charges which the applicant seeks to place in effect.
- (3) Original Cost. — A statement or exhibit showing the original cost of all property of the applicant used or useful in the public service to which such proposed increased rates relate. If the original cost of any such property cannot be accurately determined, such facts should be stated and the best estimate of the original cost given. In case such property consists of plants or facilities which have been devoted to the public use by some other person, municipality, or utility, and subsequently purchased by the applicant, the purchase price of such plants or facilities must be shown, and also the original cost and accrued depreciation at the time of purchase must be shown, if known.
- (4) Present Fair Value. — If applicant intends to offer proof as to the present fair value of its property, the application shall state the nature of such proof in such form and detail as to disclose fully the method used in obtaining such proof and the accuracy thereof. In the preparation of such data, it is recommended that the various property accounts be identified by the account numbers used in the Uniform System of Accounts.
- (5) Depreciation. — The application shall show the accrued depreciation on said property as shown on applicant's books and the rate or method used in computing the amount charged to depreciation.
- (6) Material and Supplies. — A statement showing the cost of material and supplies which the applicant had on hand on the closing date of the twelve months' period referred to in (8) below. If the amount on hand is more or less than reasonably necessary for efficient and economical operation of the business, an explanation should be made.
- (7) Cash Working Capital. — A statement showing the amount of cash working capital which the petitioner keeps on hand and finds necessary to keep on hand for the efficient, economical operation of the business.
- (8) Operating Experience. — A statement covering the last twelve consecutive months for which data are available, showing
  - a. The gross operating revenues received,
  - b. The expenses incurred, including operating expenses, depreciation, and taxes, and
  - c. The net operating income for return on investment.
- (9) Effect of Proposed Increase. — A statement showing the applicant's estimate of
  - a. The additional annual gross revenue which the proposed increase in rates and charges will produce,
  - b. The additional annual expenses anticipated by reason of such additional gross revenue,
  - c. The net additional revenue which the proposed increase in rates will produce, and
  - d. The rate of return which the applicant estimates it will receive on the value of its property after giving effect to the proposed increase in rates.
  - e. This statement is to include the total capital structure of the utility before and after the proposed increase. Ratios for each component of the capital structure are to be shown with the common stockholders' equity capital and the net income used in the rate of return on the common equity calculation clearly identifiable.
  - f. Every general rate application shall contain a one-page Summary of all proposed increases and changes affecting customers and such Summary shall appear as Appendix 1.
  - g. Rescinded by NCUC Docket No. M-100, Sub 82, 4/27/81.
- (10) Balance Sheet. — The application shall include a balance sheet and income statement for a recent representative period.
- (11) Working Papers to Be Available. — Supporting data and working papers underlying the above exhibits shall be made available promptly upon request in the offices of the Commission or Public Staff in Raleigh or in an office of the public utility in North Carolina designated by the Commission, for examination by all interested parties.
- (12) All general rate case applications of Class A and B electric, telephone and natural gas companies, and Class A water and sewer companies shall be accompanied by the information specified in the following Commission forms respectively:  
For Class A and B Electric Utilities:
  - (a) NCUC Form E-1, Rate Case Information Report — Electric Companies For Class A and B Telephone Utilities:
  - (b) NCUC Form P-1, Rate Case Information Report — Telephone Companies For Class A and B Natural Gas Utilities:

- (c) NCUC Form G-1, Rate Case Information Report — Natural Gas Companies For Class A Water and Sewer Utilities:
- (d) NCUC Form W-1, Rate Case Information Report — Water and Sewer Companies

(13) Repealed.

In the event any affected utility wishes to rely on G.S. 62-133 (c) and offer evidence on actual changes based on circumstances and events occurring up to the time the hearing is closed, such utility should file with any general rate application detailed estimates of any such data and such estimates should be expressly identified and presented in the context of the filed test year data and, if possible, in the context of a twelve (12) month period of time ending the last day of the month nearest and following 120 days from the date of the application. Said period of time should contain the necessary normalizations and annualizations of all revenues, expenses and rate base items necessary for the Commission to properly investigate the impact of any individual circumstance or event occurring after the test period cited by the applicant in support of its application. Any estimate made shall be filed in sufficient detail for review by the Commission.

(c) Supplemental Data. — The Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

Information relating to the change(s) referred to above relied upon by the applicant shall be filed with the Commission ten (10) working days prior to the date that the testimony of the Public Staff and other intervenors is due to be filed to the extent said change(s) are known by the applicant at that time.

To the extent that additional information becomes available subsequent to ten (10) working days prior to the filing of testimony by the Public Staff and other intervenors, such information which will be offered to support change(s) shall be made available to the Commission and other parties as soon as practicable. Under such circumstances the Public Staff and other intervenors shall have the right to address said evidence through additional direct testimony, such option to be exercised at the discretion of the Public Staff and other intervenors.

(d) Notice of General Rate Application and Hearing. — Within thirty (30) days from the filing of any general rate case application by any electric, telephone, or natural gas utility, such utility should provide public notice to its customers in newspapers having general circulation in its service area as follows:

(Public Utility) filed a general rate application with the North Carolina Utilities Commission on (date) requesting an increase in additional annual revenues of approximately (Amount of proposed increase in dollars).

The Utilities Commission will set a public hearing on the rate application within six months from the date of filing and will require detailed Notice to the Public regarding the proposed rates in advance of the Hearing.

The Commission will thereafter prescribe the form of Notice to the Public in the Order scheduling the Hearing.

(e) Parties. — To the end that those affected by any proposed increase in rates or charges may have every opportunity to be heard, such persons may become parties to such proceedings as provided by Rule R1-6, or as provided by Rule R1-19, or without filing formal pleading by entering their appearances of record at the time the cause is called for hearing, as provided by Rule R1-23, but matters settled at prehearing conferences or by stipulations of parties, as provided in G.S. 62-69 will not ordinarily be set aside or changed at the instance of those not parties of record at the time.

(f) Denial of Filing or Application for Failure to Include Material Contents.

- (1) The Commission on its own motion or at the request of the Commission Staff, Public Staff, or any party in interest in any general rate case shall review the filing or application within 15 days after such filing and notify the applicant by letter of any additional information needed to complete the filing under Rule R1-17, and give notice to the applicant of the remedy provided by this rule for securing such information, and give the applicant 5 days to file such additional information in satisfaction of said letter request.
- (2) If any material data or information required by Rule R1-17 (b) is not filed with the tariff or application for rate increase and is not secured after informal request as provided in Rule R1-17 (f)(1) above, the Commission on its own motion or on motion of the Commission Staff, Public Staff, or motion of any party having an interest in the proceeding made within 30 days after the filing of said tariff or application, may order the utility to appear and show cause within a period of 20 days after issuance of said order why said filing or application should not be denied for failure to comply with any material provision of this rule, including the filing of the contents of said application as prescribed under subsection (b) above.
- (3) Such order to appear and show cause why the tariff filing or application should not be dismissed for failure to file material contents thereof shall specify with particularity the alleged deficiency or deficiencies in said tariff filing or application.

- (4) Any utility company served with such a show cause order shall have the right to file all of the data and information and exhibits alleged as deficiencies in said show cause order at any time prior to the hearing on said show cause order or at the hearing on said show cause order and thus satisfy the show cause order, whereupon such show cause order shall be dismissed before or at the hearing set thereon, and the proceeding on the tariff filing or rate application shall proceed as in the case of a properly filed tariff or application for a general rate increase.
  - (5) If the Commission shall find after notice and hearing that the filing or application is incomplete and does not contain material portions of the contents required under subsection (b) necessary for complete determination of the justness and reasonableness of the rates filed or applied for, and that the applicant has failed to file said material data and information necessary for determination of the justness and reasonableness of said rates after notice and opportunity to complete said filing as provided herein, the Commission shall deny said application or dismiss said tariff filing, without prejudice to the refiling of said application or tariff filing with the complete contents prescribed herein.
  - (6) The Commission shall make its determination on such show cause order within ten (10) days after the show cause hearing provided in this subsection, and shall issue an order thereon dismissing the show cause proceeding where such deficiencies are satisfied and continuing the investigation of the application, or dismissing the filing or application for material and unsatisfied deficiencies therein as provided in this subsection.
- (g) Procedure for Applications Under G.S. 62-133(f). — Repealed by NCUC Docket No. G-100, Sub 58, 2/17/92.
- (h) Procedure for Participation in Exploration and Drilling Programs and Approval of Associated Changes in Natural Gas Rates. — Repealed by NCUC Docket No. G-100, Sub 79, 12/02/99.
- (i) Procedure for Filings under G.S. 62-134(d). —
- (1) Any public utility adopting the basic retail rates of its wholesale electricity supplier under the provisions of G.S. 62-134(d), including each subsequent adoption of modified basic retail rates of its wholesale supplier, shall within 30 days of such adoption file with the Commission a Report of Adoption. The Report shall include the following as a minimum:
    - (a) A balance sheet as of a date within three months of the date of adoption.
    - (b) An income statement for the twelve months ending at the date of the balance sheet.
    - (c) An estimate of the revenues to be produced by rates that have been adopted.
  - (2) If the utility elects to adopt the monthly adjustments in the retail fuel charge of its wholesale supplier, then it must adopt decrease adjustments as well as increase adjustments. In such event, the utility shall file with the Commission a letter notice of each such adoption but is not required to file the Report of Adoption required under (i)(1) above.
  - (3) Filings of notice of adoption of basic rate changes under (i)(1) above shall be accompanied by the filing fee required for applications for rate increases but a filing fee is not required with monthly notices of adoption of adjustments to fuel charges.
  - (4) A new docket number shall be assigned to each filing under (i)(1) above. Subsequent monthly filings under (i)(2) above shall be made in the same docket until a new basic rate increase docket is established.
- (j) Repealed.
- (k) Procedure for Rate Adjustments Under G.S. 62-133.4.
- (1) Purpose. The purpose of this Section (k) of Rule R1-17 is to set forth the procedures by which local distribution companies can file to adjust their rates pursuant to G.S. 62-133.4. The intent of these rules is to permit LDCs to recover 100% of their prudently incurred gas costs applicable to North Carolina operations.
  - (2) Definitions. As used in this Section (k) of Rule R1-17, the following definitions shall apply:
    - (a) "LDC" shall mean local distribution company.
    - (b) "Gas Costs" shall mean the total delivered cost of gas paid or to be paid to Suppliers, including, but not limited to, all commodity/gas charges, all direct, transaction-related costs arising from an LDC's prudent efforts to stabilize or hedge commodity gas costs, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, reservation fees, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges, storage charges, service fees and transportation charges, and other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.
    - (c) "Suppliers" shall mean any person or entity, including affiliates of the LDC, who locates, produces, purchases, sells, stores and/or transports natural gas or its equivalent for or on behalf of

an LDC, or who provides hedging tools, including, but not limited to financial tools, designed to stabilize the LDC's commodity prices. Suppliers may include, but not be limited to, interstate pipeline transmission companies, producers, brokers, marketers, associations, intrastate pipeline transmission companies, joint ventures, providers of Liquefied Natural Gas, Liquefied Petroleum Gas, Synthetic Natural Gas and other hydrocarbons used as feed stock, other LDCs and end-users.

- (d) "Benchmark Commodity Gas Costs" shall mean an LDC's estimate of the City Gate Delivered Gas Costs for long-term gas supplies, excluding Demand Charges and Storage Charges as approved in the LDC's last general rate case or gas cost adjustment proceeding. The Benchmark Commodity Gas Costs may be amended from time to time as provided in Section (k)(3)(a).
  - (e) "City Gate Delivered Gas Costs" shall mean the total delivered Gas Costs to an LDC at its city gate.
  - (f) "Commodity and Other Charges" shall mean all Gas Costs other than Demand Charges and Storage Charges and any other gas costs determined by the Commission to be properly recoverable from sales customers.
  - (g) "Demand Charges and Storage Charges" shall mean all Gas Costs which are not based on the volume of gas actually purchased or transported by an LDC and any other gas costs determined by the Commission to be properly recoverable from customers.
- (3) Rate Adjustments Under these Procedures.
- (a) Sales Rates. In the event an LDC anticipates a change in its City Gate Delivered Gas Costs, the LDC may apply and file revised tariffs in order to increase or decrease its rates to its customers as hereinafter provided. The Commission may issue an order allowing the rate change to become effective simultaneously with the effective date of the change or at any other time ordered by the Commission. If the Commission has not issued an order within 120 days after the application, the LDC may place the requested rate adjustment into effect. Any rate adjustment under this Section (k)(3)(a) is subject to review under Section (k)(6).
    - (i) Demand Charges and Storage Charges. Whenever an LDC anticipates a change in the Demand Charges and Storage Charges, the LDC may (as hereinabove provided) change its rates to customers under all rate schedules by an amount computed as follows:  
[(Total Anticipated Demand Charges and Storage Charges - Prior Demand Charges and Storage Charges) X NC Portion\*] / Sales & Transportation Volumes\* = Increase (Decrease) Per Unit  
\*Established by the Commission in the last general rate case.
    - (ii) Commodity and Other Charges. Whenever the LDC's estimate of its Benchmark Commodity Gas Costs changes, an LDC may (as hereinabove provided) change the rates to its customers purchasing gas under all of its sales rate schedules by an amount computed as follows:  
{[Volumes of gas purchased\* (excluding Company Use and Unaccounted For) X (New Benchmark Commodity Gas Costs - Old Benchmark Commodity Gas Costs)] X NC Portion\*} / {Volumes of gas purchased for System Supply\* (excluding Company Use and Unaccounted For)\* X NC Portion\*} = Increase (Decrease) Per Unit  
\*Established by the Commission in the last general rate case
  - (b) Transportation Rate. Firm and/or interruptible transportation rates shall be computed on a per unit basis by subtracting the per unit Commodity and Other Charges included in the applicable firm or interruptible sales rate schedule from the applicable firm or interruptible rate schedule exclusive of any decrements or increments. Commodity deferred account increments or decrements shall not apply to transportation rates unless the Commission specifically directs otherwise. Demand and storage increments or decrements shall apply to transportation rates.
  - (c) Other Changes in Purchased Gas Costs. The intent of these procedures is to permit an LDC to recover its actual prudently incurred Gas Costs. If any other Gas Costs are incurred, they will be handled as in Section (3)(a)(i) if they are similar to Demand Charges and Storage Charges, or as in Section (3)(a)(ii) if they are similar to Commodity and Other Charges.
- (4) True-up of Gas Costs.
- (a) Demand Charges and Storage Charges. On a monthly basis, each LDC shall determine the difference between (a) Demand Charges and Storage Charges billed to its customers in accordance with the Commission-approved allocation of such costs to the LDC's various rate

- schedules and (b) the LDC's actual Demand Charges and Storage Charges. This difference shall be recorded in the LDC's deferred account for demand and storage charges. Increments and decrements for this deferred account, including the portion of the Commodity and Other Charges true-up calculated under Section (4)(b) and apportioned to this deferred account, flow to all sales and transportation rate schedules. Where applicable, the percentage allocation to North Carolina shall be the percentage established in the last general rate case.
- (b) Commodity and Other Charges. On a monthly basis, each LDC shall determine with respect to gas sold (including company use and unaccounted for) during the month the difference between (a) the actual Commodity and Other Charges incurred and (b) the actual Commodity and Other Charges billed to customers. This difference shall be apportioned each month to the LDC's deferred account for commodity and other charges based on the ratio of volumes sold to the volumes purchased for that month. The residual portion of the difference not apportioned to the LDC's deferred account for commodity and other charges shall be apportioned each month to the LDC's deferred account for Demand Charges and Storage Charges. Increments and decrements for Commodity and Other Charges flow to all sales rate schedules.
  - (c) Repealed.
  - (d) Supplier Refunds and Direct Bills. In the event an LDC receives supplier refunds or direct bills with respect to gas previously purchased, the amount of such supplier refunds or direct bills will be recorded in the appropriate deferred account, unless directed otherwise by the Commission.
- (5) Other.
- (a) Gas Costs changes not tracked concurrently shall be recorded in each LDC's appropriate deferred account.
  - (b) The Commodity and Other Charges portion of gas inventories shall be recorded at actual cost and the difference in that cost and the cost last approved under Section (k)(3)(a)(ii) shall be recorded in the deferred account when the gas is withdrawn from inventory.
  - (c) Each LDC shall file with the Commission (with a copy to the Public Staff) a complete monthly accounting of the computations under these procedures, including all supporting workpapers, journal entries, etc., within 45 days after the end of each monthly reporting period. All such computations shall be deemed to be in compliance with these procedures unless within 60 days of such filing the Commission or the Public Staff notifies the LDC that the computations may not be in compliance; provided, however, that if the Commission or the Public Staff requests additional information reasonably required to evaluate such filing, the running of the 60 day period will be suspended for the number of days taken by the LDC to provide the additional information.
  - (d) Periodically, an LDC may file to adjust its rates to refund or collect balances in these deferred accounts through decrements or increments to current rates. In filing for an increment or decrement, the LDC shall state the amount in the deferred account, the time period during which the increment or decrement is expected to be in effect, the rate classes to which the increment or decrement is to apply, and the level of volumes estimated to be delivered to those classes. Any such increments or decrements shall be made on a flat per dekatherm basis for all affected rate classes, unless otherwise ordered by the Commission.
  - (e) Notwithstanding the provisions of this Rule, an LDC may offset negotiated losses in any manner authorized by the Commission.
- (6) Annual Review.
- (a) Annual Test Periods and Filing Dates. Each LDC shall file and submit to the Commission the information required in Section (k)(6)(c) for an historical 12-month test period. This information shall be filed by Toccoa Natural Gas on or before September 1 of each year based on a test period ended June 30. This information shall be filed by Frontier Natural Gas, LLC, on or before December 1 of each year based on a test period ended September 30. This information shall be filed by Piedmont Natural Gas Company, Inc., on or before August 1 of each year based on a test period ended May 31. This information shall be filed by Public Service Company of North Carolina, Inc., on or before June 1 of each year based on a test period ended March 31.
  - (b) Public Hearings. The Commission shall schedule an annual public hearing pursuant to G.S. 62-133.4(c) in order to compare each LDC's prudently incurred Gas Costs with Gas Costs recovered from all its customers that it served during the test period. The public hearing for Toccoa Natural Gas shall be on the first Wednesday of November. The public hearing for Frontier Natural Gas,

LLC, shall be on the first Tuesday of March. The public hearing for Piedmont Natural Gas Company, Inc., shall be on the first Tuesday of October. The public hearing for Public Service Company of North Carolina, Inc., shall be on the second Tuesday of August. The Commission, on its own motion or the motion of any interested party, may change the date for the public hearing and/or consolidate the hearing required by this section with any other docket(s) pending before the Commission with respect to the affected LDC.

- (c) Information Required in Annual Filings. Each LDC shall file information and data showing the LDC's actual gas costs, volumes of purchased gas, weather-normalized sales volumes, sales volumes, negotiated sales volumes and transportation volumes and such other information as may be directed by the Commission. All such information and data shall be accompanied by workpapers and direct testimony and exhibits of witnesses supporting the information.
- (d) Notice of Hearings. Each LDC shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.4 and setting forth the time and place of the hearing.
- (e) Petitions to Intervene. Persons having an interest in any hearing held under the provisions of this Section (k) may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.
- (f) Filing of Testimony and Exhibits by the Public Staff and Intervenors. The Public Staff and other intervenors shall file direct testimony and exhibits of witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of witnesses the intervenor intends to offer at the hearing.
- (g) Filing of Rebuttal Testimony. An LDC may file rebuttal testimony and exhibits within 10 days of the actual receipt of the testimony of the party to whom the rebuttal testimony is addressed.

*(NCUC Docket No. M-100, Sub 29, 5/6/70; NCUC Docket No. M-100, Sub 29, 8/11/70; NCUC Docket No. G-100, Sub 14, 10/15/71; NCUC Docket No. M-100, Sub 46, 12/15/71; NCUC Docket No. G-100, Sub 22, 6/26/75; NCUC Docket No. M-100, Sub 58, 7/18/75; NCUC Docket No. M-100, Sub 64, 10/28/75; NCUC Docket No. M-100, Sub 58, 2/3/76; NCUC Docket No. M-100, Sub 58, 8/4/77; NCUC Docket No. M-100, Sub 73, 9/12/77; NCUC Docket No. E-100, Sub 31, 10/4/77; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. G-100, Sub 22, 8/1/77; NCUC Docket No. M-100, Sub 82, 1/23/79; NCUC Docket No. G-100, Sub 22, 8/8/79; NCUC Docket No. G-100, Sub 40, 8/19/80; NCUC Docket No. M-100, Sub 82, 4/27/81; NCUC Docket No. M-100, Sub 88, 2/17/82; NCUC Docket No. G-100, Sub 40, 9/8/82; NCUC Docket No. M-100, Sub 90, 9/14/83; NCUC Docket No. M-100, Sub 101, 3/23/84; NCUC Docket No. M-100, Sub 90, 8/25/87; NCUC Docket No. W-100, Sub 12, 5/14/91; NCUC Docket No. G-100, Sub 22, 6/19/91; NCUC Docket No. W-100, Sub 12, 9/4/91; NCUC Docket No. G-100, Sub 58, 2/17/92; NCUC Docket No. G-100, Sub 58, 4/9/92; NCUC Docket No. W-100, Sub 12, 2/22/94; NCUC Docket No. G-100, Sub 58, 7/12/94; NCUC Docket No. W-100, Sub 12, 7/14/94; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. W-100, Sub 12, 3/13/96; NCUC Docket No. G-100, Sub 74, 12/4/97; NCUC Docket No. G-100, Sub 78, 06/30/99; NCUC Docket No. M-100, Sub 128, 10/27/99; NCUC Docket No. G-100, Sub 58, 4/18/00; NCUC Docket No. G-100, Sub 58, 10/02/01; NCUC Docket No. G-100, Sub 79, 10/28/03; NCUC Docket No. G-100, Sub 84, 02/11/04; NCUC Docket No. G-100, Sub 87, 07/08/09; NCUC Docket No. G-100, Sub 87, 07/17/09; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. W-100, Sub 58, 03/26/19.)*

## **R1-17A PROCEDURE FOR WATER AND SEWER INVESTMENT PLAN RATE ADJUSTMENTS UNDER G.S. 62-133.1B**

(a) Purpose. – This rule provides the procedures for the approval and administration of the Water and Sewer Investment Plan mechanism authorized under G.S. 62-133.1B.

(b) Definitions. – As used in this rule, the following definitions shall apply:

- (1) "Performance-based metrics" shall mean standards to measure utility operations and management, including the management of capital investment projects, intended to benefit customers by ensuring the provision of safe, reliable, and cost-effective service by the utility. Metrics may also be standards that are intended to drive utility performance or support Commission policy goals provided that they benefit customers by ensuring the provision of safe, reliable, and cost-effective service. In establishing performance-based metrics, the Commission may consider, at a minimum, operational compliance,

customer service, service reliability, and workplace health and safety. Performance-based metrics shall be clearly defined, measurable, and easily verified by stakeholders. The Commission may approve penalties or incentives based on the results of approved metrics. Some metrics may be tracking metrics with or without targets or benchmarks to measure utility achievement.

- (2) "Test Year" or "Base Year" shall mean the 12-month period consistent with the term "Operating Experience" as defined in sub-section (b)(8) of Rule R1-17.
- (3) "Rate Year" shall mean each of the three 12-month periods as approved in a Water and Sewer Investment Plan.
- (3a) "Unplanned Emergency Capital Investments" shall mean capital investments used and useful during a Plan term to address risk of noncompliance with primary drinking water or effluent standards, or to mitigate cyber or physical security risks.
- (4) "Utility" shall mean a water, sewer, or water and sewer public utility.
- (5) "Water and Sewer Investment Plan" or "Plan" shall mean a plan under which the Commission sets base rates and revenue requirements through the banding of authorized returns, and authorizes annual rate changes for a three-year period based on reasonably known and measurable capital investments and anticipated reasonable and prudent expenses approved under the plan without the need for a base rate proceeding during the plan period.
- (6) "Capital Investment Project" shall mean discrete, stand-alone capital investments or sub-project-level capital activities that have identical attributes for both of the following:
  - a. A detailed description, including the reason for and scope of, each proposed capital investment project; and
  - b. The asset account per the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts and the annual depreciation rate for each proposed capital investment project.

(c) Filing Requirements. – A request for a Water and Sewer Investment Plan must be consistent with Rule R1-17 unless otherwise noted in this Section. A utility's application for a Water and Sewer Investment Plan must include the following:

- (1) Identification of the Test Year and three Rate Year periods. The first Rate Year shall begin no later than the first day of the month which includes the end of the statutory suspension period under G.S. 62-134.
- (2) A three-year capital investment plan by rate division that includes the following:
  - a. The estimated costs for all proposed capital investment projects expected to be placed in service in the period starting on the date immediately following the end date specified by the Commission for the update of utility plant in service and continuing through the conclusion of the Plan for which the utility seeks cost recovery through the Plan mechanism.
  - b. A detailed description, including the reason for and scope of, each proposed capital investment project.
  - c. The estimated in-service date of each proposed capital investment project and the related estimated retirements, if applicable.
  - d. The asset account per the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts and the annual depreciation rate for each proposed capital investment project.
- (3) Calculations of rate base, as included for Rate Year revenue requirements, by rate division, with exhibits setting forth the specific method utilized for the calculations.
- (4) All proposed expenses expected to be incurred during each Rate Year by rate division including the following:
  - a. Any forecasts, including all calculations and assumptions, of changes in each expense account.
  - b. Justification for any variation from expense levels proposed in the utility's rate case application.
- (5) To the extent an inflation factor is used to forecast costs included in Rate Year revenue requirements, identification of the GDP index and the inflation rate used in such forecasts.
- (6) Proposed revenue requirements, pro forma revenues, and base rates for each Rate Year by rate division, including supporting calculations and exhibits.
- (7) Proposed Schedule of Rates by rate division for each Rate Year.
- (8) A calculation of the proposed percent increase for each Rate Year, if applicable.
- (9) A proposed banding range for the utility's requested rate of return on equity.
- (10) At least one proposed performance-based metric in each of the following categories:
  - a. Operational compliance.

- b. Customer service.
- c. Service reliability.
- d. Workplace health and safety.

(d) Establishment of Annual Revenue Requirement. – The Commission shall establish the annual revenue requirement for each Rate Year of a Water and Sewer Investment Plan. The annual revenue requirement for each Rate Year may include reasonably known and measurable capital investments and anticipated reasonable and prudent expenses, provided the Commission finds the Plan results in rates that are just and reasonable and are in the public interest, and meets the other criteria of G.S. 62-133.1B.

(e) Banding of Authorized Rate of Return on Equity. – The Commission will authorize a rate of return on equity for each Rate Year revenue requirement calculation consistent with the evidence in the record and will set high and low bands for earned rates of return on equity consistent with G.S. 62-133.1B(g). In setting an authorized rate of return on equity for banding of authorized returns pursuant to this Section, the Commission may consider any decreased or increased risk to a utility that may result from having an approved Plan. A utility with an approved Plan may not apply for a general rate increase pursuant to G.S. 62-133 or G.S. 62-133.1 to be effective before the end of the Plan unless the utility's earned rate of return on equity falls below the low-end range of the band established by the Commission.

(f) Modification. – The Commission may, for good cause shown and after an opportunity for hearing, modify or terminate an existing Water and Sewer Investment Plan for circumstances unforeseen at the time the Plan was established if the Commission determines it is in the public interest. Should a Plan modification be authorized that adjusts previously approved tariff rates, the Commission shall prescribe the form of Notice to Customers.

(g) Annual Review. – The Plan shall be subject to the following:

- (1) Within 45 days after the end of each Rate Year, each utility shall file a report, containing the following information for the preceding Rate Year:
  - a. A report of refunds or credits disbursed to customers by month and reconciliation of EMF activity by month during the Rate Year by rate division and rate type, if applicable.
  - b. An analysis, including results, of the performance-based metrics established by the Commission, and the calculation of any applicable incentives or penalties.
  - c. A statement that the utility's earnings during the subject Rate Year of the Plan fell within, exceeded the high-end, or fell below the low-end of the band of authorized rate of returns established by the Commission.
  - d. A statement of rate base based on North Carolina ratemaking depicting a 13-month average balance for the completed Rate Year.
  - e. A calculation of earned rate of return on equity based on a 13-month average of the actual cost of debt applicable to the utility for the completed Rate Year, and the authorized ratios of capital components approved in the utility's last general rate case proceeding.
  - f. A schedule of the estimated capital investment projects to be placed in-service during the remaining Rate Years of the Plan, including: total in-service costs, in-service date, applicable rate division, NARUC asset account, and annual depreciation rate.
- (2) The Public Staff shall review the utility's report and shall file a report detailing its findings and recommendations no later than four months after the end of each Rate Year of the Plan. The utility may respond to the Public Staff's report within 15 days after such filing.
- (3) When determining the utility's earned rate of return on equity, the Commission may consider pro forma adjustments to the utility's per books capital expenditures, expenses, and revenues. For the purpose of determining whether the rate of return on equity for any Rate Year falls outside of the high and low bands, the earned return on equity shall be calculated based on the capital structure established in the utility's last general rate case, and on a 13-month average of the actual cost of debt.
  - a. If the utility's earned rate of return on equity exceeds the high-end range of the band established by the Commission, the excess earnings shall be refunded to customers as provided in subsection (i) of this rule.
  - b. If the utility's earned rate of return on equity falls below the low-end range of the band established by the Commission, the utility may apply for a general rate increase pursuant to G.S. 62-133 or G.S. 62-133.1.
- (4) The Commission shall issue an order addressing its findings and making effective any reconciliation or adjustment to the Plan it deems appropriate. Any reconciliation or adjustment ordered by the Commission, including any credit to customers of excess earnings above the high end of the banding of authorized rates of returns on equity established by the Commission, shall remain effective for a 12-month period. Any

refund or credit shall be included on customer bills as a separate line item and will not be included in the calculation of earnings performed for annual audit and reconciliation filings.

(h) Experience Modification Factor. – The experience modification factor (EMF) shall be established when applicable to reconcile the difference between the credit ordered by the Commission pursuant to subsection (i) of this section and the actual credit amount applied to customer bills. If the effective date of Rate Year One is before the date of the Commission's Order approving the Plan, the Commission may establish an EMF to account for a delay between the implementation of Rate Year One tariff rates and the effective date of Rate Year One. The EMF shall remain in effect for the 12-month period unless the true up is included in the excess earnings credit calculation.

(i) Credit for Excess Earnings. – If the Annual Review determines that the utility earned higher than the authorized high band rate of return on equity for a Rate Year, the Commission will authorize a credit to applicable utility customers.

- (1) The credit shall be included on customer bills as a separate line item and will not be included in the calculation of earnings performed for Annual Review filings.
- (2) The credit shall be expressed as a percentage carried to two decimal places and shall be applied to the total utility bill of each customer under the utility's applicable service rates and charges.
- (3) Pursuant to G.S. 62-130(e), any amount to be credited to a utility's customers shall include an amount of interest at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.
- (4) The credit percentage shall be computed by dividing the Total Service Revenues for the following 12 months for which the credit will be in effect by the amount to be credited to customers, inclusive of interest. The credit will be effective no later than the first day of the second month following the Commission order authorizing the credit.
- (5) In its order authorizing a credit for excess earnings, the Commission shall include a form of Notice to Customers to be issued with customer bills in the first billing cycle the credit is effective.

(j) Reporting Requirements. – The utility shall make filings addressing each three-month period within the Plan period. The first filing shall be made no later than 45 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall contain the following:

- (1) An earnings report consisting of the following:
  - a. A balance sheet and income statement for the three months and twelve months to date for the utility.
  - b. A statement of the per books net operating income for the three months and twelve months to date for each rate division of the utility based on North Carolina ratemaking.
  - c. A statement of rate base at the end of the three months for each rate division of the utility based on North Carolina ratemaking.
  - d. The number of customers, gallons sold, and service revenue for the three months for each rate division by rate type (meter size, flat rate, etc.).
- (2) A status report which includes by rate division the following information for each capital investment project:
  - a. The costs incurred during the three months.
  - b. The cumulative amount incurred.
  - c. The original and revised estimated total cost for each project.
  - d. The in-service date estimated in the Plan.
  - e. The actual date placed in service or, if not yet placed in service the current estimated placed in-service date.
  - f. A schedule of all changes to the capital investment projects approved in the Plan for the remainder of the Plan period, including the information outlined in subsections (c)(2)(b)-(d) of this Rule for any capital investment project not approved in the original Plan.
- (3) The number of utility customers disconnected for nonpayment for the three-month period and cumulative rate-year to date.

(k) Continuation of Rates. – If the utility does not have a new general rate case effective at the end of Rate Year Three, the rates in effect at the end of Rate Year Three shall remain in effect, and the utility shall continue to file the reports required under subsection (j) of this rule, until further order of the Commission.

(l) Petition for Addition of Unplanned Emergency Capital Investments – Once a Water and Sewer Investment Plan is approved, the utility may file a petition with the Commission for consideration of the addition of certain Unplanned Emergency Capital Investments to be effective no less than 60 days before the beginning of Rate Year 2 or Rate Year 3. Prior to the effective date of the change in rates for Rate Year 2 or Rate Year 3, the Public Staff shall schedule the request for

Commission consideration at the regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the addition of the Unplanned Emergency Capital Investments to the Plan. A utility's petition must include the following:

- (1) A detailed description including the reason for and scope of each capital investment project.
- (2) The estimated in-service date of each capital investment project.
- (3) The asset account per the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts and the annual depreciation rate for each proposed capital investment project.
- (4) Calculations of rate base, as included for Rate Year revenue requirements, by affected rate division, with exhibits setting forth the specific method utilized for the calculations.
- (5) Proposed revenue requirements, pro forma revenues, and base rates for each affected Rate Year by rate division, including supporting calculations and exhibits.
- (6) Proposed Schedule of Rates by affected rate division for each Rate Year.
- (7) A calculation of the proposed percent increase for each Rate Year, if applicable.

(m) Customer Notice. – The notice to customers of the utility's general rate increase application shall include the proposed WSIP and the estimated impact of the charges under the mechanism on the utility's monthly service rates. The notice may be modified if the utility files a Plan only its water or sewer system to reflect that change. The notice shall include the following:

#### Water and Sewer Investment Plan

This filing also includes a request for approval of a Water and Sewer Investment Plan (WSIP) pursuant to G.S. 62-133.1B and Commission Rule R1-17A. This rate-making mechanism will allow the Company to recover the reasonably known and measurable capital investments and anticipated reasonable and prudent expenses approved under the WSIP. In support of this request, the Company has filed a three-year plan with its application which lists proposed water and sewer capital investment projects, anticipated water and sewer expenses, and the proposed rates to be effective in each year of the WSIP. By law, any rate adjustment allowed under an approved WSIP shall not, on an annual basis for years two and three of the WSIP, exceed five percent of the utility's North Carolina retail jurisdictional gross revenues for the preceding plan year. The Commission may, however, consider the addition of certain unplanned emergency capital investments even if such expenditures would cause the cap to be exceeded.

In this WSIP, the Company has requested that the Commission allow it to recover water service revenues of \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three. If the WSIP is approved without modifications, the average monthly water bill for a typical residential customer (based upon monthly water usage of \_\_\_\_\_ gallons) would be \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three. In this WSIP, the Company has requested that the Commission allow it to recover sewer service revenues of \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three. If the WSIP is approved without modifications, the average monthly sewer bill for a typical residential customer (based upon monthly water usage of \_\_\_\_\_ gallons) would be \$\_\_\_\_\_ in year one, \$\_\_\_\_\_ in year two, and \$\_\_\_\_\_ in year three.

The Commission may eliminate or modify any WSIP approved in this case if it determines that elimination or modification is in the public interest.

*(NCUC Docket No. W-100, Sub 63, 1/07/2022; NCUC Docket No. W-100, Sub 63, 6/30/2022).*

#### **R1-17B PROCEDURE FOR PERFORMANCE-BASED REGULATION FOR ELECTRIC PUBLIC UTILITIES UNDER G.S. 62-133.16**

(a) Purpose. – This rule provides the procedures for the approval and administration of Performance-Based Regulation authorized under G.S. 62-133.16.

(b) Definitions. – As used in this rule, the following definitions shall apply:

- (1) "Cost Causation Principle"; "Decoupling Ratemaking Mechanism"; "Earnings Sharing Mechanism"; "Multiyear Rate Plan" or "MYRP"; "Performance Incentive Mechanism" or "PIM"; "Performance-Based Regulation" or "PBR"; "Policy Goal"; and "Tracking Metric" shall have the same definitions as provided in G.S. 62-133.16(a).
- (2) "Plan Period" shall mean the period of not more than 36 months covered by an approved PBR application.
- (3) "Rate Year" shall mean each 12-month period of the MYRP for which base rates as established by G.S. 62-133 and modified by G.S. 62-133.16, are effective.

(c) Technical Conference. – No later than 90 days before an electric public utility gives notice that it intends to file a general rate case that includes a PBR application, the electric public utility shall file a request with the Commission to initiate a technical conference regarding the projected transmission and distribution projects to be included in the PBR application. The Commission will schedule one or more sessions of the technical conference to be conducted within 60 days of receiving a request for a technical conference. The following apply to the technical conference process:

- (1) Any party that desires to participate in the technical conference process shall provide notice to the Commission no later than 15 days prior to the first session of the technical conference. All parties will be provided an opportunity to provide comment and feedback on the electric public utility's technical conference information in the manner prescribed in the Commission order scheduling the technical conference process.
- (2) No later than ten business days before the first session of the technical conference, the electric public utility must file the following information on projected transmission and distribution projects to be included in the PBR application:
  - a. A comprehensive list of programs and major projects accompanied by, for each program and project, the purpose (e.g., capacity increase or reliability), a timeline for construction including the estimated placed in-service date, projected costs, cost-benefit analyses, and any other information, justifying each program and project. Cost benefit analyses shall not be required if a program or project is required by law; and
  - b. An explanation of the need for the proposed transmission and distribution expenditures and how the overall proposal advances system efficiency, reliability, or is necessary to comply with applicable federal operational or design requirements.

(d) Filing Requirements. – An application for a PBR must be filed with a general rate case proceeding initiated under G.S. 62-133, and must comply with Rule R1-17 unless otherwise provided in this Rule. Supporting data and work papers for the information provided by this section shall be provided to the Commission, Public Staff, and any other party to the proceeding. An electric public utility seeking approval of PBR must file the following:

- (1) A proposed Decoupling Ratemaking Mechanism that includes the following:
  - a. The applicable residential rate schedules and riders eligible to be affected by the decoupling.
  - b. The proposed target annual revenue requirement per residential customer unit for each Rate Year, with weather normalization, along with the electric public utility's underlying assumptions, calculations, and methodology.
  - c. Proposed distribution of the weather normalized per residential revenue requirement for each month in each Rate Year, along with the electric public utility's underlying assumptions, calculations, and methodology.
  - d. The projected number of residential customers for each Rate Year, along with the projected number of residential customers for each month of each Rate Year, and an explanation of the calculation or methodology for determining the projected number of residential customers for each month.
  - e. The proposed method for calculating and deferring differences realized between the estimated and actual revenue per customer, including the proposed accounting entries for decoupling true-up entries.
  - f. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated, including the EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each Rate Year, along with the electric public utility's underlying assumptions, calculations, and methodology.
- (2) A proposed MYRP that includes the following:
  - a. A concise, plain statement of the changes in base rates and the time when the change in rates will go into effect with schedules for each Rate Year of the MYRP in the same manner required pursuant to G.S. § 62-134(a).
  - b. A forecast of the weather-normalized revenues and costs for each Rate Year of the MYRP including detailed supporting workpapers.
  - c. A forecast of the required overall return, return on common equity (or its equivalent), and revenue requirement for each Rate Year of the MYRP, including detailed supporting workpapers.

- d. A forecast, for each year of the MYRP, of the kWh sales, kilowatt (kW) load (coincident peak demand, non-coincident peak demand), electric vehicle kWh sales, and the number of expected customers, with weather normalization, including detailed supporting workpapers.
- e. The electric public utility's forecasting methodology used for each of its forecasts, including its forecasts for all costs, energy sales, peak demand, and number of expected customers for each year of the MYRP.
- f. A detailed description of and detailed workpapers supporting all adjustments increasing or decreasing, for each year of the MYRP, operating revenue deductions and capital expenditures above or below the amounts proposed for the general rate case in accordance with G.S. § 62-133.
- g. A calculation of the proposed percent increase in revenue requirements for Rate Years 2 and 3, if applicable, of the MYRP calculated as set forth in the Statute.
- h. A fully adjusted jurisdictional and class cost of service study that includes:
  - i. Total electric cost of service and rates of return on rate base under present rates per books, present rates annualized, and proposed rates for each year of a MYRP annualized;
  - ii. Functionalization and classification of all revenues, rate base, and expenses related to the base year and each subsequent year of a MYRP;
  - iii. A unit cost study for the base year and each subsequent year of a MYRP; and
  - iv. Jurisdictional and customer class allocation factors and accompanying workpapers.
- i. The electric public utility's financing plan for the capital spending projects for each year of the MYRP.
- j. Projected costs, including AFUDC, if applicable, and related workpapers associated with the discrete and identifiable capital spending projects to be placed into service for each Rate Year of the MYRP, including:
  - i. The reason for each capital spending project;
  - ii. The scope of each capital spending project;
  - iii. The timing of each capital spending project, including projected in-service month and year for each capital spending project;
  - iv. The depreciation life of each capital spending project by year;
  - v. Changes expected in the depreciable life of each capital spending project for two years after the conclusion of the MYRP; and
  - vi. The impacts on (a) operating expenses (including operations and maintenance, depreciation, and taxes other than income expenses), and (b) the itemized rate base, related to the construction, and placement into service, of the capital spending projects for each Rate Year of the MYRP.
- k. Projected operating benefits associated with the capital spending projects to be placed in service during each Rate Year of the MYRP, including the methodology, modeling, or other analyses used to determine the projected operating benefits.
- l. A reconciliation, accompanied by detailed workpapers, of the capital expenditures and expenses associated with the capital spending projects set forth in response to subsection j. above with the increases in annual expenses and capital investments set forth in subsections b. and c. above.
- m. A proposed Earnings Sharing Mechanism that provides for the refund to customers of any annual revenues collected from the ratepayers associated with weather-normalized earnings 50 basis points or more above the Commission authorized rate of return on equity. The proposal must include the following:
  - i. The projected, weather-normalized earnings for each Rate Year.
  - ii. The electric public utility's weather normalization methodology, along with all underlying assumptions and calculations.
  - iii. Proposed revenue requirements for each Rate Year of the MYRP.
- n. Proposed base rates and pro forma revenues for each of the years that a MYRP is in effect or a method for calculating the same, accompanied by exhibits that illustrate base rate changes (exclusive of all riders applicable to the electric public utility's service), and workpapers similar in form to those provided for the general rate case pursuant to G.S. § 62-133, with exhibits including the base revenues and associated rates for the NC retail jurisdiction, each customer class and rate schedule.

- o. A proposed allocation of the electric public utility's total revenue requirement among customer classes for each Rate Year of the MYRP based upon the Cost Causation Principle, including the use of minimum system methodology by an electric public utility that allocates distribution costs between customer classes. Interclass subsidization of ratepayers should be minimized to the greatest extent practicable by the conclusion of the MYRP period.
  - p. A new depreciation study prepared within 180 days of the filing of the PBR application. However, an electric public utility serving fewer than 150,000 customers in North Carolina may file a new depreciation study that was prepared within two years of the PBR application date.
- (3) One or more clearly defined PIMs that include the following:
- a. Identification of the Policy Goal targeted by the PIM;
  - b. A detailed explanation of how the proposed PIM supports or advances the Policy Goal;
  - c. An estimate of the impact to annual and total revenue requirements (NC retail jurisdiction and customer classes) that would result from supporting or advancing the Policy Goal;
  - d. Identifiable and measurable metrics that will be used to assess compliance, including but not limited to projections of costs to be incurred, along with information on how the electric public utility intends to evaluate, measure, and verify compliance or achievement, and the proposed resources (labor, contractors, materials, etc.) the electric public utility plans to use to support or advance the Policy Goal; and
  - e. The penalty to be refunded to or the reward to be collected from customers for the proposed PIM accompanied by one or more of the following:
    - i. An explanation of how any savings achieved by meeting or exceeding a specific Policy Goal will be shared with customers.
    - ii. A proposal for differentiated authorized rates of return on common equity (or its equivalent) to encourage utility investments or operational changes to meet a specific Policy Goal; or
    - iii. Proposed fixed financial rewards or penalties based on achievement of specific Policy Goals. To the extent possible, the proposed PIMs should reward the electric public utility for achieving specific outcomes or penalize the electric public utility for not achieving specific outcomes.
    - iv. A detailed explanation of:
      - a) How the proposed penalty or reward will minimize any duplication of other rewards or penalties created by other ratemaking mechanisms authorized by statute or Commission rule; and
      - b) How the electric public utility will distinguish the achievements that are rewarded through the incentives earned by the utility related to its DSM/EE portfolio approved pursuant to Rules R8-68 and 8-69 from those that it proposes to be measured for purposes of any performance incentive pursuant to § 62-133.16.
- (4) The electric public utility may include in its PBR application proposed Tracking Metrics with or without targets or benchmarks to measure electric public utility achievement.
- (e) General Procedures. – The following general procedures apply to a proceeding to consider a PBR application:
- (1) Any PBR application approved by the Commission shall remain in effect for the Plan Period of not more than 36 months.
  - (2) The Commission, on its own motion or at the request of the Commission Staff, Public Staff, or any party of interest in the PBR application proceeding or related general rate case proceeding, may review the sufficiency of the PBR application under the procedures set forth in Rule R1-17(f).
  - (3) The electric public utility shall provide notice of the PBR application to the same extent as provided in G.S. 62-134(a). The notice to customers shall include the proposed tariff rates for each Rate Year in the Plan Period.
  - (4) During the Plan Period, the Commission, with good cause and upon its own motion or petition by the Public Staff, may examine the reasonableness of an electric public utility's rates under a plan, conduct periodic reviews with opportunities for public hearings and comments from interested parties, and initiate a proceeding to adjust base rates or PIMs as necessary. This examination may be consolidated with the Annual Review process under subsection (g) of this Rule.

- (5) An electric public utility may not file a general rate case application to be effective during the Plan Period of an approved PBR application unless the weather-normalized earnings fall below the authorized rate of return on equity. If an electric public utility files a rate case due to weather-normalized earnings falling below the authorized rate of return on equity, the rates in effect under the approved PBR at the time of that rate case filing remain in effect until further order of the Commission.
- (6) The order approving or modifying a PBR application shall address the process for annual adjustments to the ESM Rider, Decoupling Rider, and PIM Rider. Any adjustment ordered by the Commission in the ESM Rider, Decoupling Rider, and PIM Rider shall be effective for a 12-month period.
- (7) The rates in effect at the end of the final Rate Year of the approved PBR shall remain in effect, and the utility shall continue to file the reports required under subsection (h) of this Rule, until further order of the Commission. Unless otherwise provided by Commission Order, the ESM Rider, Decoupling Rider, and PIM Rider shall be reset to \$0 at the end of the Plan Period, after the 12-month period of recovery of the final year adjustment authorized by the Commission under subsection (g) of this Rule.

(f) Rejection of a PBR Application. – In an order of the Commission rejecting a PBR application, the Commission shall establish the electric public utility's base rates under G.S. 62-133 and provide an explanation of any deficiency in the PBR application. The order shall provide a period for the electric public utility to provide notice of its intent to file a proposed cure of the deficiencies, and a time period for the utility to file the proposed cure. The period for the electric public utility to file its proposed cure of the deficiencies will be based on the magnitude of the deficiencies outlined in the order but shall not exceed 90 days.

(g) Annual Review. – The Commission shall evaluate the Decoupling Rider, ESM Rider, and PIM Rider for each of the three Rate Years of the Plan Period. The Commission will establish the procedure for the annual review and issue an order setting forth the procedure based on requirements of this Rule. The Commission's order setting forth the procedure for the annual review will require the utility to provide notice of the Annual Review and will schedule a public hearing. The public hearing may be canceled if no significant protests are received.

- (1) Decoupling Rider. – Within 45 days of the end of each quarter of a Plan Period, the electric public utility shall file a status report outlining its calculation of its proposed adjustment to the Decoupling Rider. Within 60 days of the end of each Rate Year, the electric public utility shall file its proposed adjustment to the Decoupling Rider for the Rate Year. The Public Staff shall file its analysis of the electric public utility's proposed adjustment to the Decoupling Rider for the Rate Year within 60 days of the utility's filing. The quarterly status reports and annual proposed adjustments to the Decoupling Rider filed by the electric public utility must include the following:
  - a. The final applicable residential rate schedules and riders eligible to be affected by the decoupling.
  - b. The finalized proposed target annual revenue requirement per residential customer unit for the preceding Rate Year, with weather normalization, along with the utility's underlying assumptions, calculations, and methodology.
  - c. The proposed distribution of the weather-normalized per residential revenue requirement for each month in the preceding Rate Year, along with the utility's underlying assumptions, calculations, and methodology.
  - d. The number of residential customers for the preceding Rate Year, along with the number of residential customers for each month of the preceding Rate Year, or calculation or methodology for determining the projected number of residential customers for each month.
  - e. The calculation of the total deferred differences between the estimated and actual revenue per customer, and the proposed billing factors to collect or refund the deferred differences, along with detailed supporting workpapers.
  - f. A method for distinguishing kWh sales associated with EVs and the residential class as a whole and an explanation of how those EV sales will be treated; and EV rate schedules or riders that have been excluded from the mechanism, along with the projected number of EV customers and kWh for each month of each Rate Year, along with the utility's underlying assumptions, calculations, and methodology.
- (2) ESM Rider. – The Commission shall examine the earnings of the electric public utility at the end of each Rate Year, as adjusted for weather normalization and any other pro forma adjustments found reasonable and appropriate by the Commission in the PBR proceeding, to determine if the earnings exceeded the authorized rate of return on equity determined by the Commission in the proceeding establishing the PBR. If the adjusted earnings exceed the authorized rate of return on equity plus 50 basis points, the excess earnings above the authorized rate of return on equity plus 50 basis points shall be shared with customers in

the ESM Rider. Any penalty or reward from a PIM approved in the PBR, and any incentives related to demand-side management and energy efficiency measures pursuant to G.S. 62-133.9(f) shall be excluded from the calculation used to determine the ESM Rider. Within 60 days of the end of each Rate Year, the electric public utility shall file its proposed adjustment to the ESM Rider for the Rate Year. The Public Staff shall file its analysis of the electric public utility's proposed adjustment to the ESM Rider for the Rate Year within 60 days of the utility's filing.

- (3) PIM Rider. – The Commission shall evaluate the performance of the electric public utility with respect to a PIM approved in an approved PBR application. Any financial rewards shall be collected from customers and any penalties shall be distributed to customers through the PIM Rider. Within 60 days of the end of each Rate Year, the electric public utility shall file its calculations of all increment and decrement billing factors for the PIM Rider for the Rate Year. The electric public utility shall also file all workpapers and documentation verifying and supporting the results of the metrics used to quantify the results of any PIM. The Public Staff shall file its analysis of the electric public utility's calculations for the PIM Rider for the Rate Year within 60 days of the electric public utility's filing.

(h) Reporting Requirements. – An electric public utility with an approved PBR shall file quarterly reports for each three-month period of the Plan Period. The first filing shall be made no later than 60 days after the first three-month period, and subsequent reports shall be made every three months thereafter. Each filing shall contain the following:

- (1) An earnings report consisting of the following:
  - a. A balance sheet as of the report date and an income statement for the three months and MYRP year-to-date for the electric public utility;
  - b. A statement of the per books net operating income for the three months and Rate Year-to-date for the electric public utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;
  - c. A statement of rate base at the end of the three months for the electric public utility based on the most recent cost of service allocation study filed with the Commission, and on North Carolina ratemaking;
  - d. The number of customers, kWh and kW sold, and service revenue for the three months for each rate division by rate type; and
  - e. A report of refunds or credits disbursed to customers during the three months by rate class by rate schedule.
- (2) A construction status report which includes the following information for each capital spending project:
  - a. The costs incurred during the three months;
  - b. The cumulative amount incurred;
  - c. The original and revised estimated total cost;
  - d. The in-service date estimated in the MYRP; and
  - e. The actual date placed in service or, if not yet placed in service, the current estimated in-service date.
- (3) A report tracking the changes to any capital spending project, approved by the Commission for inclusion in the MYRP. The quarterly report shall include at a minimum, the following items:
  - a. List of projects impacted by the change, including the project name as originally approved, any change in the scope of the project, and any other projects (new or original) that are impacted by the change.
  - b. For each project identified in subparagraph a. above, provide:
    1. The original and revised estimated in-service dates;
    2. A statement explaining the purpose/reason for the change;
    3. The original and revised cost estimates; and
    4. The actual spending in each quarter, year-to-date, and project-to-date.

*(NCUC Docket No. E-100 Sub 178, 2/10/2022)*

#### **R1-18 REPARATIONS AND UNDERCHARGES**

(a) **Reparation Statements; Formal Claims for Reparation Based upon Findings of the Commission.** - When the Commission finds that reparation is due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the utility charges on which reparation is claimed. The statement should not include any utility charges not covered by the Commission's findings, or any utility charges on which complaint was not

filed with the Commission within the statutory period. (See G.S. 62-132.) The statement, together with the said bills on the utility charges, or true copies thereof, should then be forwarded to the utility which collected the charges for checking and certification as to its accuracy. The certificate must be signed in ink by a general accounting officer of the utility and should cover all of the information shown in the statement. If the utility which collected the charges is not a defendant in the case its certificate must be concurred in by like signature on behalf of a defendant.

(b) Applications of Transportation Companies to Award Reparation or Waive Collection of Undercharges. - Whenever application is made to the Commission with copies to the Public Staff to award reparation or waive collection of undercharges on shipments that have moved between points in North Carolina, in addition to full explanation in justification of said applications, Form No. 1, at the end of this rule, shall be submitted also and same shall be handled in manner outlined in the preceding subsection.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

## FORM NO. 1.

**IMPORTANT.-Before making out statement read Rule R1-18 carefully.**

**Form No. 1. - Form of Reparation or Waiver of Undercharge Statement Under Rule R1-18.  
Claim No. \_ of Richard Roe under the decision of the Utilities Commission in Docket No. \_**

**For full text of form, please see the 1995 Edition.**

### **R1-19 INTERVENTION**

(a) Contents of Petition. - Any person having an interest in the subject matter of any hearing or investigation pending before the Commission may become a party thereto and have the right to call and examine witnesses, cross-examine opposing witnesses, and be heard on all matters relative to the issues involved, by filing a verified petition with the Commission giving the docket number and title of the proceeding and the following information in separately numbered paragraphs:

- (1) The correct name, post-office address and electronic mailing address of the petitioner.
- (2) The name, post office address and electronic mailing address of counsel representing the petitioner, if any.
- (3) A clear, concise statement of the nature of the petitioner's interest in the subject matter of the proceeding, and the way and manner in which such interest is affected by the issues involved in the proceeding.
- (4) A statement of the exact relief desired.

(b) When Filed. - Petitions under this rule shall be filed with the Commission not less than 10 days prior to the time the proceeding is called for hearing, unless the notice of hearing fixes the time for filing such petitions, in which case such notice shall govern. A petition, which for good cause shown was not filed within the time herein limited, and which neither broadens the issues nor seeks affirmative relief, may be presented to and allowed or denied by the presiding official, in his discretion, at the time the cause is called for hearing.

(c) Copies Required. - See Rule R1-5, Subsection (g).

(d) Leave. - Leave to intervene filed within the time herein provided, in compliance with this rule and showing a real interest in the subject matter of the proceeding, will be granted as a matter of course, but granting such leave does not constitute a finding by the Commission that such party will or may be affected by any order or rule made in the proceeding. Failure of any party to file answer or reply to such petition for leave to intervene does not constitute an admission of the facts stated in such petition, nor a waiver of the right to move to dismiss said petition at the time the cause is called for hearing for failure to comply with this Rule.

(e) Notices of Intervention by the Public Staff. - Notices of Intervention by the Public Staff shall be deemed recognized without the issuance of any order. As a general rule, Notices of Intervention by the Public Staff need not be filed in advance of any hearing and appearances may be made and noted at the hearing. If the Public Staff elects to do so, Notices of Intervention may be filed in certain cases. The filing of testimony and exhibits and otherwise complying with all other Rules and Regulations of the Commission are not affected by this provision.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 128, 11/03/99; NCUC Docket No. M-100, Sub 134, 3/11/10.)

### **R1-20 PREHEARING CONFERENCES**

(a) Purpose. - Upon written notice by the Commission in any pending proceeding, or by the chairman of the Hearing Division or any Hearing Commissioner or Examiner to whom any such proceeding has been referred for hearing, the parties or their attorneys may be directed to appear before the Commission, or such Commissioner or Examiner, at a time and place designated in such notice, for a conference for the purpose of formulating issues and consideration of:

- (1) The simplification of issues;
  - (2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;
  - (3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports and the like, to the end of avoiding the unnecessary introduction of proof;
  - (4) The procedure at the hearing;
  - (5) The limitation of the number of witnesses;
  - (6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and
  - (7) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.
- (b) Facts Disclosed Privileged. - All facts disclosed during a prehearing conference shall be privileged and, unless agreed upon by the parties involved and read into the stenographic record of the proceeding, shall not be used against the participating parties either before the Commission or elsewhere unless substantiated by other evidence.

## **R1-21 CONDUCT OF HEARINGS AND INVESTIGATIONS**

(a) Open to the Public. — All formal hearings and investigations shall be open to the public.

(b) Notice.

- (1) Proceedings in Which There Is Only One Party. — In proceedings in which there is only one party, hearings may be held at any time convenient to the Commission and to the party to the proceeding, with or without a public notice, in the discretion of the Commission.
- (2) Posting of Notice. — In addition to other notice of hearings required by statute, notice of the date and place of all public hearings shall be posted on the bulletin board in the Office of the Chief Clerk of the Commission at least ten (10) days in advance of the date set for the hearing. Notice of all postponements of such hearings shall immediately be posted on said bulletin board.
- (3) Publication of Notice. — In formal proceedings the Commission may, at its discretion, in addition to other notice, give or require to be given general notice of the substance of the application, petition, or complaint and the date and place of the hearing in a newspaper, or newspapers, for such length of time as the Commission may designate.
- (4) Mailing Lists. — General mailing lists for copies of applications, petitions, protests, notices or orders will not be maintained but persons interested in specific matters under investigation should request the Commission to place their names on the mailing lists in connection with such specific matters.

(c) Motions. — Any motion made at the instance of an adverse party, the granting of which will summarily terminate a hearing of a cause, or necessitate the postponement of the same, must be filed with the Commission in writing at least ten (10) days before the date set for the hearing, which motion shall certify that a copy thereof has been served upon each party of record in the cause, or upon their attorneys of record in accordance with Rule R1-39. This rule shall not apply to motions which necessarily arise during the course of the hearing to which they relate.

(d) Procedure at Hearings. — Hearings shall be conducted by and before the Full Commission, Commission Panel, Commissioner or Examiner as provided in G.S. 62-76, and except as otherwise directed in the particular case, the presiding Commissioner or Examiner:

- (1) Shall call the proceeding for hearing, giving the title of the proceeding, its docket number, and the nature and purpose of the hearing;
- (2) Shall cause to be entered in the record the kind of notice given of the time, place, and nature of the hearing, and the date or dates such notice was given;
- (3) Shall take the appearances, which shall be filed in writing with the court reporter and shall also be stated orally for the record.

(e) Order of Receiving Evidence. — Unless otherwise directed by the presiding Commissioner or Hearing Examiner, evidence will ordinarily be received in the following order:

- (1) Upon investigation on motion of the Commission: (i) Commission Staff, (ii) Public Staff, (iii) Respondent, and (iv) rebuttal by Commission Staff or Public Staff.
- (2) In investigation and suspension proceedings: (i) Respondent, (ii) Public Staff, (iii) Commission Staff, (iv) Protestants, and (v) rebuttal by Respondent.
- (3) Upon applications and petitions: (i) Applicants or Petitioners, (ii) Protestants, (iii) Public Staff, (iv) Commission Staff, and (v) rebuttal by Applicant or Petitioner.

- (4) Upon investigations after motion by the Public Staff: (i) Public Staff, (ii) Respondent, (iii) Intervenors, (iv) Commission Staff, and (v) rebuttal by Public Staff.
  - (5) Upon formal complaints: (i) Complainant, (ii) Defendant, (iii) Public Staff, (iv) Commission Staff, and (v) rebuttal by Complainant.
  - (6) Upon order to show cause: (i) Commission Staff, (ii) Public Staff, (iii) Respondent, and (iv) rebuttal by Commission Staff.
- (f) Testimony by Public Staff or Commission Staff.
- (1) Investigations made by the Public Staff or Commission Staff in any pending proceeding shall be reported to the Commission in writing, a true and correct copy of which shall be filed with the official records of the proceeding at least twenty (20) days prior to the hearing of the cause, and may be inspected by any party to the proceeding or by any other person.
  - (2) Such report may be offered in evidence by any party to the proceeding, or by the Commission, subject to the same rules of evidence that apply to other exhibits offered in evidence.
- (g) Public Witness Testimony.
- (1) Witnesses must register his or her name on a sign-up sheet in the hearing room prior to his or her testimony.
  - (2) After calling the hearing to order as provided in section (d), the presiding Commissioner or Examiner shall outline the procedure to be followed for testimony and shall establish hearing room decorum standards.
  - (3) Witnesses will be called according to the order of registration on the sign-up sheet. The presiding Commissioner or Examiner reserves the right to re-order the witnesses in order to provide the Commission with a full spectrum of opinions and ideas.
  - (4) Each witness shall state his or her name and address and the association, if any, that he or she represents at the time of his or her testimony. The presiding Commissioner or Examiner may limit the scope of the testimony to matters specified in the notice of public hearing.
  - (5) To allow each witness an equal amount of time to testify or to prevent cumulative, repetitive, irrelevant or unnecessary testimony, the presiding Commissioner or Examiner may establish time limits for the presentation of testimony within his or her discretion and may limit testimony to five minutes or less per witness.
  - (6) Any witness testifying may extend his or her remarks in written form, but written testimony must be submitted at the time of his or her oral testimony at the public hearing. Any witness may submit written testimony in lieu of oral testimony, but any written testimony must be submitted by the witness during the public hearing and subject to cross-examination.
  - (7) Only one witness may testify at a time and shall refrain from testifying to matters not specified in the notice of public hearing. Witnesses are providing testimony to the Commission and should not address non-Commission participants in the hearing room and may not ask questions. As testimony must be recorded, the presiding Commissioner or Examiner may limit unconventional modes of testimony to ensure accuracy of the record.
  - (8) To allow all witnesses to be heard and properly transcribed by the court reporter, the presiding Commissioner or Examiner shall have the right to instruct the removal of any member of the audience attempting to participate either verbally or visually during testimony. Members of the audience shall not bring signs or placards into the hearing room.
  - (9) The presiding Commissioner or Examiner, at his or her discretion, may modify the rules for public witness testimony.
- (h) Transcript. — The transcript of matters heard before the Commission or before an Examiner shall contain the docket number, date of hearing, title of the cause, testimony offered, objections, rulings on objections, exceptions, and such motions, rulings, and orders as may be made during the course of the hearing. Unless directed by the Commission or the Examiner, the reporter's transcript of the proceedings shall not include oral arguments or contentions of the parties. Copies of transcripts will not be furnished parties unless written order therefor shall have been given to the court reporter prior to or at the close of the hearing.
- (i) Discussion Pending Decision. — After the close of the hearing it is improper for the parties to discuss the case with the Commission pending the decision, or to induce others to do so by letter, wire, or by any other means. G.S. 62-70 prohibits ex parte contacts without notice to all other parties.
- (j) Notice of Orders and Decisions. — When an order or decision of the Commission, or the report and recommended order of an Examiner, as the case may be, is ready to be made and entered in the cause, copies thereof shall be mailed, delivered or transmitted by electronic mail to all parties to the proceeding or their attorneys. Copies to parties against whom such order or decision runs shall be under seal of the Commission and shall be mailed to such parties by registered or certified mail unless

the Commission shall direct service by some other means authorized by law. Any party against whom such order or decision runs may consent to service of those orders or decisions by electronic mail in lieu of being served personally or by registered or certified mail by filing a written waiver and consent to receive service by electronic mail with the Clerk; provided, such consent shall remain effective until thirty days after the party has notified the Commission in writing that its consent to receive service by electronic mail has been revoked. The Commission may serve other parties to the proceeding by first class mail or electronic mail. (G.S. 62-63 and G.S. 62-79.)

*(NCUC Docket No. M-100, Sub 29, 5/6/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 133, 2/2/06; NCUC Docket No. M-100, Sub 134, 3/11/10; NCUC Docket No. M-100, Sub 143, 12/15/15.)*

## **R1-22 PRACTICE BEFORE THE COMMISSION**

(a) In all proceedings wherein pleadings are filed and a formal hearing is held involving the taking of testimony and the formulation of a record subject to review by the courts, no person may appear in a representative capacity other than an attorney at law, duly qualified and entitled to practice before the Supreme Court of the State of North Carolina. (See G.S. Ch. 84.)

(b) This rule does not limit the right of any individual to plead his own cause before the Commission and to call and examine witnesses in his own behalf, and to cross-examine the opposing witnesses. Neither does this rule limit the right of any individual, whether called as a witness or not, to testify in any hearing or investigation before the Commission with respect to facts pertinent to the issues involved.

## **R1-23 APPEARANCES**

Parties shall enter their appearances in proceedings before the Commission at the time the cause is called for hearing by giving their names and addresses in writing to the reporter, who will include the same in the record of the proceeding. Appearance may be made on behalf of any party by counsel, and thereafter all notices, pleadings and orders in the cause may be served upon such counsel, and such service upon counsel shall be considered valid service for all purposes upon the party represented by such counsel. Counsel making an appearance on behalf of any party shall give their name, post office address and an electronic mailing address to the reporter, who will include the same in the record of the proceeding. The Commission may, in addition, require appearances to be stated orally, so that the identity and interest of all parties may be made known to those present and having an interest in the subject matter of the proceeding.

*(NCUC Docket No. M-100, Sub 134, 3/11/10.)*

## **R1-24 EVIDENCE**

(a) Admissibility, Generally. — Any evidence admissible under the General Statutes of North Carolina, or under the rules of evidence applicable in civil actions in the superior court of this State, will be admissible in investigations and hearings before the Commission.

(b) Judicial Notice. — The provision with respect to judicial notice set forth in G.S. 62-65(b) will apply to investigations and hearings before the Commission.

(c) Stipulations. — The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Commission or entered in the stenographic record at the time of the hearing, agree upon the facts or any portion thereof involved in the controversy, which stipulations shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practical. The Commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

(d) Prepared Statements. — A witness may read into the record as his testimony statements of fact prepared by him, or written answers to questions of counsel; provided, such statements shall not include argument; provided, further, that before such statements are read or offered in evidence a copy thereof shall be delivered to the presiding officer, a copy to the reporter, and copies to opposing counsel, as may be directed by the presiding officer. The admissibility of such written statements or questions and answers shall be subject to the same rules as if such testimony were produced in the usual manner.

(e) Abstracts of Documents. — When documents are numerous, such as freight bills or bills of lading, and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract in an orderly manner of the relevant data from such documents shall be prepared and offered as an exhibit, giving other parties to the proceeding reasonable opportunity to examine both the abstract and the documents.

(f) Hearing Exhibits, Generally.

- (1) Size and Identification. — It is desirable, when practical, that exhibits be on paper of uniform size not exceeding 8½" x 14", and that each exhibit be distinguished from other exhibits by a short title descriptive of the subject matter of the exhibit, by an identification number or letter and by the name of the witness,

and that all exhibits produced by a single witness be assembled and bound together, properly indexed, and offered as a single exhibit.

- (2) Records and Documents. — For the purpose of identification and for the purpose of the record on appeal, all records or documents in the files of the Commission and other matters of a documentary nature when offered and admitted in evidence must be read into the stenographic record of the proceeding, or a true copy thereof offered as an exhibit. Records or documents of more than one hundred words must be offered in the form of an exhibit.
- (3) Copies. — Unless otherwise provided by Order of the Commission, an original plus 12 paper copies of each exhibit shall be provided for the use of the Commission, plus a copy for each party to the proceeding.

(g) Pre-filed Expert Witness Testimony and Exhibits.

- (1) Proposed Initial Direct Testimony to Be Reduced to Writing. — The proposed initial direct testimony of an expert witness, including accountants, auditors and engineers, in rate cases and in other proceedings involving detailed and complicated computations, audits, cost studies, appraisals, tables of figures, graphs, charts, drawings, and other exhibits of a similar nature, shall be reduced to writing, which shall include a brief statement in narrative form of the qualifications of such witness (training and experience), and that the exhibits proposed to be offered in evidence were prepared by or under the direction of such witness. The witness shall explain in writing each exhibit in such detail as to make the same understandable.
- (2) Time of Filing. — Except as provided below, the testimony for the applicant of such expert witnesses shall be filed with the Commission at least 60 days prior to the date set for the hearing in general rate cases, and at least 30 days prior to the date set for the hearing in all other cases. Testimony of such expert witness in rebuttal shall be prepared in the same manner and form, and shall be filed with the Commission at least 10 days prior to the date fixed for the hearing. The Commission Staff, Public Staff, Attorney General and all other Intervenor or Protestants shall file all testimony, exhibits and other information which is to be relied upon at the hearing 20 days in advance of the scheduled hearing. When filed, all such exhibits shall be made available immediately to adverse parties of record, and to others having an interest in the proceeding. Class A & B electric, telephone, natural gas, water, and sewer utilities shall file with and at the time of any general rate case application all testimony, exhibits and other information upon which any such utility will rely at the hearing. Class C water and sewer utilities shall file 45 days prior to the hearing on the general rate case application all testimony upon which such utility will rely. In general rate cases of Class A & B electric, telephone, natural gas, water and sewer utilities, the Commission Staff, Public Staff, Attorney General and all other Intervenor or Protestants shall file all testimony, exhibits and other information which is to be relied upon at the hearing 30 days in advance of the scheduled hearing, and any testimony for the utility in rebuttal shall be filed 15 days prior to the hearing.
- (3) Copies Required. — An original plus 12 paper complete copies of the testimony and exhibits of each expert witness, as required by this rule, shall be provided to the Commission for its use.
- (4) Procedure at Hearing. — The testimony of an expert witness, prepared and submitted as provided by this rule, may be identified by the witness, offered in evidence, and made a part of the record without further formality or further explanation, and the witness immediately tendered for cross-examination; provided, that any party to the proceeding shall have the right to object to or move to strike all or any part of such testimony by filing such objection or motion with the Commission in writing at least five (5) days prior to the date fixed for the hearing; provided further, that if upon such objection or motion all or any part of the proposed testimony is excluded, the party offering the same shall be allowed to offer other testimony in lieu of that excluded by the same or other witnesses without the necessity of advance filing.
- (5) Relief from Subdivisions (1) to (4). — Relief from the provisions of subdivisions (1) to (4) of this subsection may be granted by the Commission, after notice of hearing and before the date of hearing, in cases in which it appears by stipulation of counsel for the respective parties that the oral testimony or exhibits of expert witnesses will not be of such technical or complicated nature as to warrant a recess of the hearing for study and preparation of cross-examination.

(h) Subpoenas. — Subpoenas may be issued by the Commission on its own motion for the attendance of witnesses or for the production of books, records, and documents considered necessary for the information of the Commission, and may be issued at the instance of a party to the proceeding upon written request therefor; provided, that the request for the production of books, papers, records, and documents shall specify the books and records desired and purpose for which the same are desired.

(i) Letters, Telegrams and Petitions. — G.S. 62-65 requires the Commission to adhere to the rules of evidence applicable to civil actions in the superior court, insofar as practicable. Letters, telegrams and petitions sent to the Commission concerning

matters pending before it for hearing violate the rules of evidence, and sending such communications to the Commission, or inducing others to do so, will not be looked upon with favor by the Commission.

(j) Numbering of Testimony Lines. — Each individual sheet of testimony and, where practical, exhibits and other supporting materials, of all parties shall have each line numbered in the left-hand margin and shall be punched to fit a three-ring binder. Written testimony shall also comply with the requirements of Rule R1-5(c).

*(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 29, 5/6/70; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 58, 7/18/75; NCUC Docket No. M-100, Sub 64, 10/28/75; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. W-100, Sub 12, 5/14/91; NCUC Docket No. W-100, Sub 12, 9/4/91; NCUC Docket No. M-100, Sub 128, 11/30/01; NCUC Docket No. M-100, Sub 136, 6/26/12; NCUC Docket No. W-100, Sub 58, 3/26/19; NCUC Docket No. M-100, Sub 153, 5/22/19; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

## **R1-25 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND BRIEF; SUMMARY STATEMENTS AND REPLY STATEMENTS.**

(a) Any party of record, including the Public Staff, to a proceeding before the Commission, Commission Panel, or before a Hearing Examiner shall, upon request of the presiding Commissioner or Examiner, file proposed findings of fact, conclusions of law, and brief in the cause on all issues. The Presiding Officer shall fix the time within which to file such proposed findings, conclusions and briefs at the hearing or thereafter, and no decision, report, or recommended order shall be made in the cause until after the expiration of the time so fixed.

(b) Contents. — Each proposed finding of fact shall be clearly and concisely stated and numbered. Such statement shall be followed by one or more paragraphs which shall set out or specifically refer to the testimony supporting such proposed findings of fact.

(c) Form; Copies Required. — Rule R1-5, subsections (c) and (g) shall apply to the filing of briefs, proposed findings of fact, and conclusions of law. Parties filing briefs, proposed findings of fact, and conclusions of law shall also submit a copy of their briefs, proposed findings of fact, and conclusions of law via electronic mail addressed to [briefs@ncuc.net](mailto:briefs@ncuc.net) attaching editable noncompressed files in Microsoft Word or ASCII Text format.

(d) Summary Statements. — Pursuant to G.S. 62-15(g) the Public Staff shall in all general rate cases provide to the Commission fifteen (15) days after the close of all general rate hearings Summary Statements and schedules in comparative form setting forth the position of the applicant, the Public Staff and such other intervenors as may be required, with regard to all material facts and matters of which the Public Staff has knowledge or is aware which must or should be considered in determining a public utility's cost of service and/or in the fixing of just and reasonable rates.

With regard to matters at issue, the Summaries shall include such schedules and written narrative explanation so as to clearly and completely show and convey reconciliation of the difference between the parties to the proceeding.

The above mentioned Summary Statements, schedules and reconciliations shall include, but not be limited to, the following:

- (1) Original cost net investment with each component shown separately, e.g., utility plant in service, accumulated depreciation, working capital (show components of working capital separately, e.g., cash, minimum bank balances, materials and supplies, etc.);
- (2) Operating income for return with each component shown separately, i.e., operating revenues, operation and maintenance expenses with fuel expense shown separately, depreciation expense, taxes — other than income, current income taxes — state, current income taxes — federal, investment tax credit — net, deferred income taxes — net, and interest on customer deposits;
- (3) Total company capitalization including absolute dollar amounts and ratios. Also show the annualized embedded cost of debt, the preferred dividend requirement, the end-of-period return on common equity and the end-of-period overall rate of return under present and company proposed rates;
- (4) Calculations of current and deferred state and federal income tax expense; and
- (5) Calculation of replacement cost and fair value.

(e) In rate proceedings involving operating ratios, such operating ratios shall be presented in addition to applicable data set forth above.

(f) Rescinded by NCUC Docket No. M-100, Sub 147, 9/15/2023.

(g) Reply Statements. — Any party desiring to do so may file Reply Statements to the Summary Statement within five (5) days of receipt thereof.

*(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 125, 3/7/95; NCUC Docket No. M-100, Sub 136, 6/26/12; NCUC Docket No. M-100, Sub 139, 11/13/13; NCUC Docket No. M-100, Sub 139, 10/14/2022; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

**R1-26 RECOMMENDED DECISION OF COMMISSION PANEL, HEARING COMMISSIONER OR AN EXAMINER**

(a) Contents. - A Commission Panel, Hearing Commissioner or Examiner to whom a matter has been referred for hearing, as provided in G.S. 62-76 shall include the following in the report to the Commission:

- (1) The docket number and title of the proceeding.
- (2) The time and place of the hearing.
- (3) The appearances entered at the hearing.
- (4) A concise statement of the issues, or of the relief sought.
- (5) Findings of fact set forth separately.
- (6) Conclusions of law.
- (7) A recommended order in the cause.

(b) Service. - Copies of the report shall be served upon counsel of record for the parties who have appeared in the proceeding, or if not represented by counsel, then upon the parties.

(c) Exceptions. - Every report and recommended order made by a Commission Panel, a Hearing Commissioner or an Examiner shall fix a time not less than fifteen (15) days from the receipt thereof by the parties to the proceeding within which any party to the proceeding may file exceptions to such report and recommended order, and no report and recommended order shall become effective until the expiration of the time so fixed for the filing of exceptions, and if exceptions are filed within the time allowed, the report and recommended order shall be automatically suspended pending the ruling and order of the Commission on said exceptions.

Each exception shall be numbered and shall plainly and concisely state in a separate paragraph without unnecessary repetition and without argument the precise matter to which exception is taken. Arguments, explanations, excerpts from court decisions or references to other pertinent matters may be stated in one or more paragraphs following the statement of the exception. Exceptions shall be typewritten or printed and filed with the Commission in triplicate, and shall show by certificate or statement that a copy thereof has been mailed or delivered to each party of record in the case and to their counsel.

*(NCUC Docket No. M-100, Sub 22, 9/15/69; NCUC Docket No. M-100, Sub 75, 10/27/77.)*

**R1-27 COMPUTATION OF TIME**

The time within which any pleading, motion, notice, brief, or exceptions may be filed, or the time within which any act is required to be performed or may be performed, as provided by any rule or order of the Commission, shall be so computed as to exclude the first day and include the last day; provided, that when the last day of any such period falls on Saturday, Sunday, a legal holiday under the laws of this State, or a day on which the offices of the Commission for any reason are not open for business, the computation of time shall omit such day and begin on the first day thereafter which does not fall on any such day. (Not applicable in the computing of time for filing transportation tariffs and minimum rate schedules. See Rule R4-10.)  
*(NCUC Docket No. M-100, Sub 3, 7/30/64.)*

**R1-28 GIVING NOTICE OR FILING PAPERS WITH THE COMMISSION BY MAIL; ELECTRONIC FILING**

(a) Any notice, motion, pleading, or other document or paper may be filed with or served on the Commission by hand delivery, courier service, or United States mail, unless required by statute to be filed or served by some other means, but the same shall not be deemed filed or served until the day and date actually received at the office of the Commission in Raleigh. Rule R1-27 also applies to giving notice of filing papers by mail. In addition, any notice, motion, pleading, or other document may be electronically filed with the Commission using the Commission's online electronic filing system.

(b) An electronic filing may consist of one or multiple files. Confidential information must be redacted from public filings. Each filing must be either public or confidential, and confidential files must be so marked when filed. When a party files confidential information, the party must make two separate filings. The first is a complete copy of the confidential version of the filing with the word "confidential" in the description of the filing. The second is a public filing constituting a complete copy of the filing with confidential information redacted in such a way that the pagination of both the confidential and public filings is the same and with the word "redacted" included in the description of the filing. Except as provided in Section (e) below, do not file paper copies of documents that are filed electronically. Other provisions of any statute, rule, or order regarding the content and format of specific filings remain applicable.

(c) All documents filed electronically should be filed in a text-based, searchable, noncompressed Portable Document Format (i.e., PDF) format rather than in an image file format.

(d) The typed characters representing the name of a person shall be sufficient to show that such person has signed the pleading or other document for purposes of electronic filing. Verification pages, when required, shall be printed, signed, notarized, converted to an electronic format, and included in the electronic filing as a separate file.

(e) The following documents should be filed electronically; provided, however, 12 three-hole punched paper copies of the entire filing, one of which shall be single-sided, must be provided to the Commission on the following business day in lieu of the number of copies required pursuant to the applicable statute, rule, or order. If such filing is made electronically on the day of or day before a hearing on the matter, the paper copies shall be provided to the Commission no later than one hour prior to the scheduled start of the hearing. The failure to provide the required number of paper copies within the prescribed timeframe may result in the electronic filing being rejected and excluded from the record in that proceeding.

- (1) For all Class A and B electric, telephone, natural gas, water, and sewer utilities, applications for or filings of a general increase in rates, fares, or charges for revenue purposes or to increase the rate of return on investment or to change transportation rates, fares, etc. pursuant to Rule R1-17, and all testimony and exhibits of expert witnesses filed by any party to the general rate case proceeding.
- (2) For all Class A and B electric utilities, applications for changes in rates in annual rate rider proceedings pursuant to G.S. 62-133.2, 62-133.8, and 62-133.9, and Rules R8-55, R8-67, and R8-69, and all testimony and exhibits of expert witnesses filed by any party to such proceeding.
- (3) For all Class A and B natural gas utilities, applications for changes in rates in annual prudency review proceedings pursuant to G.S. 62-133.4 and Rule R1-17(k), and all testimony and exhibits of expert witnesses filed by any party to such proceeding.
- (4) Other documents, such as testimony and exhibits of expert witnesses, as ordered in specific proceedings.

In addition to the above requirements, when applicable, copies of testimony and exhibits of each expert witness shall be separated, one from the other, by the use of colored paper dividers such that one witness' testimony or separate exhibit shall not begin on the reverse side of the same page as another when provided to the Chief Clerk's Office.

(f) Fingerprint cards and criminal history record release forms required to be filed by applicants for certificates of exemption to transport household goods pursuant to G.S. 62-273.1 and Rule R2-8.1 may not be filed electronically, but must be filed on paper pursuant to Section (a).

(g) Reports on performance results required to be filed by local exchange telephone companies and competing local providers pursuant to Rule R9-8(d) may be filed electronically, provided that an electronic copy in Excel is also provided to the Public Staff. The electronic copy in Excel may be emailed to the Public Staff at [communications@psncuc.nc.gov](mailto:communications@psncuc.nc.gov).

(h) Both paper and electronic filings must be received by the Commission by 5:00 p.m. Eastern time to be considered to be filed on that business day. A filing may be made electronically at any time, but filings submitted after 5:00 p.m. Eastern time are considered to be filed on the next business day. A filing that does not comply with all applicable statutes, rules, or orders may be rejected, unless the filing is accompanied by a motion requesting a waiver of the applicable requirement of a rule or order and the motion is granted. If a filing is rejected, the document is deemed not to have been filed with the Commission. A filing that requires a filing fee is not considered to be filed until the fee has been submitted to the Commission.

*(NCUC Docket No. M-100, Sub 139, 11/13/13; NCUC Docket No. M-100, Sub 139 & P-100, Sub 99; 05/13/14; NCUC Docket No. M-100, Sub 147, 6/27/17; NCUC Docket No. M-100, Sub 147, 04/17/18; NCUC Docket No. M-100, Sub 147, 7/31/19; NCUC Docket No. M-100, Sub 139, 10/14/22; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

#### **R1-29 SERVICE OF PROCESS AND NOTICES**

Service of any process, order, or notice required by statute shall be deemed to have been made personally on the party to be served when a true copy thereof under the seal of the Commission shall have been delivered to the party to be served by an authorized agent of the Commission, or by mailing the same to such party by registered or certified mail. (G.S. 62-63.)

#### **R1-30 DEVIATION FROM RULES**

In special cases, the Commission may permit deviation from these rules insofar as it finds compliance therewith to be impossible or impracticable.

#### **R1-31 SCHEDULE OF FEES**

The fees and charges of the Commission are set forth in G.S. 62-300.

#### **R1-32 FILING OF ANNUAL REPORTS BY PUBLIC UTILITIES**

(This rule is not applicable to interexchange carriers, pursuant to Order Modifying Ceiling Rate Plan and Financial Reporting Requirements, Docket No. P-100, Sub 72, December 9, 1993, and to competing local providers, pursuant to Rule R17 2(j).)

(a) Pursuant to the provisions of G.S. 62-36 relating to annual reports by utilities, all public utilities doing business in the State of North Carolina and subject to regulation as to franchises, rates or services by the North Carolina Utilities Commission shall electronically file annual reports of the operations of said public utility as soon as possible after the close of the calendar year, but in no event later than the 30th day of April of each year for the preceding calendar year. Such annual reports shall be prepared on forms approved or furnished by the Utilities Commission for the respective utility services offered by such companies; to wit, the appropriate approved form respectively for electric service, telephone service, water service, sewer service, natural gas service, motor carriers of household goods, motor carriers of passengers, and common carriers by water. Where prescribed by the forms furnished or approved by the Commission, such public utilities shall make such annual reports in accordance with the classification of such utility as prescribed by the instructions for said forms; to wit, Class A, Class B, or Class C utility companies, or other classifications, for the respective utility services. All operating data, financial statistics, and other accounting and financial information required for said form shall be furnished in accordance with the respective Uniform System of Accounts prescribed for the said respective utility services, unless otherwise specifically provided by the Commission.

(b) All such annual reports shall show the utility's total operations. If the utility operates in other states in addition to North Carolina, the report shall also show separately stated either the utility's total operations in North Carolina or its total operations in intrastate commerce in North Carolina. Any utility which elects to separately state its total operations in intrastate commerce in North Carolina rather than its total operations in North Carolina shall include therein any interstate operations over which the Commission has rate-making jurisdiction.

(c) The separate statement of total operations in North Carolina or of total operations in intrastate commerce in North Carolina may be shown by supplementary addenda or by different colored insert pages in sequence to the report of total operations. The underlying basis for all separations and allocations used in obtaining the separate statement shall be given in sufficient detail to permit analysis thereof by the Commission.

(d) In the case of public utilities which file annual reports with federal agencies such as the Federal Energy Regulatory Commission, Federal Communications Commission, or Department of Transportation, a copy of said report to the federal agency will comply with this rule insofar as it requires a report of total company operations; provided all said copies shall contain supplementary addenda or different colored insert sheets in sequence showing the required separate statement of total operations in North Carolina or of total operations in intrastate commerce in North Carolina.

(e) The separate statement of total operations in North Carolina or of total operations in intrastate commerce in North Carolina shall show for the separately stated operations

- (1) The original cost of the utility's plant and equipment used therein,
- (2) The portion of the cost thereof which has been consumed by previous use recovered in depreciation expenses,
- (3) The gross revenues derived therefrom,
- (4) The operating and maintenance expenses, actual investment currently consumed through depreciation, and taxes attributable thereto, and
- (5) The net utility operating income derived therefrom.

(e1) In lieu of filing annual report forms furnished or approved by the Commission, or otherwise filing any other information as provided for in Sections (a) through (e) above, incumbent local exchange companies (ILECs) that are price regulated under G.S. 62-133.5(a), and any carrier electing regulation under G.S. 62-133.5(h), may instead satisfy all of their annual reporting obligations by providing the following as soon as possible after the close of the calendar year, but in no event later than the 30th day of April of each year for the preceding calendar year:

- (1) Publicly traded ILECs may provide the Commission with a link to their annual filings with the SEC;
- (2) ILECs that are not publicly traded may annually file copies of their audited financial statements with the Commission;
- (3) CLPs with COLR responsibilities that are publicly traded may provide the Commission with a link to their annual filings with the SEC; and
- (4) CLPs with COLR responsibilities that are not publicly traded may annually file copies of their audited financial statements with the Commission.

(f) Common carriers of passengers and household goods will be in compliance with the provisions of this rule by completing and electronically filing the annual report form prescribed by the Commission.

(g) In addition to filing FERC Form No. 1 as revised by the Federal Energy Regulatory Commission effective on February 5, 1982, for reports to be filed on or before April 30, 1983, and for reports filed thereafter, Electric Companies shall also

electronically file the following financial schedules in addition to the revised FERC Form No. 1, or modify the revised FERC Form No. 1 schedules as follows:

- (1) The following schedules previously included in FERC Form No. 1 but not included in the revised FERC Form No. 1 shall continue to be filed in Revised Form No. 1 and assigned the page numbers indicated below:

Schedule Title	Page Number of Previous Form No. 1	Page Number To Be Assigned Revised Form No. 1
Investments	202	216
Accumulated provision for uncollectible accounts	204	219
Production fuel and oil stocks	209	218-A
Miscellaneous current and accrued assets	210	221
Preliminary survey and investigation charges	212	222
Deferred losses from disposition of utility plant	214-A	222-A
Unamortized loss and gain on reacquired debt	214-B	222-B
Miscellaneous current and accrued liabilities	224	262
Operating reserves	226	263
Investment tax credits generated and utilized	228	274
Gain or loss on disposition of property	300	305
Income from utility plant leased to others	301	306
Particulars concerning certain other income accounts	303	307
Extraordinary items	306	319
Plant acquisition adjustments and accumulated provision for amortization of plant acquisition adjustments	407	325
Sales of electricity — by communities	410-411	302-303
Lease rentals charged	421A-D	328A-D

- (2) The schedule entitled "Charges for Outside Professional and Consultative Services," which was Page 354 of previous Form No. 1 shall be filed as Page 324 of revised Form No. 1, but the previous \$10,000 limit may be increased to \$50,000.
- (3) For Page Numbers 102 and 250 of revised Form No. 1 the electric companies shall file the information requested by these schedules instead of making reference to Securities and Exchange Commission 10-K Report Form.
- (4) [REPEALED.]
- (5) A column (e) entitled "Increase or Decrease" shall be added to Pages 110-113 of revised Form No. 1.
- (6) Columns (c) through (j) of Pages 214C-D of previous Form No. 1 shall be added as Columns (c) through (j) of Page 224 of revised Form No. 1. Column (c) of Page 224 of revised Form No. 1 shall be changed to Column (k).
- (7) The information requested in instruction 1.B of Page 106 of previous Form No. 1 which was omitted from Page 106 of revised Form No. 1 shall continue to be provided on Page 106 of revised Form No. 1.
- (8) Page 337 of revised Form No. 1 shall be filed based on the instructions for Page 304 of previous Form No. 1.

- (9) Pages 350 and 351 of revised Form No. 1 shall be filed based on the instructions for Pages 353-353A of previous Form No. 1.
- (10) [REPEALED.]

Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC (DEP), shall use their annual cost-of-service filings to meet the requirements of Sections (b) through (e) above but shall continue to file the following pages in their annual reports:

- (1) North Carolina Page 301 — Electric Operating Revenues (Account 400) Allocated to North Carolina Electric
- (2) North Carolina Page 304 — Sales of Electricity by Rate Schedule Allocated to North Carolina Electric
- (3) North Carolina Page 447A — Class A Electric Company Statistical Data
- (4) North Carolina Page 450 — Gross Annual Premiums Paid — NEIL Primary Nuclear Property Insurance

*(NCUC Docket No. M-100, Sub 4, 7/21/65; 11/16/65; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. E-100, Sub 45, 5/24/82; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. R-100, Sub 4, 03/09/99; NCUC Docket No. P-100, Sub 72b, 01/02/04; NCUC Docket No. M-100, Sub 132, 11/03/04; NCUC Docket No. M-100, Sub 4, 6/30/11; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. M-100, Sub 160, 3/30/2022.)*

### **R1-33 FILING OF ANNUAL REPORTS BY MUNICIPALITIES**

Pursuant to the provisions of G.S. 62-47, the annual reports therein required to be filed by every municipality furnishing gas, electricity, or telephone service shall be electronically filed on a fiscal year basis for an annual reporting period from July 1st of each year through June 30th of the succeeding year. Beginning with the fiscal year July 1, 1964 - June 30, 1965, and continuing thereafter, such municipal annual reports shall be electronically filed as soon as possible after the close of the fiscal year, but in no event later than November 15th next following the end of said fiscal year. Each such annual report of a municipality furnishing gas, electricity, or telephone service shall be made upon annual report forms furnished or approved by the North Carolina Utilities Commission for the respective service; to wit, the approved annual report form for gas service, the approved annual report form for electric service, and the approved annual report form for telephone service. Such annual reports shall be signed under penalty of perjury by the general manager or superintendent of such utility service in accordance with the requirements of G.S. 62-47.

*(NCUC Docket No. M-100, Sub 4, 7/21/65; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 123, 8/10/93; NCUC Docket No. M-100, Sub 132, 11/03/04; NCUC Docket No. M-100, Sub 160, 03/30/2022.)*

### **R1-34 EXCEPTIONS TO NUMBER OF COPIES TO BE FILED**

In any case where the provisions of this chapter require the filing of a specific number of copies of any document and it appears that there is no reasonable or substantial need for said specific number of copies of documents under the procedures to be observed in the proceeding in which the document is to be filed, or where it is not feasible for other reasons to provide the specific number of copies, upon request of the party filing the document or on its own motion, the Commission may authorize a lesser number of copies by notifying the parties in writing of the number of copies to be filed.

*(NCUC Docket No. M-100, Sub 23, 8/18/69; NCUC Docket No. M-100, Sub 35, 7/3/70; NCUC Docket No. M-100, Sub 56, 5/24/74.)*

### **R1-35 USE OF ACCELERATED DEPRECIATION BY ELECTRIC, WATER, SEWER, GAS AND TELEPHONE UTILITY COMPANIES UNDER FEDERAL TAX REFORM ACT OF 1969**

(a) Electric, water, sewer, gas and telephone utility companies operating in North Carolina are hereby authorized, but not required, to use liberalized or accelerated depreciation and are authorized to normalize the difference between the federal and State income taxes due with the use of accelerated depreciation and the federal and State income tax which would be due with the use of various straight-line depreciation methods for their regular books of account and for rate-making purposes, to the extent such accelerated depreciation and normalization thereof is authorized by Section 441 of the Federal Tax Reform Act of 1969 as enacted by Congress in December of 1969, subject to the terms and conditions provided in this rule.

(b) The accelerated depreciation and normalization of the results thereof for accounting and rate-making purposes shall be authorized on all utility property which qualifies for accelerated depreciation under Section 441 of the Federal Tax Reform Act of 1969.

(c) Utility companies using accelerated depreciation and normalization thereof under this rule shall record deferred operating federal income taxes in a temporary income account to be designated as "Operating federal income taxes deferred - accelerated tax depreciation"; deferred operating State income taxes in an account designated "Other operating taxes"; deferred nonoperating federal income taxes in an account designated "Federal income taxes - nonoperating taxes"; and

deferred nonoperating State income taxes in an account designated "Other nonoperating taxes", and contra credits shall be made to corresponding subdivisions of a temporary balance sheet account to be designated "Reserve for accumulated deferred income taxes - accelerated tax depreciation."

(d) The deferred federal and State income tax funds made available temporarily by the adoption of such accelerated depreciation and normalization thereof on the utility company books should be utilized by said utility company for construction of utility plant, and in no event shall the same be transferred to earned surplus.

(e) Any utility company which has used accelerated depreciation with flow-through methods of accounting as defined in Section 441 of the Federal Tax Reform Act of 1969 is authorized, but not required, to continue such flow-through methods of accounting to the full extent allowed under said Section 441 of the Federal Tax Reform Act of 1969.

(NCUC Docket No. M-100, Sub 32, 5/28/70.)

**R1-36 REPEALED BY NCUC DOCKET NO. E-100, SUB 47, 2/27/84.**

**R1-37 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY QUALIFYING COGENERATOR OR SMALL POWER PRODUCER; PROCEDURE THEREON; REPORTS OF CONSTRUCTION**

(NCUC Docket No. E-100, Sub 41, 10/25/84; NCUC Docket No. E-100, Sub 41, 1/21/86; NCUC Docket No. E-100, Sub 59, 9/10/91; NCUC Docket No. M-100, Sub 128, 01/09/04; NCUC Docket No. SP-100, Sub 21, 08/19/04.) Repealed by NCUC Docket No. E-100, SUB 113, 2/29/08.

**R1-38 INCENTIVE PROGRAMS FOR ELECTRIC AND NATURAL GAS UTILITIES**

(NCUC Docket No. M-100, Sub 124, 10/24/95.)

Repealed by NCUC Docket No. E-100, SUB 113, 2/29/08.

**R1-39 METHODS OF SERVICE TO PARTIES**

Service of pleadings, motions, or other papers to parties of record or to the attorney of record of such party, unless otherwise specified by the Commission, shall be made by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party. (NCUC Docket No. M-100, Sub 133, 02/02/06.)

**ARTICLE 1.**

**GENERAL.**

**R2-01 CARRIERS REQUIRED TO OBTAIN AND KEEP COPY OF ACT AND COPY OF COMMISSION'S RULES**

Every motor carrier shall keep at all times a copy of the Public Utilities Act and these rules and regulations. Copies of same may be obtained from the Commission.

(NCUC Docket No. M-100, Sub 140, 12/03/13.)

**R2-02 CERTIFICATE; VEHICLE IDENTIFICATION, ETC.**

(a) Repealed.

(b) Repealed.

(c) Passengers, fire-fighting equipment, medical and hospital supplies, food, feed, clothing, and other articles necessary for immediate relief of or direct prevention of fires, sickness, accident, storm, flood, or similar catastrophes, may be transported by any person in any available vehicle without notice to or authority from the Commission.

(d) Repealed.

(e) Repealed.

(f) Repealed.

(g) The lease of equipment with driver for use in private transportation of property is prohibited unless the private carrier leases vehicle(s) and driver(s) from a single source on an intrastate basis and the lease contains the following requirements:

- (1) the leased equipment must be exclusively committed to the lessee's use for the term of the lease;

- (2) the lessee must have exclusive dominion and control over the transportation service during the term of the lease;
- (3) the lessee must maintain liability insurance for any injury caused in the course of performing the transportation service;
- (4) the lessee must be responsible for compliance with safety regulations;
- (5) the lessee must bear the risk of damage to cargo; and
- (6) the term of the lease must be for a minimum period of 30 days.

(h) Repealed

(NCUC Docket No. M-100, Sub 14, 10/5/67; NCUC Docket No. M-100, Sub 18, 6/4/69; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 105, 5/14/85; NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-03** Repealed by NCUC Docket No. M-100, Sub 109, 5/20/86.

**R2-04** Repealed by NCUC Docket No. M-100, Sub 109, 5/20/86.

**R2-05** Repealed by NCUC Docket No. M-100, Sub 109, 5/20/86.

**R2-05.1 INSURANCE AND SAFETY REGULATION OF EXEMPT PASSENGER CARRIERS**

In the application of the insurance regulations of the Commission under G.S. 62-260(f) and certificates of exemption under G.S. 62-260(g) the Commission deems that the term "motor carriers" as included in said sections should be construed under the definition in G.S. 62-3(17) to be limited to motor common carriers or motor contract carriers of exempt passengers for hire who have been issued certificates of exemption by the Division of Motor Vehicles.

(NCUC Docket No. M-100, Sub 16, 2/5/68; NCUC Docket No. M-100, Sub 109, 5/20/86.)

**ARTICLE 3. – RENTED OR LEASED VEHICLES**

**R2-06 USE OF RENTED OR LEASED VEHICLES**

(a) No carrier authorized to operate as a common carrier of household goods shall use any vehicle of which such carrier is not the owner for the transportation of household goods for compensation, except under a bona fide written lease from the owner, subject to the following conditions:

- (1) The lessee shall use such vehicles only for purposes and within the territory covered by his certificate of exemption and for the term of the lease.
- (2) The household goods transported shall be transported in the name of and under the responsibility of the said lessee, and under the direct supervision and control of the lessee.
- (3) The drivers of said leased equipment shall be directly supervised and controlled by lessee.
- (4) The name, address, and certificate of exemption number assigned to the lessee shall be displayed on the leased vehicle as required by Rule R2-26.
- (5) The vehicle shall be covered by insurance in the name of the lessee as required by Rule R2-36.
- (6) The lease shall specify a definite effective period, the amount of consideration to the lessor, and shall list and describe the equipment covered.
- (7) A legible copy of the executed lease shall be carried in the leased vehicle at all times, unless a certificate as provided in subsection (a)(8) of this Rule is carried in lieu thereof.
- (8) Unless a copy of the lease is carried on the equipment as provided in subsection (a)(7) of this Rule, the authorized carrier shall prepare a statement certifying that the equipment is being operated by it, which shall specify the name of the owner, the date of the lease, the period thereof, any restrictions therein relative to the commodities to be transported, and the location of the premises where the original of the lease is kept by the authorized carrier, which certificate shall be carried with the equipment at all times during the entire period of the lease. Such certificate shall be in the following form or on such other form as may be submitted to and approved in advance by the Commission:

**CERTIFICATE OF LEASE**

This is to certify that this unit is being operated by \_\_\_\_\_  
 (Name of Authorized Carrier)

\_\_\_\_\_  
(Address)

Under a written lease from: \_\_\_\_\_  
(Name of Owner)

Address: \_\_\_\_\_

Date of Lease: \_\_\_\_\_

Equipment: Make: \_\_\_\_\_ Year: \_\_\_\_\_ Model: \_\_\_\_\_ Serial Number: \_\_\_\_\_

Period of Lease: \_\_\_\_\_

Commodities Authorized: \_\_\_\_\_

I hereby certify that the original lease is on file at \_\_\_\_\_

\_\_\_\_\_  
(Name of Authorized Operating Carrier)

BY: \_\_\_\_\_  
(Duly Authorized Officer)

Exception: The provisions of this rule shall not apply to the interchange of trailers.

(b) No common carrier of household goods shall lease its equipment for private use in the transportation of commodities which it is authorized to transport by authority of the Commission, and no common carrier of household goods shall lease equipment with drivers to private carriers or shippers under any circumstance.

(c) Repealed.

(NCUC Docket No. M-100, Sub 6, 10/15/65; NCUC Docket No. M-100, Sub 18, 6/4/69, 6/9/69; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

## **R2-07 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

### **R2-08.1 APPLICATIONS FOR CERTIFICATES OF EXEMPTION; TRANSFERS, AND NOTICE**

(a) For New Applications.

- (1) Application to operate as a common carrier of household goods must be made on forms furnished by the Commission, and all the required exhibits must be attached to and made a part of the application. The original and three (3) complete copies of the application, including exhibits, must be filed with the Commission with a fourth copy for the Public Staff's Transportation Division.
- (2) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must verify the application. The names and addresses of all principals including the directors and officers for the corporation or member-managers and nonmember managers for an LLC must be given and a certified copy of the corporate charter filed with the application. This does not alleviate the responsibility that all the partners or principals are required to individually submit completed "Authority for Release of Information" forms allowing use of principal's fingerprints for a criminal history records check, pursuant to G.S. 114-19.32, and citizen certifications or employment authorization as set forth in Rule R2-8.1(a)(3)(F and G).
- (3) Pursuant to G.S. 62-261(8), the applicant shall provide proof or certification of the following:
  - a. That the applicant is fit, willing, and able to properly provide the transportation of household goods in intrastate commerce and has a reasonable and adequate knowledge of the moving industry;
  - b. That the applicant is financially solvent and able to furnish adequate service on a continuing basis, including adequate insurance protection, maintenance of safe, dependable equipment, and the financial ability to settle any damage claims for which it is liable;

- c. That the applicant maintains minimum limits of liability insurance coverage of \$100,000/\$300,000/\$50,000, or such higher amount as may be required by federal law, and cargo insurance coverage of \$35,000/\$50,000; and
- d. That the applicant maintains a minimum amount of \$50,000 general liability insurance coverage.
- e. That the applicant certifies that only persons possessing valid driver's licenses will operate the motor vehicles that will be used for transporting household goods;
- f. That the applicant or each of its partners/principals shall submit (i) a completed Fingerprint Card with fingerprints that have been taken and imprinted by a law enforcement agency; (ii) a completed "Authority for Release of Information" form signed by principal consenting to use of his or her fingerprints for a criminal history records check; (iii) a money order or cashier's check in the amount due for criminal history records checks (\$38.00 per principal or as subsequently modified by the Commission), made payable to the "North Carolina Department of Commerce/Utilities Commission," to cover the Commission's direct cost of obtaining a criminal history records check; and
- g. That the applicant or all its partners/principals certifies that he or she (1) is a United States citizen or (2) if not a United States citizen, to submit employment authorization document(s) proving legal status to work within the United States.

(b) For Approval of Sale, Lease, or Other Transfer of Certificate of Exemption. (Also see Rule R2-9.)

- (1) Application for approval of sale, lease, or other transfer of certificate of exemption shall be typewritten, shall be filed with the Commission with a copy to the Public Staff, by providing an original and three (3) copies. Such applications may necessarily differ according to the nature of the transaction involved, but must include the following:
  - a. The names and addresses of all parties to the transaction.
  - b. A full and complete explanation of the nature of the transaction and its purpose.
  - c. That the applicant or all its partners/principals complete the requirements set forth in R2-8.1(a)(3).
- (2) If the application is for approval of a lease of certificate of exemption, a copy of the proposed lease agreement must be filed with the application and must contain the entire agreement between the parties.
- (3) If the application is for approval of a sale of certificate of exemption, a copy of the proposed sales agreement must be filed with the application and must contain the entire agreement between the parties, including the purchase price agreed upon, and all the terms and conditions with respect to the payment of same.
- (4) No sale of a certificate of exemption will be approved unless the seller complies with the provisions of G.S. 62-111 by filing a statement under oath, as therein required, with respect to debts and claims; a statement showing gross operating revenues and total number of miles traveled for the latest three months' period preceding the date of filing the application, or for the latest three months' period preceding the date of authority to suspend operations, if theretofore granted by this Commission; and no such sale will be approved unless the purchaser files with the Commission a statement under oath attesting to his fitness and ability to provide household goods transportation service and of his assets and liabilities from which it must appear that the purchaser is solvent and in financial condition to meet such reasonable demands as the business may require.
- (5) If the transferee is a corporation, a certified copy of its corporate charter must be filed with said application unless same is already on file with the Commission.
- (6) If the application is for approval of a merger of two or more carriers, or of any agreement by which one carrier seeks to acquire an interest in or control over another carrier, the application shall set out the purpose of such merger, combination or agreement, and the extent of any transfers of other properties of the carriers involved, the changes in the financial status and obligations of the individual carriers involved, and all other matters necessary to a full understanding of the transaction and its effect upon other motor carriers.

(c) Notice of Application and Hearings.

- (1) Upon receipt of an application for a certificate of exemption for the transportation of household goods, same shall be made available for review on the Commission's website. Any party desiring to file a protest must do so in writing by setting forth the reasons for the protest and filing that protest with the Commission no later than 15 days from the filing date of the application. Protests may be filed based only upon the applicant's fitness or financial solvency.

- (2) If no protests are filed to the application within the 15-day time period provided for in Rule R2-8.1(c)(1), or as extended by order of the Commission, the Commission may proceed to decide the application on the basis of information contained in the application and such additional information as the Commission may choose to obtain.

(NCUC Docket No. T-100, Sub 49, 02/02/04; NCUC Docket No. T-100, Sub 69, 8/29/08; NCUC Docket No. M-100, Sub 140, 12/03/13.)

**R2-08 APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY;  
TRANSFERS; AND NOTICE.**

(a) For Operating Authority.

- (1) Application for authority to operate as a common carrier must be made on forms furnished by the Commission, and all the required exhibits must be attached to and made a part of the application. The original and three (3) complete copies of the application, including exhibits, must be filed with the Commission with a copy to the Public Staff. The original and the copies shall be fastened separately. A filing fee as set forth in G.S. 62-300 must accompany the application before it is considered as being filed.
- (2) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must verify the application. The names and addresses of the principal managing officers of the corporation must be given and a certified copy of the corporate charter filed with the application.

(b) For Approval of Sale, Lease, or Other Transfer of Operating Authority. (Also see Rule R2-9.)

- (1) Application for approval of sale, lease, or other transfer of operating authority shall be typewritten, shall be filed with the Commission with a copy to the Public Staff, by providing an original and three (3) copies and shall be accompanied by a filing fee as set forth in G.S. 62-300. Such applications may necessarily differ according to the nature of the transaction involved, but must include the following:
  - (A) The names and addresses of all parties to the transaction.
  - (B) A full and complete explanation of the nature of the transaction and its purpose.
- (2) If the application is for approval of a lease of operating rights, a copy of the proposed lease agreement must be filed with the application and must contain the entire agreement between the parties.
- (3) If the application is for approval of a sale of operating rights, a copy of the proposed sales agreement must be filed with the application and must contain the entire agreement between parties, including (i) an accurate description of the operating rights and other property to be transferred, and (ii) the purchase price agreed upon, and all the terms and conditions with respect to the payment of the same.
- (4) No sale of a certificate will be approved unless the seller complies with the provisions of G.S. 62-111 by filing a statement under oath, as therein required, with respect to debts and claims; a statement showing gross operating revenues and total number of miles traveled for the latest three months' period preceding the date of filing the application, or for the latest three months' period preceding the date of authority to suspend operations, if theretofore granted by this Commission; and no such sale will be approved unless the purchaser files with the Commission a statement under oath of his assets and liabilities from which it must appear that the purchaser is solvent and in financial condition to meet such reasonable demands as the business may require.
- (5) If the transferee is a corporation, a photostatic copy or certified copy of its corporate charter must be filed with said application unless same is already on file with the Commission.
- (6) If the application is for approval of a merger of two or more carriers, or of any agreement by which one carrier seeks to acquire an interest in or control over another carrier, the application shall set out the purpose of such merger, combination or agreement, and the extent of any transfers of operating rights or other properties of the carriers involved, the changes in the financial status and obligations of the individual carriers involved, and all other matters necessary to a full understanding of the transaction and its effect upon other motor carriers.

(c) Notice of Application and Hearings.

- (1) Upon receipt of an application for a certificate for the transportation of household goods, same shall be set for hearing and at least twenty (20) days' notice shall be given in the Commission's calendar of truck

hearings, a copy of which shall be mailed to applicant and to any other person desiring it, upon payment of charges to be fixed by the Commission. If no protests are filed to the application within the time provided for in Rule R2-11, or as extended by order of the Commission, the hearing may be cancelled and the Commission may proceed to decide the application on the basis of information contained in the application and sworn affidavits.

- (2) Repealed.
- (3) Upon receipt of an application to operate as a bus company over fixed routes, the Commission, within ten (10) days after the filing of the application, shall cause notice thereof to be given by mail to the applicant, to other bus companies holding certificates to operate in the territory proposed to be served by the applicant, and to other bus companies who have pending applications to so operate. If no protests, raising material issues of fact to the granting of the application, are filed with the Commission within thirty (30) days after the notice is given, the Commission shall proceed to decide the application. If protests are filed raising material issues of fact to the granting of the application, the Commission shall set the application for hearing as soon as possible and cause notice thereof to be given to the applicant and all other parties of record.
- (4) The notice shall give the general nature and scope of the proposed operations and shall also fix the time within which protests, if any, shall be filed to the application. (See Rule R2-11.) See G.S. 62-300.

(NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100 Sub 44, 11/24/98; NCUC Docket No. M-100, Sub 128, 11/30/01; NCUC Docket No. T-100, Sub 49, 02/02/04.)

## **R2-09 SALE, LEASE OR OTHER TRANSFER**

(a) Any carrier operating as a common carrier under any certificate issued by the Commission which proposes to sell, assign, pledge, lease or transfer any right or interest in such certificate or to change its name, or trade name, or enter into any merger, combination, or joint control with any other carrier through purchase of stock or otherwise, shall apply in writing to the Commission with a copy to the Public Staff and obtain its written approval. This rule includes the following:

- (1) A change of name or trade name which does not involve any change of ownership or control.
- (2) Any change in the membership of a partnership, or the creation or dissolution of a partnership, which does not amount to a transfer of the controlling interest in the business to a new party.
- (3) The incorporation of a transportation business which does not involve any substantial change of ownership or control of the business.
- (4) Any pledge of a certificate for the purpose of securing a loan in furtherance of the transportation business of the carrier or any change of control through stock transfer except as provided in example (7).
- (5) A lease of all or any part of the rights represented by a certificate.
- (6) A sale or assignment of rights represented by a certificate.
- (7) Any merger, combination or agreement through purchases of stock or by any other means by which joint or common control of two or more carriers is effectuated.

(b) In examples (1) through (4) the Commission will not give notice to other carriers or conduct formal hearings unless some matter in the particular application appears to require notice and formal hearing.

(c) In examples (5) through (7) notice shall be given and hearings held as in applications for certificates.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. T-100, Sub 32, 8/23/95.)

## **R2-10 GRANTING AUTHORITY**

(a) Unless the applicant elects to accept only the type of authority set out in the application, the Commission will grant such authority as the evidence shows the applicant is entitled to receive; that is to say, if the applicant has misconceived the nature of his proposed operation, or has misconstrued the meaning of terms used in his application, the Commission will disregard the form of the application and grant such authority within the scope of the application as the applicant is entitled to receive upon the facts.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(NCUC Docket No. M-100, Sub 13, 10/5/67; NCUC Docket No. M-100, Sub 34, 6/4/70; NCUC Docket No. T-100, Sub 32, 8/23/95.)

## **R2-11.1 PROTESTS OF APPLICATIONS FOR CERTIFICATES OF EXEMPTION**

- (a) Except for good cause shown, no party or person shall be heard in opposition to an application for a certificate of exemption unless such party or person shall have filed a protest to such application no more than 15 days from the filing date of the application.
- (b) All protests shall be in writing, shall be verified by the protestant, and shall show whether or not the protestant holds a certificate of exemption from the Commission. The protests shall only be based upon the applicant's fitness or financial solvency. Parties holding certificates of exemption may join in one protest signed and verified by one of the parties.
- (c) The original and two (2) complete copies of the protest must be filed with the Commission within the 15-day time period fixed for filing protests, and it must appear in the verification or in some statement attached to the protest that a copy thereof has been mailed or delivered to the applicant or to his attorney, if any, as shown in the application.
- (d) The Commission shall set the application for hearing upon receipt of a valid protest.

*(NCUC Docket No. T-100, Sub 49, 02/02/04.)*

#### **R2-11 PROTESTS OF APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY**

- (a) Except for good cause shown, no party shall be heard in opposition to an application for a certificate unless such party shall have filed a protest to such application not less than ten (10) days prior to the date set for the hearing or within the time specified in the notice.
- (b) No person shall be heard in opposition to any other matter set for hearing before the Commission unless such person shall have filed a protest to such matter not less than ten (10) days before the date set for the hearing unless otherwise specified by the Commission.
- (c) All protests shall be in writing, shall be verified by the protestant and shall show whether or not the protestant holds authority from the Commission, the type of service authorized and the particular way in which the protestant is adversely affected. Parties holding similar authority may join in one protest signed and verified by one of the parties.
- (d) The original and seventeen complete copies of the protest must be mailed or delivered to the Commission within the time fixed for filing protests, and it must appear in the verification or in some statement attached to the protest that a copy thereof has been mailed or delivered to the applicant and a copy to his attorney, if any, appearing in the notice of hearing.  
*(NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 02/02/04.)*

#### **R2-12 INTERVENERS**

Upon request in writing and for good cause shown, a carrier or other person may, in the discretion of the Commission, intervene in support of or against a pending application, subject to such terms and conditions as the Commission may prescribe; provided, however, no person shall be permitted to intervene in opposition to an application who could have with reasonable diligence filed a protest in compliance with Rule R2-11.

#### **R2-13 MOTION FOR CONTINUANCE OF HEARING**

No application which has been set for hearing will be continued or postponed except upon written motion filed with the Commission and all parties not less than ten (10) days prior to the date of the hearing.

#### **R2-14 TESTIMONY**

- (a) Testimony for or against the granting of an application may be oral, in the form of exhibits, or both. Sufficient copies of all exhibits shall be made available for the use of the parties and the Commission and the Public Staff. Exhibits shall contain statements of facts relevant to the particular application without argument or conclusions.
- (b) The Commission will limit the time for direct and cross-examination of witnesses when in its judgment such examinations are repetitious and unnecessarily prolonged. In cases in which protests are substantially the same, the Commission may, in its discretion, limit the cross-examination of witnesses by protestants to one attorney or party. Cumulative testimony or repetition of facts will be limited to reasonable bounds.  
*(NCUC Docket No. M-100, Sub 75, 10/27/77.)*

#### **R2-15 PROOF REQUIRED**

- (a) If the application is for a certificate of exemption to operate as a common carrier of household goods, the applicant shall establish by proof that the requirements of Rule R2-8.1(a)(3) are satisfied.
- (b) Repealed.

(c) If the application is for a certificate to operate as a bus company in the transportation of passengers over fixed routes, the applicant shall establish that it is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with the provisions of Chapter 62 of the Public Utilities Act, and that the transportation to be authorized is consistent with the public interest.

In making any findings relating to public interest under section (c) of this Rule, the Commission shall consider, to the extent applicable, (i) the transportation policy of this State as it relates to bus companies under G.S. 62-259.1 and Chapter 62 of the Public Utilities Act; (ii) the value of competition to the traveling and shipping public; (iii) the effect of issuance of the certificate on bus company service and small communities; and (iv) whether issuance of the certificate would impair the ability of any other fixed route carrier of passengers to provide a substantial portion of its fixed route passenger service, except that diversion of revenue or traffic from a fixed route carrier of passengers, alone, shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of its fixed route passenger service.

(d) Repealed.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 44, 11/24/98; NCUC Docket No. T-100, Sub 49, 02/02/04; NCUC Docket No. M-100, Sub 140, 12/03/13.)

**R2-16.1** Rescinded by NCUC Docket No. M-100, Sub 121, 1/18/91.

#### **R2-16.2 HOUSEHOLD GOODS CARRIER FUEL SURCHARGE**

(a) A fuel surcharge for household goods carriers shall be established by the Commission on a monthly basis using the following procedure:

- (1) On the last Tuesday of each month (or the next business day thereafter if delayed by a legal State or Federal holiday), the Public Staff shall file its recommended fuel surcharge in the current calendar year fuel surcharge docket (T-825). The recommended fuel charge shall be calculated by the Public Staff as follows:
  - a. Using the On-Highway Diesel Fuel Price Index and Retail Gasoline Price Index for the Lower Atlantic Region released that week by the United States Department of Energy - Energy Information Administration (EIA), or another source approved by the Commission, the Public Staff shall determine a current composite cost of fuel using the diesel/gasoline ratio shown in Schedule 2-A filed in Docket No. T-825, Sub 334, on March 28, 2000.
  - b. With this composite cost of fuel, the Public Staff shall determine the appropriate fuel surcharge using the Fuel Surcharge Index Chart filed on October 6, 2005, in Docket No. T-825, Sub 339, to be applied per bill of lading mile for all North Carolina intrastate household goods moves governed by the Commission's most recently issued Maximum Rate Tariff in accordance with the procedures outlined in Docket No. M-100, Sub 121, and the provisions of Appendix A, Paragraph C, of the Order dated January 18, 1991.
- (2) On the first business day of the week following the Public Staff's filing, the Commission will issue an order adjusting the fuel surcharge when an adjustment is appropriate.

(b) All fuel surcharge revenue assessed and collected shall be passed on or otherwise credited to the purchaser of the fuel. The fuel surcharge shall be assessed once per shipment regardless of the number of vehicles used.

(NCUC Docket No. T-100, Sub 93, 6/5/14.)

#### **R2-16 RATES AND CHARGES**

(a) Every common carrier of household goods by motor vehicle and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 shall be subject to and strictly observe the provisions, rates, and charges of the Maximum Rate Tariff issued by the Commission for the transportation of household goods in intrastate commerce between all points within the area authorized to be served. All common carriers of passengers by motor vehicle shall file with the Commission, publish and keep open for public inspection and strictly observe all tariffs showing all rates and charges for the transportation of passengers in intrastate commerce between all points within the area authorized to be serviced (G.S. 62-138).

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

(f) Repealed.

(NCUC Docket No. T-100, Sub 15, 1/24/92 and 3/6/92, effective 2/23/92; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-17 COLLECTION OF CHARGES BY COMMON CARRIERS OF HOUSEHOLD GOODS.**

(a) Upon taking precautions deemed by them to be sufficient to assure payment of the tariff charges within the credit period herein specified, common carriers of household goods by motor vehicle may relinquish possession of household goods in advance of the payment of the tariff charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called shippers, for a period of fifteen (15) days. When the bill of lading covering a shipment is presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the household goods. When the bill of lading is not presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the bill of lading.

(b) Where a common carrier by motor vehicle has relinquished possession of household goods and collected the amount of tariff charges represented in the bill of lading presented by it as the total amount of such charges, and another bill of lading for additional charges is thereafter presented to the shipper, the carrier may extend credit in the amount of such additional charges for a period of thirty (30) calendar days, to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented bill of lading.

(c) Bills of lading for all transportation charges shall be presented to the shippers within seven (7) calendar days from the first 12 o'clock midnight following delivery of freight.

(d) Shippers may elect to have their bills of lading presented by means of the United States mails, and when the mail service is so used the time of mailing by the carrier shall be deemed to be the time of presentation of the bills. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.

(e) The mailing by the shipper of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such shipper, may be deemed to be the collection of the tariff charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.

(NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-18 C.O.D. SHIPMENTS.**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04

**R2-19 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-20.1 MISROUTING OF SHIPMENTS.**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04.

**ARTICLE 5. – LOSS AND DAMAGE**

**R2-20 SETTLEMENT OF HOUSEHOLD GOODS CLAIMS**

G.S. 62-203 specifically sets forth the carrier's liability for damaged property in transit. The carrier issuing a bill of lading for transportation of household goods in intrastate commerce and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any carrier participating in the haul and transporting it on a through bill of lading, and such carrier delivering said property so received and transported shall be liable to the lawful holder of said bill of lading or to any party entitled to recover thereon for such loss, damage or injury, notwithstanding any contract or agreement to the contrary; that is to say, that once the validity of a claim is established by the originating and/or delivering carrier, settlement of said valid claim shall be promptly made to the claimant. In the case of a claim where more than one carrier participated in the haul, either the originating or delivering carrier after establishing the validity of said claim shall make prompt settlement to the party in interest filing said claim, and the proration of any settlement thereof shall be a matter between the participating carriers and not between the shipper or receiver and each of said participating carriers. THIS RULE DOES NOT APPLY TO MOTOR CARRIERS OF PASSENGERS.

(NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**ARTICLE 6. - OPERATIONS.**

## **R2-21 AUTHORIZED OPERATIONS.**

No carrier shall engage in transportation in intrastate commerce for compensation in North Carolina until and unless such carrier shall have applied to and obtained from the North Carolina Utilities Commission the appropriate certificate of exemption to so operate. Any authority granted by the Federal Motor Carrier Safety Administration does not confer, and does not purport to confer, upon any carrier the right to engage in intrastate commerce in North Carolina. Such certificate of exemption may be obtained in the manner set out in the Public Utilities Act, and in no other way. Interstate carriers who engage in transportation in intrastate commerce for compensation in North Carolina without first obtaining a certificate of exemption in the manner provided in said Act will be subject to the penalties prescribed in G.S. 62-325 of said Act. (NCUC Docket No. M-100, Sub 7, 12/30/65; NCUC Docket No. T-100, Sub 49, 01/09/04.)

## **R2-22 BEGINNING OPERATIONS UNDER A CERTIFICATE OR CERTIFICATE OF EXEMPTION FOR THE TRANSPORTATION OF PASSENGERS**

(a) An order of the Commission, approving an application, or the issuance of a certificate does not within itself authorize the carrier to begin operations. Operations are unlawful until the carrier shall have complied with the following:

- (1) Registration of its rolling equipment with the Division of Motor Vehicles on Form NCMC 19.
- (2) Filing insurance with the Division of Motor Vehicles covering its rolling equipment or by providing other security for the protection of the public, as provided by Rule R2-36.
- (3) In the case of common carriers, filing tariffs to be made for the transportation service authorized, as provided by Rule R2-16.

(b) Unless a common carrier complies with the foregoing requirements and begins operating, as authorized, within a period of thirty (30) days after the Commission's order approving the application becomes final, unless the time is extended in writing by the Commission upon written request, the operating rights therein granted will cease and determine.

(NCUC Docket No. M-100, Sub 14, 10/5/67; NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95.)

## **R2-23 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

## **R2-24 UNAUTHORIZED USE OF OPERATING RIGHTS**

All motor carriers will be held to strict account for the use of their operating rights, and to permit the use of the same by others for the transportation of persons or household goods for compensation shall be deemed just cause for the revocation of such rights. This rule positively forbids the party to whom operating rights have been granted from permitting others to use the name or operating authority of such party.

(NCUC Docket No. M-100, Sub 38, 12/1/70; NCUC Docket No. T-100, Sub 32, 8/23/95.)

## **R2-25 ASSIGNMENT OF IDENTIFICATION NUMBERS**

(a) All household goods common carriers shall be identified by the letter "C", and each such carrier shall be assigned a number. Example: N.C. No. C-25.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) All motor passenger carriers shall be identified by the letter "B", and each such carrier shall be assigned a number. Example: N.C. No. B-25.

(NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. R-100, Sub 4, 03/09/99; NCUC Docket No. T-100, Sub 49, 01/09/04.)

## **R2-26 MARKING OR IDENTIFICATION OF VEHICLES**

(a) No carrier shall operate any motor vehicle upon the highways in the transportation of household goods or passengers for compensation unless the name, or trade name, home address and the North Carolina number assigned to such carrier, as provided in Rule R2-25 appear on both sides of such vehicle in letters and figures not less than three inches high.

Example:                    John Doe Trucking (Bus) Co.  
                                 Greensboro, N.C.  
                                 N.C. No. C-132(B-132)

The North Carolina number assigned to such carrier shall also be placed on the rear, left upper quadrant, of such vehicle in letters and figures not less than three inches high. In case of a tractor-trailer unit, the side markings must be on the tractor and the rear markings must be on the trailer.

- (b) The markings required may be printed on the vehicle, or on durable placards securely fastened on the vehicle.
- (c) Subject to the exceptions noted below, this Rule applies to every vehicle used by the carrier in his operation whether owned, rented, leased or otherwise; but in case of rented or leased vehicles the words "Operated By" shall also appear above or preceding the name of the carrier, unless such vehicles are under permanent lease, in which case the name of the lessor and the words "Operated By" need not appear.
- (d) This Rule does not apply to carriers engaged only in interstate commerce. If the carrier is engaged in both interstate and intrastate commerce and is marked as required by the Federal Motor Carrier Safety Administration, then in that case, it will only be necessary for the carrier to print his North Carolina number in a conspicuous place near his name in letters and figures corresponding in size with Federal Motor Carrier Safety Administration regulations.  
(NCUC Docket No. M-100, Sub 6, 10/15/65; NC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04; NCUC Docket No. T-100, Sub 80, 04/30/10.)

**R2-2 REPEALED BY NCUC DOCKET NO. M-100, SUB 59, 9/21/77.**

**R2-28 COMMERCIAL ZONES OF MUNICIPALITIES FOR MOTOR CARRIERS OF HOUSEHOLD GOODS.**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04.

**R2-29 SUPERVISION OF LEASED OPERATING RIGHTS**

The lessor of operating rights shall supervise the operation of its lessee to the extent of requiring said lessee, during the term of the lease, to promptly pay all debts of the nature set out in G.S. 62-111, and upon the termination of the lease, whether by agreement between the parties, by order of the Commission, or otherwise, operations shall not be resumed by the lessor, or by any transferee of the lessor, until all such debts shall have been paid.

**R2-30 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-31. REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-32. REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-33 PRIVATE CARRIAGE BY REGULATED CARRIERS**

A common carrier may conduct intrastate regulated and private carriage on a tandem or commingled basis provided that separate accounting records of regulated and proprietary transportation operations are maintained.

(NCUC Docket No. M-100, Sub 111, 5/13/86; NCUC Docket No. M-100, Sub 111, 5/16/86; NCUC Docket No. T-100, Sub 32, 8/25/95.)

**R2-34 MOTOR FREIGHT CARRIERS OBLIGATED.**

When any common carrier has been authorized by this Commission to transport household goods, such carrier is thereafter obligated to transport said household goods as authorized. Refusal of transportation offered or any discrimination or undue preference in the movement thereof is prohibited.

(NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-35.1 AUTHORIZED SUSPENSION OF OPERATIONS**

Any franchise may be suspended, in whole or in part, at the discretion of the Commission, upon application of the holder thereof. The application for authorized suspension may be in the form of a letter or formal motion and shall include the carrier's name, address, certificate number, the reason for the request for authorized suspension, and the length of time for which the authorized suspension is requested, up to one year per request. During an authorized suspension of operations, a carrier shall continue to file with the Commission an annual report and quarterly public utility regulatory fee reports and pay the applicable regulatory fees. If a carrier desires to commence operations while under an authorized suspension of operations, the carrier shall inform the Commission in writing and shall also comply with the filing requirements in Rule R2-22 prior to commencing operations.

(NCUC Docket No. T-100, Sub 29, 2/3/95.)

**R2-35 INTERCHANGE BY MOTOR FREIGHT CARRIERS OF INTRASTATE TRAFFIC**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04.

**R2-36 SECURITY FOR THE PROTECTION OF THE PUBLIC.**

(a) All common motor carriers, including exempt for-hire passenger carriers, shall obtain and keep in force and maintain on file at all times with the Division of Motor Vehicles public liability and property damage insurance issued by a company authorized to do business in North Carolina in amounts not less than the following:

SCHEDULE OF LIMITS			
Motor Carriers -- Bodily Injury Liability -- Property Damage Liability			
(1)	(2)	(3)	(4)
Kind of Equipment	Limit for bodily injuries to or death to one person	Limit for bodily injuries to or death of all persons injured or killed in any one accident (Subject to a maximum of \$100,000 for bodily injuries to or death of one person)	Limit for loss or damage in any one accident to property of others (excluding cargo)
Freight Equipment: All motor vehicles used in the transportation of household goods with a GVW of 26,000 lbs or less.	\$100,000	\$300,000	\$50,000
All motor vehicles used in the transportation of household goods with a GVW of 26,001lbs. or more shall maintain coverage in the amount of \$750,000 for public liability and property damage as required by federal law.			
Passenger Equipment: The minimum levels of financial responsibility are as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. 10927(a)(1), which are \$5,000,000 for vehicles with a seating capacity of 16 passengers or more and \$1,500,000 for vehicles with a seating capacity of 15 passengers or less. Provided, however, that a passenger carrier providing transportation of passengers exclusively for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, or the United States Department of Defense, to the extent that said arm of the United States Government maintains local boards of education in the State of North Carolina, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. 10927(a)(1) or in a minimum amount not less than said limits as may be specified and approved by the local Board of Education or State Department of Education, or the United States Department of Defense contracting with said passenger carrier, provided, however, that in no event shall the minimum level of financial responsibility be less than \$1,000,000.00. Provided, further, that no bus company operating solely within the State of North Carolina and which is exempt from regulation under the provisions of G.S. 62-260(a)(7) shall be required to file with the Commission proof of the financial responsibility in excess of one million five hundred thousand dollars (\$1,500,000).			

(b) The policy shall have attached thereto endorsement Form F and as evidence of such insurance there shall be filed with the Division of Motor Vehicles certificate of insurance Form E.

(c) In addition to the foregoing insurance, all common carriers of household goods and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 shall maintain the following cargo and general liability insurance coverage to compensate shippers or consignees for loss of or damage to household goods belonging to shippers or consignees and coming into the possession of motor common carriers in connection with their transportation service, in not less than the following amounts: (1) Cargo insurance: for loss of or damage to household goods carried on any one motor vehicle -

\$35,000; and for loss of or damage to or aggregate of losses or damages of or to household goods occurring at one at any one time and place - \$50,000. The policy shall have attached thereof endorsement Form I or a facsimile thereof and as evidence of such insurance there shall be filed with the Division of Motor Vehicles certificate of insurance Form H or a facsimile thereof. (2) General liability insurance: for loss of or damage to property of shipper or consignee in the amount of \$50,000. A certificate of insurance proving such coverage shall be provided to the Commission (a) prior to being issued a certificate of exemption and (b) with the filing of each annual report.

(d) No insurance policy, endorsement, rider or certificate of insurance issued by any insurance company, covering the liability of any motor carrier authorized to operate in North Carolina under a certificate issued by the North Carolina Utilities Commission will be accepted by the Division of Motor Vehicles for filing, unless the same is signed by an officer of the insurance company or by a North Carolina resident agent of the insurance company duly licensed by the Insurance Commissioner of the State of North Carolina.

(e) To the end that the Commission or Division of Motor Vehicles may be advised of the risks and liabilities assumed by such motor carriers under such insurance policies, no deductible agreement between insurer and insured shall be deemed valid and enforceable against the insured unless a true and correct copy of such agreement, countersigned as required in subsection (d) hereof, shall have been first filed with and approved by the Commission.

(f) A common carrier or exempt for-hire passenger carrier may qualify as self-insurer, or be permitted to post bond in lieu of insurance upon application to and written approval by the Commission, but no such application will be approved unless it shall appear to the satisfaction of the Commission that the applicant is in such financial condition as to be able to pay personal injury and property damage claims arising out of motor vehicle accidents from its own assets without seriously affecting its financial stability and the continuation of its operations. The Division of Motor Vehicles will accept only surety companies, authorized to do business in North Carolina, as surety on bonds referred to in this rule.

(g) In all cases under this rule, actual filing must be made with the Division of Motor Vehicles before operations begin. Household goods carriers must also provide the certificate of insurance providing proof of general liability coverage in the amount of \$50,000 before operations begin. Letters or telegrams to the effect that insurance is in force will not be accepted in lieu of actual filing.

(h) Repealed

(NCUC Docket No. M-100, Sub 12, 10/5/67; NCUC Docket No. M-100, Sub 30, 5/25/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 81, 3/1/79; NCUC Docket No. M-100, Sub 112, 7/1/86; NCUC Docket No. M-100, Sub 112, 11/12/86; NCUC Docket No. M-100, Sub 115, 2/23/88; NCUC Docket No. T-100, Sub 32, 8/25/95; T-100, Sub 49, 02/22/02; NCUC Docket No. T-100, Sub 49, 02/02/04.)

## **R2-37 COMMODITY DESCRIPTION.**

Group 1. *General Commodities.* — [Repealed.]

Group 2. *Heavy Commodities.* — [Repealed.]

Group 3. *Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks.* — [Repealed.]

Group 4. *Liquid Refrigerated Products in Bulk.* — [Repealed.]

Group 5. *Solid Refrigerated Products.* — [Repealed.]

Group 6. *Agricultural Commodities.* — [Repealed.]

Group 7. *Cotton in Bales.* — [Repealed.]

Group 8. *Dry Fertilizer and Dry Fertilizer Materials.* — [Deleted.]

Group 9. *Forest Products.* — [Deleted.]

Group 10. *Building Materials.* — [Repealed.]

Group 11. *Livestock.* — [Repealed.]

Group 12. *Explosives and Other Dangerous Articles.* — [Repealed.]

Group 13. *Motor Vehicles.* — [Repealed.]

Group 14. *Dump Truck Operations.* — [Repealed.]

Group 15. *Retail Store Delivery Service.* — [Repealed.]

Group 16. *Furniture Factory Goods and Supplies.* — [Repealed.]

Group 17. *Textile Mill Goods and Supplies.* — [Repealed.]

Group 18. *Household Goods.* — The term "household goods", as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is arranged and paid for by the householder or another party.

Group 18-B. *Household Goods Retail Delivery.* — [Repealed.]

Group 19. *Unmanufactured Tobacco and Accessories.* — [Repealed.]

Group 20. *Motion Picture Film and Special Service.* — [Repealed.]

Group 21. *Other Specific Commodities.* — [Repealed.]

(NCUC Docket No. M-100, Sub 1, 5/12/65; NCUC Docket No. M-100, Sub 31, 1/14/71; NCUC Docket No. M-100, Sub 87, 5/8/81; NCUC Docket No. M-100, Sub 106, 9/16/85; NCUC Docket No. T-100, Sub 14, 1/16/92; NCUC Docket No. T-100, Sub 14, 7/21/92; NCUC Docket No. T-100, Sub 18, 3/24/93; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 38, 7/26/96; 9/19/96; T-100, Sub 49, 02/22/02; NCUC Docket No. T-100, Sub 49, 02/02/04.)

**R2-38 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

**ARTICLE 9 - MISCELLANEOUS.**

**R2-39 PAYMENT OF INTERCHANGE ACCOUNTS**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04.

**R2-40 BILL OF LADING**

(a) Every common carrier of household goods by motor vehicle and the motor carriers voluntarily participating in this rule pursuant to G.S. 62-152.2 receiving property for transportation shall issue a uniform bill of lading therefore, the form, terms, and conditions to be set out in the Maximum Rate Tariff issued by the Commission.

(b) A complete copy of every such bill of lading, or a full and complete record thereof made at the time the same is issued, shall be kept by the carrier in numerical or chronological order separate from other records for a period of three (3) years, and the same shall be available for inspection by the Commission or its agents.

(NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-41 LOAD SHEETS**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04.

**R2-42 INSPECTION OF VEHICLES, BOOKS, RECORDS, ETC.**

(a) Auditors, accountants, inspectors, examiners of the Public Staff or Commission Staff or their agents, upon demand and display of proper credentials, shall be permitted by any carrier transporting, or authorized to transport, household goods or passengers over the public highways of North Carolina for compensation to examine the books, records, accounts, bills of lading, or other records of such carrier relating to the transportation of household goods or passengers and the terminals, building, and other facilities used by such carrier in such transportation business; and all such carriers shall instruct their drivers, agents and employees in charge of such records and facilities to permit such examination.

(b) Repealed.

(c) No inspector or other agent of the Commission or the Public Staff shall knowingly and wilfully divulge any fact or information which may come to his knowledge during the course of any such examination or inspection, except to the Commission or as may be directed by the Commission or upon approval of request to the Commission by the Public Staff or by a court or judge thereof. See G.S. 62-316. (NCUC Docket No. M-100, Sub 14, 10/5/67; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-43 SERVICE OF PAPERS**

Any citation, summons, subpoena, order or process issued by the Commission in any proceeding may be served:

- (1) By any peace officer authorized to serve process.
- (2) By any person designated by the Commission to serve the same.
- (3) By certified or registered mail.

Reference: G.S. 62-62 and G.S. 62-63.

**R2-44 PROCESS AGENT**

(a) All motor carriers operating under certificates of public convenience and necessity, or having pending applications to so operate, shall file with the Division of Motor Vehicles a designation in writing of the name and post-office address of a person residing in the State of North Carolina upon whom notice of applications, hearings and orders in proceedings under said Act may be made.

(b) In proceedings before the Commission involving the lawfulness of rates, charges, or practices, service of notice upon the person or agent who has filed a tariff in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier.

(NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 01/09/04.)

#### **R2-45 SCHEDULE OF FEES**

The fees and charges of the North Carolina Utilities Commission for motor carriers are set forth in G.S. 62-300.

#### **R2-46. REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

#### **R2-47 DISCONTINUANCE OF SERVICE**

(a) No common carrier shall abandon or discontinue any service authorized by its certificate without first obtaining written authority from the Commission. The petition for such authority shall be filed with the Commission at least thirty (30) days prior to any discontinuance, unless otherwise authorized by the Commission, and if petitioner is a motor carrier of passengers, shall show in support thereof the information set forth in paragraph (c) herein. The discontinuance or nonuse of a service authorized by a certificate for a period of thirty (30) days or longer without the written consent of the Commission shall be considered good cause for cancellation, seasonal service excepted. Upon receipt of a petition for authority to discontinue or abandon service, the Commission may designate a time and place for hearing on the petition. If a petitioning bus company proposes to discontinue service over any intrastate route or proposes to reduce its level of service to any points on a route to a level of service which is less than one trip per day, excluding Saturdays and Sundays, the Commission shall, within ten (10) days after the filing of the petition, require notice to be given to the public by posting notice of the petition in buses serving such routes and in bus stations or other prominent places along said routes. If no objections are filed to the petition by any person or the Public Staff within thirty (30) days after notice is given, the Commission may proceed to decide the petition based on the record and without a hearing.

(b) All interruptions of passenger service, where likely to continue for more than twenty-four hours, shall be reported promptly to the Commission and to the public along the route, with full statement of the cause and its possible duration.

(c) In support of any petition or schedule which proposes to reduce motor passenger carrier service over any North Carolina route or to any North Carolina point to a level which is less than one (1) trip per five (5) days per week excluding Saturdays and Sundays, the proponent carrier shall furnish the data set forth hereinbelow:

- (1) A listing of the origin, termination and all intermediate points which will lose the proponent carrier's service.
- (2) A statement as to whether the proponent carrier is the last or only intercity motor carrier of passengers to or from the issue points or over the issue route.
- (3) A statement identifying any reasonable alternative to the proponent carrier's passenger and express services on the issue route and to or from the issue points, which statement shall identify the location of the alternative services relative to the issue route and points.
- (4) For the latest twelve months available to the proponent carrier, a statement showing:
  - a. total system bus miles operated;
  - b. total N.C. bus miles operated;
  - c. scheduled system bus miles operated; and
  - d. scheduled N.C. bus miles operated.
- (5) A statement or exhibits calculating and showing:
  - a. estimated or actual passenger revenues, at actual and present annualized levels, attributable to that portion of the proponent carrier's operations proposed to be abandoned, but not including passenger revenues which the carrier expects to retain in connection with other services which it will still operate;
  - b. estimated or actual express revenues, at actual and present annualized levels, attributable to that portion of the proponent carrier's operations proposed to be abandoned, but not including express revenues which the carrier expects to retain in connection with other services which it will still operate;
  - c. actual or scheduled N.C. bus miles, for the latest twelve (12) months available, operated in service over that portion of the route proposed to be discontinued; and
  - d. estimated or actual number of interstate and intrastate passengers transported over the issue route or to or from the issue points during the latest twelve (12) months available.

The statements or exhibits containing the calculations and information required under Items A, B, C and D above shall be presented in such a manner and in such detail that the Commission can verify the sampling and apportionment methodologies used and can determine the treatment by the proponent carrier of

revenues originating outside the issue route but within the carrier's system going to any issue point; revenues originating at an issue point going to points within the carrier's system but outside the issue route; and revenues originating and terminating along the issue route. The proponent carrier also shall, at a site in North Carolina designated by it, make available for inspection by all parties, and upon order of the Commission shall file, copies of ticket samples, driver reports, station reports, bus bills, schedule information reports, trend sheets or any other source documents which show or were used to develop revenues or passenger counts (whether by schedule, points or route) as determined in Items A through D above.

- (6) The proponent carrier shall calculate and furnish its system variable costs and the fully allocated costs attributable to service along and to the issue route and points, with an explanation of how the costs were calculated, and of any assumptions underlying the calculations, which assumptions must be consistent with any used to calculate revenues. The proponent carrier shall furnish such information pursuant to forms and in the format as from time to time shall be approved by the Commission, if any, but nothing herein shall preclude the carrier from submitting, in addition to the above, the same data in a different form or format if it so desires.

(NCUC Docket No. M-100, Sub 98, 6/6/84; NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95.)

### **R2-48.1 PRACTICES OF HOUSEHOLD GOODS CARRIERS RELATING TO RELEASED VALUES**

(a) Motor carriers of household goods in intrastate commerce in North Carolina shall use the uniform bill of lading in connection with all shipments handled by them.

(b) Motor carriers of household goods shall not charge rates and charges in excess of those as provided in the Maximum Rate Tariff issued by the Commission.

(c) Motor carriers of household goods shall not engage in or be a party to the sale of insurance coverage for any shipment for the purpose of keeping declared value at a figure less than the declared value stated by the shipper, nor shall such carriers at any time apply a base rate applicable to a declared value when the declared value is in excess of the base rate value, nor shall they include on the bill of lading or any other bill for transportation services any costs incident to insurance coverage.

(NCUC Docket No. T-825, Sub 18, 4/15/58; NCUC Docket No. M-100, Sub 42, 9/1/71; NCUC Docket No. T-100, Sub 49, 01/09/04.)

### **R2-48.2 ADVERTISING, SOLICITATIONS, ETC., OF HOUSEHOLD GOODS CARRIERS**

(a) Household goods carriers in intrastate commerce shall not use any name in the advertising, soliciting, or handling of intrastate business other than the name or trade name in which their operating authority is issued from the Utilities Commission.

(b) In the event that any household goods carriers in intrastate commerce uses joint advertising with any national carrier with which it has any connection, such advertising must state clearly that the intrastate hauling is performed solely by the North Carolina carrier and has no connection with the interstate carrier named in the advertisement.

(c) Household goods carriers operating in North Carolina intrastate commerce shall clearly display their certificate of exemption numbers in any paid print or other visual form of advertising.

(NCUC Docket No. M-100, Sub 8, 6/14/66; NCUC Docket No. T-100, Sub 49, 01/29/03; 01/09/04.)

### **R2-48 ACCOUNTS; ANNUAL REPORTS**

(a) The Uniform Systems of Accounts adopted by the Interstate Commerce Commission are hereby prescribed for use of Class I, Class II, and Class III Common Carriers of Passengers, who operate under the jurisdiction of this Commission pursuant to the Public Utilities Act or through the Commission's authority to fix rates and charges. (G.S. 62-260, subsection (b)).

For purposes of annual, other periodical and special reports commencing with the year beginning January 1, 1980, and thereafter until further ordered, common carriers of passengers subject to the North Carolina Utilities Commission's jurisdiction will assume their classification according to the most current dollar amounts in effect and prescribed by the Interstate Commerce Commission. Classifications in effect as of January 1, 1980, are as follows:

CLASS I: Carriers having annual carrier operating revenues (including interstate and intrastate) of \$3 million or more.

CLASS II: Carriers having annual carrier operating revenues (including interstate and intrastate) of \$500,000 but less than \$3 million.

CLASS III: Carriers having annual carrier operating revenues (including interstate and intrastate) of less than \$500,000.

The class to which any carrier belongs shall be determined by annual carrier operating revenue by the following manner and procedure:

- (1) If at the end of any calendar year or of 13 four-week periods, such annual carrier operating revenue is greater than the maximum for the class in which the carrier is classified, the carrier shall adopt the accounting and reporting requirements of the higher class in which it falls. For Class III carriers, adoption of Class II classification shall be effective as of January 1 of the following year. For Class II carriers, adoption of a higher classification shall be effective as of January 1 of the second succeeding year after the carrier meets the minimum revenue limit for Class I.
- (2) If at the end of a calendar year, or accounting year of 13 four-week periods, a carrier's annual operating revenue is less than the minimum of the class in which the carrier is classified, and has been for three consecutive years, the carrier shall adopt the accounting and reporting requirements of the lower class in which the current year revenue falls. Adoption of the lower class shall be effective as of January 1 of the following year.
- (3) Carriers shall notify the Commission by letter of any change in classification by October 31 of each year.
- (4) Any carrier which begins new operations (obtains operating authority not previously held) or extends its existing authority (obtains additional operating rights) shall be classified in accordance with a reasonable estimate of its annual gross carrier operating revenues.
- (5) When a business combination occurs, such as a merger, reorganization, or consolidation, the surviving carrier shall be reclassified effective January 1 of the next calendar year on the basis of the combined revenue for the year when the combination occurred.
- (6) In unusual circumstances, such as partial liquidation and curtailment or elimination of contracted services, where the classification regulations will unduly burden the carrier, the carrier may request the Commission for an exception to the regulations. This request shall be in writing specifying conditions justifying an exception.

(b) Repealed.

(c) Repealed.

(NCUC Docket No. M-100, Sub 25, 9/15/69; NCUC Docket No. M-100, Sub 55, 5/24/74; NCUC Docket No. M-100, Sub 68, 12/17/76; NCUC Docket No. M-100, Sub 68, 2/5/82; NCUC Docket No. T-100, Sub 32, 8/23/95; NCUC Docket No. T-100, Sub 49, 02/02/04.)

**R2-49 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-50 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-51 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-52 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

**R2-53.1** Repealed by NCUC Docket No. T-100, Sub 32, 8/23/95.

**R2-53.2 NATIONAL EMERGENCY; ADOPTION OF MOBILIZATION ORDERS OF THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

(a) The following Orders adopted by the Federal Motor Carrier Safety Administration for control of motor transportation during the national emergency are hereby adopted for application to intrastate commerce within the State of North Carolina:

GENERAL ORDER ICC TM-1 - Preference and Priority for the Transportation by Carriers for Hire of United States Military Personnel, Accredited Civil Defense Workers and United States Mail.

GENERAL ORDER ICC TM-2 - Rail Freight Embargo - Appointment of Permit Agent.

GENERAL ORDER ICC TM-3 - Motor Freight Embargo.

GENERAL ORDER ICC TM-4 - Inland Waterways Freight Embargo.

GENERAL ORDER ICC TM-5 - Disposal by Carriers of Undeliverable Shipments.

GENERAL ORDER ICC TM-6 - Control of Railroad Tank Cars.

GENERAL ORDER ICC TM-7 - Rerouting of Rail Traffic.

GENERAL ORDER ICC TM-8 - Direction to Certain Over-The-Road Motor Carriers of Property Regarding Routes, Diversions and Service to Certain Destinations.

GENERAL ORDER ICC TM-9 - Direction to Certain Intercity Common Carriers of Persons by Bus to Serve Certain Points.

GENERAL ORDER ICC TM-10 - Control of Motor Transport Vehicles.

GENERAL ORDER ICC TM-11 - Control of Freight Shipments to or within Port or Storage Areas.

GENERAL ORDER ICC TM-12 - Inventory and Disposition of Shipments of Food and Medical Supplies Requisitioned by Government in Possession of Railroads and Motor Carriers.

PROCEDURAL ORDER ICC TM-11-PO-1 - Procedures and Delegations of Authority under General Order ICC TM-11 for Rail Shipments.

GENERAL ORDER ICC TM-13 - Control of Liquid Transport Vessels.

(b) The above Orders of the Federal Motor Carrier Safety Administration shall become effective as to intrastate commerce within North Carolina only upon the proclamation of the existence of a state of civil defense emergency by the President or by concurrent resolution of the Congress.

(NCUC General Order Docket No. D-1, 3/1/65; NCUC General Order Docket No. D-1, Sub 1, 2/19/70; NCUC Docket No. T-100, Sub 49, 01/09/04.)

**R2-53.3** Repealed by NCUC Docket No. T-100, Sub 32, 8/23/95.

**R2-53.4** Repealed by NCUC Docket No. T-100, Sub 32, 8/23/95.

### **R2-53 EMBARGOES**

(a) No carrier holding a franchise certificate has the right to issue an embargo on intrastate traffic against any carrier or any goods except upon application to, and approval by, the North Carolina Utilities Commission.

(b) A franchise certificate grants certain rights and the rights so granted therein presuppose a service to be rendered, and any embargo establishes a condition which the carrier does not have the right to impose; therefore, where the carrier desires to embargo any shipments, application must be made to the Commission for approval, and then the Commission will pass upon the necessity therefor.

(c) The procedure to be followed in connection with an embargo will be for the carrier desiring to establish same to notify the Commission in a letter with a copy to the Public Staff, sending a copy of said letter to any and all carriers affected, after which the carriers receiving such notice shall have three days within which to advise the proponent and the Commission of their attitude thereon, after which the Commission will notify all parties to the proceeding if it desires to hold a public hearing thereon.

(NCUC Docket No. M-100, Sub 75, 10/27/77.) (SOURCE: N.C.U.C. Report 1943-44, p. 16.)

### **R2-54 BUS STATIONS IN GENERAL**

(a) Adequate bus station facilities commensurate with the requirements of the traveling public must be provided by all motor carriers of passengers subject to the jurisdiction of the Commission in cities or towns in which service is rendered.

(b) All bus passenger waiting rooms shall be supplied with good, pure drinking water easily accessible to passengers; and shall be so lighted, heated, ventilated and equipped as to render occupants of the same reasonably comfortable, the circumstances of each case being considered.

(c) In all cities where the service requires full time employees, or exclusive station buildings, or exclusive space in buildings constructed primarily for other purposes, adequate accommodations shall be provided, including comfort stations and rest rooms with running water.

(d) In all towns and cities where agents are employed on commission and the station is located in a place with another business, adequate accommodations shall be provided, insofar as it is practicable to do so, the circumstances in each instance to be taken into consideration.

(e) In providing bus station facilities, the gross receipts from ticket sales shall be considered as a factor, but not necessarily the controlling factor in determining the cost of construction, operation and maintenance of the station.

(f) All bus station waiting rooms shall be equipped with a fire extinguisher, bearing the label of approval of the Fire Underwriters' Association, which shall be filled and kept in good serviceable condition, and shall be so placed as to be plainly visible and readily accessible and easily removable from the holders; provided, however, this requirement shall not apply to those ticket agencies where some other endeavor is the principal business or one of the principal businesses and the selling of bus tickets is incidental to such principal business or businesses.

**R2-55 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

## **R2-56 TICKETS**

- (a) Carriers to Provide Tickets. - All passenger carriers shall provide tickets at all agency stations and at such other places indicated on the published time schedules where satisfactory financial arrangements for handling can be made.
- (b) Tickets to Be Accepted by Connecting and Interconnecting Carriers. - All passenger carriers shall join in publishing an interline tariff and furnish such tariff to all agents on all carriers' lines and all tickets when sold by one carrier over another line or lines shall be accepted by the other carrier, or carriers, at the value of the ticket set forth in the interline tariff, less the percentage charge for selling commission, and the accepting carrier shall render statements to originating carrier, or seller, at regular intervals of not less than thirty (30) days.
- (c) Carriers Operating Between Common Points. - Passenger carriers operating from a common station where tickets are sold to a common destination, over the same or different routes, shall honor the tickets of one another between said points, and the carrier lifting the same shall be reimbursed therefor by the issuing carrier in the amount paid for same, less the applicable station charge at point of sale.
- (d) Passenger to Determine Ticket Destination. - At the time of the sale of an interline ticket the passenger shall determine the destination and routing called for on the ticket, provided such destination be on a known carrier's line and recorded in the joint or interline tariff and such interline ticket shall not be reissued en route except at the passenger's request. The passenger shall be given the advantage of a reduction of fare, if any, because of the change in routing and the reissuing carrier shall make the adjustment and note same on the original ticket for the information of the original seller who shall reimburse the reissuing carrier upon the receipt of the statement in which the original ticket, or a portion of the original ticket, is rendered.
- (e) "Closed Ticket". - No carrier or ticket agent shall issue so-called "closed tickets," or by any rule, practice, or device deter or prevent passengers from having their tickets reissued and rerouted at any interchange agency station upon the request of passengers.
- (f) Reissue of Ticket to Permit Passenger to Reach Destination. - When passenger cannot board issuing carrier's bus out of station, ticket may be reissued so as to permit passenger to reach destination over most convenient route but the return ticket must not be taken up and reissued at this time.
- (g) Reissue of Ticket to Returning Passenger. - When returning passenger cannot take issuing carrier's bus out of the station, ticket should be reissued for passenger to go to original issuing carrier's nearest station on passenger's most direct return route and then over original issuing carrier's route, unless passenger requests another routing.
- (h) Sale of Tickets in Municipality Not on Carrier's Line. - No carrier shall sell, nor cause or permit its agent to sell, tickets in any town or city not on its line.
- (i) Redemption of Tickets. - All tickets when sold shall have the date of sale stamped thereon. Tickets when sold shall be redeemable for transportation within the limits of the tariff when presented to driver on a bus or shall be redeemable at their sale price in money by the selling agent on duty at the station where the ticket was purchased on the date of sale or by the company within twelve months of the date of sale stamped thereon; if no date is stamped thereon at time of sale, such tickets shall be redeemable upon presentation at any time; provided, that where tickets have been sold and baggage checked for transportation the carrier may deduct, at time of redemption, the usual amount to reimburse it for baggage transfer.
- (j) Disposition of Redeemed Tickets. - Tickets redeemed at a station as provided for under subsection (i) shall not be resold and must be sent in to the home office of the company whose ticket was refunded for redemption.

## **R2-57 PETITIONS FOR THE ESTABLISHMENT OF INTERLINE TICKET ARRANGEMENT**

In any case where two or more passenger common carriers cannot agree among themselves upon the establishment of interline ticket arrangements, the Commission will, upon proper petition being filed with it with a copy of the Public Staff by an interested carrier or the public, enter into an investigation, and if justified, prescribe interline ticket arrangements for use between such carriers. In considering any such petition, the Commission, among other things, will take into consideration the fact of whether all carriers involved have in effect a system of accounting which will permit the easy checking accounting for all revenue and expenditures in connection with such interline ticket arrangement, and further provided, that satisfactory financial responsibility is shown by all carriers involved.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

## **R2-58 INTERCHANGE OF EQUIPMENT**

Common carriers of passengers may interchange equipment for the purpose of providing through service without change of passengers from one bus to another, but no such interchange agreement shall become effective unless the parties thereto shall file a true copy thereof with the Commission with a copy to the Public Staff and give notice thereof to all common carriers operating to, from or through the interchange point at least twenty (20) days prior to the effective date of such agreement; provided, the Commission may upon its own motion, or upon protest, suspend or disapprove the agreement for reasons considered to be in the public interest.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

### **R2-59 TIME TABLES**

(a) Information in Table. - Every common carrier of passengers shall file with the Commission with a copy to the Public Staff a time table showing the time of arrival and departure of its coaches at each regular station or stop, and such time table shall further show the number of trips to be made daily over each route or routes. Time tables shall be available in each waiting room at bus stations. Time tables shall bear an issuing date and an effective date.

(b) Time Table Changes. - Any change in or addition to a time table shall be made by reissuing the time table. Each new time table shall cancel the previous time table. Every time table shall bear a number which shall be placed in the upper left-hand corner of the title page and shall be printed in bold type. Time tables shall be numbered consecutively. Five (5) copies of all changes in time schedules shall be filed with the Commission not less than twenty (20) days prior to the effective date of change, together with a certificate that copies thereof have been furnished by first class mail to all connecting carriers and that said changes have been posted in bus stations and at bus stops: Provided, however, that the Commission may order such changes to be made upon shorter notice.

(c) Protest. - Where changes in time schedules, other than changes relating to scheduling of interstate or intrastate transportation provided by a motor common carrier of passengers subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of Title 49 of the United States Code on an authorized interstate route, are properly posted in accordance with subsection (b) above and no protest is received by the Commission during the first fifteen (15) days after notice is properly posted, the carrier, unless otherwise directed by the Commission, will be allowed to make the change effective on date shown on the schedule, subject to complaint and further order of the Commission. No protest by a connecting or competing carrier to a change of schedule will be considered unless it is filed with the Commission in writing, gives the reasons for such protest and certifies that a copy thereof has been mailed by certified or registered mail to the carrier proposing the change.

(d) Adherence to Schedules. - Time schedules as filed with and approved by the Commission and posted for the information of the public shall be strictly complied with. Habitual or intentional delay to obtain passengers of a competitor will be considered just cause for removing the schedule of the offending carrier.

(e) Effective Date. - This amended rule shall be effective on and after July 1, 1986.

(NCUC Docket No. M-100, Sub 10, 11/1/67; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 109, 5/20/86.)

### **R2-60 BAGGAGE**

(a) Baggage, not exceeding a total weight of one hundred fifty (150) pounds shall be checked and carried free of charge on each adult ticket. Baggage not exceeding a total weight of seventy-five (75) pounds shall be checked and carried free of charge on each half-fare ticket. No allowance shall be permitted on tickets purchased for the sole purpose of avoiding payment of excess baggage.

(b) Subject to the provisions of subsection (a) of this rule, the transportation of baggage and other articles that may be transported in baggage service shall be governed by the uniform rules and regulations of the "National Bus Traffic Association, Inc., Agent", tariff, and supplements thereto or revision thereof, as filed with the Commission.

(c) In all cases baggage of passengers is to receive priority over express packages, and shall be transported on the bus carrying the owner of said baggage when practicable.

### **R2-61 TRANSPORTATION OF PROPERTY IN BUSES**

The transportation of property by passenger carriers, as authorized by subsection (g) of G.S. 62-262.1, shall be so limited as not to interfere with the comfort and convenience of passengers.

(NCUC Docket No. M-100, Sub 109, 5/20/86; NCUC Docket No. T-100, Sub 32, 8/23/95.)

### **R2-62 SEATING PASSENGERS IN BUSES**

(a) No common carrier of passengers by bus shall accept any passenger for transportation whose destination is more than fifteen (15) miles without either providing such passenger with a seat before departure, or advising such passenger that all seats are occupied, and further advising such passenger when the next bus is scheduled to depart and arrive at the passenger's destination, the next schedule meaning the next scheduled of any carrier.

(b) Failure of a carrier to provide seats for its passengers shall be considered as evidence that the said carrier is unable or unwilling to provide buses sufficient to meet public demands and needs.

(c) Subject to the other provisions of this rule and to other rules and regulations promulgated by the Commission, the carriers themselves have full control and discretion as to the seating of passengers and the right to change such seats at any time during the trip shall be reserved by the carriers.

#### **R2-63 SANITARY COACHES**

It shall be the duty of every motor carrier of passengers subject to the jurisdiction of the Commission to cleanse thoroughly all passenger-carrying vehicles in regular use at least once every twenty-four hours, and to keep the same in a clean and sanitary condition while in operation.

#### **R2-64 HEATING SYSTEM**

All passenger-carrying vehicles shall be equipped with a suitable heating system sufficient to keep the same reasonably comfortable for its passengers and shall be kept in such repair that fumes therefrom shall not escape into the passenger compartment.

#### **R2-65 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

#### **R2-66 BROKERS**

(a) License Required. - No person, firm or association shall engage in the business of broker in arranging for the transportation of passengers and their baggage by motor vehicle in intrastate commerce in North Carolina without a license therefor issued by the Commission upon application to the Commission, with a copy of the application also being furnished to the Public Staff, and after a hearing, or after notice and no protests being filed as provided by G.S. 62-263.

(b) Evidence. - No such license shall be issued unless it shall appear from the testimony offered at the hearing:

- (1) That the applicant is not a bona fide employee or agent of any motor carrier.
- (2) That the applicant proposes to engage only those motor carriers authorized by the Commission to transport passengers as common carriers by motor vehicle in intrastate commerce in North Carolina.
- (3) That the proposed service is desired and will be used by the public.
- (4) That the applicant is fit, willing and able to properly perform the proposed service.

(c) Bond. - No person shall engage in the business of a broker as defined in the Public Utilities Act unless and until such person shall have furnished a bond approved by the Commission in the amount of not less than \$5,000, and in such form as will insure the financial responsibility of such broker and the supplying of authorized transportation in accordance with agreements, contracts, and arrangements therefor.

(d) Vehicles and Drivers. - The vehicles and drivers used in performing the transportation service shall be under the exclusive control of the motor carrier engaged to perform the transportation service, and the operation of such vehicles shall be limited to the authority set out in such carrier's certificate.

(e) Rates and Charges. - The transportation charges shall be in all respects as prescribed in the carrier's published tariff. Commissions or other compensation for sale of tickets by brokers shall not be allowed.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R2-67 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

#### **R2-68 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

#### **R2-69 INTRACITY BUS CARRIERS**

(a) Towns and Municipalities. - Unless and until determined by the Commission in particular cases, all towns and municipalities shall for the purpose of the administration of G.S. 62-260 include a zone adjacent thereto as follows:

- (1) A zone within 1/4 mile of the corporate limits if the municipality has a population of 2,500 or less.
- (2) A zone within 1/2 mile of the corporate limits if the municipality has a population of between 2,500 and 10,000.
- (3) A zone within 1 mile of the corporate limits if the municipality has a population of between 10,000 and 100,000.
- (4) A zone within 2 miles of the corporate limits if the municipality has a population of more than 100,000.
- (5) Municipalities whose commercial zones join shall be considered as one municipality for the purpose of this rule.
- (6) The population of any municipality, for the purpose of this rule, shall be determined by the population shown by the latest United States Census.

(7) The distances referred to shall be air-line distances.

(b) Routing Buses over Streets. - Carriers operating from outside zones described in subsection (a) into or through cities and towns shall operate over such streets as local municipal authorities may designate, subject to the approval of the Commission, and in case of a controversy between any such carrier and a municipality with respect to routing buses over the streets of such municipality, or to and from bus stations located therein, the procedure set out in subsections (c) and (d) of this rule shall be followed in bringing such controversy before the Commission.

(c) Rates and Controversies Determined by Commission. - As authorized by G.S. 62-260, the Commission will fix rates and hear and determine controversies with respect to extensions and services when brought before it upon a duly verified petition of a town, municipality, or carrier, from which it appears that a demand in writing has been made by the petitioner upon the adverse party for specific relief to be effected by extensions of services, or by specific change in existing services, and that the relief demanded has been denied or ignored. No particular form of petition is required, but the relief demanded and denied or ignored must be clearly and definitely stated. General complaints or broad-side allegations which do not present the particular matter or matters in controversy are not sufficient.

(d) Petition to Be Filed in Quintuplicate. - The petition must be filed with the Commission in quintuplicate (original and four copies.)

## **R2-70 APPLICATION OF RULES**

(a) Rules R2-54 through R2-60 shall not apply to common carriers whose operations are found by the Commission to be of such a local nature as not to require compliance with said rules.

(b) All facilities, services and accommodations provided by these rules for intrastate passengers at bus stations and on buses shall apply in like manner to interstate passengers of carriers authorized to operate in both intrastate and interstate commerce in North Carolina.

(c) The Commission may permit relief from these rules in special cases in which it finds compliance therewith unjust, impracticable, contrary to law, or inconsistent with the public interest.

(NCUC Docket No. T-100, Sub 32, 8/23/95.)

## **R2-71 DEVIATIONS BY MOTOR CARRIERS OF PASSENGERS FROM AUTHORIZED REGULAR ROUTES**

(a) Applicability of Rule. - Subject to all other rules and regulations of the Commission, this rule is hereby found to be just and reasonable and adopted and made applicable so far as pertinent to the operations within the State of North Carolina under authority of certificates issued by the Commission to all motor carriers of passengers.

(b) Definitions. - As used in this rule, the following words and terms shall be construed to have meanings as follows:

- (1) Designated Highway. - A highway identified for record purposes by a number, letter, or name such as a turnpike, thruway, expressway, freeway, or as an "unnumbered county or state road," or in some other like manner.
- (2) Redesignated Highway. - A highway to which there has been assigned a new designation, either number, letter, name or other identifying reference, in lieu of a designation previously assigned thereto.
- (3) Relocated Highway. - A highway which has been constructed in a new location in lieu of an existing highway or a segment or segments thereof, and which is intended to replace such existing highway or a segment or segments thereof for public use.
- (4) Regular Service Route. - A designated highway or series of highways over which a regular route motor carrier is specifically authorized to operate with provision in the carrier's certificate for service at terminal, intermediate, or off-route points as specified therein, as distinguished from an alternate route as defined in subdivision (5) of this subsection. Such regular service route may be described as a single route in a carrier's authority or as two or more routes which are combined by joinder at a common service point or points.
- (5) Alternate Route. - A designated highway or series of highways lying wholly within the State of North Carolina over which a regular route motor carrier may operate in the interest of economy or convenience or to avoid congested areas, dangerous grades, sharp curves, or other hazards on an authorized regular service route, deviating from a point on such authorized regular service route and returning at some other point on the same regular service route.
- (6) By-Pass Route. - A route designated by proper authority for the general purpose of avoiding traffic congestion in a heavily populated area or areas.

- (7) Detour Route. - The highway or highways designated by proper authority for public use while the highway or highways normally used between specified points is, or are, temporarily closed or restricted, as by reduced weight limits, or for repairs or constructions, or for any other reason.
- (8) Deviation Route. - Any of the routes used by a motor carrier under authority of this rule.
- (9) Point of Deviation. - The point where a motor carrier using, or proposing to use, an alternate route, as defined in subdivision (5) of this subsection or any other deviation route, under authority of this rule, departs from, or proposes to depart from, its specifically authorized regular service route.
- (10) Point of Return. - The point where a carrier using, or proposing to use, an alternate route, as defined in subdivision (5) of this subsection or any other deviation route, under authority of this rule returns to, or proposes to return to, its specifically authorized regular service route.
- (11) Deadheading Empty Vehicles. - The movement of empty vehicles incidental to either prior or subsequent transportation in intrastate commerce.

(c) Authority for Deviations by Carriers from Operating Authorities in Described Circumstances. - Subject to the special rules, requirements, and conditions governing particular situations hereinafter stated, and subject also, when reference is made thereto, to the general conditions and requirements set forth in subsection (d) of this rule, carriers holding operating authority from this Commission, are hereby authorized, in the circumstances hereinafter described, to deviate from their specifically authorized regular service routes, and otherwise to depart from their specific authority, in the circumstances and to the extent hereinafter stated without obtaining other prior specific authority therefor:

- (1) Redesignated Highways. - Where a carrier is authorized to operate over a specified highway and thereafter that highway or a segment thereof without relocation is redesignated, the carrier in order to facilitate appropriate corrections in its certificate and changes in the records of the Commission, shall so advise the Commission, by letter, giving sufficient information regarding the old and new designation, the points between which the highway designation has been changed, and the place or places where such highway is referred to in the carrier's authority. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.
- (2) Relocated Highway and Abandonment of Old Highway. - Where a carrier is authorized to operate over a specified highway and thereafter that highway or a segment or segments thereof are relocated, and where the old highway or any segment thereof is no longer maintained for use by the general public, the carrier may operate over such relocated highway or relocated segment or segments under its authority without notice to the Commission of such change, and in so doing may serve as intermediate or off-route points, on or from, the new highway, those points previously authorized to be served as intermediate or off-route points on or from the old highway, provided there is no other change in the service previously rendered in connection with operations over the old highway.
- (3) Relocated Highway and Maintenance of Old Highway under New Designation.
  - a. Where a carrier is authorized to operate over, and to serve points on, a specified highway and thereafter that highway or segment or segments thereof are relocated, but the old highway is maintained for use by the general public under a new designation, the carrier shall not, without first obtaining specific authority from the Commission, transfer its operations to the relocated highway or relocated segments thereof, but must continue to operate over the old highway and advise the Commission of the change in the designation thereof, furnishing the same information as required in connection with subdivision (1) of this subsection. The new designation of the highway will be shown in the carrier's certificate when the Commission has occasion to reissue it.
  - b. Where a carrier is authorized to operate over a specified highway, but is not authorized to serve any point on such highway, and thereafter such highway or a segment or segments thereof are relocated, but the old highway is maintained for use by the public under a new designation, the carrier may, if it so desires, use as its operating route only the new or relocated highway, provided, it promptly advises the Commission of such change, giving descriptions of the old and new highways between the points involved and the other information required by subdivision (1) of this subsection.
- (4) By-Pass Routes. - Where a by-pass route has been designated to be used for the purpose of avoiding a congested area or areas, a carrier having an authorized regular route, or alternate route, through such area or areas, which desires to use such by-pass route as an alternate route, may do so subject to the general conditions and requirements set forth in subsection (d) of this rule.
- (5) Detour Routes. - When a federal, state, county or other government official, in the exercise of his powers, temporarily prohibits the use by a regular route carrier of an authorized service route or a segment or

segments thereof, or when operations by a regular route carrier over an authorized service route or a segment or segments thereof are temporarily obstructed or rendered unsafe by any cause over which the carrier has no control, or when a highway or a segment thereof which comprises all or any portion of a carrier's authorized regular service route is, by appropriate authority, made subject to weight or other restrictions which temporarily prevent the operation of the equipment regularly and normally used by the carrier over that route, and when, because of any one or more of the foregoing, a detour route has been officially designated by proper authority for public use in lieu of the closed, obstructed, unsafe, or restricted highway, the carrier may use such officially designated detour route in lieu of the temporarily closed, obstructed, unsafe, or restricted highway, provided (i) that no service is rendered at any point the carrier is not specifically authorized to serve, (ii) that, so far as suitable detour routes are available, the carrier continues to furnish reasonable and adequate service at all points it is authorized to serve, and (iii) that if use of the detour route will continue for more than 30 days and if the distance over the detour route is less than 90 percent of the distance over the authorized service route, a statement shall be obtained from the governmental authority exercising control over the highways involved and filed by the carrier with the Commission, together with a notice in writing of its intent to use such detour route under authority of this subdivision, which notice shall show the nature of the condition which prevents operation over the authorized route, the period of time it is anticipated that the service route will not be usable and proper identification of the official detour route. Where a detour route is used under the provisions of this subdivision, the carrier shall discontinue operations over such route and resume operations over its authorized service route immediately upon removal of the condition which necessitated use of the detour route.

- (6) Alternate Routes for Operating Convenience Only. □ Where a regular route motor carrier is authorized to operate over a regular service route and there is wholly within the State of North Carolina another highway which extends in the same general direction as such regular service route and affords a reasonably direct and practicable route between any two points on such regular service route, it may, subject to the general conditions and requirements set forth in subsection (d) of this rule, use such other highway as an alternate route for operating convenience only, with no service at any intermediate point thereon, and with no service at the termini except as otherwise authorized, in the manner and to the extent, as follows:
- a. Superhighways as alternate routes. □ Where a regular route motor carrier is authorized to operate over a regular service route and there is extending in the same general direction as such service route, and wholly within the State of North Carolina, a so-called superhighway, turnpike, thruway, freeway, or expressway, which is substantially the same in purpose, design, and construction as the National System of Interstate Highways, such superhighway, turnpike, thruway, freeway, or expressway and such additional highways as it may be necessary to use in traveling by the shortest practicable route between the carrier's authorized regular service route and the superhighway, turnpike, thruway, freeway, or expressway may be used as an alternate route between two points on the carrier's regular service route regardless of the ratio of the distance over such alternate route between the point of deviation and the point of return to the distance over the carrier's regular service route between the same points, and regardless of whether or not such alternate route crosses or intersects or passes over or under, any other specifically authorized service or alternate routes of the carrier at any place intermediate to the points of deviation and return: Provided, that use of the alternate route will not materially change the competitive situation between such carrier and any other.
  - b. Highways other than superhighways. - Where a regular route motor carrier is authorized to operate over a regular service route and there is extending in the same general direction as such service route and wholly within the State of North Carolina, another highway which is not a so-called superhighway, turnpike, thruway, freeway, or expressway, the carrier may use such other highway as an alternate route for operating convenience only, provided (i) that the distance over such alternate route between the points of deviation and return is not less than 90 percent of the distance over the authorized regular service route between the same points, and (ii) that such alternate route does not duplicate, or involve operations over, any part of any authorized service route described in the carrier's certificate and does not cross or otherwise intersect any authorized service route of the carrier or pass through any authorized off-route point or any part of the commercial zone of any authorized point either off-route or other, except at the points of deviation and return.

- c. For the purpose of this paragraph:
1. The crossing of another route by overpass or underpass shall be deemed to be a crossing or an intersection except in those instances where a transfer of a vehicle from one highway to the other at a point of such underpass or overpass is physically impossible because of the absence of any connecting access roads.
  2. The prohibition against the inclusion of any alternate route used under this paragraph of any part of any authorized service route of the carrier shall not be deemed to prohibit the inclusion of an alternate route used under this paragraph, of a segment of the specifically authorized alternate route, provided, the distance over the alternate route used under this paragraph is computed from point of deviation from a service route to the point of return to the same service route, including the embraced segment of the specifically authorized alternate route.
  3. The prohibition against the crossing by any alternate route used under this paragraph of any authorized service route shall not be deemed to prohibit the crossing of a specifically authorized alternate route.

(7) Deadheading Empty Vehicles. - A motor carrier may deadhead empty vehicles over any highway, the use of which is necessary or desirable to accomplish a reasonably direct and practicable movement thereof between any two points incidental to either prior or subsequent transportation in intrastate commerce.

(d) General Conditions and Requirements. - Where reference is made thereto in subsection (c) of this rule governing particular situations, the following general conditions and requirements shall be applicable and shall be complied with as a condition to the granting of authority herein for the particular deviation:

- (1) Any proposed deviation under this rule, except one over an alternate route under subsection (c)(6) of this rule, may be instituted by a carrier without prior notice to the Commission.
- (2) If a deviation proposed under this rule, other than one under subsection (c)(6) of this rule, is to continue for not more than 30 days, no notice to the Commission concerning it is required.
- (3) If any deviation, other than one over an alternate route under subsection (c)(6) of this section, is to continue for more than 30 days, the carrier shall, not later than one day after the deviation operations are begun, give notice thereof to the Commission and others in the manner provided in subdivision (5) of this subsection, giving the information therein required.
- (4) When an alternate-route deviation under subsection (c)(6) of this rule is proposed, the carrier shall give prior notice thereof to the Commission and to others in the manner provided in subdivision (5) of this subsection. A summary of such notice must be prepared by the carrier and published in a newspaper of general circulation in the area involved and operation over such deviation route shall not, under any circumstances, be commenced until the elapse of 30 days after the date of such publication and if a protest against any such proposed deviation is filed within such 30-day period, the proposed deviation shall not be commenced until the Commission has considered and overruled the protest and found that the proposed deviation meets the requirements of, and is permissible under, this rule.
- (5) If notice of a deviation proposed under this rule is required by either subdivision (3) or (4) of this subsection, it shall contain:
  - a. A complete description by highway designations of the carrier's authorized service route between the point of deviation and the point of return, including authorized off-route points;
  - b. A complete description by highway designations of its proposed deviation route between the point of deviation and the point of return;
  - c. A complete description by highway designations of all segments of other specifically authorized service and alternate routes, including authorized off-route points, of the carrier adjacent either to the authorized service route from which deviation is to be made or to the proposed deviation route; and
  - d. Where the deviation is subject to a comparative distance limitation, the distance (actual mileage) over any proposed deviation route and also over the authorized regular service route between the points of deviation and return shall be stated. Such distances shall be computed not from municipal or commercial zone limits, but from actual junction points of the carrier's specifically authorized service route and the proposed deviation route, whether such junction points be within or without city limits, and shall include that portion of any specifically authorized alternate route which is embraced in any proposed alternate deviation route.

- (6) The notice described in subdivision (5) of this subsection shall be accompanied by a map on which there shall be shown so much as may be practicable of the information required by that subdivision and in case of an alternate-route deviation under subsection (c)(6)(a) or (b) of this rule, such map must clearly show in different colors the routes involved and authorized off-route points, including in each instance the official highway designations of the authorized regular service route, from which deviation is proposed, and other service routes of the carriers, if any, in the area, also the highway designations of the proposed deviation route and other specifically authorized alternate routes, if any, in the area, and the distances (actual mileage) between the points of deviation and return (the actual junctions) over the regular service route from which deviation is proposed and over the deviation route.
- (7) The notice of an alternate-route deviation required by subdivision (4) of this subsection shall also contain a statement to the effect that the carrier filing it will continue to furnish reasonable and adequate service from and to all authorized points on its regular service route; that it will not serve any intermediate point or points on such deviation route; and that deviation from its authorized regular service route as proposed, will not enable it to render a materially different service than that rendered over its regular service route or enable it to engage in transportation between any points between which operation is not practicable over its regular service route because of the circuitry or otherwise.
- (8) The notice of any deviation required by subdivision (3) or (4) of this subsection shall also contain a statement indicating that a copy thereof, accompanied by a copy of the map required by subdivision (5) of this subsection, has been served by mail or in person on the following, listed by names and addresses in each instance:

All carriers which, after diligent inquiry, have been found to be competitive with the carrier's proposed operation over the deviation route.
- (9) Where a notice of a deviation or proposed deviation is required by subdivision (3) or (4) of this subsection and such notice is not timely filed and served on competing carriers and others as required by subdivision (8) of this subsection, any deviation operation begun prior to the actual filing and service of notice is unauthorized and where a notice though filed is defective for want of required information or insufficient service on competing carriers, or for any other reason, it shall be subject to rejection and if rejected, any deviation operation covered thereby which has been begun, shall immediately be discontinued and shall not be resumed until a sufficient notice has been filed and served on interested parties as required by subdivision (8) of this subsection, and the carrier has been notified by the Commission that the operation may be resumed.
- (10) The right to operate over a deviation route which is subject to the general conditions and requirements set forth in this subsection shall continue only so long as the carrier is performing, when required by this rule, reasonable and adequate service over specifically authorized routes, and only so long as the conditions set forth in this rule are observed.

(e) Protest and Replies Thereto. - Any person who considers that he is or will be adversely affected by a deviation described or proposed in any notice filed under subsection (d) of this rule may file at any time a protest against such deviation. Such protest may be in the form of a letter, but shall contain a recital of facts and information showing protestant's interest and supporting his opinion that the facts and circumstances upon which the right to deviate depends, are nonexistent, or have been incorrectly described, or that the carrier filing the deviation notice has not met the applicable conditions and requirements, and shall show that a copy thereof has been furnished to the carrier filing the notice. If such a protest is filed, the carrier which has filed the deviation notice may reply thereto within 20 days, after which the Commission will give due consideration to all facts of record or otherwise available to it in the particular case, including the notice and protest, and will make a determination in accordance therewith.

(f) Commission May Forbid Deviation. - The Commission may forbid the commencement of operations over any deviation route under this rule, or require discontinuance of any such operations already commenced, whenever, in its opinion, such deviation results in inadequate service over specifically authorized routes, or is unreasonable, undesirable, or otherwise repugnant to the public interest, or is not in harmony with the general purpose and intent of the rules and regulations established by this rule.

**R2-72 THROUGH R2-78                      REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

**R2-79    REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

**R2-80 THROUGH R2-86                      REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

**R3-1 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

**R3-2 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

**R3-3 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

**R3-4 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

**R3-5 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

**R3-6 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**

**R3-7 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**  
(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. R-100, Sub 4, 03/09/99.)

**R3-8 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**  
(NCUC Docket No. M-100, Sub 49, 3/7/73; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. R-100, Sub 4, 03/09/99.)

**R3-9 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**  
(NCUC Docket No. M-100, Sub 25, 9/15/69; NCUC Docket No. M-100, Sub 55, 5/24/74; NCUC Docket No. M-100, Sub 68, 12/17/76; NCUC Docket No. M-100, Sub 68, 2/5/82; NCUC Docket No. R-100, Sub 4, 03/09/99.)

**R3-10 REPEALED BY NCUC DOCKET NO. R-100, SUB 4, 03/09/99.**  
(NCUC Docket No. R-100, Sub 2, 6/28/91; NCUC Docket No. R-100, Sub 4, 03/09/99.)

#### **Chapter 4. Filing of Transportation Tariffs.**

These tariff rules supersede rules and regulations adopted July 1, 1961.

Rule R4-1. Definition.

Rule R4-2. Requirements as to size, form, identification and filing of tariffs.

Rule R4-3. Filing and posting.

Rule R4-4. Notice of changes; special permission; symbols.

Rule R4-5. Filing supplements on suspension matters.

Rule R4-6. Adoption notices.

Rule R4-7. [Repealed.]

Rule R4-8. Rates to intermediate intrastate destinations.

Rule R4-9. Alternate application of combination rates.

Rule R4-10. Computation of time.

Rule R4-11. Embargoes.

Rule R4-12. Uniform rates, procedure for approval of joint rate agreements among carriers. Repealed eff. 01/09/04.

#### **R4-1 DEFINITION.**

(a) The term "tariff" as used herein means a publication containing the fares, charges, rules and regulations of a common carrier of persons and baggage, or the fares, charges, rules and regulations of intracity bus passenger carriers.

(b) Repealed.

(NCUC Docket No. M-100, Sub 75, 10/27/77; Docket No. T-100, Sub 32, 8/25/95; NCUC Docket No. T-100, Sub 49, 01/09/04; 02/02/04.)

#### **R4-2 REQUIREMENTS AS TO SIZE, FORM IDENTIFICATION AND FILING OF TARIFFS**

(a) All tariffs and supplements thereto shall be in book, pamphlet, or loose-leaf form of size 8 x 11 inches, and shall be plainly printed, planographed, stereotyped, or reproduced by other similar durable process on paper of good quality. No alteration in writing or erasure shall be made in any tariff or supplement thereto. The size requirement of this rule is not applicable to railway express carriers.

(b) A margin of not less than five eighths of an inch, without any printing thereon, shall be allowed at the binding edge of each tariff or supplement thereto.

(c) An N.C.U.C. number or a tariff serial number of the issuing carrier shall be shown on the title page of the tariff. The N.C.U.C. numbers shall run consecutively beginning with the number immediately following the last number utilized; or, if no tariffs have been issued previously, the numbering shall begin with N.C.U.C. No. 1 and continue in consecutive order. If issuing carrier uses a tariff number in lieu of an N.C.U.C. number, each tariff must bear a serial number of the issuing carrier, and as each such tariff is reissued the number must be retained and letter suffixes in sequence beginning with "A" be added to the numeral; and when the alphabet is thus exhausted the reissue of the tariff carrying the suffix "Z" will be given the suffixes "A", "B", etc., thus starting over again with the alphabet. Immediately under the N.C.U.C. number or the tariff serial number, as the case may be, the N.C.U.C. number or the tariff serial number of the tariff canceled thereby shall be shown. Revised pages to loose-leaf tariffs shall also be properly identified.

(d) When it is desired to make changes in the rates, ratings, rules, or other provisions of a tariff, other than a loose-leaf tariff, without reissuing the tariff, a supplement constructed generally in the same manner as is the tariff which it supplements may be issued to the tariff.

- (1) The supplement numbers of supplements issued to a tariff may be designated on the upper right-hand corner of the title page as

Supplement No. 1  
to  
N.C.U.C. No. \_\_

or may be designated in the upper central portion of the title page; or if tariff bears no N.C.U.C. number the first supplement number shall be designated immediately above the freight tariff number, as

Supplement No. 1  
to  
Tariff No. \_\_

- (2) Subsequent supplements shall be numbered consecutively in like manner. Each supplement shall specify on its title page immediately under the supplement number and N.C.U.C. number or tariff number of the tariff supplemented, the publications which the supplement cancels and shall also specify the supplements that are in effect.
- (3) When purely intrastate supplements are issued to tariffs containing both interstate and intrastate rates, ratings, rules or other provisions, such supplements may be assigned the number of the last I.C.C. supplement with capital letters of the alphabet (used consecutively) added, such as "5A", except that if any intrastate supplements be issued prior to Supplement No. 1, such intrastate supplements are to be identified with capital letters of the alphabet used consecutively, such as "A", "B", etc.
- (4) The matter contained in each supplement shall be arranged in the same general manner and order as in the tariff which it amends and when points in a tariff are given index or item numbers the same index or item number, as the case may be, must be assigned to the same point in all supplements to the tariff.
- (5) Except as may be otherwise provided in these rules, a tariff of six (6) pages or less may not have in effect at any time more than two (2) supplements; not more than three (3) supplements may be in effect at any time to a tariff containing seven (7) and not more than sixteen (16) pages; not more than four (4) supplements may be in effect at any time to a tariff containing seventeen (17) and not more than eighty (80) pages; not more than five (5) supplements may be in effect at any time to a tariff containing eighty-one (81) and not more than two hundred (200) pages, and not more than six (6) supplements may be in effect at any time to a tariff containing more than two hundred (200) pages. The supplemental matter hereinabove mentioned may in the aggregate be not more than fifty (50) percent of the number of pages in the involved tariff including the title page thereof, except it may exceed the volume authorized only to the extent necessary to complete the page of supplemental matter when the tariff is not evenly divisible to equal fifty (50) percent. For example, a tariff with nineteen (19) pages, title page inclusive, may not have in effect at any time more than

four (4) supplements thereto or an aggregate of ten (10) pages of supplemental matter. Except further, that suspension supplements and supplements containing only suspended matter and issued as a result of an order of the North Carolina Utilities Commission shall not be included in the number of supplements or aggregate of pages of supplemental matter as hereinabove enumerated. Except further, that the title page of no supplement shall be included in the aggregate of the supplemental matter.

(e) Except as otherwise provided in this rule, each carrier shall file tariffs and supplements under consecutive N.C.U.C. numbers, tariff numbers, or supplement numbers. If, for any reason this is not done, the tariff or supplement which is not numbered consecutively with the publication last filed must be accompanied by a memorandum explaining why consecutive numbers were not used.

(f) On the upper central portion of the title page shall be shown the name of the issuing carrier. When an individual or partnership operates under a trade name, the individual name or names shall precede the trade name (See G.S. 66-68 et seq.).

(g) When one or more carriers participate in an individual carrier tariff, the individual names and firm names or (in the case of corporations) corporate names of the participating carriers, and the cities and states in which their principal offices are located, shall be alphabetically arranged in such tariff.

(h) Issuing carriers shall transmit to the Commission six (6) copies of each tariff, supplement, or revised page. All copies shall be included in one package, accompanied by a letter of transmittal in triplicate, listing all tariffs enclosed and addressed to the Public Staff - North Carolina Utilities Commission, Transportation Rates Division, 4326 Mail Service Center, Raleigh, NC 27699-4326. All postage, etc., must be prepaid.

(NCUC Docket No. M-100, Sub 26, 4/20/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 128, 04/10/00; NCUC Docket No. T-100, Sub 49, 02/02/04.)

#### **R4-03 FILING AND POSTING**

(a) Except as provided by Rule R4-4(b), all tariffs and supplements shall be filed with the Commission at least 30 days before the date upon which they are to become effective.

(b) A carrier shall post and file in a place accessible to the public, at each of its stations or offices which is in charge of a person employed exclusively by such carrier or by it jointly with one or more other carriers and at which persons or property is received for transportation, all of the tariffs containing fares, rates, charges, classifications, and rules or other provisions applying from, or at, such station or office. Each carrier shall also maintain at its principal office in North Carolina a complete file of all tariffs issued by it or by its agents in a place accessible to the public, and employees of the carrier shall be required to give any desired information contained in such tariffs, to lend assistance to seekers of information therefrom, and to afford inquirers opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire.

(c) Repealed.

(d) Repealed.

(e) Repealed.

(f) Repealed.

(NCUC Docket No. T-100, Sub 15, 1/24/92 and 3/6/92, effective 2/23/92; NCUC Docket No. T-100, Sub 32, 8/23/95.)

#### **R4-04 NOTICE OF CHANGES; SPECIAL PERMISSION; SYMBOLS**

(a) Written notice, in triplicate, containing a brief explanation of the character of and reason for any intended changes in tariff schedules shall be filed with the Commission not later than the date said schedule is filed.

(b) Applications for permission to change or establish rates, rules, or other provisions on less than statutory notice, or for waiver of the provisions of these rules must be made by the carrier holding authority to file the proposed publication.

(c) Six (6) copies of applications (including amendments thereto and exhibits made a part thereof) shall be sent to the Public Staff North Carolina Utilities Commission, Transportation Rates Division, 4326 Mail Service Center, Raleigh, NC 27699-4326. The application should set forth full grounds for the relief sought. If the authority granted by special permission is used, it must be used in its entirety.

(d) All tariffs, supplements and revised pages shall indicate changes from preceding issues by a printer's tear drop symbol or (R) to denote reductions, a symbol in the shape of a diamond or (A) to denote increases or a symbol in shape of a triangle or (C) to denote changes resulting in neither increases nor reductions. The proper symbol must be shown directly in connection with each change.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 128, 04/10/00; NCUC Docket No. T-100, Sub 49, 01/09/04.)

#### **R4-05 FILING SUPPLEMENTS ON SUSPENSION MATTERS**

(a) Upon receipt of an order of suspension of any publication in part or in its entirety, the carrier who filed such publication shall immediately file with the Commission a consecutively numbered supplement which must not bear an effective date, quoting in full the Commission's order of suspension. Such supplement shall give specific reference by N.C.U.C. number or tariff serial number or numbers to the tariff or tariffs, schedule or schedules or supplements thereto or revised pages where rates, fares, charges, classifications, rules, regulations or practices so continued in effect will be found.

(b) If prior to the filing of the supplement announcing suspension a carrier files a later supplement which contains as reissues, the matter suspended in the previous supplement, the suspension supplement shall also specifically suspend such reissued matter.

(c) When a schedule, tariff (or supplement) which is suspended in part is reissued, such reissue shall cancel the schedule, tariff (or supplement) containing the suspended matter "except portions under suspension in docket No. . . ." When a schedule or tariff which is suspended in part is reissued, such reissue shall also cancel the schedule or tariff containing the matter which is continued in effect by reason of the suspension. When a schedule or tariff, as to which a supplement is suspended in whole or in part, is reissued, the reissue shall cancel the schedule or tariff "except portions under suspension in supplement No. . . . (or in item No. . . . of supplement No. . . .) in Docket No. . . ." and shall reissue the matter which is continued in effect by the suspension.

(d) A suspended rate, fare, charge, classification, rule, regulation, or practice may not be changed or withdrawn or the effective date thereof further deferred except by order or special permission of the Commission, nor may any change be made in a rate, fare, charge, classification, rule, regulation, or practice which is continued in effect as a result of such suspension except under order or special permission of the Commission.

(e) When the Commission vacates an order of suspension as of a date earlier than the date to which suspended, the carrier who filed such suspended schedule, tariff, supplement or revised page may file with the Commission, on not less than one day's notice, unless otherwise provided by the order, a supplement stating the date upon which, under authority of the vacating order, the schedule, tariff, supplement, revised page, item, rate, fare, charge, classification, rule, regulation, or practice will become effective. Unless such supplement is filed naming an earlier date than the date to which suspended, the suspended matter will become effective on the date to which suspended.

(f) When an order which suspended a schedule or tariff in its entirety is vacated, the vacating supplement, if made effective on or before the date to which the schedule or tariff is suspended, may also include as reissues, changes or additions which have been lawfully established in supplements to the former schedule or tariff. If a new schedule or tariff has been filed during the period of suspension, canceling the schedule or tariff proposed to be canceled by the suspended schedule or tariff any changes or additions published in the new schedule or tariff which are not included in the suspended schedule or tariff may be included in the vacating supplement as reissued items, provided the vacating supplement also cancels such new schedule or tariff. No other matter may be included in vacating supplements.

(g) When a schedule or tariff containing suspended matter has been canceled by a new schedule or tariff, except as to portions under suspension, and the Commission vacates its suspension order in its entirety effective on a date subsequent to the effective date of the new schedule or tariff, a supplement must be filed to the new schedule or tariff effective on not less than one day's notice, republishing and establishing the suspended matter and canceling the matter which was effective during the period of suspension, also canceling the matter under suspension in the former issue. Unless this is done, the matter which was suspended will not become applicable as the effective matter in the new schedule or tariff remains in effect until canceled. When the Commission vacates its suspension order effective on a date prior to the effective date of the new schedule or tariff, a vacating supplement, as prescribed in this order, should be filed to the old schedule or tariff and a supplement should also be filed to the new schedule or tariff on not less than one day's notice, establishing therein on the effective date thereof, matter which was under suspension in the old schedule or tariff.

(h) When the Commission orders the cancellation of a schedule or tariff, supplement, revised page, item, rate, fare, charge, classification, rule, regulation, or practice theretofore suspended by it the cancellation shall be effected by filing with the Commission upon not less than one day's notice, unless otherwise provided by the order, a supplement stating the date upon which in accordance with the Commission's order said rate, fare, charge, classification, rule, regulation, or practice is canceled; except that, when desired, such cancellation may be accomplished in a new schedule or tariff canceling the schedule or tariff containing the suspended matter. When an order of the Commission requires the cancellation of suspended matter on or before a date which is subsequent to the date to which suspended, carriers should endeavor to make the cancellation effective prior to the date to which the matter was suspended, in order to prevent the rates which have been found not justified from becoming effective. If the suspended matter is not canceled on or before the date to which suspended, it will be necessary, when canceling the suspended matter, to republish and reestablish the matter continued in force during the period of suspension.

(i) These provisions relating to suspension, vacating, and cancellation supplements will also govern in connection with schedules or tariffs issued in loose-leaf form, except that such supplements must not contain rates, fares, charges,

classifications, rules, regulations, or practices. All changes made in loose-leaf schedules or tariffs must be published on revised pages.  
(NCUC Docket No. T-100, Sub 49, 01/09/04.)

#### **R4-06 ADOPTION NOTICES**

(a) When the name of a carrier is changed, or when its operating control is transferred to another carrier, the carrier which will thereafter operate the properties shall file with the North Carolina Utilities Commission, Transportation Rates Division, and post as required in Rule R4-3 (b) an adoption notice in the form of a tariff numbered in its N.C.U.C. series and containing substantially the following:

(Name, also trade name, if any, of adopting carrier) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, classifications, rules, notices, traffic agreements, statements of divisions, powers of attorney, concurrences, or other instruments whatsoever, including supplements or amendments thereto, filed with the North Carolina Utilities Commission by, or heretofore adopted by (name and trade name, if any, of former carrier.)

(b) In addition to the above adoption notice the adopting carrier shall immediately file, with the North Carolina Utilities Commission, Transportation Rates Division, and post as required in Rule R4-3 (b), a consecutively numbered supplement to each of the effective tariffs issued or adopted by its predecessor, reading as follows:

Effective (Here insert date shown in the adoption notice) this tariff, or as amended, became the tariff of (name and trade name, if any, of the adopting carrier) as stated in its adoption notice N.C.U.C. No. . . .

(c) Notices of adoption shall be filed and posted immediately and if possible on or before the date shown therein. Copies shall be sent to each carrier to which power of attorney or concurrence has been given the adopted carrier. The effective date shall be the date (as shown in the body of the notice) on which the change in name or operation occurs, except that if prior approval of such change by the North Carolina Utilities Commission is required, the effective date shown shall not antedate that approval.

(d) Adoption notices issued under the authority of this rule shall contain no other matter.

(NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. T-100, Sub 49, 01/09/04.)

#### **R4-07 REPEALED BY NCUC DOCKET NO. T-100, SUB 32, 8/23/95.**

#### **R4-08 RATES TO INTERMEDIATE INTRASTATE DESTINATIONS**

In applying rates from points of origin in North Carolina to destinations within the State, on intrastate traffic, rates shall in no case exceed commodity rates on like traffic from or to more distant interstate points from or to which there are published through commodity rates and from or to which the intrastate origin or destination is directly intermediate via the rate making line or lines from or to the more distant interstate points.

#### **R4-09 ALTERNATE APPLICATION OF COMBINATION RATES**

If the charge based on the aggregate of intermediate local, joint or proportional rates approved or prescribed by the Commission, is lower than the charge accruing under the through rates approved or prescribed from origin to destination, such lower charge will be the legal charge to apply.

#### **R4-10 COMPUTATION OF TIME**

Transportation tariffs received by and filed with the Transportation Rates Division not later than noon of a workday will be stamped as received on the last preceding workday provided such workday does not precede in time the issuance date of the publication. Such publications received by or filed with the Commission on an afternoon of a workday will be stamped as received the day on which filed. The date tariffs are stamped as received shall be counted as a day of notice but the effective date of said tariffs shall not be counted. G.S. 62-134 and such orders issued thereunder will be considered complied with when such publications are on file with the Commission for the authorized period of time.

(NCUC Docket No. M-100, Sub 3, 7/30/64; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. T-100, Sub 32, 8/23/95.)

#### **R4-11 EMBARGOES**

(a) No carrier holding a franchise certificate has the right to issue an embargo on intrastate traffic against any carrier or any goods except upon application to, and approval by, the North Carolina Utilities Commission.

(b) A franchise certificate grants certain rights and the rights so granted therein presuppose a service to be rendered, and any embargo establishes a condition which the carrier does not have the right to impose; therefore, where the carrier desires to

embargo any shipments, application must be made to the Commission for approval, and then the Commission will pass upon the necessity therefor.

(c) The procedure to be followed in connection with an embargo will be for the carrier desiring to establish same to notify the Commission in a letter, sending a copy of said letter to any and all carriers affected, after which the carriers receiving such notice shall have three days within which to advise the proponent and the Commission of their attitude thereon, after which the Commission will notify all parties to the proceeding if it desires to hold a public hearing thereon.

(SOURCE: N.C.U.C. Report 1943-44, p. 16.)

#### **R4-12 UNIFORM RATES, PROCEDURE FOR APPROVAL OF JOINT RATE AGREEMENTS AMONG CARRIERS**

Repealed by NCUC Docket No. T-100, Sub 49, 01/09/04.

#### **R4-13 PROCEDURE FOR DETERMINING FUEL SURCHARGES BY FERRY OPERATORS**

(a) Any passenger ferry operating as a common carrier as defined by G.S. 62-3(6) may apply pursuant to NCUC Rule 4-4 for approval of a fuel surcharge.

(b) The application shall specify the fuel cost per gallon expressed to three decimal places that is proposed to be used as the basis of determining the fuel surcharge. In addition, although no single data point or price index will be mandated by this procedure, the application shall include documentation of its fuel prices during, at least, the previous six months and/or government or industry fuel cost forecasts in support of the fuel cost per gallon proposed by the applicant.

(c) The surcharge shall be computed in the manner set forth in Exhibit A of the Commission's Order issued January 28, 2009 in Docket No. A-100, Sub 0, unless otherwise ordered by the Commission. The base period used for computing the surcharge shall be the calendar year 2004 or the test year from the ferry operator's most recent rate case, whichever is later. If calendar year 2004 is used, the base period cost shall be calculated by dividing the total annual expense for the purchase of fuel in calendar year 2004 to operate the ferries by the number of gallons purchased during that period.

(d) Applications for a fuel surcharge increase may be filed no more frequently than every three months. Applications for a fuel surcharge shall be considered at the Commission's Staff Conference within two weeks of the date of filing. Upon approval of the surcharge, the ferry operator may implement the surcharge, effective the first day of the month following the ferry operator's filing the revised tariff rate schedules reflecting the surcharge with the Chief Clerk of the Commission.

(e) If the ferry sells an annual pass or other approved means of paying for transportation that are not individual single- or round-trip tickets, the surcharge shall apply only to the price of such passes sold following the approval of any surcharge and shall be equivalent to the approved surcharge at the time of sale multiplied by the projected average number of trips per passholder in the class of such passholders during the valid period of the pass. For purposes of calculating the number of customers, it will be assumed that each passholder travels the average number of trips (to be reflected in the number of customers) by all passholders in the class of such passholders during the valid period of the pass, calculated using historic ridership data.

(f) Any ferry operator implementing a fuel surcharge shall establish a fuel tracking account to account for the difference between the amount of fuel costs collected from customers as compared to the amount of fuel costs incurred by the carrier. A quarterly report on the activity recorded in a fuel tracking account shall be filed with the Commission within 45 days after the end of each calendar quarter in the manner set forth in Exhibit B of the Commission's Order issued January 28, 2009, in Docket No. A-100, Sub 0, unless otherwise ordered by the Commission. The balance of the fuel tracking account shall be considered in determining the amount of the fuel surcharge after the initially approved fuel surcharge.

(g) Applications or petitions for changes in the fuel surcharge may be filed by the ferry operator, the Public Staff, the Attorney General, or other interested parties.

(h) Copies of any application for a surcharge and for change in the surcharge shall be served upon the Public Staff, the Attorney General, and other party requesting a copy. Persons desiring a copy who notify the Chief Clerk of the Commission in writing shall be placed on a service list.

(NCUC Docket No. A-100, Sub 0, 01/29/09.)

EXHIBIT A

#### **FORMULA TO DETERMINE FUEL SURCHARGE AND FUEL COMPONENT OF RATES FOR FERRY OPERATORS**

FUEL SURCHARGE:

A.	Proposed Fuel Cost per Gallon for Surcharge	\$_____
B.	Base Period Cost per Gallon	\$_____
C.	Increase in Fuel Cost per Gallon (A – B)	\$_____
D.	Gallons Purchased in Base Period	_____
E.	Annualized Increase in Cost of Gallons Purchased (C x D)	\$_____
F.	Balance in Fuel Tracking Account	\$_____
G.	Amount Used for Computing Surcharge (E + F)	\$_____
H.	Number of Customers in Base Period	_____
I.	Computed Surcharge per Customer (G/H)	\$_____

FUEL COMPONENT OF RATES:

A.	Proposed Fuel Cost per Gallon for Surcharge	\$_____
B.	Gallons Purchased in Base Period	_____
C.	Annualized Fuel Costs (A x B)	\$_____
D.	Balance in Fuel Tracking Account	\$_____
E.	Tracked Fuel Costs (C + D)	\$_____
F.	Number of Customers in Base Period	_____
G.	Fuel Cost Component of Rates (E/F)	\$_____

EXHIBIT B

[Name of Ferry Operator]

Quarterly Fuel Surcharge Tracking Report

For the Reporting Quarter Ended \_\_\_\_\_

A.	Balance at the beginning of the quarter – Under (Over) Collection	\$_____
B.	Fuel costs paid to vendors:	
1.	Gallons purchased	_____
2.	Actual fuel costs paid	\$_____
C.	Fuel costs collected from customers:	
1.	Number of customers	_____
2.	Fuel cost component of rates	X \$_____
3.	Fuel costs collected	\$_____
D.	Under (Over) Collection of fuel costs for the quarter [B-C]	\$_____

E. Balance at the end of the quarter – Under (Over) Collection [A+D] \$\_\_\_\_\_

CERTIFICATION

I hereby certify that the information contained in this report is true to the best of my knowledge and belief.

\_\_\_\_\_  
Authorized Signature and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contact Person (Print Clearly)

(\_\_\_\_)\_\_\_\_\_  
Telephone Number

NOTE: Providing false information to the Commission is punishable by fine and/or imprisonment pursuant to G.S. 62-310 and 62-326.

**CHAPTER 4 APPENDIX.**

(Repealed by NCUC Docket No. T-100, Sub 32, 8/23/95.)

**CHAPTER 5 – INVESTIGATIONS BY TRANSPORTATION INSPECTORS**

**R5-1 THROUGH R5-6 REPEALED BY NCUC DOCKET NO. M-100, SUB 109, 5/20/86.**

**R6-01 APPLICATION OF RULES**

These rules apply to any gas utility operating within the State of North Carolina under the jurisdiction of the North Carolina Utilities Commission and also to interstate natural gas companies having pipeline facilities located in North Carolina insofar as safety is concerned.

- (1) These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.
- (2) If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its requirements.
- (3) The adoption of these rules shall in no way preclude the Commission from altering or amending them, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.
- (4) These regulations shall in no way relieve any utility from any of its duties under the laws of this State.

(NCUC Docket No. G-100, Sub 9, 7/26/67.)

**R6-02.1** Repealed by NCUC Docket No. G-100, Sub 79, 12/02/99

**R6-02 DEFINITIONS**

- (a) "Utility" means any gas company operating under the jurisdiction of the Commission, including in the case of safety rules and regulations, any interstate pipeline company subject to the safety jurisdiction of the Commission pursuant to G.S. 62 50.
- (b) "Customer" means any person, firm, association, or corporation, or any agency of the federal, State, or local government, being supplied with gas service by a gas utility.
- (c) "Premises" means a piece of land or real estate, including buildings and other appurtenances thereon.
- (d) "Gas plant" means all facilities owned by a gas utility for the production, storage, transmission, and distribution of gas.
- (e) "Main" means a gas pipe, owned, operated, or maintained by a utility, which is used for the purpose of transmission or distribution of gas, but does not include "gas service line."
- (f) "Gas service line" is the pipe that runs between a main or a pipeline and a customer's meter.
- (g) "Meter," without other qualification, shall mean any device, or instrument which is used by a utility in measuring a quantity of gas.

- (h) "Check flow" means a flow at approximately 20% of the rated capacity of a meter at a pressure of 1-1/2" water column on prover.
- (i) "Full rated flow" means a flow of 100% of the rated capacity of meter at a pressure of 1-1/2" water column on prover.
- (j) "Open rated flow" means a flow with meter outlet unrestricted at a pressure of 1-1/2" water column on prover.
- (k) "Cubic foot" of gas as used in these rules shall have the following meanings:
- (1) Where gas is supplied and metered to customers at the pressure normally used for domestic customers' appliances, a cubic foot of gas shall be that quantity of gas which, at the temperature and pressure existing in the meter, occupies one cubic foot.
  - (2) When gas is supplied to customers at other than the pressure in (1) above, a cubic foot of gas shall be that quantity of gas which, at a temperature of 60° F. and a base pressure of 14.73 pounds per square inch absolute, occupies one cubic foot, atmospheric pressure assumed to be 14.73.
  - (3) The standard cubic foot of gas for testing the gas itself for heating value shall be that quantity of gas, saturated with water vapor, which at a temperature of 60° F. and a pressure of 30 inches of mercury, occupies one cubic foot. (Temperature of mercury = 32° F. acceleration due to gravity = 32.17 feet per second; density 13.595 grams per cubic centimeter).
- (l) "Interruption of service" means any disturbance of the gas supply whereby the pilot flame on the appliances of at least 50 customers shall have been extinguished.
- (m) The abbreviations used, and their meanings, shall be as follows:
- (1) BTU — British Thermal Unit.
  - (2) LP Gas — Liquefied Petroleum Gas.
  - (3) psig — Pounds Per Square Inch, Gauge.
  - (4) W.C. — Water Column.

(NCUC Docket No. G 100, Sub 9, 7/26/67; NCUC Docket No. G-100, Sub 90, 4/29/11.)

### **R6-03 LOCATION OF RECORDS**

All records required by these rules, or necessary for the administration thereof, shall be kept within this State, unless otherwise authorized by the Commission. These records shall be available for examination by the Commission, the Public Staff, or their authorized representatives at all reasonable hours.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

### **R6-04 RETENTION OF RECORDS**

Unless otherwise specified by the Commission, all records required by these rules shall be preserved for the period of time specified in the current edition of the National Association of Regulatory Utility Commissioners' publication "Regulations to Govern the Preservation of Records of Gas, Electric and Water Utilities."

(NCUC Docket No. G-100, Sub 74, 12/4/97.)

### **R6-05.1 NOTICE OF TARIFF CHANGES**

Each tariff filing involving any change in any existing tariff, whether made in the context of a general rate case or any other type of proceeding, shall include a copy of the existing tariff showing by cross-outs and italicized inserts all proposed changes in rates, charges, terms and conditions, service rules and regulations, and other text.

(NCUC Docket No. G-100, Sub 46, 1/21/87.)

### **R6-05 DATA TO BE FILED WITH THE COMMISSION**

The utility shall file with the Commission the following documents and information, and shall maintain such documents and information in a current status:

- (1) A copy of the utility's tariff, including the utility's rules, or terms and conditions describing the utility's policies and practices in rendering service. These rules shall include:
  - a. The standard total heating value of the gas in BTUs per cubic foot. If necessary, this may be listed by district, division, or community.
  - b. The list of the items which the utility furnishes, owns, and maintains on the customer's premises, such as gas services, meters, regulators, vents, and shut-off valves.
  - c. General statement indicating the extent to which the utility will provide free service in the adjustment of customer's appliances.

- d. General statement of the utility's policy in making adjustments for wastage of gas when such wastage occurs without the knowledge of the customer.
  - e. A statement indicating the minimum number of days allowed for payment of the gross amount of the customer's bill before service will be discontinued for nonpayment.
- (2) A copy of each special contract for service.
  - (3) A copy of each type of customer bill form.
  - (4) A map showing the utility's operating area. This map shall be revised annually unless such revision is unnecessary, in which event the utility shall notify the Commission that the map on file is current. The map should show:
    - a. Gas production plant.
    - b. Principal storage holders.
    - c. Principal transmission and distribution mains by size.
    - d. System metering (supply) points.
    - e. State boundary crossings.
    - f. Franchise area.
    - g. Names of all communities (post offices) served.
  - (5) The name, title, address, and telephone number of the person who should be contacted in connection with:
    - a. General management duties.
    - b. Customer relations (complaints).
    - c. Engineering operations.
    - d. Meter tests and repairs.
    - e. Emergencies during nonoffice hours.
  - (6) A copy of the utility's construction and operational budget filed annually by said utility.
  - (7) Monthly reports of gas service.
    - a. Each utility shall file a "Gas Service" monthly report, on forms provided by the Commission, showing:
      - 1. The daily and the monthly average heating value of the gas.
      - 2. Interruptions of service occurring during the month.
      - 3. Meter report G 1 (revised).
    - b. These reports shall be due in the Commission's offices within thirty (30) days after the end of the month reported.
  - (8) The responsibility for the maintenance of necessary records to establish that compliance with these rules has been accomplished rests with the utility. Such records shall be available for inspection at all times by the Commission or the Commission Staff or the Public Staff.
  - (9) Two copies of annual report on forms furnished by the Commission.
  - (10)
    - a. At least 30 days prior to the construction or major reconstruction of any gas pipeline or main intended to be subjected to pressures in excess of 100 psig, a report shall be filed with the North Carolina Utilities Commission setting forth the specifications for such pipeline or main.
    - b. The Commission shall be advised with at least 24 hours' notice prior to the testing of any gas pipeline or main intended to be subjected to pressures in excess of 100 psig.
    - c. Within 60 days after the construction of any gas pipeline or main intended to be subjected to pressures in excess of 100 psig is placed in operation, a report shall be filed with the North Carolina Utilities Commission certifying the maximum pressure to which the line is intended to be subjected and also certifying that the pipeline has been constructed and tested in accordance with the requirements of the rules herein prescribed, which report shall include the results of all tests made pursuant thereto. No gas pipeline shall be operated at pressures in excess of the pressure for which it was certified to the North Carolina Utilities Commission.
  - (11) Repealed.

*(NCUC Docket No. G-100, Sub 7, 5/31/67; NCUC Docket No. G-100, Sub 34, 10/5/77; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. G-100, Sub 53, 10/25/89; 8/18/94; NCUC Docket No. G-100, Sub 74, 12/4/97; G-100, Sub 86, 09/04/03; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket Nos. G-9, Sub 712; G-5, Sub 581; G-41, Sub 52; G-40, Sub 143; G-100, Sub 53, 10/25/2017.)*

## **R6-06 DISPOSITION OF GAS**

- (a) All gas sold by a utility shall be on the basis of meter measurement unless otherwise authorized by the Commission.
- (b) Wherever practicable, consumption of gas within the utility itself, or by administrative units associated with it, shall be metered.

**R6-07 METER READING SHEETS, CARDS OR DATA**

The meter reading sheets, cards or data shall show:

- (1) Customer's name, address, and rate schedule.
- (2) Identifying number and/or description of the meter(s).
- (3) Meter readings.
- (4) If the reading has been estimated.
- (5) Multiplier or constants should be shown if applicable.

(NCUC Docket No. G-100, Sub 74, 12/4/97.)

**R6-08 METER READING INTERVAL**

Meters shall be read monthly, except that authority may be obtained from the Commission for reading the meters at other than monthly intervals. As nearly as practicable, utilities shall avoid sending a customer two successive estimated bills.

**R6-09 CONDITION OF METER**

No meter shall be installed which is mechanically defective, has an incorrect correction factor or has not been tested and adjusted in accordance with Rule R6-26. The capacity of the meter and the index mechanism should be consistent with the gas requirements of the customer.

**R6-10 TEMPORARY SERVICE**

When the utility renders temporary service to a customer, it may require that the customer bear all the cost of installing and removing the service in excess of any salvage realized.

**R6-11 EXTENSION PLAN**

Each utility shall develop a plan, acceptable to the Commission, for the installation of extensions of main and service lines where such facilities are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost. This plan must be related to the investment that prudently can be made for the probable revenue.

**R6-12 CUSTOMER INFORMATION**

Each utility shall:

- (1) Maintain up-to-date maps, plans, or records of its entire transmission and distribution systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving any locality.
- (2) Assist the customer or prospective customer in selecting the most economical rate schedule.
- (3) Notify customers, as required by the Commission, affected by a change in rates or schedule classification.
- (4) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the Commission, are available for inspection.
- (5) Upon request, inform its customers as to the method of reading meters.
- (6) Furnish such additional information as the customer may reasonably request.
- (7) During July and August of each year, consumption for each customer for the twelve-months ending June 30 of such year and the prior year shall be reviewed. If it is found that the customer has either increased or decreased his annual consumption based on the two prior years' consumption to the point it would place him on a different rate schedule, the customer shall be automatically reclassified to the proper rate schedule effective the following September 1. In determining consumption, periods of involuntary curtailment shall be excluded.

Each customer reclassified under this rule shall be notified of the change in rate schedule, along with a copy of the tariff sheets applicable to his old and new rate schedules, at least twenty-one days prior to the effective date of the change.

(NCUC Docket No. G-100, Sub 48, 2/22/91.)

**R6-13 REPEALED BY NCUC DOCKET NO. M-100, SUB 28, 5/6/70, EFFECTIVE JULY 1, 1970.**

#### **R6-14 CUSTOMER BILL FORMS**

The utility shall bill each customer as promptly as possible following the reading of his meter. The bill shall show:

- (1) The reading of the meter at the beginning and at the end of the period for which the bill is rendered.
- (2) The date on which the meter was read at the end of the billing period.
- (3) The number of units metered.
- (4) Identification of the applicable rate schedule.
- (5) The gross and/or net amount of the bill.
- (6) The date by which the customer must pay the bill in order to benefit from any discount or to avoid any penalty.
- (7) A distinct marking to identify an estimated bill.
- (8) Any conversion from meter reading units to billing units, or any calculations to determine billing units from recording or other devices, or any other factors, such as purchased gas or fuel adjustments, used in determining the bill. In lieu of such information on the bill, a statement must be on the bill advising that such information can be obtained by contacting the utility's principal office.

#### **R6-15 ADJUSTMENT OF BILLS DUE TO INACCURATE METERS FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS**

Bills which are incorrect due to meter errors where the meters in question have not been tampered with by the customer are to be adjusted as follows:

- (1) **Meter Accuracy.** - Whenever a meter in service is tested and found to be accurate within 2%, there shall be no adjustment to the customer's bill.
- (2) **Billing Adjustments.** - Billing adjustments due to fast or slow meters shall be calculated on the basis that the meter should be 100% accurate. The actual accuracy shall be the accuracy determined by averaging the results at the check and open rated flow.
  - (a) **Fast Meters.** - Whenever a meter in service is tested and found to have overregistered more than 2%, the utility shall adjust the customer's bill for the excess amount paid as determined below, except that the utility need not adjust the customer's bill if the excess amount paid is less than \$5.00.
    - (i) If the time at which the error first developed or occurred can reasonably be determined, the estimated amount of overcharge is to be based on the actual period of the overcharge but not to exceed a maximum of three (3) years from the discovery of the error.
    - (ii) If the time at which the error first developed or occurred cannot reasonably be determined, the estimated amount of overcharge is to be based on the most recent twelve (12) month period from the discovery of the overcharge.
    - (iii) No part of the minimum bill or facilities charge shall be refunded.
    - (iv) The utility shall not be required to make refunds to more than the last two customers who purchased gas through a fast meter as defined in the rule.
  - (b) **Slow Meters.** - Whenever a meter in service is tested and found to have underregistered more than 2%, the utility shall adjust the customer's bill for the deficient amount due as determined below except that the utility need not adjust the customer's bill if the deficient amount due is less than \$5.00.
    - (i) Regardless of whether the time at which the error first developed can or cannot reasonably be determined, the estimated amount of undercharge may not exceed one (1) year.
    - (ii) When billing for the underregistered usage and the undercharge exceeds \$25.00, the utility shall allow the customer the option of paying the undercharge in equal payments, without any penalty or interest charges, for a period of time equal to the period during which the meter underregistered, up to a maximum of one (1) year.
  - (c) **Nonregistering Meters.** - Whenever a meter is found to be stopped, the utility may estimate and bill the customer the proper charge for the unregistered service by reference to the customer's consumption during similar normal periods or by such method as the Commission may authorize or direct.
    - (i) The utility may backbill the customer from the point in time the meter stopped, up to a maximum of twelve (12) months.

- (ii) When billing for the nonregistered usage, the utility shall allow the customer the option of paying the undercharge in equal payments, without any penalty or interest charges, for a period not to exceed the customer's next six (6) billing periods.

(NCUC Docket No. G-100, Sub 71, 8/1/96.)

#### **R6-16 REASONS FOR DENYING SERVICE**

Service may be refused or discontinued for any of the reasons listed below. Unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is discontinued.

- (1) Without notice in the event of a condition determined by the utility to be hazardous.
- (2) Without notice in the event of customer use of equipment in such a manner as to adversely affect the utility's equipment or the utility's service to others.
- (3) Without notice in the event of tampering with the equipment furnished and owned by the utility.
- (4) Without notice in the event of unauthorized use.
- (5) For violation of and/or noncompliance with these rules and regulations.
- (6) For failure of the customer to fulfill his contractual obligations for service and/or facilities subject to regulation by the Commission.
- (7) For failure of the customer to permit the utility reasonable access to its equipment.
- (8) Repealed by NCUC Docket No. M-100, Sub 28, 5/6/70, effective July 1, 1970.
- (9) Repealed by NCUC Docket No. M-100, Sub 28, 5/6/70, effective July 1, 1970.
- (10) For failure of the customer to furnish such service equipment, permits, certificates, and/or rights-of-way, as shall have been specified by the utility as a condition to obtaining service, or in the event such equipment or permissions are withdrawn or terminated.

(NCUC Docket No. M-100, Sub 28, 5/16/70.)

#### **R6-17 INSUFFICIENT REASONS FOR DENYING SERVICE**

The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

- (1) Delinquency in payment for service by a previous occupant of the premises to be served.
- (2) Failure to pay for merchandise purchased from utility.
- (3) Failure to pay for a different type or class of public utility service.
- (4) Failure to pay the bill of another customer as guarantor thereof.

#### **R6-18 CHANGE IN CHARACTER OF SERVICE**

The following procedure shall be followed whenever there is a material change in the character of the gas service:

- (1) Changes under the Control of the Utility. - The utility shall make such changes only with the approval of the Commission, and after adequate notice to the customers.
- (2) Changes Not under the Control of the Utility. - The utility shall maintain the proper combustibility of the gas supplied at the heating valve and specific gravity existing at the customers' meters (See Rule R6-34(b)).

#### **R6-19.1 PRIORITIES FOR LIMITATIONS ON NEW SERVICE**

(a) Any natural gas company in North Carolina placing any limitations on sales of gas to new customers shall file within thirty (30) days with this Commission a program for sales to new customers and additional sales to existing customers as may be required because of insufficient gas supply, which program shall provide the following order of priorities for such service:

- (1) Gas service to all residential customers requesting service who can be feasibly served, including multiple housing.
- (2) Gas service to small commercial and small industrial users whose requirements do not exceed 20 Mcf per day.
- (3) Industrial customers utilizing natural gas as a raw material or in direct application of gas flame where no other heat is usable.
- (4) Large commercial customers whose requirements exceed 20 Mcf per day.
- (5) Large industrial customers whose requirements exceed 20 Mcf per day.
- (6) Preferred interruptible customers.
- (7) Interruptible customers.
- (8) Dump schedule customers.

(b) Said natural gas utilities shall file such restrictive sales program with this Commission in accordance with subsection (a) of this rule in tariff form, including limitations of the size of interruptible customers, if any, within 30 days after the date of this rule.

(c) All natural gas utility companies in North Carolina without sufficient gas supply for peak-day demand shall install as needed sufficient peak-shaving equipment to meet the needs of residential customers.

(NCUC Docket No. G-100, Sub 12, 7/27/71, 7/29/71; NCUC Docket No. G-100, Sub 79, 12/02/99.)

#### **R6-19.2 CURTAILMENT OF SERVICE.**

(a) In the event that a North Carolina retail gas utility cannot supply the demands of all its customers, the utility shall curtail the customers paying the least margin per dekatherm first. This applies to all customers, be they transportation customers, regular sales rate customers, municipal customers or otherwise. However, if operating conditions require some interruption of service to a particular geographical area instead of a utility's entire system, then curtailment by margin should be applied only to those customers within the affected areas.

(b) If it is necessary to interrupt some but not all customers paying the same margin per dekatherm, then, to the extent practicable, service shall be curtailed to the customers paying the same margin per dekatherm on a pro rata basis for the season.

(c) For the convenience of wording in tariffs, the following definitions of priorities by end use will be retained. However, these priorities are not to be used for purposes of curtailment priorities unless the Commission so orders pursuant to section (d) below.

(i) Priority 1. Residential. Essential Human Needs With No Alternate Fuel Capability. Commercial less than 50 Mcf/day.

1.1 Residential requirements and essential human needs with no alternate fuel capability.

1.2 Commercial less than 50 Mcf/day.

Priority 2. Industrial Less Than 50 Mcf/day. Process, Feedstock and Plant Protection With No Alternate Fuel Capability. Large commercial requirements of 50 Mcf or more per day except for large commercial boiler fuel requirements above 300 Mcf/day.

2.1 Industrial less than 50 Mcf/day.

2.2 Commercial between 50 and 100 Mcf/day.

2.3 Commercial greater than 100 Mcf/day, non boiler use.

2.4 Commercial greater than 100 Mcf/day, with no alternate fuel capability.

2.5 Industrial process, feedstock and plant protection between 50 and 300 Mcf/day, with no alternate fuel capability.

2.6 Industrial process, feedstock and plant protection between 300 and 3,000 Mcf/day, with no alternate fuel capability.

2.7 Industrial process, feedstock and plant protection greater than 3,000 Mcf/day, with no alternate fuel capability.

2.8 Commercial over 100 Mcf/day (excluding commercial Priorities 2.3 and 2.4 and commercial boiler fuel requirements over 300 Mcf/day).

Priority 3. All other industrial requirements not greater than 300 Mcf per day.

3.1 Industrial non boiler between 50 and 300 Mcf per day.

3.2 Other industrial between 50 and 300 Mcf per day.

Priority 4. Non boiler use between 300 and 3,000 Mcf/day.

Priority 5. Non boiler use greater than 3,000 Mcf/day.

Priority 6. Boiler fuel requirements of more than 300 Mcf per day but less than 1,500 Mcf per day.

Priority 7. Boiler fuel requirements between 1,500 and 3,000 Mcf/day.

Priority 8. Boiler fuel requirements between 3,000 and 10,000 Mcf/day.

Priority 9. Boiler fuel requirements greater than 10,000 Mcf/day.

(ii) Definitions.

*Residential:*

Service to customers which consists of direct natural gas usage in residential dwelling for space heating, air conditioning, cooking, water heating, and other residential uses.

*Commercial:*

Service to customers engaged primarily in the sale of goods or services, including institutions and governmental agencies, for uses other than those involving manufacturing

	or electric power generation.
<i>Industrial:</i>	Service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power.
<i>Plant Protection Gas:</i>	Minimum quantities required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be destroyed but shall not include deliveries required to maintain plant production.
<i>Feedstock Gas:</i>	Natural gas used as a raw material for its chemical properties in creating an end product, including atmospheric generation.
<i>Process Gas:</i>	Gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics.
<i>Boiler Gas:</i>	Gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.
<i>Alternate Fuel Capability:</i>	A situation where the capability to burn a nongaseous fuel is actually installed.
<i>Essential Human Needs:</i>	Hospitals, nursing homes, orphanages, prisons, sanitariums, and boarding schools, and gas used for water and sewage treatment.
<i>Emergency Service:</i>	Service which if denied would cause shut down of an operation which in turn would result in plant closing.
<i>Margin:</i>	Margin is defined as the filed tariff rate per unit of gas or negotiated rate per unit of gas of a customer, less the cost per unit of gas as determined in the Company's last general rate case or Purchased Gas Adjustment proceeding, adjusted for any temporary decrements or increments in the filed tariff rate.

(d) The Commission may change the curtailment priority system from one of curtailment by margin to curtailment by the end use characteristics listed in the priorities defined in section (c) above, if the Commission so orders, based on good cause shown, upon the Commission's own motion or petition of any interested party. Notice and opportunity to comment shall be given to all North Carolina retail gas utilities, the Public Staff, the Attorney General, and any other parties within the Commission's discretion before such change takes effect.

(e) For end users on the municipal gas systems served by Piedmont Natural Gas Company, Inc. (Piedmont), curtailment shall be on the basis of the combined margin they pay to the City and Piedmont (i.e., the rate the end user is paying to the City behind Piedmont's system rather than the rate the City is paying to Piedmont governs those customers' curtailment priority).

(f) During July and August of each year, consumption for each customer for the twelve-months ending June 30 of such year and the prior year shall be reviewed. If it is found that the customer has either increased or decreased his annual consumption based on the two prior years' consumption to the point it would place him in a different priority classification, the customer shall be automatically reclassified to the proper priority classification effective the following September 1. In determining consumption, periods of involuntary curtailment shall be excluded.

(NCUC Docket No. G-100, Sub 12, 4/1/71; NCUC Docket No. G-100, Sub 24, 9/9/75; NCUC Docket No. G-100, Sub 24, 10/25/77; NCUC Docket No. G-100, Sub 24, 10/11/78; NCUC Docket No. G-100, Sub 24, 10/18/78; NCUC Docket No. G-100, Sub 24, 1/10/79; NCUC Docket No. G-100, Sub 51, 10/31/89; NCUC Docket No. G-100, Sub 48, 2/22/91; G-100, Sub 78, 06/30/99; NCUC Docket No. G-100, Sub 79, 12/02/99; NCUC Docket No. G-100, Sub 90, 4/29/11.)

### **R6-19.3 USE OF NATURAL GAS IN TORCHES REPEALED.**

(NCUC Docket No. G-100, Sub 25, 6/3/75; NCUC Docket No. G-100, Sub 25, 3/11/88; NCUC Docket No. G-100, Sub 25A, 07/20/04)

### **R6-19 CUSTOMER COMPLAINTS**

(a) Complaints concerning the charges, practices, facilities or service of the utility shall be investigated promptly and thoroughly. The utility shall keep such records of customer complaints as will enable it to review and analyze its procedures and actions.

(b) A report of incorrectly adjusted appliances shall be given prompt attention.

### **R6-20 REQUIREMENT FOR GOOD ENGINEERING PRACTICE**

The gas plant of the utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice in the gas industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

### **R6-21 ACCEPTABLE STANDARDS**

Unless otherwise specified by the Commission, the utility shall use the applicable provisions in the publications listed below as standards of accepted good practice.

- (1) The ASME Guide for Gas Piping Systems - Appendix G-K (Leakage Classification).
- (2) The latest edition of the American Standards Association pamphlet, ASA Z21.30, "Installation of Gas Appliances and Gas Piping in Buildings," or the latest edition of the National Board of Fire Underwriters publication, NFPA No. 54, "Piping, Appliances and Fittings for City Gas."
- (3) The current edition of the NFPA No. 59, "The Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants."
- (4) "Standard Methods of Gas Testing," Circular No. 48, National Bureau of Standards, 1961. (The applicable portions of this circular have been substantially reproduced in the American Meter Company Handbook E-4, covering the testing of positive displacement meters.)
- (5) "Testing Large Capacity Rotary Gas Meters," Research Paper No. 1741, National Bureau of Standards Journal of Research, September, 1946.
- (6) "Standard Method of Test for Calorific Value of Gaseous Fuels by Water-Flow Calorimeter," American Society for Testing Materials, Standard D 900-55.
- (7) "Purging Principles and Practices," American Gas Association.

(NCUC Docket No. G-100, Sub 7, 5/31/67; NCUC Docket No. G-100, Sub 7, 3/20/68; NCUC Docket No. G-100, Sub 34, 10/5/77.)

### **R6-22 ACCEPTABLE REFERENCES**

The following publications have not been designated as standards but they may be used as guides to acceptable practice:

- (1) "Accuracy of the Recording Gas Calorimeter When Used with Gases of High BTU Content," by John H. Eiseman, National Bureau of Standards, and Elwin A. Potter, Gas Inspection Bureau of the District of Columbia, AGA Publication No. CEP-55-13.
- (2) "Orifice Metering of Natural Gas," Report No. 3 of the AGA Gas Measurement Committee.
- (3) Reports prepared by the Practical Methods Committee of the Appalachian Gas Measurement Short Course, West Virginia University, as follows:
  - a. Report No. 1, "Methods of Testing Large Capacity Displacement Meters."
  - b. Report No. 2, "Testing Orifice Meters."
  - c. Report No. 3, "Designing and Installing Measuring and Regulating Stations."
  - d. Report No. 4, "Useful Tables for Gas Men."
  - e. Report No. 5, "Prover Room Practices."

### **R6-23 ADEQUACY OF SUPPLY**

The production and/or storage capacity of the utility's plant, supplemented by the gas supply regularly available from other sources, must be sufficiently large to meet all reasonably expectable demands for firm service.

### **R6-24 INSPECTION OF GAS PLANT**

Each utility must adopt a program of inspection of its gas plant in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.

## ARTICLE 6

### INSPECTIONS AND TESTS

#### R6-25 UTILITY INSPECTIONS AND TESTS

Each utility shall make inspections and tests of meters and associated metering devices as follows:

- (1) Pre-installation Inspections and Tests.
  - a. Every meter and/or associated metering device shall be inspected, tested and sealed in the meter shop of the utility before being placed in service, and the accuracy of each meter shall be within the tolerances permitted by Rule R6-26.
  - b. New or reconditioned meters which have been sealed at the factory need not be resealed in the meter shop of the utility.
  - c. No meter shall be installed if it has been tested as required in subdivision (1)a and held for a period longer than 30 months without retesting.
- (2) Tests to Be Made after Removal of Meters from Service. — All meters and/or associated metering devices shall be tested after they are removed from service. Such tests shall be made before the meters and/or associated metering devices are adjusted, repaired, or retired.
- (3) Leak Tests. — Repaired meters, and meters that have been removed from service, shall be leak tested prior to installation. New meters shall be leak tested in accordance with a sampling method, acceptable to the Commission.
  - a. Meters used for measuring low pressure gas shall be tested and subjected to an internal pressure of at least 20" W.C. and checked for the presence of leaks by one of the tests listed below.
  - b. Meters other than those which are covered by subdivision (3)a of this rule shall be tested and subjected to an internal pressure of 1.1 times the specified maximum working pressure of the meter if shop tested or if such pressures are available in the field but under no less than the available operating pressure if field tested and checked for the presence of leaks by one of the following tests:
    1. Immersion test.
    2. Soap test.
    3. Pressure drop test of a type acceptable to the Commission.
- (4) Request Tests. — Upon request by a customer and at no charge, the utility shall make a test of the meter serving him, provided that such tests need not be made more frequently than once in 18 months.
  - a. The customer, or his representative, may be present when his meter is tested.
  - b. A report of the results of the test shall be made to the customer within a reasonable time after the completion of the test, and a record of the report, together with a complete record of each test, shall be kept on file at the office of the utility.
- (5) Periodic Tests. — These test periods may be extended upon application to and approved by the Commission, provided that the utility can prove by its own records that different test periods are adequate for the protection of the public.
  - a. Positive displacement meters.
    1. Up to 251 cfh (at .5 in water column differential pressure with nonabsorptive diaphragm) — 7 years.
    2. Up to 251 cfh (at .5 in water column differential pressure with absorptive type diaphragm) — 5 years.
    3. 251 to 1500 cfh (at .5 in water column differential pressure) — 5 years.
    4. Over 1500 cfh (at .5 in water column differential pressure) — 2 years.
  - b. Orifice meters — 6 months.
  - c. Base pressure correcting devices — 24 months.
  - d. Base volume correcting devices — 24 months.
  - e. Secondary standards
    1. Test bottles, one cubic foot — 10 years.
    2. Dead weight testers — 10 years.
  - f. Working standards
    1. Bell provers — 5 years.
    2. Rotary displacement test meters — 5 years.

3. Flow provers — 5 years.
4. Laboratory quality indicating pressure gauges — 6 months.

(NCUC Docket No. G-100, Sub 79, 12/02/99; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. G-100, Sub 97, 10/17/22.)

#### **R6-26 TEST PROCEDURES AND ACCURACIES**

(a) Meters and/or associated metering devices shall be tested at the points and adjusted to the tolerances prescribed below. The test of any unit of metering equipment shall consist of a comparison of its accuracy with the accuracy of a standard. The Commission will use the applicable provisions of the standards listed in Rule R6-21 as criteria of accepted good practice in testing meters.

(b) Positive Displacement Meters.

- (1) Accuracy at Test Points.

<u>Flow</u>	<u>Adjusted to within</u>
Check flow	98.5%-100.5%
Not less than full rated flow	98.5%-100.5%

- (2) Overall Accuracy. - The accuracy at check flow and the accuracy at not less than open rated flow shall agree within one percent.

(c) Orifice Meters. - Accuracy at test points must be within 1/2%, plus or minus.

(d) Timing Devices. - All recording type meters or associated instruments which have a timing element that serves to record the time at which the measurement occurs must be adjusted so that the timing element is not in error by more than plus or minus 4 minutes in 24 hours.

(e) General.

- (1) All meters and/or associated metering devices, when tested, shall be adjusted as closely as practicable to the condition of zero error.
- (2) All tolerances are to be interpreted as maximum permissible variations from the condition of zero error. In making adjustments no advantages of the prescribed tolerance limits shall be taken.

#### **R6-27 FACILITIES AND EQUIPMENT FOR METER TESTING**

(a) Each utility shall maintain or designate a meter shop for the purpose of inspecting, testing and repairing meters. The shop shall be open for inspection by authorized representatives of the Commission or the Public Staff at all reasonable times, and the facilities and equipment, as well as the methods of measurements and testing employed, shall be subject to the approval of the Commission.

(b) The area within the meter shop used for the testing of meters shall be designed so that the meters and meter testing equipment are protected from drafts and excessive changes of temperature.

- (1) The calorimetric equipment shall be installed in a suitably located testing station acceptable to the Commission and subject to inspection by the Commission Staff or the Public Staff.

(c) The meters to be tested shall be stored in such manner that the temperature of the meters is substantially the same as the temperature of the prover.

(d) Working Standards. - Each utility shall own and maintain, or have access to, at least one 5 cubic-foot bell prover of an approved type, and all other equipment necessary to test meters, which shall be installed in the meter room.

- (1) Means shall be provided to maintain the temperature of the liquid in the meter prover at substantially the same level as the ambient temperature in the prover room.
- (2) The meter prover shall be maintained in good condition and correct adjustment so that it shall be capable of determining the accuracy of any service meter to within one-half of one percent.

(e) Each utility having meters which are too large for testing on a 5-cubic-foot bell prover shall use a properly calibrated test meter or a properly designed flow prover for testing the large meters.

(f) Working standards must be checked periodically (see Rule R6-25(5)) by comparison with a secondary standard.

- (1) Bell provers must be checked with a cubic foot bottle which has been calibrated by the National Bureau of Standards.
- (2) Rotary displacement test meters must be checked with a bell prover of adequate capacity which has been calibrated by representatives of the National Bureau of Standards.

(g) Extreme care must be exercised in the use and handling of standards to assure that their accuracy is not disturbed.

(h) Each standard shall be accompanied at all times by a certificate of calibration card, duly signed and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

(i) Each utility must have properly calibrated orifices, as may be necessary, to achieve the rates of flow required to test the meters on its system.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R6-28 RECORDS OF METERS AND ASSOCIATED METERING DEVICES**

Each utility shall maintain records of the following data, where applicable, for each meter and/or associated metering device until retirement:

- (1) The complete identification - manufacturer, number, type, capacity, multiplier, constants, and pressure rating.
- (2) The dates of installation and removal from service, together with the location.

#### **R6-29 METER TEST RECORDS**

Each utility shall maintain records of at least the last two tests made of any meter. The record of the meter test made at the time of the meter's retirement shall be maintained for a minimum of 3 years. Test records shall include the following:

- (1) The date and reason for the test.
- (2) The reading of the meter before making any test.
- (3) The accuracy "as found" at check and open rated flow.
- (4) The accuracy "as left" at check and open rated flow.
- (5) In the event test of the meter is made by using a test meter or a flow prover, the utility shall retain all data taken at the time of the test in sufficiently complete form to permit the convenient checking of the test methods and the calculations.

#### **R6-30 PURITY REQUIREMENTS**

All gas supplied to customers shall be substantially free of impurities which may cause corrosion of mains or piping, or form corrosive or harmful fumes when burned in a properly designed and adjusted burner.

**R6-31** Repealed by NCUC Docket No. G-100, Sub 34, 10/5/77.

#### **R6-32 PRESSURE SURVEYS AND RECORDS**

(a) Each utility shall make a sufficient number of pressure measurements on its mains and at the customer's meter so that it will have a substantially accurate knowledge of the pressures in the low, intermediate and high pressure systems in each district, division, or community served by its distribution mains.

(b) All pressure records obtained under this rule shall be retained by the utility for at least 2 years and shall be available for inspection by the Commission's representatives. Notations on each record shall indicate the following:

- (1) The location where the pressure check was made.
- (2) The time and date of the check.

#### **R6-33 STANDARDS FOR PRESSURE MEASUREMENTS**

(a) Secondary Standards. - Each utility shall own or have access to a dead weight tester. This instrument must be maintained in an accurate condition.

(b) Working Standards. - Each utility must have water manometers, mercury manometers, laboratory quality indicating pressure gauges and field type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system.

(c) Periodic Checks. - Working standards must be checked periodically (see Rule R6-25(5)) by comparison with a secondary standard.

(d) Handling of Standards. - Extreme care must be exercised in the handling of standards to assure that their accuracy is not disturbed.

(e) Certificates or Calibration Cards. - Each standard shall be accompanied at all times by a certificate or calibration card, duly signed, and dated, on which are recorded the corrections required to compensate for errors found at the customary test points at the time of the last previous test.

#### **R6-34 HEATING VALUE**

(a) Manufactured and Mixed Gas. - The heating value of manufactured gas and mixed gas, including LP Gas mixed with air, shall be considered as being under the control of the utility, except that natural gas when mixed with manufactured or LP Gas for peak shaving or emergency purposes shall not be considered a mixed gas.

(1) The average heating value on any one day shall not exceed or fall below the standard total heating value (see Rule R6-5(1)(a)) by more than five percent.

(2) The monthly average heating value shall be not less than the standard total heating value.

(b) Natural and LP Gas. - The heating value of natural gas and undiluted, commercially pure LP Gas shall be considered as being not under the control of the utility.

(c) When Appliances to Be Readjusted. - The utility shall determine the allowable range of monthly average heating values within which its customers' appliances may be expected to function properly without repeated readjustment of the burners. If the monthly average heating value is above or below the limits of the allowable range for two successive months, the customers' appliances must be readjusted in accordance with Rule R6-18.

### **R6-35 HEATING VALUE DETERMINATION AND RECORDS**

(a) The utility may not be required to determine the heating value of the gas sold if its gas supply is purchased from pipeline companies which determine the heating value in a manner acceptable to the Commission; however, if the utility sells any of its gas on a BTU basis, it shall determine the heating value and install a calorimeter in the manner provided in Subsection (b)(1), (2), (3) of this rule.

(b) The utility, if required to determine heating value under subsection (a) of this rule, shall provide and maintain a calorimeter of a type acceptable to the Commission for the regular determination of the heating value of the gas sold.

(1) The calorimetric equipment shall be installed in a suitably located testing station acceptable to the Commission and subject to its inspection.

(2) The accuracy of all calorimeters, as well as the method of making heating value tests, shall be acceptable to the Commission. Recording calorimeters shall be tested with a standard gas at least once each month.

(3) Heating value test records shall be preserved for at least 3 years.

### **R6-36 INTERRUPTIONS OF SERVICE**

(a) Each utility, except where interruptions are permitted by tariff or contract, shall make reasonable efforts to avoid interruptions of service; but when interruptions occur, service shall be reestablished within the shortest time practicable, consistent with safety.

(b) Each utility shall keep records of interruptions of service on its system and shall make an analysis of the records for the purpose of determining steps to be taken to prevent recurrence of such interruptions. Such records should include the following concerning the interruptions:

(1) Cause.

(2) Date and time.

(3) Duration.

(4) Location affected.

(5) Number of customers affected.

(c) Each utility shall notify the Commission by telephone or facsimile of any interruption of service to a major portion of its system.

(d) A detailed, written report on each interruption of service shall be filed within 30 days following the notice required in (c) above.

(e) Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers and shall be preceded by adequate notice to those who will be affected.

(NCUC Docket No. G-100, Sub 7, 5/31/67; NCUC Docket No. G-100, Sub 74, 12/4/97.)

### **R6-37 ACCEPTABLE STANDARDS**

As criteria of accepted good safety practice, the Commission will use the applicable provisions of the standards listed in Rule R6-21.

### **R6-38 PROTECTIVE MEASURES**

(a) Each utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected.

(b) The utility shall give reasonable assistance to the Commission in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

(c) Each utility shall maintain a summary of all reportable accidents arising from its operations.

### **R6-39 SAFETY PROGRAM**

(a) Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program should:

- (1) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.
- (2) Instruct employees in safe methods of performing their work.
- (3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

(b) The minimum federal safety standards and the corrosion control standards pertaining to gas pipeline safety and the transportation of natural gas as adopted in 49 CFR, Part 192 and 49 CFR, Part 192 Subpart I, as are in effect on November 15, 1971, and amendments thereto, are adopted and shall be applicable to all natural gas facilities under the jurisdiction of the Commission, except as to those requirements of North Carolina law which exceed or are more stringent than the standards set forth in the above-mentioned federal enactment, and further with the exception of any subsequent modification or amendment to the North Carolina safety standards.

(c) The Federal Safety Standards pertaining to liquefied natural gas facilities, as adopted in 49 CFR, Part 193, and as were in effect on July 15, 1980, and all subsequent amendments thereto, are adopted and shall be applicable to all liquefied natural gas facilities under the jurisdiction of the Commission.

(d) Control of Drug Use. - The Federal Safety Standards pertaining to the control of drug use in natural gas, liquefied natural gas, and hazardous liquid pipeline operations as adopted in 49 CFR, Part 199, and as were in effect on September 19, 1989, and all subsequent amendments thereto, are adopted and shall be applicable to all facilities under the jurisdiction of the Commission.

(e) The Federal Safety Standards pertaining to Grants for State Pipeline Safety Programs; State Adoption of One Call Damage Prevention Program as adopted in 49 CFR, Part 198, and as was in effect on September 20, 1990, and all subsequent amendments thereto, are adopted and shall be applicable to all natural gas facilities under the jurisdiction of the Commission. (NCUC Docket No. G-100, Sub 13, 12/30/70; NCUC Docket No. G-100, Sub 15, 11/15/71; NCUC Docket No. G-100, Sub 17, 12/20/72; NCUC Docket No. G-100, Sub 19, 11/21/73; NCUC Docket No. G-100, Sub 41, 10/1/80; NCUC Docket No. G-100, Sub 54, 9/19/89; NCUC Docket No. G-100, Sub 56, 12/6/90.)

### **R6-40 CUSTOMER'S PIPING**

Each customer's piping system shall be tested for leaks before service is turned on.

- (1) Pressure Test. - If local authorities do not require the pressure test of customer's piping, as set forth in section 2.12, "Test of Piping for Tightness," NFPA Standard No. 54, the utility shall advise the customer of the desirability of having his plumber conduct such a test.
- (2) Leakage Test. - Before turning on a gas meter at any location, the piping system supplied shall be tested for leaks by a method at least equal to that described in section 2.13, "Leakage Check after Gas Turn-On," in the latest edition of the American Standard Installation of Gas Appliances and Gas Piping in Buildings, ASA Z21.30.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

### **R6-41 GAS LEAKS AND ANNUAL REPORTS**

(a) A report of a gas leak shall be considered as an emergency requiring immediate attention.

(b) The reporting rules and requirements regarding transportation of natural gas and other gas by pipeline as adopted in 49 CFR Part 191, and any subsequent amendments thereto, are adopted with the following modifications:

- (1) Repealed
- (2) Section 191.9(c) — Delete
- (3) Section 191.11(b) — Delete

(c) This rule shall be applicable to all natural gas operators subject to the jurisdiction of the Commission pursuant to G.S. 62-50.

(d) All natural gas operators shall submit two copies of each report called for in Part 191 of Title 49, Code of Federal Regulations, to the Commission. The Chief of the Gas Pipeline Safety Division of the Commission is hereby authorized to transmit one copy of each such required report to the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration.

*(NCUC Docket No. G-100, Sub 11, 3/5/70; NCUC Docket No. G-100, Sub 43, 8/6/84; NCUC Docket No. G-100, Sub 99, 5/22/2023; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

**R6-42 to R6-46** Repealed by NCUC Docket No. G-100, Sub 34, 10/5/77.

**R6-47 to R6-59** Reserved.

**R6-60 EXTENSION OF FACILITIES INTO CONTIGUOUS OCCUPIED TERRITORY**

No natural gas utility shall construct or operate natural gas facilities in territory occupied by and receiving similar service from another natural gas utility except upon written notice to the Commission and to the company occupying and serving the territory, opportunity for public hearing, and written approval by the Commission. Territory which has been assigned to a natural gas utility by the Commission shall be presumed occupied by it and receiving similar service from it, subject to a finding by the Commission that the authorized natural gas utility has waived or disclaimed its right to serve, or that it is not feasible for the authorized company to serve, or that service by the authorized company would be less feasible than for the applicant, or that existing service by the authorized company is inadequate or inferior and that the authorized company reasonably will not or cannot render adequate service or that the natural gas utility has forfeited its exclusive franchise rights pursuant to a finding and order of the Commission issued under Rule R6-63.

*(NCUC Docket No. E-100, Sub 6, 5/23/67; NCUC Docket No. G-100, Sub 70, 3/19/96.)*

**R6-61 CONSTRUCTION OF PIPELINE FACILITIES**

No natural gas utility under the jurisdiction of the Commission shall construct or operate a natural gas pipeline facility outside its designated territory to which the utility has exclusive franchise rights or to be connected to an interstate pipeline, including looping of present facilities, from an interstate supplier without having first applied in writing to, and obtained the written approval of the Commission. Such application shall clearly show that the construction proposed is economically and financially feasible, and will not be wastefully duplicative of existing or proposed construction by any other supplier of natural gas in the State, will not constitute an unfair burden upon applicant's customers in the State, and is in the public interest generally.

If the proposed pipeline facility is within a company's designated territory to which the company has exclusive franchise rights and is to a community for initial service, the natural gas utility shall notify the Commission in writing before entering upon construction or operation of the facility.

*(NCUC Docket No. E-100, Sub 6, 5/23/67; NCUC Docket No. G-100, Sub 70, 3/19/96.)*

**R6-62 SERVICE FROM FACILITIES IN ANOTHER GAS UTILITY'S TERRITORY**

Where a natural gas pipeline constructed, owned, or operated by a natural gas utility subject to jurisdiction of the Commission traverses territory or area designated by the Commission as the authorized territory or service area to which another natural gas utility regulated by the Commission has exclusive franchise rights, and either of said companies finds it necessary or desirable to furnish natural gas for domestic, commercial, industrial, or farm use within an area adjacent to said pipeline and within the boundaries of the territory traversed by the pipeline, the owner of the pipeline shall install the meters, regulators, and taps necessary to furnish the service and shall deliver the natural gas to the company in whose territory or area the pipeline is located at rates and under regulations from time to time filed with and approved by the Commission, and the gas utility having authority to serve in the designated area shall have opportunity to sell and to service said domestic, commercial, industrial, or farm customers.

*(NCUC Docket No. E-100, Sub 6, 5/23/67; NCUC Docket No. G-100, Sub 70, 3/19/96.)*

**R6-63 FORFEITURE OF EXCLUSIVE FRANCHISE RIGHTS**

(a) Purpose. - The purpose of this Rule is to implement the portion of G.S. 62-36A(b) which provides for expansion of service by each franchised natural gas local distribution company to all areas of its franchise territory within three years, and which further provides that any local distribution company that the Commission determines is not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, shall forfeit its exclusive franchise rights to that portion of its territory not being served.

(b) Forfeiture For Failure To Provide Service. - Each natural gas utility shall provide for the expansion of natural gas service to at least some portion of each county within its certificated service territory, as established by the Commission, on or before the following date:

- (i) July 1, 1998 for certificated service territories existing on July 1, 1995, or

- (ii) three years after the date a certificate of public convenience and necessity is awarded for newly certificated service territories, or the natural gas utility shall be subject to forfeiture of its exclusive franchise rights to each such unserved county located within its service territory upon a finding by the Commission that the natural gas utility is not providing adequate service to at least some portion of that county on the applicable date set forth above.

(c) Review Proceedings. - The Commission will initiate a review proceeding for each natural gas utility subject to its jurisdiction following the applicable date set forth in subsection (b)(i) or (b)(ii) above to determine whether the utility is providing adequate service to at least some portion of each county within its franchise territory. The Commission will require the utility to file testimony, and the testimony shall include the following:

- (i) A list of counties in the certificated service territory in which the natural gas utility has no transmission facilities or distribution system in service on such date;
- (ii) A description of any immediate plans the natural gas utility has to serve a portion of any of the unserved counties listed;
- (iii) A description of right-of-way acquisition, natural gas system design work being undertaken, or natural gas system construction work in progress by the natural gas utility on such date in any of the unserved counties listed;
- (iv) Citation by case caption and docket number of any pending application before the Commission for the use of expansion funds for the construction of natural gas facilities in any of the listed unserved counties and a description of the current status of any such expansion fund project to the extent a Commission order approving the project has been issued; and
- (v) Any other information the natural gas utility may wish the Commission to consider relating to its efforts to provide service to the unserved counties listed.

The Commission will allow for interventions by interested persons and will allow all intervenors to participate fully in the review proceedings. The Commission will allow the Public Staff and other intervenors to file testimony, in which they may propose that counties other than those listed by the utility be considered for forfeiture and provide support for their proposal. The Commission will schedule a hearing and will provide for public notice thereof to be given throughout the franchise territory of the utility. Following the hearing, the Commission shall issue an order in which it will determine whether the natural gas utility is providing adequate service to at least some portion of each county within its franchise territory and if the Commission finds that the utility is not providing adequate service to at least some portion of any such county, the Commission will order that the natural gas utility forfeit its exclusive franchise rights to each such county.

(d) Adequate Service. - The Commission will determine whether adequate service is being provided to at least some portion of each county in a natural gas utility's franchise territory based on the review proceedings provided in subsection (c) above. The requirement that adequate service must be provided by the applicable date set forth in subsection (b)(i) or (ii) above may be deemed to have been met for a given county even though the natural gas utility has not actually begun providing service if the following conditions are met:

- (i) the natural gas utility has completed a substantial amount of design process/service for the construction of natural gas facilities into at least some portion of the county, such as the preparation of engineering design for pipe size and capacity parameter, rectifier facilities, route location, materials specifications, construction specifications and drawings by an engineer sufficient to indicate the facilities to be built; or
- (ii) the natural gas utility has begun to acquire rights-of-way for the construction and operation of natural gas facilities in the county; or
- (iii) by at least six months before the applicable date set forth in subsection (b)(i) or (ii) above, the natural gas utility filed an application that complies with the Commission's applicable orders and rules for use of expansion funds for the construction of facilities into at least some portion of the county; and
- (iv) it appears likely that the construction of the facilities will be completed and service will be provided within two years of the applicable date set forth in subsection (b)(i) or (ii) above.

If the natural gas utility meets the above conditions, it will be given two years from the applicable date set forth in subsection (b)(i) or (ii) above to complete construction of its proposed project and begin providing service. If construction of the facilities included in the proposed project are not substantially completed at the end of the two-year period, the Commission shall issue an order requiring the utility to show cause why the Commission should not find that the requirements of G.S. 62-36A(b) and of this Rule have not been met and why the Commission should not issue an order declaring the natural gas utility to have forfeited its exclusive franchise rights to such county in which the proposed facilities are not completed and in service. (NCUC Docket No. G-100, Sub 70, 3/19/96.)

#### **R6-70 UNIFORM SYSTEM OF ACCOUNTS.**

For utilities with annual accounting and reporting periods based on the calendar year, effective January 1, 2002, and for utilities with fiscal year accounting and reporting periods, effective with fiscal years beginning in 2002, the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, as currently embodied in the United States Code of Federal Regulations, Title 18, Part 201, and as revised periodically, is hereby adopted by this Commission as its accounting rules for natural gas utilities and is prescribed for the use of all natural gas utilities under the jurisdiction of the North Carolina Utilities Commission, subject to the following exceptions and conditions unless otherwise ordered by the Commission:

- (1) All orders and practices of the Commission in effect as of the effective date of this Rule with any accounting impacts that conflict with provisions of the Uniform System of Accounts shall remain in effect, and future such orders and practices with such impacts shall supersede the provisions of the Uniform System of Accounts for North Carolina retail jurisdictional purposes.
- (2) All references to federal statutes, federal regulations, and other federal documents are to be ignored or deleted where they are not applicable to the jurisdiction exercised by this Commission.
- (3) Instead of natural gas companies being divided into Class A, Class B, Class C, and Class D categories, all companies shall be treated as Class A companies.

(SOURCE: Administrative Order issued in Docket No. G-100, Sub 1, February 18, 1960; NCUC Docket No. G-100, Sub 7, 5/31/67; NCUC Docket No. G-100, Sub 10, 7/26/67; NCUC Docket No. G-100, Sub 20, 5/24/74; NCUC Docket No. G-100, Sub 83, 10/12/01.)

**R6-71** Repealed by NCUC Docket No. G-100, Sub 79, 12/02/99.

**R6-72 TO R6-79** Reserved.

#### **R6-80 REQUIREMENTS FOR DEPRECIATION STUDIES**

Each natural gas utility shall make a depreciation study at least once every five years. All such studies, including any proposed changes in depreciation rates, shall be submitted to the Commission for approval.

(NCUC Docket No. G-100, Sub 8, 3/23/67; NCUC Docket No. G-100, Sub 10, 7/26/67; NCUC Docket No. G-100, Sub 62, 10/15/92.)

#### **R6-81 GENERAL**

(a) Purpose. The purpose of these rules is to implement G.S. 62-158 and G.S. 62-2(9) by providing for the establishment, funding, operation and administration of natural gas expansion funds to promote the public welfare throughout the State. Any such fund is to be used by the franchised natural gas local distribution company for which it is approved for the construction of facilities in its franchised territory to extend natural gas service to areas of the State where natural gas service is not available.

(b) Definitions.

- (1) Economically infeasible: The Project has a negative net present value.
- (2) LDC: Natural gas local distribution company.
- (3) Net present value: The present value of expected future net cash inflows over the useful life of a Project minus the present value of net cash outflows.
- (4) Project: The scope of the construction of facilities to extend service into unserved areas.
- (5) Unserved areas: Counties, cities or towns of which a high percentage is unserved.

(NCUC Docket No. G-100, Sub 57, 4/9/92.)

#### **R6-82 ESTABLISHMENT OF EXPANSION FUNDS**

(a) Upon petition by an LDC, the Commission may, after a hearing, order the establishment of a special Natural Gas Expansion Fund (Fund) to be used by the petitioning LDC to construct facilities into unserved areas in that LDC's franchised territory that otherwise would be economically infeasible.

(b) Any petition for the establishment of a Fund shall include a showing that there are unserved areas in the LDC's franchised territory and that expansion of natural gas facilities to such areas is economically infeasible. In its petition for the establishment of a Fund, an LDC shall request the Commission to authorize appropriate funding and show the following:

- (1) If approval for the application of supplier refunds to the Fund is sought, the amount of the refunds the LDC has received or which it expects to receive and when it expects to receive them, to the extent then known or reasonably capable of estimation.
- (2) If an expansion surcharge is requested, the amount which the LDC estimates the requested surcharge will generate over periods of one year and three years.

(c) The Commission shall order the petitioning LDC to publish a notice of the petition and the request for funding in a form approved by the Commission. If an expansion surcharge or application of supplier refunds is requested, the Commission shall require the petitioning LDC to mail an approved notice to each of its customers.

(d) In determining the establishment of a fund and the sources and magnitude of the initial funding, the Commission will consider the LDC's showing that expanding to serve unserved areas is economically infeasible and such other factors as the Commission deems reasonable and consistent with the intent of G.S. 62-158 and G.S. 62-2(9). Before ordering the establishment of a fund, the Commission must find that it is in the public interest to do so. Upon the establishment of a fund, the Commission shall provide for appropriate notice of its decision.

(NCUC Docket No. G-100, Sub 57, 4/9/92.)

### **R6-83 STRUCTURE AND ADMINISTRATION OF EXPANSION FUNDS**

(a) Upon the establishment of a fund for a petitioning LDC, a special fund in an interest-bearing account shall be created in the office of the State Treasurer to be funded as provided in G.S. 62-158. Any interest or other income derived from the fund shall be credited to the Fund.

(b) After public notice and hearing as provided in Rule R6-82, the Commission may, for an LDC for which a Fund is being or has been established,

- (1) order that refunds from the LDC's suppliers of natural gas and transportation services be placed in the Fund;
- (2) approve an expansion surcharge in accordance with G.S. 62-158(b) to be charged, by separate line item on bills, to all customers purchasing natural gas or transportation service throughout that LDC's franchised territory for service rendered after approval, such surcharge to remain in effect until further order of the Commission, and order the LDC to deposit proceeds collected from such surcharge in the Fund; or
- (3) approve other sources of funding proposed by the LDC in its petition.

(c) Monies received from approved sources of funding shall be remitted to the Commission, as follows:

- (1) Refunds ordered to be placed in the LDC's Fund shall be remitted plus interest to the Commission within ten (10) days of the Commission's order or upon receipt of such refunds.
- (2) Expansion surcharges billed shall be recorded on the books of the LDC in a separate accounts-payable account by customer class prior to their transfer to the Commission. The balance in this account shall be remitted to the Commission by the 20th day of the month following the month in which the surcharges are billed. If surcharges billed are uncollected, such uncollected amount shall be treated as natural gas bad debt losses for ratemaking purposes. To the extent the LDC negotiates a price lower than the tariff rate, any discount will be applied first to the expansion fund surcharge. The amount of the surcharge forfeited due to negotiations shall not be recoverable from the LDC nor shall it be considered a "negotiated loss" for the purpose of the LDC's deferred account.
- (3) Other sources of funding shall be remitted as ordered by the Commission when such sources are approved and when the funds become available to the LDC.

(d) The refunds ordered to be placed in an LDC's Fund, surcharges collected by each LDC pursuant to G.S. 62-158, and any other approved funding shall be deposited in the fund established for that LDC.

(e) The LDC may, at any time, based upon changes in circumstances, request changes in the nature or magnitude of the funding previously approved. If the Commission finds that the request involves a material change in funding, the Commission shall provide for appropriate notice and shall afford an opportunity for review and comment by interested parties. The Commission shall set the request for hearing if it deems it appropriate.

(f) Upon petition for the dissolution of a Fund, the Commission shall consider the status of service in the affected LDC's territory, the feasibility of further expansion and other relevant factors consistent with the intent of G.S. 62-158 and G.S. 62-2(9). Upon dissolution, the affected LDC shall file a final accounting for the Fund. Any monies remaining in the Fund at the time of dissolution shall be refunded to the rate classes that contributed them pursuant to Commission order.

(NCUC Docket No. G-100, Sub 57, 4/9/92.)

### **R6-84 APPROVAL OF EXPANSION PROJECTS**

(a) Each LDC that has an established Fund shall, on at least an annual basis, file a request for approval of any Project(s) which previously have not been approved and which it proposes to undertake within the next year and for which it proposes to use expansion funds. The request shall include an analysis of each proposed Project. For each proposed Project, the LDC's analysis shall contain the following:

- (1) A precise geographic description, a map, a detailed description of the physical facilities, including their projected operating parameters, and the arrangements that have been or are proposed to be made to obtain right-of-ways;
- (2) The date when construction is proposed to begin and end, specific construction budgets and a timetable for disbursements from the Fund; and
- (3) A net present value analysis calculated in a generally accepted manner. The net present value calculation shall reflect only the income tax benefits to be realized by the LDC.

(b) The request shall also include a prioritizing of the proposed Projects by the LDC to the extent practicable based upon the degree of feasibility; the existence of an active demand and previous requests for service; the extent of contributions from local governments, potential end users, or others; benefits to the LDC's transmission or distribution system; the improvement in the feasibility of subsequent extensions into relatively densely populated counties or towns resulting from an initial Project, if applicable; and any other relevant factors.

(c) The Commission shall provide for notice of each request for approval filed under this Rule and shall afford an opportunity for review and comment by interested parties. The Commission shall set the request for hearing if it deems it appropriate.

(d) The Commission shall enter an order approving or denying funding on a project-specific basis. The order shall include a finding of the negative net present value of each Project approved, which shall be the maximum amount to be disbursed from the Fund for that Project. In determining the Projects to be approved for each annual period, the Commission shall consider the balance in the fund at the time of the approval, the relative merit of each Project based on customer need, the degree of economic feasibility, and such other factors as the Commission deems pertinent and consistent with the intent of G.S. 62-158 and G.S. 62-2(9). To the extent the Commission's order approving a Project is based on different assumptions, including design, projected load or amount or sources of funding, than those used by the LDC in its request for approval, the LDC shall have the right not to proceed with the Project or to invest its funds in the same, and no use may be made of expansion funds on such Project absent further order of the Commission.

(e) The LDC may, at any time, based upon changes in circumstances, propose modifications with respect to Projects previously approved by the Commission. If the Commission finds such a proposal to constitute a material change in an approved Project, the Commission shall provide for appropriate notice and shall afford an opportunity for review and comment by interested parties. The Commission shall set the proposal for hearing if it deems it appropriate.

(f) If construction on an approved Project has not begun within one year of the order granting approval, the Commission may require the LDC to show cause why the balance in its Fund allocated to such Project should not be allocated to other approved Projects or otherwise disposed of as ordered by the Commission.

(NCUC Docket No. G-100, Sub 57, 4/9/92.)

## **R6-85 DISBURSEMENTS**

(a) Monies from a fund shall be disbursed to the LDC for which the fund was established only as ordered by the Commission. All disbursements shall be used only for the specific Projects for which they were approved. The LDC shall not be required to commence or continue construction of any Project if it appears that the funds available in its Fund will be inadequate to complete construction.

(b) Progress Payments. - Disbursements shall be in the form of reimbursements for actual amounts paid by the LDC. The LDC shall submit a Request for Reimbursement for each approved Project not more often than once a month. Such Requests shall specify the work performed and materials and equipment delivered to the Project during the period covered by the request for reimbursement and be accompanied by the Project Status Report and the Summary of Construction Cost Reimbursement Report described in Rule R6-87. Requests shall also contain a certification that the amounts sought by the LDC have been paid for work completed on and materials provided to the Project. If the request for disbursement complies with these rules and the Commission's order approving the Project for which reimbursement is sought, the request for disbursement shall not be subject to any further proceedings or orders and shall be paid within fifteen (15) days of receipt. If the request raises issues of material fact as to whether such a disbursement is appropriate, the Commission may set the matter for hearing or otherwise resolve any issues as to the appropriateness of the disbursement. The maximum amount of each reimbursement shall be 75% of total expenditures during the period covered by the request. Cumulative reimbursements for the Project shall not exceed the approved negative net present value.

(c) Final Accounting. - Within three years from the date of the Commission's order approving a Project, a final accounting shall be filed showing the actual expenditures to date, disbursements to date, the negative net present value determined by the

Commission for the Project, and the balance of funds requested to be disbursed, if any. This information shall be provided in the formats approved by the Commission. Unless the Commission specifically orders otherwise, disbursements for a Project will not be approved after the date the final accounting is approved by the Commission. If the total amount of the approved negative net present value has not been disbursed by the time the final accounting is approved, the Commission shall, upon motion of the LDC and notice to all parties, approve a further disbursement up to the lesser of the approved negative net present value or the actual expenditures to date.  
(NCUC Docket No. G-100, Sub 57, 4/9/92.)

#### **R6-86 BUY BACK**

In determining whether or not a buy back of a Project shall be allowed or required, the Commission shall consider: (1) whether the Project in question has become economically feasible and the facilities used and useful as required by G.S. 62-133(b)(1); (2) the impact on the LDC's customers; (3) whether the LDC has or can obtain on reasonable terms the necessary funds; and (4) any other factors relevant to a determination of whether the buy back is in the public interest. No buy back shall be approved unless the records required to be kept by these rules are provided. No buy back will be required unless the LDC has, or can obtain on reasonable terms, funds for remittance on a project financing basis.  
(NCUC Docket No. G-100, Sub 57, 4/9/92.)

#### **R6-87 REPORTING**

- (a) A Surcharge Deposit Report shall be filed by an LDC with an approved surcharge on a monthly basis concurrent with each deposit into the Fund. This report shall include, by rate schedule, the information required by the Commission in the format approved by the Commission.
- (b) Whenever an LDC with an established Fund seeks to deposit funds from sources other than surcharges, it shall file a Request to Deposit Funds from Other Sources. This report shall contain a description of the source of the funds, the total dollar amount, and the docket number at the Federal Energy Regulatory Commission, if any.
- (c) The Commission shall determine the status of each LDC's Fund on a monthly basis and prepare a monthly Expansion Fund Financial Statement for each LDC with an established Fund.
- (d) Each LDC with an established Fund shall file reports with each Request for Reimbursement or at least quarterly. These reports shall be filed in the formats approved by the Commission, and these reports are as follows:
  - (1) A Summary of Construction Cost Reimbursements and
  - (2) A separate Project Status Report for each Project containing three separate sections: (a) Budget Versus Actual Cost Data, (b) Construction Cost Summary, and (c) Current Reimbursement Requested.
- (e) A comprehensive annual report on all activity in the Fund for the fiscal year ending November 30 shall be filed by each LDC with an established Fund by February 1 of each year and the report shall be in the format approved by the Commission.  
(NCUC Docket No. G-100, Sub 57, 4/9/92.)

#### **R6-88 ACCOUNTING AND RATEMAKING**

- (a) The gas plant accounts shall not include monies disbursed from a Fund. Plant constructed from these monies shall be shown as a reduction to gross plant constructed when assembling cost data in work orders for posting to the plant ledger of accounts. Disbursements from a Fund shall be credited to the accounts charged with the cost of such construction.
- (b) Monies disbursed from a fund shall be credited first against transmission main costs, secondly against distribution main costs, and finally to other plant.
- (c) No depreciation expense on the portion of the plant cost financed by disbursements from the Fund shall be included in the LDC's cost of service.
- (d) Any remittance of monies in order to buy back facilities constructed with monies disbursed from a Fund shall be considered by the Commission only in the context of a general rate case. Any amounts remitted shall be included in rate base in such general rate case. The Commission shall order that any such remittance of monies either be deposited in the LDC's Fund or be refunded to the customer rate classes that contributed the monies, and the Commission may order interest in a reasonable amount to be determined by the Commission.  
(NCUC Docket No. G-100, Sub 57, 4/9/92.)

#### **R6-89 DEFERRAL ACCOUNTING FOR NATURAL GAS EXPANSION**

- (a) An LDC may request Commission approval to create a regulatory asset account for the purpose of accruing a return on its investment in transmission lines constructed as part of a Project of the type that would be eligible for use of an expansion fund pursuant to G.S. 62-158. Such a request may be filed with the Commission as part of a request for approval of a Project pursuant to Rule R6-84 but in no event less than 45 days prior to the date the accrual is to begin. AFUDC will accrue during

construction; however, the accrual under this Rule shall begin no sooner than the date construction is completed and continue until the date new rates become effective in the LDC's next general rate case in which the investment in the Transmission Facilities are included in the LDC's rate base. The Commission, however, may terminate the accrual upon the motion of any interested party and after notice to the LDC and opportunity for hearing. The accrual under this Rule for a particular project shall not exceed five (5) years unless so authorized by the Commission upon a showing by the LDC of good cause.

(b) For the purposes of this Rule, "Transmission Facilities" shall include the gas pipeline and all appurtenant related facilities, including land, mains, valves, meters, boosters, regulators, compressors and their driving units and appurtenances, and other related equipment constructed as part of the Project, the purpose of which is to facilitate the transportation of natural gas from an interstate pipeline, other portions of the LDC's system including existing transmission mains, or other suppliers of gas for ultimate delivery to a distribution system(s). Transmission Facilities shall end at the inlet side of the equipment which meters or regulates the entry of gas into one or more distribution systems.

(c) In determining whether to approve a request under this rule, the Commission will consider the desirability of providing gas service to the new area covered by the Project, the size and relative infeasibility of the Project for which deferral accounting is sought, the LDC's overall expansion plans as reported pursuant to G.S. 62-36A, the LDC's currently earned return on equity, the amount of the investment as a percentage of the LDC's rate base and the amount of the anticipated accrual as a percentage of the LDC's revenues, the estimated impact of the accrual on rates when the investment is included in the LDC's rate base in a general rate case, and any other factors affecting the public interest.

(d) The anticipated accrual under this Rule shall not affect the calculation of the net present value of a Project for the purpose of the use of an expansion fund pursuant to G.S. 62-158 and Rule R6-84. Approval of the use of expansion funds as partial funding for a Project pursuant to G.S. 62-158 is not required for the Project to be eligible for Commission approval of the deferral accounting treatment under this Rule.

(e) Upon receiving Commission approval, the LDC may, on a monthly basis, debit the account in an amount equal to the LDC's currently authorized overall rate of return on its investment in Transmission Facilities constructed as part of Projects that have been completed but not included in rate base.

(NCUC Docket No. G-100, Sub 68, 10/13/95.)

## **R6-90 APPLICATION PROCESS**

(a) Purpose. The purpose of these Rules is to implement G.S. 62-2(a)(9) and G.S. 62-159 by providing a process pursuant to which funding from the proceeds of the general obligation natural gas bonds approved by referendum in November 1998 can be made available to:

- (i) existing North Carolina local distribution companies (LDCs) or
- (ii) a person awarded a new franchise or a regional gas district for the construction of natural gas facilities in unserved areas that would otherwise not be economically feasible to construct (hereinafter collectively referred to as "eligible recipients" or "applicants"). For purposes of these Rules, a "project" is defined as all of the natural gas facilities, including but not limited to, transmission and distribution lines, metering facilities, and compressors, and all of the activities necessary to extend and provide natural gas service to an unserved area that is eligible under the statutes for funding from the natural gas bonds.

(b) Letters of intent. All applicants who intend to file an application for approval to use natural gas bond funds shall first file a letter of intent 30 days before the projected filing date of the application. The letter shall give notice of the intention to file an application and shall identify the counties involved in the project to be proposed. Upon the filing of such a letter of intent, the Commission will promptly issue an order establishing a filing deadline for competing letters of intent, i.e., letters of intent as to applications that include one or more of the same counties. Typically, this deadline will be 30 days from the date of the Commission's order, and the order will be sent to those on the Commission's natural gas service list, representatives of the counties involved, and all other known interested persons. Upon expiration of the deadline for competing letters of intent, if no competing letter of intent has been filed, the applicant shall file its application for approval to use natural gas bond funds forthwith. If a competing letter of intent is filed, the Commission will promptly issue an order establishing a filing deadline for all applications that include one or more of the same counties. Typically, this deadline will be 60 days from the date of the Commission's order, but the Commission may establish some other period as appropriate. Upon expiration of the deadline and upon the filing of a competing application, the Commission shall consolidate the competing applications as appropriate, set the applications for hearing, and establish a procedural schedule.

(c) Projects involving a county or counties for which an existing LDC has the exclusive franchise. For projects involving a county or counties for which an existing LDC has the exclusive franchise, applications for approval to use natural gas bond funds pursuant to G.S. 62-159 and this Rule may be filed only by the existing LDC or by a regional gas district. An application for approval to use bond funds shall contain the following information:

- (1) A precise geographic description, a map or maps of the area(s) proposed to be served, a detailed description of the proposed physical facilities, including their projected operating parameters and characteristics, the arrangements that have been or are proposed to be made to obtain rights-of-way and plans for obtaining capacity to supply the projected demand;
- (2) Details about any special permitting or licensing that may be required, such as from the National Park Service, the National Forest Service, the Federal Energy Regulatory Commission or the Army Corp of Engineers, and a statement as to how much time the permitting or licensing is likely to take;
- (3) A market study, including an analysis of potential customers and volumes, probable conversions from other fuels, and projected growth resulting from population growth and economic development;
- (4) An engineering study that includes the proposed design of the system (including a pipe network flow analysis), routing (including a review of planned or proposed state highway improvements), and construction cost estimates;
- (5) A net present value (NPV) analysis conducted in a generally accepted manner that provides support for the amount of natural gas bond funding requested in the eligible recipient's application;
- (6) A demonstration of the applicant's technical, operational, and financial management capabilities that will ensure the successful and safe construction and operation of the project;
- (7) A financing plan for the feasible part of the project that includes the amounts, sources, and costs for common equity, debt, and/or other types of financing;
- (8) The estimated beginning and ending dates of the proposed construction, including the date service to one or more customers is proposed to begin, specific itemized construction budgets and a timetable for disbursements from the bond fund; and
- (9) A schedule or schedules of proposed rates.

(d) Projects involving a county or counties for which no LDC has an exclusive franchise. For projects involving a county or counties for which no LDC has an exclusive franchise, applications for approval to use natural gas bond funds may be filed by any person, including an existing LDC, that is a public utility or would become a public utility by constructing, owning or operating the proposed natural gas facilities or by a regional gas district. For projects involving such counties, a person, including an existing LDC, that is a public utility or would become a public utility by constructing, owning or operating the proposed natural gas facilities also must file an application for a certificate of public convenience and necessity pursuant to G.S. 62-110. All applications for approval to use natural gas bond funds must include the information required by subsection (c) of this Rule.

(e) Accuracy required. In all cases, applications for approval to use natural gas bond funds shall be as accurate as possible when filed, particularly as to the estimates used in the NPV analysis of the project. Amendments are discouraged. In cases of competing applications, the Commission shall first give preliminary approval to use natural gas bond funds, and the winning applicant shall then be required to refine the estimates and move for final approval of the amount of bond money to be awarded. If significant changes to the project or to the NPV analysis are made, the Commission may in its discretion re-open the preliminary approval and conduct such further proceedings as appropriate to reconsider the decision.

(f) Other applications. If not otherwise addressed in its application, an applicant that is a public utility or would become subject to regulation as a public utility if its application were granted, shall file for approval of its proposed financing for the feasible portion of an approved project to the extent required by G.S. 62-160 through G.S. 62-171 and Commission Rule R1-16. A regional gas district proposing to use revenue bonds to finance the feasible portion of a project for which bond funds have been approved shall file for a certificate of convenience and necessity in accordance with G.S. 159-95.

(NCUC Docket No. G-100, Sub 75, 03/08/99; 08/04/99.)

#### **R6-91 APPROVAL OF PROJECTS AND USE OF NATURAL GAS BOND FUNDS**

(a) Eligible recipients applying for bond funds pursuant to Commission Rule R6-90 shall publish a notice of the application at the direction of and in a form approved by the Commission.

(b) The Commission shall consider the following in determining whether to approve the use of bond funds: the scope of the proposed project, including the number of unserved counties and the number of anticipated customers by class that would be served; the total cost of the proposed project; the extent to which the proposed project is feasible; and other relevant factors affecting the public interest.

(c) The Commission shall enter an order approving or denying the use of natural gas bond funds on a project-specific basis. Natural gas bond funds shall be used only pursuant to an order of the Commission after a public hearing. Such an order shall specifically find the negative NPV of the approved project and shall limit the bond funding pursuant to G.S. 62-159 to that negative NPV.

(d) As soon as practicable after an order approving funding of a project becomes final, the Commission shall notify the State Treasurer of such approval and the amount of bond funding that has been approved.

(e) If construction has not begun on a project for which bond funding has been approved within one year after the date on which the order granting approval became final, the Commission shall require the recipient to show cause why the approval should not be rescinded; why its franchise should not be revoked, if appropriate; and why it should not be required to reimburse bond monies paid to it, if any.

(NCUC Docket No. G-100, Sub 75, 03/08/99.)

#### **R6-92 DISBURSEMENTS AND FINAL ACCOUNTING**

(a) Monies from bond funds shall be disbursed only to an eligible recipient awarded the right to use bond funds and only as ordered by the Commission. All disbursements shall be used solely for the specific project for which they were approved. A project for which bond funding has been approved must be constructed as proposed unless the eligible recipient awarded the bond funding petitions the Commission to make modifications to the project and the Commission finds that the public interest requires that modifications be made.

(b) Disbursements shall be in the form of reimbursements for actual amounts paid by an eligible recipient awarded the right to use bond funds for an approved project. Eligible recipients awarded the right to use bond funds shall submit requests for reimbursement not more often than once a month. Such requests shall specify the work performed on and the materials and equipment delivered to the approved project during the period covered by the request for reimbursement and shall be accompanied by the Project Status Report described in Commission Rule R6-93. Requests also shall contain a certification that the amounts sought by the eligible recipient awarded the right to use bond funds have been paid for work completed on and materials and equipment provided to the approved project. The maximum amount of each reimbursement shall be 75% of total expenditures during the period covered by the request. Cumulative reimbursements for an approved project shall never exceed the approved negative NPV.

(c) If the request for disbursement complies with these Rules and the Commission order approving the use of bond funds, the request shall not be subject to any further proceedings or orders and shall be paid as promptly as possible. If the request is not in compliance or if the request raises issues of material fact as to whether such a disbursement is appropriate, the Commission shall set the matter for hearing or otherwise resolve any issues as to the appropriateness of the disbursement.

(d) Within three years from the date of a final Commission order approving a project and use of bond funds, the recipient shall file a final accounting showing the actual expenditures to date, disbursements to date, the negative NPV determined by the Commission, and the balance of funds requested to be disbursed, if any. This information shall be provided in formats approved by the Commission. Unless the Commission specifically finds that good cause has been shown, no disbursement will be approved after the final accounting is approved by the Commission. If the total amount of the approved negative NPV has not been disbursed by the time the final accounting is approved, the Commission shall, upon motion by recipient awarded the right to use bond funds and notice to all parties, approve a further disbursement up to the lesser of the approved negative NPV or the actual expenditures to date.

(NCUC Docket No. G-100, Sub 75, 03/08/99.)

#### **R6-93 REPORTS**

(a) Each eligible recipient awarded the right to use bond funds shall file a Project Status Report in the format approved by the Commission for each approved project with each request for reimbursement, or at least quarterly. This report shall contain four separate sections:

- (1) budgeted versus actual cost data;
- (2) construction cost summary;
- (3) summary of construction cost reimbursements already received; and
- (4) current reimbursement requested. To the extent extraordinary delays have occurred, a report on such delays and expected progress shall be included in this report.

(b) Recipients of bond funds, if subject to the biennial reporting requirement in G.S. 62-36A, shall provide customer and construction cost information on projects for which use of bond funds has been approved in their Biennial Expansion Reports filed every two years pursuant to G.S. 62-36A. Recipients not subject to the reporting requirement in G.S. 62-36A shall provide customer and construction cost information on projects for which use of bond funds has been approved every two years in a report filed at the same time as the Biennial Expansion Reports, beginning with the first due date of those reports following approval of the use of bond funds for a project.

(c) The Commission shall use the information provided by subsection (b) of this Rule to determine whether an investigation is warranted to determine if a project for which use of bond funds has been approved has become economically feasible. If the Commission finds that a project has become economically feasible, the Commission shall require the recipient of the bond

funds to remit to the Commission appropriate funds related to the approved project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission and deposited with the State Treasurer.

(d) If a regional gas district wishes to sell or otherwise dispose of facilities financed with bond funds received pursuant to G.S. 62-159, it must first notify the Commission, which shall determine at that time the method of repayment or accounting for those funds.

(e) The Commission shall provide quarterly reports on the expenditure of moneys from the Natural Gas Bonds Fund to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division of the General Assembly.

(NCUC Docket No. G-100, Sub 75, 03/08/99.)

#### **R6-94 ACCOUNTING AND RATEMAKING FOR REGULATED RECIPIENTS**

(a) The gas plant accounts for recipients of bond funds regulated by the Commission shall be reduced by the amount of bond funds utilized to construct such plant, except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(b) No depreciation expense on the portion of the plant cost financed by disbursements of bond funds shall be included in the cost of service of recipients regulated by the Commission, except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(NCUC Docket No. G-100, Sub 75, 03/08/99.)

### **ARTICLE 14**

#### **INCENTIVE PROGRAMS.**

#### **R6-95 INCENTIVE PROGRAMS FOR NATURAL GAS UTILITIES**

(a) Purpose. — The purpose of this rule is to establish guidelines for the application of G.S. 62-140(c) to natural gas utilities that are consistent with the directives of that statute and consistent with the public policy of this State set forth in G.S. 62-2.

(b) Definitions. — As used in this rule, the following definitions shall apply:

(1) “Consideration” means anything of economic value paid, given or offered to any person by a natural gas utility (regardless of the source of the “consideration”) including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases, or service installation; equipment/appliances sold below fair market value or below their cost to the natural gas utility; low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available; studies on energy usage; model homes; and payment of trade show or advertising costs. Excepted from the definition of “consideration” are favors and promotional activities that are de minimis and nominal in value and that are not directed at influencing fuel choice decisions for specific applications or locations.

(2) “Program” means any natural gas utility action or planned action that involves offering Consideration.

(3) “Person” means the same as defined in G.S. 62-3(21).

(4) “Natural gas utility” means, for purposes of this rule, a person, whether organized under the laws of this State or under the laws of any other state or country, that owns or operates in the State equipment or facilities for producing, transporting, distributing, or furnishing piped gas to or for the public for consumption.

(c) Filing for Approval.

(1) Application of Rule. — Prior to a natural gas utility implementing any Program, the purpose or effect of which is to directly or indirectly alter or influence the decision to use the natural gas utility’s service for a particular end-use or to directly or indirectly encourage the installation of equipment that uses the natural gas utility’s service, the natural gas utility shall obtain Commission approval.

Whether a Program is offered at the expense of the natural gas utility’s shareholders, ratepayers or a third party shall not affect the filing requirements under this rule.

A natural gas utility shall file for approval all Programs to offer Consideration which are administered, promoted or funded by the natural gas utility’s subsidiaries, affiliates and/or unregulated divisions or businesses where the natural gas utility has control over the entity offering or is involved in the Program

and an intent or effect of the Program is to adopt, secure, or increase the use of the natural gas utility's utility services.

(2) Filing Requirements. — Each application for the approval of a Program shall include the following:

- (i) Cover Page. — The natural gas utility shall attach to the front of an application a cover sheet generally describing the Program, the Consideration to be offered, anticipated total cost of the Program, the source and amount of funding proposed to be used, proposed classes of persons to whom it will be offered, and the duration of the Program.
- (ii) Description. — A detailed description of the Program, its duration, purpose, estimated number of participants, and impact on the natural gas utility's general body of customers and the natural gas utility.
- (iii) Cost. — The estimated total and per unit cost for the Program to the natural gas utility, reported by type of expenditure (e.g., direct payment, rebate, advertising) and the planned accounting treatment for those costs. If the natural gas utility proposes to place any costs to be incurred in a deferred account for possible future recovery from its customers, it shall disclose the same and provide an estimate of each cost to be deferred. The natural gas utility shall describe, in detail, all other sources of monies to be used, including the name of the source, the amount provided, and the reasons the third party is providing the money.
- (iv) Effect on Customer Use. — A statement of the effect, if any, that the Program is expected to have on customer use of the natural gas utility's service.
- (v) Conditions of Program. — The type and amount of Consideration and how and to whom it will be offered or paid, including schedules listing the Consideration to be offered, a list of those who will use the natural gas utility's service, and other information on the availability and limitations (who can and cannot participate) of the Consideration. The natural gas utility shall describe any service limitations or conditions it imposes on customers who do not participate in the Program.
- (vi) Economic Justification. — Economic justification for the Program, including the results of appropriate cost-effectiveness tests.
- (vii) Communications. — Detailed cost information on the amount the natural gas utility anticipates will be spent on communication materials related to the Program. Such cost shall be included in the Commission's consideration of the total cost of the Program and whether the total cost of the Program is reasonable in light of the benefits. To the extent available, the natural gas utility shall include examples of all communication materials to be used in conjunction with the Program.
- (viii) Commission Guidelines Regarding Incentive Programs. — The natural gas utility shall provide the information necessary to comply with the Commission's Revised Guidelines for Resolution of Issues Regarding Incentive Programs issued by Commission Order on March 27, 1996, in Docket No. M-100, Sub 124, set out as an Appendix to Chapter 8 of these rules.
- (ix) Other. — Any other information the natural gas utility believes relevant to the application, including information on competition faced by the natural gas utility.

(d) Procedure.

- (1) Service and Response. — The natural gas utility filing for approval of a Program shall serve a copy of its filing on the electric utilities and electric membership corporations operating within the filing natural gas utility's certificated territory, the Public Staff, the Attorney General and any other party that has notified the natural gas utility in writing that it wishes to be served with copies of all such filings that involve the provision of Consideration. Those served, and others learning of the application, shall have thirty (30) days from the date of filing in which to seek intervention pursuant to Rule R1-19 or file a protest pursuant to Rule R1-6. The filing natural gas utility shall have the opportunity to respond to such petitions or protests within ten (10) days of their filing. If any party granted intervention requests a hearing or otherwise raises a material issue of fact, the Commission may, in its discretion, set the matter for hearing.
- (2) Notice and Schedule. — If the application is set for hearing, the Commission shall require such notice as it deems appropriate and shall establish a procedural schedule for prefiled testimony and rebuttal testimony after a discovery period of at least 45 days. Where possible, the hearing shall be held within ninety (90) days from the application filing date.

(e) Scope of Review. — In considering whether to approve in whole or in part a Program or changes to an existing Program, the Commission may consider any other information it determines to be relevant, including, but not limited to, the following issues:

- (1) Whether the Program unreasonably discriminates among persons receiving or applying for the same kind and degree of service;
- (2) Evidence of consideration or compensation paid by any competitor, regulated or unregulated, of the natural gas utility to secure the installation or adoption of the use of such competitor's services;
- (3) Whether the Program promotes unfair or destructive competition or is inconsistent with the public policy of this State as set forth in G.S. 62-2; and
- (4) Whether the Program encourages energy efficiency and its impact on the peak loads and load factors of the filing natural gas utility.

(NCUC Docket No. E-100, Sub 113, 2/29/08.)

## ARTICLE 15

### ECONOMIC DEVELOPMENT INFRASTRUCTURE COST RECOVERY

#### **R6-96 NATURAL GAS ECONOMIC DEVELOPMENT INFRASTRUCTURE COST RECOVERY**

(a) Purpose. – The purpose of this rule is to establish guidelines for applications of an LDC seeking cost recovery for the construction of natural gas development infrastructure under G.S. 62-133.15.

(b) Definitions. – As used in this section:

1. "Commission" means the North Carolina Utilities Commission.
2. "Economic development infrastructure" is the natural gas infrastructure placed in service to serve an eligible project.
3. "Economically infeasible" refers to that portion of investment in economic development infrastructure that has a negative net present value.
4. "Eligible economic development infrastructure costs" are the economically infeasible portion of an economic development infrastructure project investment.
5. "Eligible project" means a project that the Department of Commerce has designated as eligible under G.S. 143B-437.021.
6. "LDC" means a natural gas local distribution company.
7. "Net cash inflows" are the expected margin revenues, exclusive of gas costs recovered under G.S. 62-133.4, generated from the provision of natural gas service to Eligible Projects.
8. "Net cash outflows" are reasonable and prudent economic development infrastructure costs. Such costs include, but are not limited to, the following: (a) planning costs; (b) development costs; (c) construction costs and an allowance for funds used during construction and a return on investment once the project is completed, calculated using the pretax overall rate of return approved by the Commission in the LDC's most recent general rate case; (d) a revenue retention factor; (e) depreciation; and (f) property taxes.
9. "Net present value (NPV)" means the present value of expected future net cash inflows over the useful life of economic development infrastructure, minus the present value of net cash outflows.
10. "Rate adjustment surcharge (RAS)" is a yearly surcharge that allows an LDC to charge a Commission approved rate to recover the eligible economic development infrastructure costs.

(c) Application. – An application to recover eligible economic development infrastructure costs under this section shall contain all of the following information:

- (1) Documentation showing the infrastructure is designed to serve an eligible project.
- (2) A precise geographic description, a map or maps of the area proposed to be served, a detailed description of the proposed physical facilities, including their projected operating parameters and characteristics, and the arrangements that have been or are proposed to be made to obtain rights-of-way.
- (3) Documentation of a binding commitment from the prospective customer or the occupant of the eligible project to the LDC regarding the need to take natural gas service for a period of at least 10 years from the date the gas is made available.
- (4) A market study, including an analysis of any potential customers and volumes, probable conversions from other fuels, and projected growth and economic development resulting from the infrastructure.
- (5) An engineering study that includes the proposed design of the system (including a pipe network flow analysis), routing (including a review of planned or proposed state highway improvements), and construction cost estimates.
- (6) An NPV analysis conducted in a generally accepted manner that provides support for the eligible economic development infrastructure costs.

- (7) The estimated beginning and ending dates of the proposed construction of the infrastructure, including the date service to the eligible project is proposed to begin, and specific itemized construction budgets.
- (8) Proposed rates to be charged under the RAS mechanism.

(d) Approval of Cost Recovery. – Once an eligible project has been approved by the Department of Commerce, the LDC may file an application with the Commission for authority to recover the estimated eligible economic development infrastructure costs.

- (1) The Commission shall provide for notice of each request for approval filed under this Rule and shall afford an opportunity for review and comment by interested parties. The Commission shall set the request for hearing if it deems it appropriate.
- (2) The Commission shall enter an order approving or denying the eligible economic development infrastructure costs on a project-specific basis. The order shall include a finding of the negative net present value of economic development infrastructure costs for each eligible project. The negative NPV is the maximum amount to be recovered through the RAS for an eligible project.
- (3) The LDC may request modifications to eligible economic development infrastructure costs approved by the Commission. If the Commission finds the requested change is material, the Commission shall provide for appropriate notice and shall afford an opportunity for review and comment by interested parties. The Commission shall set the proposal for hearing if it deems it appropriate.

(e) Cost Recovery. – Once economic development infrastructure is placed in service, the LDC may recover the economic development infrastructure costs approved by the Commission in an annual RAS. The RAS will terminate upon the earlier of the full recovery of the approved economic development infrastructure costs, or the effective date of rates in the LDC's next general rate case, provided that the underlying infrastructure investment is included in calculating such rates.

(f) Computation of the economic development infrastructure revenue requirement. – The LDC shall file information for each year showing the computation of the Economic Development Infrastructure revenue requirement. The total annual revenue requirement will be calculated for each year, as follows:

Economic Development Infrastructure Costs	\$X,XXX,XXX
Less: Accumulated depreciation	XXX,XXX
Less: Accumulated deferred income taxes	XXX,XXX
Net Economic Development Infrastructure Costs	\$X,XXX,XXX
Pre-tax rate of return set forth in the relevant rate order	X.XX%
Allowed pre-tax return	\$X,XXX,XXX
Plus: Depreciation expense	XXX,XXX
Total	\$X,XXX,XXX

(g) Computation of the RAS. – The LDC will file for Commission approval each year information showing the computation of the RAS for each rate schedule and the revised tariffs that it proposes to charge customers during the 12-month period. To compute the RAS, the Economic Development Infrastructure revenue requirement shall first be apportioned to each customer class based on margin apportionment established in the LDC's most recent general rate case.

The amount of the economic development infrastructure revenue requirement apportioned to each rate schedule shall then be divided by the annual therms established in the LDC's most recent general rate case proceeding for each rate schedule to determine the RAS to the nearest one-thousandth cent per therm.

(h) RAS Deferred Account. – The LDC shall maintain an RAS Deferred Account for the purpose of recording (1) the economic development infrastructure revenue requirement for the year (2) the monthly RAS collected from customers, and (3) the interest on the RAS Deferred Account. Interest will be applied to the RAS Account at the LDC's authorized net-of-tax overall rate of return.

Each month the LDC shall credit the RAS Deferred Account for the amount of the RAS collected from customers. The amount of the RAS collected from customers shall be computed by multiplying the RAS for each rate schedule by the corresponding actual therms of usage billed customers for the month.

(i) Reports. – Each LDC with an approved RAS shall provide the following reports to the Commission:

- 1. Monthly RAS Deferred Account reports reflecting the activity recorded for the month.
- 2. Annual RAS Deferred Account report to recover the balance in the account and an annual computation of the Economic Development Infrastructure revenue requirement supporting the RAS for the next 12-month period.

3. Annual reports by March 1 of each year the Eligible Project is under construction summarizing the total infrastructure costs for the preceding calendar year, the remaining balance to be spent on total infrastructure costs, and the estimated completion date of the infrastructure.
4. Annual reports by March 1 of each year for completed Eligible Projects, providing the total amounts recovered from the RAS for each project, the amount of gas consumed each year for each project, and all customer additions and the respective natural gas load for each project. Annual reports on completed eligible projects are required until the LDC's next general rate case.

*(NCUC Docket No. G-100, Sub 93, 10/17/2017; NCUC Docket No. G-100, Sub 93, 03/27/2018.)*

#### **R7-01 APPLICATION OF RULES**

These rules apply to public water utilities as defined in G.S. 62-3.  
(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R7-02 DEFINITIONS**

- (a) Utility. - The term "utility" when used in these rules and regulations includes persons and corporations, or their lessees, trustees, and receivers, now or hereafter, distributing or furnishing water to the public for compensation as defined in G.S. 62-3.
- (b) Customers. - The word "customers" as used in these rules shall be construed to mean any person, group of persons, firm, corporation, institution, or other service body furnished water service by a water utility.
- (c) Municipality. - The term "municipality" when used in these rules includes a city, a county, a village, a town, and any other public body existing, created, or organized as a government under the Constitution or laws of the State.
- (d) Accidents. - Accidents as used herein are defined as other than motor vehicle accidents which do not create a service interruption that result in one or more of the following circumstances:
  - (1) Death of a person.
  - (2) Serious disabling to persons including employees of a company.
  - (3) Damage to the property of the company materially affecting its service to the public.
  - (4) Damage to the property of others amounting to more than \$1,000.
- (e) Interruptions of Service. - "Interruptions of service" as used herein means any interruption to the water supply whereby at least ten (10) customers have no water service for more than two (2) hours, whether scheduled or unscheduled.  
NCUC Docket No. W-100, Sub 2, 8/21/69; NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R7-03 RECORDS AND REPORTS**

- (a) Location and Preservation of Records. - All records shall be kept at the office or offices of the utility in North Carolina and shall be available during regular business hours for examination by the Commission, Public Staff or their duly authorized representatives.
- (b) Reports to Commission. - Each utility shall prepare and file an annual report to the Commission with copies to the Public Staff in prescribed form, giving required information respecting its general operations. Special reports shall also be made concerning any particular matter upon request by the Commission or Public Staff.
- (c) Accident Reports and Interruption of Service Reports. - Each utility shall file a report with the Commission with a copy to the Public Staff describing any accident or interruption of service in connection with the utility's operation. The report shall be filed within the intervals specified by the Commission from time to time, and shall contain the information required on the reporting forms furnished by the Commission for that purpose.  
(NCUC Docket No. W-100, Sub 2, 8/21/69; NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R7-04 APPROVAL OF RATE SCHEDULES, RULES AND REGULATIONS**

- (a) Approval Required. - Rates, schedules, rules, regulations, special contracts, and other charges for the purchase, sale, or distribution of water shall not become effective until filed with and approved by the Commission.
- (b) Manner of Filing. - Tariffs containing all the rates, rules, and regulations of each utility shall be filed in the manner prescribed by the Commission.
- (c) Utility's Special Rules.
  - (1) A utility desiring to establish any rule or requirement affecting its customers shall first make application to the Commission for approval of the same, clearly stating in its application the reason for such establishment.

- (2) On or after ninety days from the effective date of these rules and regulations any utility's special rules and regulations now on file with the Commission which conflict with these rules will become null and void unless they have been refiled and approved by the Commission.

(d) Charge for Returned Checks. - Each water utility shall file tariffs with the Commission to impose charges in an amount to be approved by the Commission for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(NCUC Docket No. W-100, Sub 6, 4/18/88.)

#### **R7-05 MAPS AND RECORDS**

Each utility shall keep on file in its office suitable maps, plans, and records showing the entire layout of every pumping station, filter plant, reservoir, transmission and distribution system, with the location, size and capacity of each plant, size of each transmission and distribution line, fire hydrant, value and customer's service reservoirs, tanks, and other facilities used in the production and delivery of water.

#### **R7-06 ACCESS TO PROPERTY**

A utility shall at all reasonable times have access to meters, service connections, and other property owned by it on customer's premises for purposes of maintenance and operation, including cutting off customer's supply of water for any of the causes provided for in these rules and regulations or the rules and regulations of the utility.

#### **R7-07 ADEQUACY OF FACILITIES**

All water production, treatment, storage, and distribution facilities shall comply with the rules of the North Carolina Department of Environmental Quality and the rules of other state and local governmental agencies governing public water systems.

*(NCUC Docket No. W-100, Sub 2, 8/21/69; NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

#### **R7-08 SERVICE INTERRUPTIONS**

(a) Record. - Each utility shall keep a record of all interruptions of service of more than two (2) hours' duration, whether scheduled or unscheduled, affecting ten (10) or more customers and shall be maintained for three (3) years. A report of such interruptions shall be filed each month in the Office of the Chief Clerk with a copy to the Public Staff by the 15th day of the month following the month for which the report is required to be filed.

(b) Notice Required. - Insofar as practical every customer affected shall be notified in advance of any contemplated work which will result in interruption of service of any long duration, but such notice shall not be required in case of interruption due to accident, the elements, public enemies, strikes, which are beyond the control of the utility.

(NCUC Docket No. W-100, Sub 2, 8/21/69; NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R7-09 DEAD ENDS**

Dead ends in the distribution mains should be avoided so far as possible. If such dead ends exist the utility should provide facilities for flushing if conditions so require.

#### **R7-10 CROSS CONNECTIONS**

No physical connections between the distribution system of a public potable water supply and that of any other water supply shall be permitted unless such other water supply is of safe, sanitary quality and has been approved by the North Carolina Department of Environmental Quality and other state or local governmental agencies with rules pertaining to cross connection.

*(NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

#### **R7-11 RECORDS OF ACCIDENTS**

Each utility shall keep a record of each accident happening in connection with the operation of its plant, station, property, and equipment, whereby any person shall have been killed or seriously injured, or any substantial amount of property damaged or destroyed, which report shall be made available to the Commission upon request.

#### **R7-12 QUALITY OF WATER**

(a) Every water utility shall comply with the rules of the North Carolina Department of Environmental Quality and the rules of other state and local governmental agencies governing purity of water, testing of water, operation of filter plant, and such other lawful rules as those agencies prescribe.

(b) All water being supplied by water utilities subject to the jurisdiction of the North Carolina Utilities Commission is required, as a minimum, to meet the standards of water quality as set forth in the United States Safe Drinking Water Act enacted in 1974 and as amended in 1986; provided, that upon application in writing to the Commission and approval of the Commission in writing, a water utility may have a specified deviation or tolerance from the mineral content requirements of said United States Safe Drinking Water Act enacted in 1974 and as amended in 1986, based upon regional water characteristics or conditions and upon the economic feasibility of providing treatment to the water or of locating alternate sources of water.

*(NCUC Docket No. W-100, Sub 2, 8/21/69; NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 140, 12/03/2013; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

### **R7-13 PRESSURE REQUIREMENTS**

Each water utility shall maintain an adequate pressure for its distribution system as required by the North Carolina Department of Environmental Quality and any other state or local governmental agencies with rules pertaining to pressure requirements.

*(NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 140, 12/03/2013; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

### **R7-14 PRESSURE GAUGES**

(a) A utility shall provide itself with one or more portable pressure gauges or have available one or more graphic recording pressure gauges, these instruments to be of a type and capacity suited to the pressure of the system.

(b) A utility shall make a sufficient number of pressure surveys each year to indicate the service furnished and to satisfy the Commission of its compliance with the pressure requirements.

(c) All utilities having graphic recording gauges shall keep at least one of these gauges in continuous service at the plant office or elsewhere on the premises. All pressure records are to be kept in compliance with the regulations of the Utilities Commission.

### **R7-15 SERVICE CONNECTIONS**

(a) Each water utility shall adopt a standard method for installing a service connection or meter installation, which is included in the "connection charge." Such method shall be set out with a written description and drawings, together with a schedule of connection charges, to the extent necessary for a clear understanding of the requirements and shall be submitted to the Commission for its approval.

(b) The term "service connection" shall mean, viz., the pipe between its main and the nearest property line, a curb cock and curb box or other standard equipment and connections. The curb cock may be installed at a convenient place between the property line and the curb.

(c) Temporary service shall be installed by mutual agreement.

(d) The customer shall furnish and lay the necessary pipe to make the connection from the property line nearest the utility's water main, and shall keep the service line from the property line to the place of consumption in good repair. The customer shall not make any change in or rebuild such service line without giving written notice to the utility. All of the foregoing shall be designated as "customer's service line."

(e) In the installation of a service line, the customer must not install any tees or branch connection ahead of the meter location and must leave the trench open and pipe uncovered until it is examined by an inspector of the utility and shown to be free from any irregularity or defect.

(f) In any case where a reasonable doubt exists as to the proper location and size for "customer's service line," the utility shall be consulted and its approval of the location and size of line be secured in writing.

### **R7-16 EXTENSION OF MAINS**

(a) General Provisions.

(1) A bona fide customer as referred to in subsections (b) and (c) hereinafter shall be a customer of permanent and established character, exclusive of the real estate developer or builder, who receives water service at a premises improved with structures of a permanent nature.

(2) Any facilities installed hereunder shall be the sole property of the utility.

- (3) The size, type, quality of materials, and their location will be specified by the utility, and the actual construction will be done by the utility or by a constructing agency acceptable to it.
- (4) Adjustment of any difference between the estimated cost and the reasonable actual cost of any main extension made hereunder will be made within 60 days after the actual cost of the installation has been ascertained by the utility.
- (5) In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears impracticable or unjust to either party, the utility, applicant or applicants may refer the matter to the Public Utilities Commission for settlement.
- (6) Extensions for fire hydrant service, private fire protection service, and temporary service will not be made under this rule.
- (7) The utility will not be required to make extensions where grades have not been brought to those established by public authority.
- (8) Where the property of the applicant or applicants is located adjacent to a street or highway exceeding 70 feet in width, or a freeway, waterway, or railroad right-of-way, the utility may elect to install a main extension on the same side thereof as the property of the applicant or applicants, and the estimated cost in such case will be based on such an extension.
- (9) Where an extension must comply with an ordinance, regulation, or specification of a public authority, the estimated cost of said extension shall be based upon the facilities required to comply therewith.

(b) Extensions to Serve Individuals.

- (1) The utility will extend its water distribution mains to serve new bona fide customers at its own expense, other than to serve subdivisions, tracts, housing projects, industrial developments or organized service districts, when the required total length of main extension from the nearest existing distribution main is not in excess of 100 feet per service connection. If the total length of main extension is in excess of 100 feet per service connection applied for, the applicant or applicants for such service shall be required to advance to the utility before construction is commenced that portion of the reasonable estimated cost of such extension over and above the estimated reasonable cost of 100 feet of the main extension per service connection exclusive of the cost of service connections and meters and exclusive of any costs of increasing the size or capacity of the utility's existing mains or any other facilities used or necessary for supplying the proposed extension. Such estimated reasonable cost shall not be based upon the cost of a main in excess of 4 inches in diameter except where required by the special needs of the applicant or applicants. The money so advanced will be refunded by the utility without interest in payments equal to the reasonable actual cost of 100 feet of the main extension, for which advance was made for each additional service connection, exclusive of that of any customer formerly served at the same location. Refunds will be made within 180 days after the date of first service to a bona fide customer. No refunds will be made after a period of 5 years from the date of completion of the main extension and the total refund shall not exceed the amount advanced.
- (2) Where a group of five or more individual applicants request service from the same extension, or in unusual cases after obtaining Commission approval, the utility at its option may require that the individual or individuals advance the entire cost of the main extension as herein provided and the utility will refund this advance as provided in subsection (c)(2) of this rule.
- (3) In addition to refunds made on the basis of service connections attached directly to the extension for which the cost was advanced as provided in subdivision (1) of this subsection, refunds also will be made to the party or parties making the advances in those cases where additional bona fide customers are served by a subsequent main extension, either continuous or lateral, supplied from the original extension upon which an advance is still refundable, whenever the length of such further extension is less than 100 feet per service connection. Such additional refunds will equal the difference between the 100-foot allowance per service connection and the length of each required subsequent extension multiplied by the average cost per foot of the extension used as the basis for determining the amount advanced. In those cases where subsequent customers are served through a series of such main extensions, refunds will be made to the party or parties making the advances in chronological order beginning with the first of the extensions in the series from the original point of supply, until the amount advanced by any party is fully repaid within the period of 5 years as specified above. In those cases where two or more customers have made a joint advance on the same extension, refunds will be made in the same proportion that each advance bears to the total of said joint advance. Where the utility installs a main larger than that for which the cost was advanced to serve an

individual or individuals, and a subsequent extension is supplied from such main, the original individual or individuals will not be entitled to refunds which might otherwise accrue from subsequent extensions.

- (c) Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial Developments or Organized Service Districts.
- (1) An applicant for a main extension to serve a new subdivision, tract, housing project, industrial development or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of the mains, from the nearest existing main at least equal in size to the main required to serve such development, including necessary service stubs or service pipelines, fittings, gates and housings therefor, and including fire hydrants when requested by the applicant or required by public authority, exclusive of meters. If additional facilities are required specifically to provide pressure or storage exclusively for the service requested, the cost of such facilities may be included in the advance upon approval by the Commission.
  - (2) The money so advanced will be subject to refund by the utility without interest to the party or parties entitled thereto. The total amount so refunded shall not exceed the amount advanced. Refunds will be made under the following method:  
Proportionate Cost Method. - For each service connection directly connected to the extension, exclusive of that of any customer formerly served at the same location, the utility will refund within 180 days after the date of first service to a bona fide customer that portion of the total amount of the advance which is determined from the ratio of 100 feet of main to the total footage of main in the extension for which the cost was advanced. No refunds will be made after a period of 5 years from the date of completion of the main extension.

#### **R7-17 REFUSAL TO SERVE APPLICANTS**

- (a) Noncompliance with Rules and Regulations. - Any utility may decline to serve an applicant until he has complied with State regulations governing water service and the approved rules and regulations of the utility.
- (b) Utility's Facilities Inadequate. - Until adequate facilities can be provided, a utility may decline to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities to render service applied for or if the intended use is of a character that is likely to affect unfavorably service to other customers.
- (c) Applicant's Facilities Inadequate. - The utility may refuse to serve an applicant if, in its judgment, the applicant's installation of water piping is regarded as hazardous or of such character that satisfactory service cannot be given.

**R7-18** Repealed by NCUC Docket No. M-100, Sub 28, 5/6/70, effective July 1, 1970.

#### **R7-19 CUSTOMER'S DISCONTINUANCE OF SERVICE**

Any customer desiring service discontinued shall give a written notice to the utility unless otherwise incorporated in the rules and regulations of the utility. Until the utility shall have such notice the customer may be held responsible for all service rendered.

#### **R7-20 UTILITY'S DISCONTINUANCE OF SERVICE**

- (a) Violation of Rules. - Neglect or refusal on the part of a customer to comply with these rules or the utility's rules properly filed with the Commission shall be deemed to be sufficient cause for discontinuance of service on the part of the utility.
- (b) Access to Property. - The utility shall at all reasonable times have access to meters, service connections, and other property owned by it on customer's premises for purposes of maintenance and operation. Neglect or refusal on the part of the customer to provide reasonable access to their premises for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility.
- (c) Notice of Discontinuance. - No utility shall discontinue service to any customer for violation of its rules or regulations without first having diligently tried to induce the customer to comply with its rules and regulations. After such effort on the part of the utility, service may be discontinued only after written notice of such intention, and that five (5) days, excluding Sundays and holidays, shall have been given the customer by the utility; provided, however, that where an emergency exists, or where fraudulent use of water is detected, or where a dangerous condition is found to exist on the customer's premises, the water may be shut off without such notice.
- (d) Disputed Bills. - In the event of a dispute between the customer and the utility respecting any bill, the utility shall make forthwith such investigation as shall be required by the particular case, and report the result thereof to the customer. In the event that the matter in dispute cannot be compromised or settled by the parties, either party may submit the fact to the Commission for its opinion, and pending such opinion, service shall not be discontinued.
- (e) Nonpayment. - Repealed by NCUC Docket No. M-100, Sub 28, 5/6/70, effective July 1, 1970.

(f) Reconnection Charge. - Whenever the supply of water is turned off for the violation of rules and regulations, nonpayment of bill, or fraudulent use of water, the utility may make a reconnection charge, approved by the Commission, payable in advance, for restoring the service. The fee shall be no more than fifteen dollars (\$15.00); except, if the utility proves that its actual and reasonable cost for restoring the service is greater than fifteen dollars (\$15.00), the fee may be set at no more than the proven cost.

(g) When Water Turned Off at Customer's Request. - When for any valid reason the supply of water has been turned off at the customer's request, the utility shall charge for restoring service the fee approved by the Commission. The fee shall be no more than fifteen dollars (\$15.00); except, if the utility proves that its actual and reasonable cost for restoring the service is greater than fifteen dollars (\$15.00), the fee may be set at no more than the proven cost.

(h) Turning Water On or Off, Disconnecting Meter, etc., Without Authority. - No plumber, owner, or other unauthorized person shall turn the water on or off except in case of emergency at any corporation stop or curb stop, or disconnect or remove the meter without the consent of the utility.

(NCUC Docket No. W-100, Sub 2, 8/21/69; NCUC Docket No. M-100, Sub 28, 5/6/70; NCUC Docket No. W-100, Sub 6, 4/18/88.)

### **R7-21 INFORMATION TO CUSTOMERS**

(a) Information as to Kinds of Service. - A utility shall, when accepting application for water service, give full information to the applicant concerning type of service to be rendered and rates which will be applicable, advantageous, and suitable to his requirements.

(b) Meter Reading Method. - Each utility shall adopt some means of informing its consumers as to the method of reading meters.

(c) Posting of Rates, Rules and Regulations. - Every utility shall provide in its business office, near the cashier's window, where it may be available to the public, the following:

- (1) A copy of the rates, rules and regulations of the utility applicable to the territory served from that office.
- (2) A copy of these rules and regulations.

### **R7-22 METHOD OF MEASURING SERVICE**

(a) Metered. - All water sold within the State of North Carolina, except as hereinafter stated, shall be by metered measurements. All customers served under a given rate schedule shall have their water consumption measured with meters having suitable characteristics.

(b) Unmetered. - Where it is impractical or uneconomical to install meters to measure temporary service or to measure use of a fixed character, then such service may be supplied unmetered, provided, that the price charged for the service shall be estimated as nearly as practicable to what would be charged if meters were in use.

(c) Waste or Fraud. - The utility shall have the right to set meters or other devices for the detection and prevention of fraud or waste, without notice to the customer.

(d) Payment for Water Used Where Meter Tampered With. - In any case where a service meter or service facility has been tampered with so as to interfere with accuracy of registration or indication, the utility whose meter or service facilities have been tampered with shall be entitled to payment for water used but not registered during a period not exceeding one year prior to the date of discovery of the tampering, unless the time of tampering can be shown, in which case the water not registered subsequent to such time shall be paid for.

(e) Abuse of Flat Rate Service. - Wherever flat rate service is furnished for a special use and a demonstrated abuse of such service occurs, the utility shall have the right, upon written notice to the customer, to meter such service and bill for same under an applicable schedule.

### **R7-23 INFORMATION ON BILLS**

(a) Meter Readings. - Bills rendered periodically shall show the reading of the water meter at the beginning and end of the time for which bill is rendered, the dates on which the readings were taken, and the amount of water supplied.

(b) Mechanical Billing. - Utilities desiring to adopt mechanical billing of such nature as to render compliance with all the terms of subsection (a) impracticable, may make application to the Commission for relief from part of these terms. After consideration of the reasons given when asking for relief, the Commission may allow the omission of part of these requirements.

(c) Billing. - Meters will be read as nearly as possible at regular intervals. This interval may be monthly, or quarterly, however no change shall be made in the billing interval except on approval of the Commission.

### **R7-24 SALE OF WATER**

No utility shall charge or demand or collect or receive any greater or less or different compensation for sale of water, or for any service connected therewith, than those rates and charges approved by the Commission and in effect at that time.

#### **R7-25 ADJUSTMENT OF BILLS FOR METER ERROR**

(a) Meter Fast.

- (1) Whenever a meter in service is found, upon periodic, request or complaint test, to be more than two percent fast, additional tests shall be made at once, to determine the average error of the meter.
- (2) Whenever a meter is found, upon periodic, request or complaint test, to have an average error of registration of more than two percent (2%) fast, the utility shall recalculate the monthly bills for a period equal to one-half of the time elapsed since the last test, but in no case shall this period exceed six (6) months. (See exception noted in subsection (d).) The method of recalculating the monthly bills shall be as shown in the following example:

Example: A meter upon test was found to register five percent (5%) fast. The consumption registered for a billing period previous to test was 105,000 gallons. The error in registration is determined by dividing 105,000 by 100% plus 5% or 105% which result is 1,000, this multiplied by 100 is 100,000 gallons, which is the proper amount to be billed. After making such recalculations the utility shall refund to the customer an amount equal to the difference between the amount previously billed and the amount calculated as being the proper charge.

(b) Meter Slow.

- (1) When a meter, upon periodic, request or complaint test is found to have an average error of more than two percent (2%) slow, the utility may recalculate the monthly bills for a period equal to one-half of the time elapsed since the last test, but in no case to exceed six (6) months. The method of recalculating the monthly bills shall be as shown in the following example:

Example: A meter upon test was found to register five percent (5%) slow. The consumption registered for a billing period previous to test was 105,000 gallons. The error in registration is determined by dividing 105,000 by 100% minus 5% or 95% which result is 1105.26, this multiplied by 100 is 110,526 gallons, which is the proper amount to be billed.

- (2) After making such recalculations the utility may collect from the customer an amount equal to the difference between the amount previously billed and the amount calculated as being the proper charge.

(c) Percent Error. - It shall be understood that when a meter is found to have an error in excess of two percent fast or slow, the figure for calculating the amount of refund or the amount to be collected by the utility shall be that percentage of error as determined by the test, i.e., it is held that it is the duty of the utility to maintain the accuracy of its measuring devices as nearly 100% as is commercially practicable. Therefore, percent error shall be that difference as between 100% and that amount of error as is indicated by a proper test.

(d) Refunds. - The burden of maintaining measuring equipment, so that it will register accurately, is upon the utility; therefore, if meters are found upon test to register fast, and if time for periodic test has overrun to the extent that one-half (1/2) of the time elapsed since the last previous test exceeds six months, the refund shall be for the six months as specified in subsection (b), and in addition thereto a like refund upon those months exceeding the periodic test period, provided, however, that the Commission may relieve the utility from this requirement in any particular case in which it is shown that the failure to make the periodic test was due to causes beyond the utility's control. No bill shall be recalculated on account of slow meter if the meter has not been tested within the periodic test period.

(e) Notification. - When a meter is tested and it is found necessary to make a refund or back-bill a customer, the customer shall be notified in writing and a copy of said notice filed by the utility.

(f) Nonregistering. - If a meter is found not to register for any period, the utility shall estimate the consumption, based on a like period of similar use.

#### **R7-26 INTERPRETATIONS**

(a) Residential Service.

- (1) "Residential service" is defined as service to a householder or tenant living in a separate house or a separate apartment in an apartment building.
- (2) Should the owner of a multiple apartment building undertake to furnish water to his tenants as a part of their monthly rent, then such service shall be classed as "Commercial."
- (3) A close member of a householder's family, living with that householder and using the same water facilities, shall not be classified as an additional service or as "Commercial."

- (4) In cases where a householder or tenant devotes some portion of the occupied building to commercial use and uses the remainder as a residence, then the predominant use of water shall constitute the basis for classification as either residential or commercial.
- (b) Commercial Service.
  - (1) "Commercial service" is defined to include service to each separate business enterprise, occupation, or institution occupying for its exclusive use any unit or units of space as an entire building, entire floor, suite of rooms or a single room, and using water for such incidental use as the schedule of rates applicable to the particular installation may permit. "Commercial service" shall apply to all stores, offices, hotels, wholesale houses, garages, display windows, signs, theaters, barber and beauty shops, churches, opera houses, auditoriums, lodge halls, schoolhouses, banks, bakeries, and any other space occupied for commercial purposes. Any rooming house, lodging house, resort, inn or tavern renting more than four rooms to strangers or transients, without any previous agreement for accommodation or as to the duration of stay, shall be classed as a hotel and as such it comes under the "Commercial" classification.
  - (2) Where a single business enterprise or institution occupies more than one unit of space in the conduct of the same business, each separate unit will be metered separately and considered a separate service unless the customer makes the necessary provisions whereby the different units may be connected to permit the metering of all water used through one meter. The above rule shall not be construed to allow any customer to secure combined meter readings and billings by reason of ownership in the same person, partnership, association, or corporation of different buildings or units of space which are not used and operated by the customer and held out to the public as one single business unit.
- (c) Industrial Service. - "Industrial service" is defined as a customer manufacturing or producing a commodity for the use and sale to the general public.
- (d) Fire Protection Service. - "Fire protection service" is defined as each customer taking service under a distinct fire protection rate schedule.

**R7-27 FIRE PROTECTION SERVICE**

- (a) The rate fixed in the schedule to be paid for fire hydrants contemplates the use of a sufficient amount of water through said hydrants for the bona fide purpose of extinguishing fires, by or under the supervision of fire department employees or officials, and does not authorize the use of said hydrants and the water that flows therefrom by any unauthorized person.
- (b) The company may require all new consumers who desire both regular commercial service and fire protection service to install separate service lines, one to be used only for fire protection. The company may require all old consumers who now have only one service connection for combined commercial service and for fire protection to install separate lines, all expenses incurred in making such change to be paid for by the company. In cases where separate lines are installed, the consumer is not permitted to take water from the fire protection line except for the extinguishing of fires or for fire drills. Neither will the company permit an interconnection to be made between the regular service line and the fire protection line.

**R7-28 METER TESTING FACILITIES AND EQUIPMENT**

- (a) Meter Test. - Each utility shall, unless specifically excused by the Commission, provide for and have available such meter-testing instruments and other equipment and facilities as may be necessary to make the tests required by these rules or other orders of the Commission. Such equipment and facilities shall be satisfactory to and approved by the Commission and shall be available at all reasonable times for the inspection and use of any authorized representative of the Commission.
- (b) Certification of Instruments and Equipment. - All testing instruments and other equipment shall at all times be accompanied by a certificate signed by a proper authority giving the date when it was last certified and adjusted, and certificates, when superseded, shall be kept on file in the office of the utility.

**R7-29 WATER METER ACCURACY**

- (a) Installation Test. - Every water service meter, whether new or repaired, shall be in good order and shall be correct to within 2% fast or slow before being installed for the use of any customer.
- (b) Meter Test Flows. - The following test rates are recommended for conducting test:

It is recommended that no less than three rates of flow be used.

Meter	Allowable Range Test Flow Gallons per Minute	Recommended Test Rate Flow	Gallons per Minute
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Size	Min.	Max.	Min.	Med.	Max.
1 ½	5	100	5	25	100
2	8	160	8	40	160
3	16	300	15*	100	300
4	28	500	15*	250	500
6	48	1000	20*	500	1000

\*Note - A meter failing to register 5% of the water passed at those rates marked \* should not be installed without correction.

(c) Method of Testing. - All tests to determine the accuracy of registration of any water service meter shall be made with suitable testing instruments.

**R7-30 LOCATION OF METERS**

(a) Accessibility. - In the interest of safety and convenience to the customer, and as a measure of economical operation to the utility, it is required that all meters should be located at the curb; provided however, that when such location is impractical, meters shall be placed outside of the customer's building as near as possible to the point where the utility's "service connection" joins the "customer's service line"; provided, further, if neither of the foregoing requirements can be complied with on account of physical, economic, or climatic conditions, the meter may be placed within the building, preferably in the cellar, and when so placed within the building, the meter shall be so located that it will be easily accessible for reading and protected from freezing and mechanical damage.

(b) Meter Grouping. - When a number of meters are grouped, every meter shall be tagged as to indicate the particular customer or premise served by it.

**R7-31 SEALING METERS**

Each utility, at its own option, may employ seals to prevent tampering.

**R7-32 PERIODIC TEST**

Meters of a compound, fireline, or turbine type containing a current meter unit in a system supplying clear spring or well water shall be periodically tested as follows. Under average conditions the following intervals between tests shall not be exceeded.

Meter Sizes	Years Between Tests
1 1/2	4
2	4
3	3
4	2
6	1

**R7-33 REQUEST TEST**

(a) Procedure. - Each utility furnishing water service shall, without charge, make a test of the accuracy of any water meter upon request of the customer, provided the customer does not request such test more frequently than once in twenty-four months. If a customer requests a meter be tested more frequently than once in twenty-four months and if such meter shall be found to register not more than two percent fast, the customer shall pay to the utility the fee as fixed by the Commission in subsection (b) of this rule. A report giving the result of each request test shall be made to the customer and to the Utilities Commission with a copy of the Public Staff, and the complete original record shall be kept on file in the office of the utility for at least five years. The customer or his representative may be present when this test is run.

(b) Charge. - All tests shall be made as soon as practicable. The charges fixed by the Commission for making such tests are as follows:

Outlet 1 inch or less	\$2.50
Outlet 2 inches and over 1 inch	3.00
Outlet 3 inches and over 2 inches	3.75
Outlet 4 inches and over 3 inches	4.50

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

**R7-34 METER TEST RECORDS**

(a) Reporting. - A complete record of all tests and adjustments with sufficient data to allow checking of test calculations shall be recorded by the meter man and shall be reported to the Commission as required on such form or forms as may be prescribed by the Commission.

The test records shall be so kept that they may be readily inspected and checked by the Commission or Public Staff.

(b) Meter Records. - All meters shall have a number plainly stenciled or stamped on the meter case or lid, or stamped upon a metal strip, suitably attached to meter or case.

It is recommended that a separate card be prepared for each meter; that this card be so arranged that the date and data of each test may be entered thereon; that the card be of such character that a marker system can be used that will record the date of the last test and indicate the proper date for the next periodic test required by these rules.

(c) Preservation of Records.

<i>Type of Records</i>	<i>Length of Time to Be Retained</i>
Interruption of Service Records	2 years from date of interruption
Accident Records	Permanently
Meter Test Records	5 years
Pressure Records	2 years

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

### **R7-35 UNIFORM SYSTEM OF ACCOUNTS**

The Uniform System of Accounts for Water Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for water companies and are prescribed for the use of all water utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross operating revenues of \$10,000 or more derived from the sales of water, viz:

Uniform System of Accounts for Class A Water Utilities - 1984.

Uniform System of Accounts for Class B Water Utilities - 1984.

Uniform System of Accounts for Class C Water Utilities - 1984.

(NCUC Docket No. W-100, Sub 3, 5/24/74; NCUC Docket No. W-100, Sub 18, 6/1/92.)

### **R7-36 AVAILABILITY RATES**

(a) Definitions.

(1) "Availability rate" - means a fee or charge paid to a water utility by a subscriber thereof for the availability of water service being provided by the utility in a specific subdivision or real estate development.

(2) "Customer" or "subscriber" - for purposes of this rule, means a person who is a nonuser of the water service provided by a water utility and who has subscribed to the availability of water service.

(a) If a person subscribes to availability of service to more than one lot, that person shall be considered a separate customer for each separate lot served: except that two lots occupied by a single dwelling may be considered as a single lot when the dwelling occupies a portion of both lots in such a manner that no additional separate dwellings can reasonably be anticipated on the lots.

(3) "Availability of water service" - means that water of adequate quantity, quality and pressure is available at all times in a water main located within 75 feet of the boundary of the subscriber's property served, or such other distance as the Commission deems reasonable, whether or not water is actually taken from the system by the subscriber, and whether or not a service outlet is located inside the boundary of the property served.

(b) Disclosure to Customer Required. - Each utility shall first ensure that its customers have been given adequate disclosure of any availability rate, in accordance with the provisions of this rule, prior to accepting a customer's subscription to availability service or accepting the initial assignment of a contract for availability service.

(1) Form of disclosure - The disclosure form shall be a written instrument signed by the customer, and if reasonably practical it shall be separate from other documents pertaining to the sale of property. The written instrument may be part of a uniform contract entered into between the developer of a subdivision

and a lot purchaser in the subdivision, or it may be part of a written agreement between the customer and the utility. Acceptable sample disclosure forms are set out as an Appendix to Chapter 7 of these rules.

- (2) Information in disclosure - The disclosure form shall contain the following information:
- (a) Definitions of "availability rate" and of "availability of water service" as contained in this rule.
  - (b) A statement specifying whether or not the availability rate shall continue to be applicable to the subscriber even if at some time in the future the subscriber's property should no longer be in use and the water service should no longer be required by the subscriber.
  - (c) The amount of the availability rate approved by the Utilities Commission, or if no amount has been approved, the amount that is to be submitted for approval.
  - (d) A statement relating to the nature and amount of any charges or fees that the customer may be obligated to pay if he should wish to become a water user; i.e., tap on fees.
  - (e) Written certification by the customer that the customer understands the meaning of such availability rate and that he subscribes to the imposition of such rate for the availability of water service.

(c) Approval of Disclosure Form Required. - The sample disclosure forms contained in the Appendix to Chapter 7 of these rules shall constitute adequate disclosure forms. Any disclosure form varying from the sample disclosure forms shall be submitted to and approved by the Utilities Commission prior to accepting the customer's subscription to availability service or accepting the assignment of a contract for availability service. The Commission shall either approve or disapprove the submitted form as promptly as possible.

(d) Improper Disclosure. - Is Grounds for Denial of Franchise and Rates. - In the event the Utilities Commission finds that disclosure of the availability rate has not been made in accordance with the provisions of this rule, the Commission may conclude that the availability rate in whole or in part should not be allowed.

(e) Record of Subscription. - Each utility shall maintain in its files a permanent record of each written certification, subscription or contract relating to an availability rate imposed by that utility.

(f) Collection of Availability Rate. - No utility shall collect an availability rate unless and until a tariff providing for such availability rate has first been filed with and approved by the Utilities Commission.

(g) Not Applicable When User Rates Are in Effect. - No availability rate approved by the Utilities Commission shall be applicable to any property when the regular user rates are in force for that property.

(h) Applicable Only When Franchise in Force. - All availability rates approved by the Utilities Commission shall be applicable only during the period of time that the utility franchise remains in force for the property served, unless such Commission approval specifies otherwise.

(i) Amount of Availability Rate. - No availability rate shall exceed the minimum rate established by the Commission for water users. Both the availability rate and the minimum user rate are subject to change from time to time upon approval by the Utilities Commission.

(j) Denial of User Service. - No utility may deny water service to its customers for nonpayment of availability rates imposed under contracts entered into prior to the effective date of this rule, except where such availability rates had been authorized under a Commission order.

(k) This rule shall become effective on and after April 2, 1975.

(NCUC Docket No. W-100, Sub 4, 4/2/75.)

### **R7-37 BONDS**

(a) Except as provided in paragraph (f), before temporary operating authority, or a certificate of convenience and necessity is granted to a water or sewer utility company, or before a water or sewer utility company extends service into territory contiguous to that already occupied, without regard to the date of the issuance of the existing franchise, the company must furnish a bond to the Commission as required by G.S. 62 110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. In setting the amount of a bond, the Commission shall consider and make appropriate findings as to the following:

- (1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation,
- (2) The number of customers the applicant now serves and proposes to serve,
- (3) The likelihood of future expansion needs of the service,

- (4) If the applicant is acquiring an existing company, the age, condition and type of the equipment,
- (5) Any other relevant factors, including the design of the system, and
- (6) In the case of a contiguous extension, both the original service area and the proposed extension.

The bond shall be in an amount, not less than ten thousand dollars (\$10,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars (\$500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement. Where a utility proposes to secure its bond by means of a commercial surety bond of nonperpetual duration issued by a corporate surety, the bond and commercial surety bond must specify that (a) if, for any reason, the surety bond is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the surety bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325, that the surety bond will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the surety bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the surety bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted surety bond shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond. If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

- (1) Obligations of the United States of America
  - (2) Obligations of the State of North Carolina
  - (3) Certificates of deposit drawn on and accepted by commercial banks and savings and loan associations incorporated in the State of North Carolina
  - (4) Irrevocable letters of credit issued by financial institutions acceptable to the Commission. If the irrevocable letter of credit is nonperpetual in duration, the bond and letter of credit must specify that (a) if, for any reason, the irrevocable letter of credit is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the irrevocable letter of credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325, that the irrevocable letter of credit will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the irrevocable letter of credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the irrevocable letter of credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted irrevocable letter of credit shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.
  - (5) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), (3), and (4) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing, the burden of proof will be on the utility to show that the proposed security under subparagraph (5) and the proposed amount of the bond will be in the public interest.
- (f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either
- (1) it applies for a franchise, or
  - (2) the Commission asserts jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(g) The company shall attach a separate statement to its annual report which is due on or before April 30th of each year signed under penalty of perjury stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

*(NCUC Docket No. W-100, Sub 5, 9/2/87; 3/18/88; 7/19/94; 8/31/94; 9/8/94; 5/3/95; 5/4/95; 5/23/95; 11/7/97; NCUC Docket No. M-100, Sub 128, 4/14/00; NCUC Docket No. W-100, Sub 42, 01/21/04; NCUC Docket No. M-100, Sub 160, 3/30/2022.)*

**(SAMPLE FORM OF WATER OR SEWER BOND ACCOMPANIED BY DEPOSIT OF CASH OR  
SECURITIES)**

**BOND**

(Name of Utility) of (City), (State), as Principal, is bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_) and for which payment to be made, the Principal by this bond binds (himself)(itself) and (his)(its) successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility)

\_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and Commission Rules R7-37 and/or R10-24, and,

WHEREAS, the Principal has delivered to the Commission (description of security), \_\_\_\_\_ with an endorsement as required by the Commission, and,

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Name)

**(SAMPLE FORM OF WATER OR SEWER BOND WITH INDIVIDUAL SURETY)**

**BOND**

(Name of Utility) of (City), (State), as Principal, and (Name of Surety) as Surety, (hereinafter called "Surety") are bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_) and for which payment to be made, the Principal and Surety by this bond bind themselves their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility) \_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(a) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

**(SAMPLE FORM OF WATER OR SEWER BOND WITH CORPORATE SURETY)**

**BOND**

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_) and for which payment to be made, the Principal and Surety by this bond binds themselves their successors and assigns.

**THE CONDITION OF THIS BOND IS:**

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility) \_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and, Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(a) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consents to the conditions of this bond and agree to be bound by them.

This the \_\_\_ day of \_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_

**(SAMPLE FORM OF WATER OR SEWER BOND SECURED BY IRREVOCABLE LETTER OF CREDIT OF  
NONPERPETUAL DURATION)**

**BOND**

(Name of Utility) of (City), (State), as Principal, is bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_ ) and for which payment to be made, the Principal by this bond binds (himself)(itself) and (his)(its) successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water and/or sewer utility (describe utility) \_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water and/or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in G.S. § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal has delivered to the Commission an Irrevocable Letter of Credit from (Name of Bank) \_\_\_\_\_ with an endorsement as required by the Commission, and,

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with G.S. 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Irrevocable Letter of Credit is not to be renewed upon its expiration, the Bank shall, at least 60 days prior to the expiration date of the Irrevocable Letter of Credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325, that the Irrevocable Letter of Credit will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Irrevocable Letter of Credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Irrevocable Letter of Credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Irrevocable Letter of Credit shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(e) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_

**(SAMPLE FORM OF WATER OR SEWER BOND SECURED BY COMMERCIAL SURETY BOND OF  
NONPERPETUAL DURATION ISSUED BY CORPORATE SURETY)**

**BOND**

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety"), are bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_ ) and for which payment to be made, the Principal and Surety by this bond bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water and/or sewer utility (describe utility) \_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water and/or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with G.S. § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(a) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, for an initial \_\_\_\_ (No. of Years) \_\_\_\_ year term, and shall be automatically renewed for additional \_\_\_\_ (No. of Years) \_\_\_\_ year terms, unless the obligations of the principal under this bond are expressly released by the Commission in writing.

NOW, THEREFORE, the Principal and Surety consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)

BY: \_\_\_\_\_

\_\_\_\_\_  
(Corporate Surety)

BY: \_\_\_\_\_

(a) At least 30 days prior to constructing, acquiring, or beginning the operation of any public utility plant or equipment capable of providing water utility service to customers in territory contiguous to that already occupied, for which, by virtue of its contiguity, no certificate of public convenience and necessity is required, a public utility shall provide written notice to the Commission of its intention to construct, acquire, or begin operation of such plant. The notice shall be in a form approved by the Commission and shall identify the area to be served by the extension.

(b) For purposes of this Rule, the phrase "territory contiguous to that already occupied" shall mean territory that is immediately adjacent. In order to be immediately adjacent, the territory must share a significant common boundary line with that already occupied. There may be a geographic feature such as a roadway or stream along this boundary line, but there must not be any intervening land or any substantial body of water. The territory must be immediately adjacent to territory that is already occupied by the water utility. A water utility occupies a territory by the presence of its plant in the territory. A contiguous extension may not be made across unoccupied territory that will not be served by the extension, whether franchised to the utility or not.

(NCUC Docket No. W-100, Sub 17, 2/28/95.)

### **R7-39 WATER SYSTEM IMPROVEMENT CHARGE MECHANISM**

(a) Scope of Rule. – This rule provides the procedure for the approval and administration of a rate adjustment mechanism pursuant to G.S. 62-133.12 to allow a utility to recover the incremental depreciation expense and capital costs related to the utility's reasonable and prudently incurred investment in eligible water system improvements.

(b) Definitions. – As used in this rule:

- (1) "Capital costs" means the pretax return on costs permitted to be capitalized pursuant to the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts, net of accumulated depreciation and accumulated deferred income taxes, using the current federal and state income tax rates and the utility's capital structure, cost of long-term debt, and return on equity approved in the utility's most recent general rate case.
- (2) "Depreciation expense" means the annual depreciation accrual rates employed in the utility's most recent general rate case for the plant accounts in which the cost of each eligible water system improvement is recorded applied to the cost of eligible water system improvements.
- (3) "Eligible water system improvements" means the improvements set forth in G.S. 62-133.12(c) and shall include only those improvements found necessary by the Commission to provide safe, reliable, and efficient service in accordance with applicable water quality standards.
- (4) "Incremental depreciation expense and capital costs" means depreciation expense and capital costs that have been incurred since the utility's most recent rate case and have not been included in the utility's cost of service for ratemaking purposes.
- (5) "Water System Improvement Charge or WSIC" means an adjustment to customer bills that allows a utility to recover the WSIC Revenue Requirement.
- (6) "WSIC Revenue Requirement" means the annual revenue required to allow a utility to recover the annual incremental depreciation expense and capital costs of eligible water system improvements.
- (7) "WSIC Period" means the 12-month period ended December 31 for Aqua North Carolina, Inc. and the 12-month period ended March 31 for Utilities, Inc., and its North Carolina affiliates. The WSIC Period for other water utilities shall be a 12-month period established by the Commission in conjunction with the approval of a WSIC mechanism for that utility.
- (8) "WSIC mechanism" means a rate adjustment mechanism approved by the Commission in a general rate case pursuant to G.S. 62-133.12.

(c) Request for Water System Improvement Charge Mechanism. – A utility seeking approval of a WSIC mechanism shall include in its application for a general rate increase under G.S. 62-133 and Commission Rule R1-17 the following:

- (1) A three-year plan that includes the following:
  - a. A detailed description of all proposed eligible water system improvements expected to be completed in the initial WSIC Period and an estimate of the cost of the improvements and dates when the improvements will be placed into service; and
  - b. A brief description of the proposed eligible water system improvements, estimated costs, and completion dates for improvements that the utility plans to complete during the two years following the initial WSIC Period.
- (2) The proposed effective dates of the WSIC and semiannual adjustments to the charge.

- (3) Testimony, affidavits, exhibits, or other evidence demonstrating that a WSIC is in the public interest and will enable the utility to provide safe, reliable, and efficient service in accordance with applicable water quality standards.
  - (4) Any other information required by the Commission.
- (d) Customer Notice. – The notice to customers of the utility’s general rate increase application shall include the proposed WSIC mechanism and the estimated impact of the charges under the mechanism on the utility's monthly service rates. The Notice shall include the following statement:

**Water System Improvement Charge Mechanism**

Pursuant to G.S. 62-133.12 and Commission Rule R7-39, the Company is requesting that the Commission approve a Water System Improvement Charge Mechanism. This mechanism will allow the Company to recover the annual incremental depreciation expense and capital costs of eligible water system improvements completed and placed in service between rate cases. In support of this request, the Company has filed a three-year plan with its application which list various projects which may be eligible for recovery pursuant to this mechanism, the cost and/or estimated costs of those projects, and the estimated completion date of those projects. By law, the cumulative maximum charges between rate cases that the Company can recover through the use of this mechanism cannot exceed five percent of the total service revenues that the Commission will approve in this rate case. Customers may subscribe to the Commission’s electronic notification system through the Commission’s website at [www.ncuc.net](http://www.ncuc.net) to receive notification of any Company requests to utilize the Water System Improvement Charge Mechanism, if approved.

In this Application, the Company has requested that the Commission allow it to recover total service revenues of \$\_\_\_\_\_. Five percent of these revenues is \$\_\_\_\_\_. If the Commission permits the Company to recover the revenue requirements requested in the Application, the Company projects that the average monthly water bill for a typical residential customer (based upon monthly water usage of x,xxx gallons) would be \$\_\_\_\_\_. Based upon these figures, the Company estimates that the maximum that the average residential customer's monthly water bill could be increased by this adjustment mechanism between rate cases is \$\_\_\_\_\_.

The Commission may eliminate or modify any rate adjustment mechanism approved in this case upon a finding that it is no longer in the public interest.

- (e) General Rate Case Review. – Following notice and hearing, the Commission shall approve a WSIC mechanism only upon a finding that it is in the public interest.
- (f) Initiation of Charge. – Once a WSIC mechanism is approved and eligible water system improvements are in service, the utility may file a request with the Commission for authority to impose the water system improvement charge pursuant to the mechanism, to be effective no less than 60 days after filing the request. The Company shall also provide a copy of the request to the Public Staff.<sup>1</sup> Prior to the effective date, the Public Staff shall schedule the request for Commission consideration at the regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed water system improvement charge. The Public Staff shall formally notify the Commission at least 15 days in advance of the date that the request shall be scheduled for Commission consideration at the regularly scheduled staff conference.
- (g) Computation of the WSIC Revenue Requirement. – The WSIC Revenue Requirement shall be computed for each WSIC Period as follows:

Eligible water system improvements	\$X,XXX,XXX
Less: Accumulated depreciation	X,XXX,XXX
Less: Accumulated deferred income taxes	<u>X,XXX,XXX</u>
Net plant investment	\$X,XXX,XXX
Pre-tax rate of return	<u>X.XX%</u>
Capital costs	\$X,XXX,XXX
Plus: Depreciation expense	<u>XXX,XXX</u>
Subtotal, excluding regulatory fee	\$X,XXX,XXX

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<sup>1</sup> Parties interested in receiving notice of these filings may subscribe to the Commission's electronic notification system through the Commission's website at [www.ncuc.net](http://www.ncuc.net).

Regulatory fee gross-up factor  
Total

XXXX  
\$X,XXX,XXX

(h) Computation of Water System Improvement Charge. –

- (1) The WSIC shall be expressed as a percentage carried to two decimal places and shall be applied to the total utility bill of each customer under the utility's applicable service rates and charges.
- (2) The WSIC shall be computed by dividing the annual WSIC Revenue Requirement by the projected revenues of the utility during the 12-month period following implementation of the charge.

(i) Semiannual Adjustments. – A utility may file a request for a WSIC adjustment no more frequently than semiannually.

- (1) The request shall include the computation and supporting data for the adjustment.
- (2) Cumulative WSIC Revenue Requirements may not exceed five percent of the total annual service revenues approved in the utility's last general rate proceeding.
- (3) The procedural requirements set forth in subsection (f) of this Rule shall apply to requests for semiannual adjustments.

(j) Experience Modification Factor. – The WSIC shall be modified through the use of an experience modification factor (EMF) that reflects the difference between the WSIC Revenue Requirement and the revenues that were actually realized under the WSIC during the WSIC Period. The EMF shall remain in effect for a 12-month period. Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred costs of the utility for eligible water system improvements to be refunded to a utility's customers through operation of the EMF shall include an amount of interest at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(k) Water System Improvement Charge Reset. – The WSIC shall be reset at zero as of the effective date of new base rates established in the utility's general rate case. Thereafter, only the incremental depreciation expense and capital costs of new eligible water system improvements that have not previously been reflected in the utility's rates shall be recoverable through the WSIC.

(l) Audit and Reconciliation. – The WSIC shall be subject to the following:

- (1) Within 60 days following the end of each WSIC Period, each utility shall file a report, in a format prescribed by the Commission, reconciling its actual eligible water system improvement costs, actual WSIC revenues, and EMF computation.
- (2) The Public Staff shall audit the utility's actual eligible water system improvement costs, actual WSIC revenues, and EMF computation, and shall file a report on its audit no later than four months after the end of the WSIC Period of the utility.

(m) Ongoing Three-Year Plan. – Within 60 days following the end of each WSIC Period, the utility shall file an updated three-year plan containing the information prescribed in Section (c)(1) of this Rule and any other information required by the Commission.

(n) Quarterly Filings with the Commission. – Within 45 days after the end of each calendar quarter, the utility shall file the following reports:

- (1) A quarterly earnings report consisting of the following:
  - a. A balance sheet and income statement for the calendar quarter and calendar year to date for the utility;
  - b. A statement of the per books net operating income for the calendar quarter and calendar year to date for each rate division of the utility based on North Carolina ratemaking;
  - c. A statement of rate base at the end of the calendar quarter for each rate division of the utility based on North Carolina ratemaking; and
  - d. The number of customers and gallons sold for each month of the calendar quarter for each rate division by rate type (meter size, flat rate, etc.).
- (2) A quarterly report of WSIC collections from customers consisting of amounts collected for the quarter by rate division and rate type.
- (3) A construction status report which includes by rate division the following information for each eligible water system improvement project:
  - a. The costs incurred during the quarter;
  - b. The cumulative amount incurred;
  - c. The estimated total cost for each project;
  - d. The estimated completion date; and
  - e. The actual completion date.

(o) Elimination or Modification of WSIC Mechanism. – After notice to the utility and opportunity to be heard, the Commission may eliminate or modify any previously authorized WSIC mechanism upon a finding that it is not in the public interest.

(p) Burden of Proof. – The burden of proof as to whether a WSIC mechanism is in the public interest, the correctness and reasonableness of any WSIC, and whether the investment in the water system improvements was reasonable and prudently incurred shall be on the utility.

(NCUC Docket No. W-100, Sub 54, 6/06/2014.)

#### **R7-40 CONSUMPTION ADJUSTMENT MECHANISM FOR WATER UTILITIES**

(a) Scope of Rule.—This Rule provides the procedure for the approval and administration of a rate adjustment mechanism pursuant to G.S. 62-133.12A, known as a Consumption Adjustment Mechanism for Water Utilities (CAM-W). This mechanism, if authorized by the Commission in a general rate case proceeding, allows a water utility to track and true-up variations in average per customer water usage from baseline consumption levels established by the Commission in the utility's most recent general rate case proceeding and to subsequently apply to the Commission for authority to establish and adjust charges or credits to recover from or refund to customers the revenue associated with these variations. The rate adjustment mechanism allowed pursuant to this Rule is not applicable to a water utility's customers that are charged based upon a flat rate or purchased bulk water rate or to customers that are served by systems that the utility acquired after the date on which the utility filed its application and were not included in its most recent general rate case proceeding.

(b) Request for Approval of CAM-W.—A utility seeking approval of a CAM-W shall include in its application for a general rate increase pursuant to G.S. 62-133 and Commission Rule R1-17 the following:

- (1) A proposed structure of the CAM-W and a proposed method for calculating the charge or credit resulting from the CAM-W that are in sufficient detail to facilitate the Commission's review and determination whether the rate adjustment mechanism is appropriate to track and true-up variations in average per customer usage and whether the rate adjustment mechanism is in the public interest;
- (2) A description of the customer classifications used within the current and any proposed rate schedules that the proposed CAM-W would apply to and the criteria used to group customers in a fair and reasonable manner;
- (3) A three-year billing data analysis that includes a detailed breakdown of the monthly active customer counts and monthly usage data by blocks of 1,000 gallons for each year, customer classification, and rate schedule;
- (4) Testimony, affidavits, exhibits, sample calculations, or other evidence demonstrating that the CAM-W is appropriate to track and true-up variations in average per customer usage and that the CAM-W is in the public interest; and
- (5) Any other information that the Commission may require by order or otherwise in the general rate case proceeding.

(c) Customer Notice.—The notice to customers of the utility's general rate case application shall include notice of the request for approval of the proposed CAM-W.

(d) General Rate Case Review.—Following notice and hearing, in the general rate case proceeding the Commission will review the utility's proposed use of a CAM-W and determine whether the CAM-W is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and whether the CAM-W is in the public interest. In conjunction with the Commission's determination that the CAM-W is appropriate and in the public interest, the Commission will establish an average per customer consumption level on an annual basis and/or on a monthly basis for the applicable 12-month period based on the relevant historical consumption data, subject to reasonable pro forma adjustment and normalization, which shall be used to establish a baseline consumption measure or measures.

(e) Procedure for Establishment of Charge or Credit Resulting from CAM-W; Setting of Adjustment Date.— On or before the date established by Commission order, but in no event less than 12 months after the Commission issues an order in a general rate case proceeding approving the use of the CAM-W, the utility shall file a request for authority to establish the charge or credit resulting from the CAM-W. The utility's request shall comply with the following:

- (1) The proposed effective date for the charge or credit resulting from the CAM-W shall be no sooner than 60 days after the filing of the request;
- (2) The request shall include a proposed calculation of the charge or credit resulting from the CAM-W specific to each customer classification and rate schedule;
- (3) The proposed calculation shall be consistent with the approved CAM-W structure and make use of the Commission-approved baseline consumption measure or measures; and
- (4) The utility shall provide a copy of the request to the Public Staff.

Prior to the proposed effective date, the Public Staff shall schedule the request for Commission consideration at a regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed charge or credit resulting from the CAM-W. The Public Staff shall notify the Commission by an appropriate filing in the relevant docket at least 15 days in advance of the date that the request is scheduled for Commission consideration at the regularly scheduled staff conference. In its order approving the charge or credit resulting from the CAM-W, the Commission shall establish the effective date for the establishment of the charge or credit resulting from the CAM-W and the effective date for the utility's subsequent annual adjustments to the credit or charge previously established. Where practical, the Commission will set the effective date for subsequent annual adjustments to the charge or credit resulting from the CAM-W on the same date of each year coinciding with the effective date of the charge or credit resulting from the CAM-W as initially established.

(f) Annual Adjustments.—A utility authorized to establish a charge or credit resulting from the CAM-W shall annually file a request for an adjustment in the charge or credit resulting from the CAM-W. The request and the supporting calculation and data for an annual adjustment shall be filed with the Commission at least 45 days prior to the annual adjustment date established pursuant to section (e) of this Rule. The utility shall also provide a copy of the request to the Public Staff. Prior to the annual adjustment date, the Public Staff shall schedule the request for Commission consideration at a regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed adjustment to the charge or credit resulting from the CAM-W. In reviewing the proposed adjustment, the Commission will also consider whether it is appropriate and in the public interest to establish an updated baseline consumption measure or measures from the measure or measures adopted in the rate case proceeding. The Public Staff shall notify the Commission by an appropriate filing in the relevant docket at least 15 days in advance of the date that the requested adjustment is scheduled for Commission consideration at the regularly scheduled staff conference.

(g) Reporting and Auditing.—A utility authorized to establish a charge or credit resulting from the CAM-W shall report to the Commission and the Public Staff shall audit these reports, as provided in this section.

- (1) Monthly Filings with the Commission.—Within 30 days of the end of each calendar month, the utility shall file the following reports:
  - (i) A balance sheet and income statement for the calendar month and calendar year to date,
  - (ii) A statement of per books net operating income for the calendar month and calendar year to date for each rate division of the utility based on North Carolina ratemaking,
  - (iii) The actual number of customers and gallons sold for each month for each rate division, customer classification, and rate schedule;
  - (iv) Total actual monthly service revenues for each rate division, customer classification, and rate schedule, excluding revenues from customers to which this Rule does not apply; and
  - (v) Any other information that the Commission may require by order or otherwise;
  - (vi) Provided that, if the Commission has authorized the utility to implement a WSIC mechanism and the utility is appropriately submitting the required quarterly filings pursuant to Commission Rule R7-39, the utility may fulfill the reporting requirements of subdivisions a. and b. of this subsection by reference to its quarterly filings required pursuant to Rule R7-39.
- (2) Annual Report.—In conjunction with its request to establish the charge or credit resulting from the CAM-W or for an annual adjustment in the charge or credit resulting from the CAM-W, the utility shall annually file a report in a format prescribed by the Commission detailing its actual gallons billed, service revenues, and revenues from the charge or credit resulting from the CAM-W for each rate division, customer classification and rate schedule for the applicable 12-month period. The annual report shall also include the calculation of the actual average per customer usage for each rate division, customer classification, and rate schedule for the applicable 12-month period, an update to the three years of consumption data that was provided in the general rate case proceeding along with its request to approve the CAM-W or in the utility's last annual report, and an updated average per customer usage baseline measure or measures utilizing the updated consumption data.
- (3) Audit and Reconciliation.—The Public Staff shall audit the utility's monthly and annual reports and file the results of the audit to the Commission. The Public Staff's audit of the annual report and the final monthly report in a given 12-month period shall be filed with the Commission as a part of the Public Staff's staff conference agenda item for the consideration of the annual adjustment in the charge or credit resulting from the CAM-W.

(h) Burden of Proof.—The burden of proof as to whether the CAM-W is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding, whether the CAM-W is

in the public interest, and the correctness and reasonableness of the charge or credit resulting from the CAM-W shall be on the utility.

(i) Elimination or Modification of CAM-W.—After notice to the utility and opportunity to be heard, the Commission may eliminate or modify any previously authorized CAM-W upon a finding that the CAM-W is no longer appropriate to track and true-up variations in average per customer usage or is no longer in the public interest.

*(NCUC Docket No. W-100, Sub 61, 5/12/2020.)*

**R7-41 PROCEDURE FOR DETERMINING FAIR VALUE AND ESTABLISHING RATE BASE FOR ACQUISITIONS OF GOVERNMENT-OWNED WATER SYSTEMS**

(a) Scope of Rule.—This Rule provides the procedural and filing requirements for the determination of the value of utility property for ratemaking purposes applicable when a utility acquires an existing water system owned by a municipality or county, or an authority or district established under Chapter 162A of the General Statutes, and the utility makes an election pursuant to G.S. 62-133.1A(a) to establish its rate base associated with the acquisition by using the fair value of the acquired property instead of original cost.

(b) Definitions.

- (1) "Local Government Utility" means an existing water system owned by a municipality, county, or an authority or district established under Chapter 162A of the General Statutes.
- (2) "Rate Division" means a separate rate schedule of a water utility for one or more established customer service areas.
- (3) "Utility Valuation Expert" means a person qualified as an expert in the appraisal of utility plant whose proficiency is demonstrated and established pursuant to subsection (c) of this Rule.
- (4) "Professional Engineer" means a person who has been duly licensed by the North Carolina State Board of Examiners for Engineers and Surveyors established by Chapter 89C of the General Statutes, including those persons who may be licensed by comity or endorsement.
- (5) "Asset Purchase Agreement" means a contract for the sale of an existing water system between a water utility, as buyer, and a Local Government Utility, as seller, which is to be valued for purposes of rate base. The Asset Purchase Agreement shall reflect the price negotiated between the Public Utility purchaser and the Local Government Utility.

(c) Establishment of List of Utility Valuation Experts.—The Commission shall establish a generic proceeding in Docket No. W-100, Sub 60A for the purpose of creating and maintaining a list of accredited, impartial Utility Valuation Experts as required pursuant to G.S. 62-133.1A(b). A person seeking to become a Utility Valuation Expert shall apply to the Commission by furnishing the following:

- (1) a demonstration of the person's education and experience specific to providing valuations and appraisals of utility plant, as differentiated from other types of appraisals, such as for real estate;
- (2) a written attestation that a Utility Valuation Expert owes a fiduciary duty to provide a thorough, objective, and fair valuation;
- (3) a demonstration of financial and technical fitness, such as through production of professional licenses, technical certifications, and names of current or past clients with a description of dates and types of services provided;
- (4) a demonstration of adequate utility valuation and appraisal experience to support the Commission's decision to consider these persons or entities as experts in this field;
- (5) a statement that the Utility Valuation Expert will make use of the assessment of the tangible assets of the system to be acquired, which assessment shall be from a Professional Engineer jointly retained by the utility and the Local Government Utility and make use of the Water and Wastewater Fair Value Engineering Assessment Form included in the Appendix to this Chapter as a template for the engineer's assessment;
- (6) a statement that the Utility Valuation Expert will comply with the requirements of G.S. 62-133.1A in conducting their appraisal, including that the Utility Valuation Expert shall appraise the subject property in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value; and
- (7) any other information as required by the Commission.

(d) Application for Election to Establish Rate Base Using Fair Value.—A water utility may elect to establish rate base using the fair value of the utility property acquired from a Local Government Utility by filing with the Commission an application pursuant to G.S. 62-133.1A and this Rule. The form of the application shall be as provided in the Appendix to this Chapter. In addition to providing the information required pursuant to G.S. 62-133.1A in the completed application form, the application

shall contain a narrative explanation of the object and purposes desired by the application and how the public interest is served by the acquisition, along with any other information required by the Commission. The application shall be accompanied by the testimony of the acquiring utility's president or another person employed by the utility who is personally familiar with the contents thereof and who verifies that the contents of the application are true and accurate.

(e) Procedure upon receipt of Application.—Contemporaneous with the filing of an application with the Commission pursuant to G.S. 62-133.1A and this Rule, the utility shall serve a copy of the application on the Public Staff. The Public Staff shall review the application and no later than ten days after the application is filed, the Public Staff shall file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete or identify any deficiencies noted. If the Commission determines that the application is incomplete as submitted, the utility will be required to file the omitted information.

Once the Commission determines that the application is complete, the Commission will promptly issue an order establishing procedural deadlines and discovery guidelines and requiring the utility to provide notice of the pending application to the customers of the Local Government Utility. If the Commission receives significant written complaints against the application, then the Commission will issue a further order setting the application for hearing. The Commission will endeavor to schedule the hearings to be held within three months of the filing of the application to facilitate issuance of a final order within six months of the filing of a completed application as directed pursuant to G.S. 62-133.1A(d).

(f) Rate Division Assignment.—Pursuant to G.S. 62-133.1A(c)(8), service to customers in the service area of the Local Government Utility shall be under a tariff that includes rates equal to the rates of the selling utility until the utility's next general rate case, unless otherwise ordered by the Commission for good cause shown. An application filed pursuant to G.S. 62-133.1A and this Rule shall include a proposed tariff that reflects such rates and a statement as to whether the utility intends to propose in its next general rate case that the service area of the Local Government Utility be integrated into an existing Rate Division of the acquiring utility or be established as a new Rate Division. A determination as to whether the service area of the Local Government Utility should be integrated into an existing Rate Division or established as a new Rate Division shall be preserved for the Commission's consideration in the utility's next general rate case.

(g) Final Order on Application.—Consistent with the direction provided in G.S. 62-133.1A(d), the Commission will endeavor to issue a final order on the application filed pursuant to G.S. 62-133.1A and this Rule within six months of the filing of a completed application. The Commission's final order will resolve all substantive issues and, if the Commission determines that the Application should be approved, the Commission will specifically determine the rate base value of the acquired property for rate-making purposes in a manner consistent with G.S. 62-133.1A and the provisions of this Rule, as follows:

- (1) Determination of Rate Base.—The rate base value of the acquired system shall be the lesser of the purchase price reflected in the Asset Purchase Agreement or the average of the three appraisals as required pursuant to G.S. 62-133.1A (b)(1), unless the Commission specifically finds that the average of the appraisals will not result in a reasonable fair value, in which case the Commission may adjust the fair value pursuant to G.S. 62-133.1A(e) as it deems appropriate and in the public interest;
- (2) Certain Costs Eligible to be Included in Rate Base Value.—Consistent with G.S. 62-133.1A(b), the Commission will allow the inclusion of the costs of the engineering assessment, transaction and closing costs incurred by the utility, and fees paid to Utility Valuation Experts, including fees paid by the acquiring utility to a Utility Valuation Expert that represents the Public Staff, in the rate base value of the acquired system upon a finding that those costs were reasonably and prudently incurred;
- (3) Depreciation.—The Commission will require the utility to apply the normal rules of depreciation against the rate base value from the date of the purchase of the system; and
- (4) Tariffs.—The Commission will approve the establishment of a new tariff for the provision of water service to customers in the acquired service territory, which shall also determine whether the acquired service territory will be treated as a separate Rate Division.

(h) Burden of Proof.—The utility shall have the burden of proof regarding all aspects of the proceeding on an application filed pursuant to G.S. 62-133.1A and this Rule, and for demonstrating that the acquisition of the Local Government Utility is in the public interest.

(i) Payment of Fees for Public Staff Utility Valuation Expert.—The acquiring utility shall pay the fees of the Utility Valuation Expert that represents the Public Staff whether the Commission approves the application, denies the application, or if the acquiring utility withdraws the application.

*(NCUC Docket No. W-100, Sub 60, 12/30/2020.)*

## **CHAPTER 7 APPENDIX**

SUBSCRIPTION FOR AVAILABILITY OF WATER SERVICE

NAME OF DEVELOPMENT OWNER OR UTILITY

NAME AND LOCATION OF SUBDIVISION

NAME AND ADDRESS OF SUBSCRIBER

DOLLAR AMOUNT OF PROPOSED AVAILABILITY RATE

NOTICE  
IMPORTANT DISCLOSURE  
READ CAREFULLY

1. Subscriber hereby makes application for water service for the following lot(s) in \_\_\_\_\_ (subdivision)

Description of lot(s): \_\_\_\_\_ (lot numbers) (street numbers)

2. Subscriber hereby agrees to pay an availability rate for availability of water service as defined herein. The initial availability rate to be proposed by Developer or Utility is \$ \_\_\_\_ per \_\_\_\_\_. (month) (quarter) (year).

3. Subscriber hereby agrees to pay the tap fee or other fees described below in order to receive regular water user service instead of availability service as follows:

\_\_\_\_\_  
\_\_\_\_\_ (fee description and amount)

4. All availability rates, fees, rules and regulations for availability of water service are subject to change from time to time upon approval by the North Carolina Utilities Commission.

5. An "availability rate" shall mean a fee or charge paid to a water utility by a subscriber thereof for the availability of water service being provided by the utility in a specific subdivision or development.

6. "Availability of water service" shall mean that water of adequate quantity, quality, and pressure is available at all times in a water main located within 75 feet of the boundary of the subscriber's property served, or such other distance as the Commission deems reasonable, whether or not water is actually taken from the system by the subscriber, and whether or not a service outlet is located inside the boundary of the property served.

7. The availability rate for water service shall continue to be applicable to the subscriber even if at some time in the future the subscriber's property should no longer be in use and the water service should no longer be required by the subscriber. The subscriber, however, shall not be required to pay the availability rate during such time that the regular water user rates are in force for the subscriber's property.

CERTIFICATION

I have read the above disclosure and understand that I am agreeing to pay an availability rate for the availability of water service to my lot(s), whether or not I use my lot(s).

\_\_\_\_\_  
Signature of Subscriber(s)

\_\_\_\_\_  
Name and Address of Subscriber(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date Accepted

SUBSCRIPTION FOR AVAILABILITY OF SEWER SERVICE

\_\_\_\_\_  
NAME OF DEVELOPMENT OWNER OR UTILITY

\_\_\_\_\_  
NAME AND LOCATION OF SUBDIVISION

\_\_\_\_\_  
NAME AND ADDRESS OF SUBSCRIBER

\_\_\_\_\_  
DOLLAR AMOUNT OF PROPOSED AVAILABILITY RATE

NOTICE  
IMPORTANT DISCLOSURE  
READ CAREFULLY

1. Subscriber hereby makes application for sewer service for the following lots(s) in \_\_\_\_\_  
\_\_\_\_\_ (subdivision)  
Describe of lots(s): \_\_\_\_\_  
\_\_\_\_\_ (lot numbers) (street numbers)
2. Subscriber hereby agrees to pay an availability rate for availability of sewer service as defined herein. The initial availability rate to be proposed by Developer or Utility is \$ \_\_\_\_ per \_\_\_\_\_ (month) (quarter) (year).
3. Subscriber hereby agrees to pay the tap fee or other fees described below in order to receive regular sewer user service instead of availability service as follows: \_\_\_\_\_  
\_\_\_\_\_ (fee description and amount)
4. All availability rates, fees, rules and regulations for availability of sewer service are subject to change from time to time upon approval by the North Carolina Utilities Commission.
5. An "availability rate" shall mean a fee or charge paid to a sewer utility by a subscriber thereof for the availability of sewer service being provided by the utility in a specific subdivision or development.
6. "Availability of sewer service" shall mean that safe, sanitary and unoffensive collection, treatment or disposal of sewage is available at all times by means of a sewer main located within 75 feet of the boundary of the subscriber's property served, or such other distance as the Commission deems reasonable, whether or not sewage is actually delivered to the system by the subscriber, and whether or not a service outlet is located inside the boundary of the property served.
7. The availability rate for sewer service shall continue to be applicable to the subscriber even if at some time in the future the subscriber's property should no longer be in use and the sewer service should no longer be required by the subscriber. The subscriber, however, shall not be required to pay the availability rate during such time that the regular sewer user rates are in force for the subscriber's property.

CERTIFICATION

I have read the above disclosure and understand that I am agreeing to pay an availability rate for the availability of sewer service to my lot(s), whether or not I use my lot(s).

\_\_\_\_\_  
Signature of Subscriber(s)  
\_\_\_\_\_  
Name and Address of Subscriber(s)  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date Accepted

SUBSCRIPTION FOR AVAILABILITY OF WATER AND SEWER SERVICE

\_\_\_\_\_  
NAME OF DEVELOPMENT OWNER OR UTILITY

\_\_\_\_\_  
NAME AND LOCATION OF SUBDIVISION

\_\_\_\_\_  
NAME AND ADDRESS OF SUBSCRIBER

\_\_\_\_\_  
DOLLAR AMOUNT OF PROPOSED AVAILABILITY RATE

NOTICE  
IMPORTANT DISCLOSURE  
READ CAREFULLY

- Subscriber hereby makes application for water and sewer service for the following lot(s) in \_\_\_\_\_ (subdivision)  
Description of lot(s): \_\_\_\_\_ (lot numbers) (street numbers)
- Subscriber hereby agrees to pay an availability rate for availability of water and sewer service as defined herein. The initial availability rate to be proposed by Developer or Utility is \$ \_\_\_\_ per \_\_\_\_\_ (month) (quarter) (year) for water and \$ \_\_\_\_ per \_\_\_\_\_ (month) (quarter) (year) for sewer.
- Subscriber hereby agrees to pay the tap fee or other fees described below in order to receive regular water and sewer user service instead of availability service as follows: \_\_\_\_\_ (fee description and amount)
- All availability rates, fees, rules and regulations for availability of water and sewer service are subject to change from time to time upon approval by the North Carolina Utilities Commission.
- An "availability rate" shall mean a fee or charge paid to a water or sewer utility by a subscriber thereof for the availability of water or sewer service being provided by the utility in a specific subdivision or development.
- (a) "Availability of water service" shall mean that water of adequate quantity, quality, and pressure is available at all times in a water main located within 75 feet of the boundary of the subscriber's property served, or such other distance as the Commission deems reasonable, whether or not water is actually taken from the system by the subscriber, and whether or not a service outlet is located inside the boundary of the property served.

(b) "Availability of sewer service" shall mean that safe, sanitary and unoffensive collection, treatment or disposal of sewage is available at all times by means of a sewer main located within 75 feet of the boundary of the subscriber's property served, or such other distance as the Commission deems reasonable, whether or not sewage is actually delivered to the system by the subscriber, and whether or not a service outlet is located inside the boundary of the property served.

7. The availability rate for water and sewer service shall continue to be applicable to the subscriber even if at some time in the future the subscriber's property should no longer be in use and the water and sewer service should no longer be required by the subscriber. The subscriber, however, shall not be required to pay the availability rate during such time that the regular water and sewer user rates are in force for the subscriber's property.

#### CERTIFICATION

I have read the above disclosure and understand that I am agreeing to pay an availability rate for the availability of water and sewer service to my lot(s), whether or not I use my lot(s).

\_\_\_\_\_  
Signature of Subscriber(s)

\_\_\_\_\_  
Name and Address of Subscriber(s)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date Accepted

(NCUC Docket No. W-100, Sub 4, 4/2/75.)

#### **R8-01 APPLICATION OF RULES**

(a) These rules shall apply to any person, firm, or corporation (except municipalities, or agents thereof) which is now or may hereafter become engaged as a public utility in the business of furnishing electric current for domestic, commercial or industrial consumers within the State of North Carolina.

(b) The rules are intended to define good practice which can normally be expected. They are intended to insure adequate service and to protect the public from unfair practices and the utilities from unreasonable demands. The cooperation of the utilities with the Commission and the Public Staff is expected.

(c) In any case where compliance with any of these rules introduces unusual difficulty, such rule may be temporarily waived by the Commission upon application of the utility. If in such case compliance with the rule would cost more than the results of such compliance are worth to the public and consumers of electric current, it may be permanently set aside by the Commission.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R8-02 DEFINITIONS**

In the interpretation of these rules the word "utility" shall be taken to mean any person, firm or corporation engaged in the business of supplying electric current to domestic, commercial, or industrial users within this State except a municipality or electric membership corporation organized under G.S. 117-6 et seq. and the word "consumer" shall be taken to mean any person, firm, corporation, municipality, or other political subdivision of the State supplied by any such utility. Unless specifically stated otherwise, capacity of generation facilities is provided in alternating current (AC) delivered at the point of interconnection to the distribution or transmission facilities.

(NCUC Docket No. E-100, Sub 134, 3/18/2015.)

#### **R8-03 RECORDS**

(a) A complete record shall be kept of all tests and inspections required under these rules as to the quality or condition of service which is rendered.

(b) All records of tests shall contain complete information concerning the test, including the date, hour, and place where the test was made; the name of the person making the test, and the result.

(c) All records required by these rules shall be preserved by the utility for at least one year after they are made. Such records shall be kept within the State at the office or offices of the utility, and shall be open for examination by the Commission or its representatives or the Public Staff at all reasonable hours.  
(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R8-04 REPORTS TO COMMISSION**

Each utility shall, at such times and in such form as the Commission shall prescribe, report to the Commission and the Public Staff the results of all tests required to be made or the information contained in any records required to be kept by the utility.  
(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R8-04A CUSTOMER SATISFACTION METRICS AND AVERAGE RESPONSE TIME PERFORMANCE**

(a) Purpose. – The purpose of this rule is to establish standards for measuring and reporting customer call center performance by electric utilities that own and operate electric power systems in North Carolina.

(b) Applicability. – This rule applies to Duke Energy Carolinas, LLC, Duke Energy Progress, Inc., and Virginia Electric and Power Company, d/b/a Dominion North Carolina Power.

(c) Quarterly Reports.

- (1) Each electric utility in this State shall file a report on its call center performance on a quarterly basis. The data reported shall be submitted within 30 days of the end of each quarter.
- (2) Call center performance reports shall include:
  - (a) Customer satisfaction with the automated response system and customer service representatives.
    - (i) Customer satisfaction metrics shall be transaction-based.
    - (ii) Customer satisfaction metrics shall be based on customers rating their satisfaction with the automated response system and the customer service representatives.
    - (iii) Results from customers rating their satisfaction with the automated response system and the customer service representatives shall be reported to the Commission for each quarter and the preceding quarters, if any, of a calendar year.
  - (b) Answer Rate for live voice-handled calls
    - (i) Total calls answered by a customer service representative as a percentage of total calls received minus technology-handled calls shall be reported on a 12-month rolling average basis.
  - (c) Average Speed of Answer for live voice- and technology-handled calls.
    - (i) Average Speed of Answer in seconds shall be reported on a 12-month rolling average basis.

(NCUC Docket No. E-100, Sub 138, 3/9/15.)

#### **R8-04B NEW RESIDENTIAL SERVICE INSTALLATION INDICES**

(a) Purpose. – The purpose of this rule is to establish standards for measuring and reporting new residential service installations and the average number of days in construction per installation for both underground and overhead installations by electric utilities that own and operate electric power systems in North Carolina.

(b) Applicability. – This rule applies to Duke Energy Carolinas, LLC, Duke Energy Progress, Inc., and Virginia Electric and Power Company, d/b/a Dominion North Carolina Power.

(c) Annual Reports.

- (1) Each electric utility in this State shall file a report on its new residential service installations on an annual basis. The data reported shall be submitted within 60 days of the end of each calendar year.
- (2) Service installation reports shall include:
  - (a) The number of new residential service installations for both underground and overhead installations for the preceding calendar year.
  - (b) The average number of days in construction per installation for both underground and overhead installations for the preceding calendar year.
- (3) The beginning point for measuring the number of days in construction for both underground and overhead installations shall be the date the builder or customer acknowledges that the building site is ready for the installation work to begin. This occurs after the meter base and load wires have been installed, the site is to final grade, no obstacles impede construction, and any other construction prerequisites have been satisfied.
- (4) The ending point for measuring the number of days in construction for both underground and overhead installations shall be the date when new service is energized to the meter base.

(NCUC Docket No. E-100, Sub 138, 3/9/15.)

#### **R8-05 INSPECTION OF PLANT AND EQUIPMENT**

(a) Each utility shall maintain its plant, distribution system and facilities at all times in proper condition for use in rendering safe and adequate service.

(b) Each utility shall, upon request of the Commission or the Public Staff, file with it a statement regarding the condition and adequacy of its plant, equipment, facilities and service in such form as may be required by the Commission.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R8-06 COMPLAINTS**

Each utility shall make a full and prompt investigation of all service complaints made to it by its consumers, either directly or through the Commission or the Public Staff. It shall keep a record of all such complaints received which record shall show the name and address of the complainant, the date and character of the complaint and the adjustment or disposal made thereof.

Such record shall be kept for a period of one year.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R8-07 INFORMATION FOR CONSUMERS**

Each utility shall upon request inform its consumers as to the method of reading meters. It is recommended that an exhibition meter be kept on display in each office maintained by a utility.

#### **R8-08 METER READINGS AND BILL FORMS**

(a) Bills shall be rendered for metered service periodically, and shall show the readings of the meter at the beginning and end of the period for which the bill is rendered, the number and kinds of units of service supplied, and the date of the last meter reading.

(b) Each bill shall bear upon its face the date when the bill was mailed, or left at the premises of the consumer, or the latest date on which it may be paid without loss of discount or incurring of penalty.

### ARTICLE 3

#### METERS, METER TESTS AND RECORDS

Note: Throughout this Article 3, cited standards of the American National Standards Institute (ANSI) means the most recent approved ANSI standard as amended from time to time.

#### **R8-09 LOCATION AND CONTROL OF METERS**

(a) No consumer's meter shall be installed in any location where it may be unreasonably exposed to heat, cold, dampness or other cause of damage, or in any unduly dirty or inaccessible location.

(b) Unless otherwise authorized by the Commission, each electric utility shall provide, install, and continue to own and maintain all meters necessary for the measurement of electric energy consumed by its customers.

(c) All meters shall be of a standard type that meets applicable industry standards for the type and application of electric utility service.

(d) Meters shall be placed on stable and unobstructed supports sufficient for the purpose of maintaining the integrity of the meter, meter base, and any other appurtenant equipment necessary for metered utility service.

(e) Meters shall be easily accessible and acceptable clearances shall be maintained on all sides of enclosures for installing, removing, reading, testing, communicating, and making necessary adjustments and repairs. Such clearances must allow for any hinged doors or panels to be opened a minimum of 90 degrees. When two or more meter enclosures are placed on one meter board, each meter enclosure shall be tagged to indicate the circuit metered.

(f) Each customer shall provide and maintain a suitable and convenient place for the location of meters, where they will be readily accessible at any reasonable hour for the purpose of reading, testing, repairing, removing etc., and such other appliances owned by the utility and placed on the premises of the customer shall be so placed as to be readily accessible at such times as are necessary, and the authorized agent of the utility shall have authority to visit such meters and appurtenances at such times as are necessary in the conduct of the business of the utility.

(NCUC Docket No. E-100, Sub 153, 11/27/2019.)

### **R8-10 TESTING FACILITIES**

(a) Each utility furnishing metered electric service shall, unless specifically excused by the Commission, provide and have available such meter laboratory, standard meters, instruments, and facilities as may be necessary to make the tests required by these rules, together with such portable indicating electrical testing instruments, watt hour meters, and facilities of suitable type and range for testing service watt hour meters, voltmeters and other electrical equipment, used in its operations, as may be deemed necessary and satisfactory to the Commission.

(b) All portable indicating electrical testing instruments, when in regular use for testing purposes, shall be checked against suitable reference standards periodically, and with such frequency as to insure their accuracy whenever used in testing service meters of the utility.

*(NCUC Docket No. E-100, Sub 153, 11/27/19.)*

### **R8-11 METHOD OF DETERMINING AVERAGE ERROR OF METERS**

(a) The average percent registration of a watt hour meter shall be determined using one of the following methods prescribed by the American National Standards Institute (ANSI) Standard C12.1 – Code for Electricity Metering, where "FL" means the percent registration at full load test amps and unity power factor, "LL" means the percent registration at light load test amps and unity power factor, and "PF" means the percent registration at full load test amps and 50% power factor:

- (1) Method 1: Average percent registration =  $(4FL + LL)/5$ .
- (2) Method 2: Average percent registration =  $(FL + LL)/2$ .
- (3) Method 3: Average percent registration = registration at a single load point when this single load point represents the registration within the range.
- (4) Method 4: Average percent registration =  $(4FL + 2LL + PF)/7$ .

*(NCUC Docket No. T-100, Sub 49, 01/09/04; NCUC Docket No. E-100, Sub 153, 11/27/2019.)*

### **R8-12 METER ACCURACY**

(a) No watt hour meter that registers on "no load" as defined by ANSI C12.1 (voltage circuits energized and zero current), shall be placed in service or allowed to remain in service.

(b) No watt hour meter shall be placed in service that is in any way defective or has incorrect constants, nor shall any watt hour meter be maintained in service that does not meet the following performance requirements: Average percent registration not less than 98% or more than 102%.

(c) All meters shall be accuracy tested by the manufacturer. Test results shall be provided to the utility and stored by the utility for the life of the meter and at least three years after the retirement of the meter.

(d) Acceptance testing shall be performed on a statistically valid sample of each shipment of new meters. The statistical sampling plan used shall conform to the accepted principles of statistical sampling as set forth in ANSI Z1.4 – Sampling Procedures and Tables for Inspection by Attributes, ANSI Z1.9 – Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming, or other generally accepted statistical methodology. If the total number of failures exceeds the level allowed under the sample plan, the entire shipment will be rejected and returned to the manufacturer or corrected on site.

(e) Whenever a test made by the utility or Commission on a service watt hour meter connected in its permanent position in place of service shows an average percent registration less than 98% or more than 102%, the meter shall be replaced.

(f) A service watt hour meter having an average percent registration not less than 98% or more than 102% may be considered as correct, and no adjustment of charges shall be entailed by such an error.

*(NCUC Docket No. E-100, Sub 29, 11/29/77; NCUC Docket No. E-100, Sub 153, 11/27/2019.)*

### **R8-13 IN-SERVICE METER TESTING**

(a) Meter Testing Required – Each in-service watt hour billing meter shall be included in either a periodic or sampling testing plan as prescribed by ANSI C12.1 – Code for Electricity Metering. Average meter registration accuracy that is less than 98% or more than 102% will be counted as a failure.

(b) Statistical Sampling Plan – The statistical sampling plan provides for the division of meters into homogenous groups such as manufacturer and manufacturer type and may be further subdivided based on other factors such as age or vintage of meter. The selection process is random where each meter within each group has an equal chance of being selected. Selected meters in each group are tested for energy registration accuracy. The statistical sampling plan used shall conform to the accepted principles of statistical sampling as found in ANSI Z1.4 – Sampling Procedures and Tables for Inspection by Attributes, ANSI

Z1.9 – Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming, or other statistically valid programs that have been evaluated by qualified independent mathematical statisticians.

(c) Periodic Interval Plan – Every meter included in a periodic interval plan shall be tested for energy registration accuracy at a minimum of once every sixteen years. The utility may elect to test more frequently based on factors such as complexity of the metering system, class of customer, or size of service.

(d) Corrective Action – If testing pursuant to subsection (a) or (b) shows that a meter or group of meters does not meet the performance criteria, then an established program of corrective action shall be followed. Corrective action shall consist of one or more of the following methods listed in ANSI C12.1 section 5.0.3.4.4: a) an accelerated test program, b) splitting a group into two or more subgroups, c) a time-specific retirement program, or d) a sample-driven retirement program. The accelerated test program should provide for testing at rates that vary in accordance with the calculated percentage of meters in the group outside the acceptable limits of accuracy but not less than 20% of the group tested per year. Meters so tested and placed into service shall be sampled as a separate group from the remainder of the original group not tested. When the sample results of the remainder of the original group indicate that the group has come up to acceptable limits the two components of the group may be consolidated for sampling.

(e) Utility to Retain Test Results – Accuracy test results shall be stored by the utility for the life of the meter and at least three years after the retirement of the meter.

(f) Utility Reporting – No later than April 1 of each year, a utility shall report to the Commission on its in-service meter program. For tests performed pursuant to subsection (b), the report shall indicate the number of meters in each homogeneous group in service at the beginning of each year, the number of meters making up the sample for each such group, the test results for each group, and any corrective action taken. In addition, the report shall describe the results from meters tested under a periodic interval plan pursuant to subsection (c), including the number of meters in each homogeneous group in service at the beginning of each year, the number of meters tested, the test results, and any corrective action taken. The report shall also identify any classes of meters for which the utility tests on a more frequent basis than prescribed in ANSI C12.1, and the basis for the more frequent testing. The report shall also outline the current year's testing plan.

(g) Inspections – When metering installations are tested or inspected, instrument transformers and wiring associated with the installation shall be visually inspected for correctness of connections and evidence of damage. Nameplate or stenciled ratios shall be verified against ratios used by the utility for billing. These inspections are not required if performing them cannot be done safely.

*(NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. E-100, Sub 4, 6/8/66; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. E-100, Sub 153, 11/27/2019.)*

#### **R8-14 METER TESTING AT REQUEST OF CONSUMERS**

(a) Upon reasonable notice, when requested in writing by the customer, each utility shall test the accuracy of the meter in use by the customer.

(b) No deposit or payment shall be required from the customer for a meter test, except when the customer has requested, within the previous twelve months, that the same meter be tested, in which case the customer shall be required by the utility to deposit with it an amount as determined by the Commission to cover the reasonable cost of such test.

(c) A schedule of deposits or fees for testing various classifications of meters shall be filed with, and approved by, the Commission.

(d) The amount so deposited with the utility shall be refunded or credited to the customer (as a part of the settlement in the case of a disputed account) if the meter is found, when tested, to register more than two percent (2%) fast; otherwise the deposit shall be retained by the utility.

(e) The customer may, if customer so requests, be present when the utility conducts the test on customer's meter, or if the customer desires, may provide (at customer's expense) an expert, or other representative appointed by customer, to be present at the time of the meter test.

(f) A report of the results of the meter test shall be made within a reasonable time after the completion of the test. This report shall give the name of the customer requesting the test, the date of the request, the location of the premises where the meter is installed, the type, make, size, and serial number of the meter, the date of removal, the date tested, and the results of the test, a copy of which shall be supplied to the customer upon request. The utility shall inform the customer that the customer has a right to request such written copy of the report of the meter test.

(g) Any meter tested pursuant to this rule that fails the following performance requirements shall be removed from service and remain out of service until it is determined to be in compliance: Average percent registration not less than 98% or more than 102%.

(NCUC Docket No. E-100, Sub 29, 11/29/77; NCUC Docket No. E-100, Sub 72, 6/22/94; NCUC Docket No. E-100, Sub 153, 11/27/2019.)

**R8-15** Repealed by NCUC Docket No. E-100, Sub 29, 11/29/77.

**ARTICLE 4**

**OPERATION**

Note: Throughout this Article 4, cited standards of the American National Standards Institute (ANSI) means the most recent approved ANSI standard as amended from time to time.

**R8-16 STANDARD FREQUENCY**

[Repealed.]

(NCUC Docket No. E-100, Sub 153, 11/27/2019.)

**R8-17 STANDARD VOLTAGE**

(a) Each electric supplier shall adopt and file with the Commission standard average service voltages available from its distribution class facilities. The filing shall contain the nominal voltage, base voltage, lower limit, and upper limit. The voltage maintained at the point of delivery shall be reasonably constant and variations therein should not normally exceed the limits set forth in this rule.

- (1) The standard nominal voltage adopted by the electric supplier shall be a voltage indicated by the version of ANSI Standard C84.1, Electric Power Systems and Equipment-Voltage Ratings (60 Hz), or equivalent ANSI standard as later amended, in effect at the time of adoption of nominal voltages. The following standard nominal service voltages are hereby adopted by the Commission as the preferred standard nominal service voltages:

<b>NOMINAL SYSTEM VOLTAGE****</b>		
Two-wire	Three-wire	Four-wire
<b>Single-Phase Systems</b>		
<b>120*</b>	<b>120/240*</b>	
<b>Three-Phase Systems</b>		
		<b>208Y/120***</b>
		<b>240/120</b>
	240	
		<b>480Y/277</b>
	<b>480</b>	
	600**	
	2400	
	<b>4160</b>	4160Y/2400
	4800	
	<b>6900</b>	
		8320Y/4800
		12000Y/6930
		<b>12470Y/7200</b>
		<b>13200Y/7620</b>
	<b>13800</b>	<b>13800Y/7970</b>
		20780Y/12000
	23000	22860Y/13200

		<b>24940Y/14400</b>
	34500	<b>34500Y/19920</b>

\*see (a)(2) below

\*\*This classification covers the range of nominal voltages from 550 to 600 volts.

\*\*\*A modification of this three-phase, four-wire system is available as a 120/208YV service for single-phase, three-wire, open-wye applications.

\*\*\*\*Preferred system voltages are in bold-face type.

- (2) An electric supplier may adopt different nominal voltages to serve specific customers if such action does not compromise prudent transmission and distribution system operation.
- (b) In order to promote harmony between the service of electric suppliers and the utilization of voltage requirements of presently manufactured equipment, the following service voltage variations are permitted:
- (1) For service rendered for individual residential use or specifically for lighting purposes, the voltage variations shall not exceed five percent (5%) above or below the standard base voltage.
  - (2) For other service the voltage variations shall not exceed ten percent (10%) above or below the standard base voltage.
- (c) An electric supplier may elect to deliver service at a nominal voltage that is not standard on its system. The variation in the nonstandard voltage shall not exceed the limits set forth above for the type of service being rendered.
- (d) Upon approval of the Commission and proper notification to its customers a utility may cease to deliver a particular voltage.
- (e) Variations in voltage in excess of those specified that are caused by the following shall not be construed a violation of this rule:
- (1) Addition of customer equipment without proper notification to the electric supplier.
  - (2) Operation of customer's equipment.
  - (3) The action of the elements.
  - (4) Infrequent and unavoidable fluctuations of short duration due to system operations.
  - (5) Conditions that are part of practical operations and are of limited extent, frequency, and duration.
  - (6) Emergency operations.
- (f) Customers shall select, install, maintain and operate their electrical equipment so as to cause the least interference with the regulation of the electric supply system. Three phase motors in excess of 20 horsepower, single phase motors in excess of five horsepower and other apparatus with high starting or fluctuating currents must be installed in accordance with the supplier's filed tariffs and rules and regulations.
- (g) Greater variations in voltage for service to installations that permit greater variations than those required above may be allowed upon specific authorization by the Commission.

*(NCUC Docket No. E-100, Sub 9, 4/25/72; NCUC Docket No. E-100, Sub 153, 11/27/2019.)*

### **R8-18 VOLTAGE SURVEYS AND RECORDS**

Each utility shall provide itself with suitable indicating or recording voltmeters, and shall make a sufficient number of voltage tests periodically so as to insure compliance with the voltage requirements cited above. These tests shall be made at appropriate points upon the utility's distribution lines.

**R8-19** Rescinded by NCUC Docket Nos. M-100, Sub 86; M-100, Sub 28; M-100, Sub 61, 10/1/80.

### **R8-20 DISCONTINUANCE OF SERVICE FOR VIOLATION OF RULES OR NONPAYMENT OF BILLS**

- (a) No utility shall discontinue the service to any consumer for violation of its rules or regulations, or for nonpayment of bills without having first tried to induce the consumer to comply with its rules and regulations or to pay his bills.
- (b) Service shall actually be discontinued only after at least 24 hours' written notice of such intention shall have been given to the consumer by the utility; provided, however, that where fraudulent use of current is detected, or where a dangerous condition is found to exist on the consumer's premises, the service may be shut off without notice in advance.
- (c) Said notice herein prescribed may be given by leaving a copy thereof with such consumer at the premises where such service is rendered, or by mailing same through the United States mail to the consumer's last known post-office address.
- (d) Consumer shall have the privilege of paying delinquent bill at any time prior to actual disconnection of service lines supplying him; provided, that where the utility dispatches an employee to the premises of any consumer for the purpose of

disconnecting service lines, a fee not to exceed one dollar may be added to consumer's delinquent bill to cover cost to utility of dispatching such employee to consumer's premises, which fee must be paid as a part of consumer's delinquent account.

(e) Whenever the service is turned off for violation of rules or regulations, or fraudulent use of current, the utility may make a reasonable charge for the cost of renewing it.

(f) Where a consumer has been required to make a guarantee deposit this shall not relieve consumer of the obligation to pay the service bills when due, but where such deposit has been made and service has been discontinued on account of nonpayment of bill, then in such event unless consumer shall, within forty-eight hours after service has been discontinued, apply for reconnection of service and pay the account, then in such event the utility shall apply the deposit of such consumer toward the discharge of such account and shall as soon thereafter as practicable, refund the consumer any excess of the deposit.

#### **R8-21 INSTALLATION OR REPLACEMENT OF METERS AND CHANGES IN LOCATION OF SERVICE**

(a) A customer's request for electric utility service grants the utility permission to install any metering device that meets the requirements of Rules R8-8, -9, -11, and -12, as deemed appropriate by the utility and in compliance with Commission orders.

(b) Whenever a customer requests the replacement of the service meter on the customer's premises, such request shall be treated as a request for the test of such meter, and as such, shall fall under the provisions of Rule R8-14.

(c) Whenever a customer moves from the location where electric service is used by the customer, and thereby requires the disconnecting and/or connecting at a new location of the electric supplier, or information is required from the metering infrastructure to complete the transfer of service, and the same work has been done for the customer within one year preceding, the utility may make a charge, subject to such charge having been approved by the Commission.

*NCUC Docket No. E-100, Sub 153, 11/27/2019.)*

#### **R8-22 UTILITY MAY WITHHOLD SERVICE UNTIL CUSTOMER COMPLIES WITH RULES AND REGULATIONS**

Any utility may decline to serve a customer or prospective customer until he has complied with the State and municipal regulations on electric service, and the rules and regulations of the utility furnishing the service, provided such rules and regulations have been approved by the Commission.

#### **R8-23 EXTENT OF SYSTEM ON WHICH UTILITY MUST MAINTAIN SERVICE**

Each electric utility, unless specifically relieved in any case by the Commission from such obligation, shall operate and maintain in safe, efficient and proper condition, all the facilities and instrumentalities used in connection with the regulation, measurement and delivery of electric current to any consumer up to and including the point of delivery into the wiring owned by the consumer.

#### **R8-24 EXTENSIONS**

Each utility shall adopt rules, subject to the approval of the Commission, under which it will, upon written request for service by a prospective consumer or a group of prospective consumers, located in the same neighborhood, make the extension necessary to give service and furnish service connection or connections.

#### **R8-25 RATE SCHEDULE, RULES AND REGULATIONS**

(a) Copies of all schedules of rates for service, forms of contracts, charges for service connections and extensions of circuits, and of all rules and regulations covering the relations of consumer and utility, shall be filed by each utility in the office of the Commission. Copies of such rates, rules and regulations shall be furnished consumers or prospective consumers upon request.

(b) Consumers applying for more than one class of service on the same premises shall so arrange their wiring that each class of service can be metered separately (unless utility has schedules on file covering service to a combination of classes on one meter), and consumers purchasing any particular class of service shall confine the use of current supplied thereunder to the purposes set forth in the rate scheduled for such class. Separate meters will be required for each building on the same premises except outhouses and for each separate class of service in the same building except when a commercial lighting consumer occupies the same building in part for residential purposes the utility may supply both the commercial and residential lighting through one meter at the commercial lighting rate, or on rural lines at the rural rate.

(c) Consumers desiring service in excess of 25 HP may be required to enter into term contracts with the utility supplying service, for the period established in the schedule of rates filed with the Commission. Failure to enter into contract for the period specified in the rate schedule will entitle the utility to impose a surcharge of five percent on all bills rendered to such consumers. The utility shall not be required to supply service for a period of less than one year except under rate schedules

designed expressly for short-term service. In case of initial contracts for service where the investment required of the utility is large, the Commission may require contracts of sufficiently long term to justify the investment, regardless of the provisions of the rate schedule filed for such service.

(NCUC Docket No. E-100, Sub 16, 2/9/73.)

#### **R8-26 SAFETY RULES AND REGULATIONS**

The current rules and regulations of the American National Standards Institute (ANSI) entitled "National Electrical Safety Code" are hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

(NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 12/8/81; 4/9/84; 6/23/87; 12/5/89; 12/8/92; 1/7/97; 04/02/02.)

#### **R8-27 UNIFORM SYSTEM OF ACCOUNTS**

(a) For utilities with annual accounting and reporting periods based on the calendar year, effective January 1, 2002, and for utilities with fiscal year accounting and reporting periods, effective with fiscal years beginning in 2002, the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, as currently embodied in the United States Code of Federal Regulations, Title 18, Part 101, and as revised periodically, is hereby adopted by this Commission as its accounting rules for electric utilities and is prescribed for the use of all electric utilities under the jurisdiction of the North Carolina Utilities Commission, subject to the following exceptions and conditions unless otherwise ordered by the Commission:

- (1) All orders and practices of the Commission in effect as of the effective date of this Rule with any accounting impacts that conflict with provisions of the Uniform System of Accounts shall remain in effect, and future such orders and practices with such impacts shall supersede the provisions of the Uniform System of Accounts for North Carolina retail jurisdictional purposes.
  - (2) The electric utilities under the jurisdiction of the Commission must apply to the Commission for any North Carolina retail jurisdictional use of the following accounts:
    - a. Account 182.1 - Extraordinary Property Losses.
    - b. Account 182.2 - Unrecovered Plant and Regulatory Study Costs.
    - c. Account 182.3 - Other Regulatory Assets.
    - d. Account 254 - Other Regulatory Liabilities.
    - e. Account 407 - Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs.
    - f. Account 407.3 - Regulatory Debits.
    - g. Account 407.4 - Regulatory Credits.
- (b) Each electric utility subject to this Rule shall file the following with the Commission:
- (1) In the case of utility filings and other correspondence with the FERC or its staff, on and after the effective date of this Rule, regarding the utility's accounting practices or the Uniform System of Accounts, including but not limited to requests for accounting guidance and or approval of accounting entries, the portion of the initial filing or correspondence by the utility relating to said accounting practices or the Uniform System of Accounts, and the final disposition of the matter.
  - (2) In the case of other changes in the utility's accounting practices prompted by FERC orders, directives, or correspondence, a written explanation of the change in practice, along with relevant supporting documentation.
  - (3) In the case of the regular periodic or any special compliance audits performed on and after the effective date of this Rule by the FERC or its staff, notification of the commencement of the audit and a copy of the final audit report.
- (c) The accounting treatment to be used for contributions in aid of construction is as follows:
- (1) Contributions in aid of construction received before the effective date of this Rule are to be accounted for in the manner prescribed by the Commission in Docket No. E-100, Sub 18.
  - (2) Contributions in aid of construction received on and after the effective date of this Rule are to be accounted for in the manner prescribed by the Uniform System of Accounts adopted herein.
- (d) The following classification system is hereby adopted:
- Class A: Electric utilities having annual electric operating revenues of \$2,500,000 or more.
  - Class B: Electric utilities having annual electric operating revenues of \$1,000,000 or more but less than \$2,500,000.
  - Class C: Electric utilities having annual electric operating revenues of \$150,000 or more but less than \$1,000,000.
  - Class D: Electric utilities having annual electric operating revenues of \$25,000 or more but less than \$150,000.

(e) Electric utilities with annual gross operating revenues of less than \$25,000 shall be exempt from the provisions of this Rule until the average of their annual gross revenues, for a period of three consecutive years, shall exceed \$25,000. Electric utilities exceeding the \$25,000 threshold but falling below the minimum threshold of 10,000 megawatthours of annual sales included in the FERC Uniform System of Accounts shall nevertheless utilize the FERC Uniform System of Accounts as specified for Nonmajor utilities.

(NCUC Docket No. E-100, Sub 18, 5/24/74; NCUC Docket No. E-100, Sub 91, 9/6/01.)

#### **R8-28 RETENTION OF RECORDS**

Unless otherwise specified by the Commission, all records required by these rules shall be preserved for the period of time specified in the current edition of the National Association of Regulatory Utility Commissioners' publication "Regulations to Govern the Preservation of Records of Electric, Gas and Water Utilities."

(NCUC Docket No. M-100, Sub 128, 10/27/99.)

#### **R8-29 APPLICATION FOR SERVICE AREA BY ELECTRIC SUPPLIER; PUBLICATION OF NOTICE**

Whenever there is filed with the Commission an application by an electric supplier for the assignment of a service area, as provided in G.S. 62-110.2(c), the applicant will publish a notice thereof in form approved by the Commission once a week for four successive weeks in a newspaper of general circulation in the county or counties where such area is situated.

(NCUC Docket No. E-100, Sub 3, 1/28/66; NCUC Docket No. M-100, Sub 22, 9/15/69.)

#### **R8-30 PETITION TO INTERVENE BY OTHER SUPPLIERS; CONSOLIDATION OF APPLICATIONS FOR SAME SERVICE AREA**

A petition for intervention by another electric supplier may contain an application for assignment to the intervenor of the same area applied for by the applicant or any portion thereof, but may not contain application for any area not applied for by the applicant. The Commission may, however, in its discretion, consolidate two or more applications for hearing.

(NCUC Docket No. E-100, Sub 3, 1/28/66.)

#### **R8-31 HEARING AT LEAST SIXTY DAYS AFTER PUBLICATION**

A hearing upon any application will not be commenced before the expiration of at least sixty days after the last day of publication of notice by the applicant.

(NCUC Docket No. E-100, Sub 3, 1/28/66.)

#### **R8-32 ASSIGNMENT OF SERVICE AREAS ON COMMISSION'S MOTION**

The Commission may on its own motion set for hearing the assignment of any service area which the Commission deems should be assigned pursuant to G.S. 62-110.2(c) notwithstanding there is no application to have such area assigned by any electrical supplier, and any hearing set on the Commission's own motion shall be subject to the provisions of this article relating to the notice to electrical suppliers in the adjoining territory and to the time for hearing.

(NCUC Docket No. E-100, Sub 3, 1/28/66.)

#### **R8-33 RATE SCHEDULES, RULES AND REGULATIONS, UNDERGROUND WIRING, PROMOTIONAL PAYMENTS**

(a) Copies of all schedules of rates, charges, service regulations and forms of service contracts used or to be used within the State by any electric membership corporation doing business in North Carolina shall be filed with the Utilities Commission for information purposes and each such electric membership corporation shall keep a copy of such schedule, rates, charges, service regulations and contracts open to public inspection, which shall be furnished to members or prospective members upon request, as provided in G.S. 62-138(f).

(b) For the purposes of this article, the rates, charges and service regulations of electric membership corporations shall be deemed to include the provisions of G.S. 62-3(24) defining "rate" to mean every compensation, charge, fare, tariff, schedule, toll, rental and classification or any of them demanded, observed, charged, or collected by any electric membership corporation for any service, product or commodity offered by it to their members and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.

(c) The schedule of rates, charges and service regulations under this article shall specifically include any provisions of rates, charges or service regulations or any other source relating to underground wiring to members' premises.

(d) In addition to filing such schedules of rates, charges and service regulations under this article, any electric membership corporation proposing to pay any compensation or consideration or to furnish any equipment to secure the installation or adoption of electric service shall first file with the Commission a schedule of such compensation or consideration or

equipment to be furnished and received approval thereof by the Commission as provided by G.S. 62-140(c) as amended in 1965.  
(NCUC Docket No. E-100, Sub 5, 6/16/66.)

**R8-34 TITLE AND DOCKET ASSIGNMENTS FOR RATES AND REGULATIONS OF ELECTRIC MEMBERSHIP CORPORATIONS**

Electric membership corporations (including electric "cooperatives" domesticated in North Carolina, both hereafter called "EMCs") will carry the designation "EC" in all of their filings with the Commission, whether under G.S. 62-138(f) or otherwise, together with their respective number designations by the United States Rural Electrification Administration. (Out-of-state EMCs domesticated in North Carolina will also carry immediately following their REA number designation, the letter (s) denoting their respective states, since in several instances the numbers are the same as assigned to North Carolina EMCs.) For example, Randolph Electric Membership Corporation, Asheboro, North Carolina, was originally assigned the REA number 36; Randolph's filings will therefore carry the designation "EC-36"; in like manner, each of the other EMCs will be designated and permanently identified.  
(NCUC Docket No. E-100, Sub 5, 6/16/66.)

**R8-35 REQUIREMENTS AS TO SIZE AND FORM OF RATE FILINGS**

Information filed pursuant to G.S. 62-138(f) will ordinarily be on 8-1/2" by 11" bond paper.

(NCUC Docket No. E-100, Sub 5, 6/16/66.)

**R8-36 FILINGS TO REFLECT EFFECTIVE DATE, CHANGES AND PREVIOUS FILINGS SUPERSEDED**

Each filing pursuant to G.S. 62-138(f) will reflect (a) the original date of the matter filed and the effective date thereof, (b) the subject number thereof (EMC filing of all kinds to begin with Sub 1 and to continue as Sub 2, Sub 3, etc., as is the Commission's present practice), and (c) any other information appropriate in clearly identifying the filing, i.e., what it is superseding that has been previously filed, if anything.  
(NCUC Docket No. E-100, Sub 5, 6/16/66.)

**R8-37 COPIES REQUIRED**

At least one copy of each filing will be forwarded to the Commission.

(NCUC Docket No. E-100, Sub 5, 6/16/66; NCUC Docket No. M-100, Sub 147, 9/15/2023.)

**R8-38 TIME REQUIREMENTS FOR FILINGS**

Matter will be filed within at least thirty (30) days after its effective date, and may be filed earlier or in advance of the effective date.  
(NCUC Docket No. E-100, Sub 5, 6/16/66.)

**R8-39 TRANSMISSION OF FILINGS**

Filings may be effectuated by transmission of the matter filed via covering letter, addressed to the Chief Clerk of the Commission.

(NCUC Docket No. E-100, Sub 5, 6/16/66; NCUC Docket No. M-100, Sub 140, 12/03/13.)

**Article 7.**

**POWER RELIABILITY.**

**R8-40 REPORT OF IMPENDING EMERGENCIES, LOAD REDUCTIONS AND SERVICE INTERRUPTIONS IN BULK ELECTRIC POWER SUPPLY AND RELATED POWER SUPPLY FACILITIES.**

(a) Definitions. — For the purpose of this rule, a bulk electric power supply interruption shall be any interruption or loss of service to customers of any public electric utility, or electric membership corporation engaged in the generation or transmission of electric energy caused by or involving an outage of any generating unit or of electric facilities operating at a

nominal voltage of 69 kV or higher. In determining the aggregate of loads which are interrupted, any load which is interrupted in accordance with the provisions of contracts permitting interruptions in service shall not be included.

(b) Telephonic Reports. — Every public electric utility and electric membership corporation engaged in the generation or transmission of electric energy shall report promptly (Monday - Friday, during regular work hours) to the Operations Division of the Commission Staff and the Electric Division of the Public Staff of the North Carolina Utilities Commission by telephone any event as described below:

- (1) Any decision to issue a public request for reduction in use of electricity.
- (2) Any action to reduce firm customer loads by reduction of voltage for reasons of maintaining adequacy of bulk electric power supply.
- (3) Any action to reduce firm customer loads by manual switching, operation of automatic loadshedding devices, or any other means for reasons of maintaining adequacy of bulk electric power supply.
- (4) Any loss in service for 15 minutes or more of bulk electric power supply to aggregate loads in excess of 200,000 kW.
- (5) Any outage in bulk power supply facilities, accident to system facilities, delays in construction, or substantial delays in making repairs following unscheduled outages that are of consequence on a subregional or State basis, or which may constitute an unusual hazard to the reliability of electric service.

(c) Telegraphic or Telephonic Reports. — Every public electric utility and electric membership corporation engaged in the generation or transmission of electric energy shall report any event as described below to the Operations Division of the Commission Staff and Electric Division of the Public Staff of the North Carolina Utilities Commission by telephone or telegram.

These reports are to be made no later than the beginning of the Commission's next regular work day (Monday - Friday) after the interruption occurred. Events requiring a report are as follows:

Any loss in service for 15 minutes or more of bulk electric power supply to aggregate loads exceeding the lesser of 100,000 kW or half of the current annual system peak load, and not required to be reported under subsection (b). See subsection (d) for information to be reported.

(d) Information to Be Reported. — The information supplied in the initial report should include at least the approximate territory affected by the interruption, the time of occurrence, the duration, or an appraisal of the likely duration, if service is still interrupted, an estimate of the number of customers and amount of load involved, and whether any known critical services, such as hospitals, pumping stations, traffic control systems, etc., were interrupted. To the extent known or suspected, the report desirably will include a description of the initial incident resulting in the interruption. The Commission or its representative may require further reports during or after the period of interruption and restoration of service, such reports to be made by telephone, telegraph or letter, as required.

(e) Special Investigations and Reports.

- (1) If so directed by the Commission, an entity experiencing a condition, as described in subsections (b) and (c), shall submit a full report of the circumstances surrounding such occurrence and the conclusions the entity has drawn therefrom. The report shall be filed at such time subsequent to the submittal of the initial report by telephone or telegraph as may be directed by the Commission.
- (2) The report shall be prepared in such detail as may be appropriate to the severity and complexity of the incident experienced and should include an account understandable to the informed layman in addition to the following technical and other information:
  - (i) The cause or causes of the incident clearly described, including the manner in which it was initiated.
  - (ii) A description of any operating conditions of an unusual nature preceding the initiation of the incident.
  - (iii) If the incident was an interruption and geographically widespread, an enumeration of the sequence of events contributing to its spread.
  - (iv) An account of the measures taken which prevented further spreading in the loss of service, e.g., manual or automatic load shedding, unit isolation, or system sectionalization. These actions and all chronicled events should be keyed to a record of the coincident frequencies which occurred.
  - (v) A description of the measures taken to restore service with particular evaluation of the availability of start up power and the ease or difficulty of restoration.
  - (vi) A statement of the capacity of the transmission lines into the area of load interruption, the generating capacity in operation in the area at the beginning of the disturbance, and the actual loading on the generating units and, where available, the loading on the lines at that time. When actual loadings are not available, estimate the line loadings at the time to the extent possible.

- (vii) A summary description of any equipment damage and the status of its repair.
- (viii) A description of the impact of any load reduction or interruption on people and industries in the affected area, including a copy of materials in the printed news media indicative of the impact.
- (ix) Information on the steps taken, being taken, or planned by the utility, to prevent recurrence of conditions of a similar nature, to ease problems of service restoration, and to minimize impacts on the public and the customers of any future conditions of a similar nature.

(NCUC Docket No. E-100, Sub 8, 12/30/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 140, 12/03/13.)

**R8-40A SERVICE RELIABILITY INDEX REPORTING**

(a) Purpose. The purpose of this Rule is to establish standards for measuring and reporting distribution service reliability by electric public utilities that own and operate electric power distribution systems in North Carolina.

(b) Applicability. This Rule applies to Duke Energy Carolinas, LLC; Duke Energy Progress, Inc.; and Dominion North Carolina Power.

(c) Definitions. Unless otherwise provided for in this Rule, all terms used are as defined by the Institute of Electrical and Electronics Engineers (IEEE) in the most current IEEE Guide for Electric Power Distribution Reliability Indices 1366 (IEEE Standard 1366).

(d) Quarterly Reports.

- (1) Each electric public utility shall report service reliability data to the Commission on a quarterly basis. The data reported shall be submitted within 30 days of the end of each quarter and shall reflect SAIDI and SAIFI results for the preceding 12 months.
- (2) SAIDI and SAIFI shall be calculated in accordance with IEEE Standard 1366.
- (3) The reports shall include: SAIDI, with and without Major Event Days, and SAIFI, with and without Major Event Days.
- (4) Interruptions reported shall include all sustained interruptions, except those for Major Event Days.

(NCUC Docket No. E-100, Sub 138, 11/25/13)

**R8-41 FILING OF EMERGENCY LOAD REDUCTION PLANS AND EMERGENCY PROCEDURES**

(a) All certificated public electric utility companies, electric membership corporations and municipal corporations engaged in the generation, transmission or distribution of electric energy, shall design and adopt a set of load-reducing plans and emergency procedures that will provide judicious treatment to all affected customers in the event that emergency load reduction is required, provided that compliance with the requirements of this subsection by any municipal corporation shall be voluntary. Furthermore, the plans and procedures of each such electric supplier or participating municipal corporation shall be coordinated with the plans and procedures of its natural gas suppliers, natural gas distribution utilities, gas pipelines, wholesale suppliers and/or wholesale-for-resale customers to the extent reasonably practicable.

(b) A detailed copy of emergency load reduction plans and emergency procedures in effect shall be filed by each electric supplier or municipal corporation in the office of the Commission in Docket No. E-100, Sub 10A and shall be updated annually not later than May 15. Each filing shall contain a certification that such plans and procedures have been coordinated with the electric utilities' natural gas suppliers, natural gas distribution utilities, and gas pipelines, as well as wholesale power suppliers or wholesale-for-resale customers as applicable.

(c) In its annual filing, each electric public utility and electric membership corporation shall include a verified statement by an officer stating that: (1) the utility had identified all the gas-electric dependencies and inter-dependencies that could threaten electric operations or customer service during extreme cold weather or other emergencies; (2) the electric utility had discussed those dependencies and inter-dependencies with the appropriate gas utility(ies) and pipeline(s); (3) the electric utility had, in cooperation with the gas utility(ies) and/or pipeline(s), established a plan for managing the dependencies and inter-dependencies during extreme cold weather events and other emergencies; and (4) the electric utility had within the last 12 months demonstrated its ability to start its black start generators from a cold shutdown state during cold weather.

(NCUC Docket No. E-100, Sub 10, 3/3/72; NCUC Docket No. M-100, Sub 135, 9/10/13.)

**R8-42** Rescinded by NCUC Docket No. E-100, Sub 54, 12/8/88.

**R8-43** Rescinded by NCUC Docket No. E-100, Sub 54, 12/8/88.

## Article 9.

### OVERCHARGES AND UNDERCHARGES.

#### **R8-44 METHOD OF ADJUSTMENT FOR RATES VARYING FROM SCHEDULE OR FOR OTHER BILLING ERRORS**

If it is found that a utility has directly or indirectly, by any device whatsoever, charged, demanded, collected or received from any consumer a greater or less compensation for any service rendered or to be rendered by such utility than that prescribed in the schedules of such utility applicable thereto then filed in the manner provided in Chapter 62 of the North Carolina General Statutes; or if it is found that any consumer has received or accepted any service from a utility for a compensation greater or less than that prescribed in such schedules; or if, for any reason, billing error has resulted in a greater or lesser charge than that incurred by the consumer for the actual service rendered, then the method of adjustment for such overcharge or undercharge shall be as provided by the following:

- (1) If the utility has willfully overcharged any consumer, then the method of adjustment shall be as provided in G.S. 62-139(b).
- (2) If the utility has inadvertently overcharged a consumer as a result of a misapplied schedule, an error in reading the meter, a skipped meter reading, or any other human, machine, or meter error, the utility shall at the customer's option, refund the excess amount paid by that consumer or credit the amount billed as provided by the following:
  - a. If the interval during which the consumer was overcharged can be determined, then the utility shall credit or refund the excess amount charged during that entire interval provided that the applicable statute of limitations shall not be exceeded.
  - b. If the interval during which the consumer was overcharged cannot be determined, then the utility shall credit or refund the excess amount charged during the 12 month period preceding the date when the billing error was discovered.
  - c. If the exact usage and/or demand incurred by that consumer during the billing periods subject to adjustment cannot be determined, then the refund shall be based on an appropriate estimated usage and/or demand.
  - d. If an overcharged consumer owes a past due electric balance for the same type of service on which an overcharge occurred, the utility may deduct the past due amount from any refund or credit.
- (3) If the utility has undercharged any consumer as the consequence of a fraudulent or willfully misleading action on that consumer's part, or any such action by any person other than the employees or agents of the company, such as tampering with, or bypassing the meter where it is evident that such tampering or bypassing occurred during the residency of that consumer, or if it is evident that a consumer has knowledge of being undercharged without notifying the utility as such the utility shall recover the deficient amount as provided by the following:
  - a. If the interval during which the consumer was undercharged can be determined, then the utility shall collect the deficient amount incurred during that entire interval, provided that the applicable statute of limitations is not exceeded.
  - b. If the interval during which the consumer was undercharged cannot be determined, then the utility shall collect the deficient amount incurred during the 12 month period preceding the date when the billing error was discovered by the utility.
  - c. If the usage and/or demand incurred by that consumer during the billing periods subject to adjustment cannot be determined, then the adjustment shall be based on an appropriate estimated usage and/or demand.
- (4) If the utility has undercharged any consumer as the result of a misapplied schedule, an error in reading the meter, a skipped meter reading, or any other human, machine, or meter error, except as provided in (3) above, then the utility shall recover the deficient amount as provided by the following:
  - a. If the interval during which a consumer having a demand of less than 50kW was undercharged can be determined, then the utility may collect the deficient amount incurred during that entire interval up to a maximum period of 150 days. For a consumer having a demand of 50 kW or greater, the maximum period shall be 12 months.

- b. If the interval during which a consumer was undercharged cannot be determined, then the utility may collect the deficient amount incurred during the 150 day period preceding the date when the billing error was discovered by the utility. For a consumer having a demand of 50 kW or greater, the maximum period shall be 12 months.
  - c. If the usage and/or demand incurred by that person during the billing periods subject to adjustment cannot be determined, then the adjustment shall be based on an appropriate estimated usage and/or demand.
  - d. The consumer shall be allowed to pay the deficient amount, in equal installments added to the regular monthly bills, over the same number of billing periods which occurred during the interval the customer was subject to pay the deficient amount.
- (5) This rule shall not be construed as to prohibit equal payment plans, wherein the charge for each billing period is the estimated total annual bill divided by the number of billing periods prescribed by the plan, and the difference between the actual and estimated annual bill is settled by one payment at the end of the year. However, incorrect billing under equal payment plans shall be subject to this rule.
  - (6) This rule shall not be construed as to prohibit the estimation of a consumer's usage for billing purposes when it is not feasible to read the consumer's meter on a particular occasion.
  - (7) If the meter error is found upon test to be not more than 2% fast or slow, the utility shall not be required to make a billing adjustment under (2) above or allowed to make a billing adjustment under (4) above.

(NCUC Docket No. E-100, Sub 17, 5/10/74; NCUC Docket No. E-100, Sub 29, 11/29/77; NCUC Docket No. M-100, Sub 140, 12/03/13.)

**R8-45** Rescinded by NCUC Docket No. E-100, Sub 47, 5/1/84.

**R8-46** Rescinded by NCUC Docket No. E-100, Sub 47, 5/1/84.

**R8-47 REQUIREMENTS OF MINIMUM STANDARD OFFERINGS OF LIGHTING LUMINAIRES**

- (a) Utilities are urged to investigate new, more efficient lighting systems as they are developed and, where such systems are efficient and economical to the consumer, to request approval of newer systems as standard tariff items.
- (b) Luminaires with less than 33,000 lamp lumens
  - (1) When new lighting systems of less than 33,000 lamp lumens are offered, at least one unit must be offered in each of the following standard lumen ranges before offerings may be made in other ranges.

STANDARD RANGES

(Nominal Lamp Lumen Ratings)

Area Lighting	Street Lighting
6,000 - 8,700	6,000 - 8,700
20,000 - 30,000	10,000 - 14,500
	19,000 - 25,000

- (2) If a standard unit of the new type is not available in a lumen output range required in R8-47(b)(1), the standard unit most closely meeting the lumen requirements of that range may be substituted.
  - (3) The lumen ranges required for street lighting by R8-47(b)(1) are based upon the light distributions on roadway and sidewalk areas resulting from the refractive characteristics of standard mercury vapor and high pressure sodium vapor point source luminaires. In order to qualify as meeting Rule R8-47(b)(1), luminaire systems with other light distributions will require a corresponding adjustment of lamp lumen levels in order to equal the roadway and sidewalk illumination from these standard luminaires.
  - (c) Luminaires with 33,000 or more lamp lumens - New lighting systems may be offered in 33,000 lumen or larger size without being offered in the standard ranges required by Rule R8-47(b).
  - (d) As newer, more efficient types of lighting sources become available and in substantial or predominant use, utilities will not be required to continue to offer the older, less efficient types of lighting for new service. Upon approval of the Commission, one or more sizes of the older types may be removed at one time from the schedule of offerings.
- (NCUC Docket No. E-100, Sub 30, 12/20/79; NCUC Docket No. E-100, Sub 30, 12/28/79.)

## **Article 10.**

### **FUEL BASED RATE CHANGES.**

#### **R8-48 INFORMATION TO BE PROVIDED TO NEW CONSUMERS**

(a) Each utility shall provide to each of its new consumers within sixty (60) days after commencement of service a clear and concise explanation of the rate schedule(s) applicable to such consumer. This can be accomplished in one of the following manners at the option of the utility:

- (1) A description of the rate schedules, special clauses, and riders which are reasonably available to the consumer with respect to the customer's particular rate classification or usage pattern (e.g., residential, small commercial, general service, large power).
- (2) A copy of applicable rate schedules or similar documents on file with the Commission which contain such information.
- (3) A combination of items (1) and (2) above to inform the customer of rate schedules available to that particular service.
- (4) The information stated in (1) and (2) above may also be provided to a new consumer prior to commencement of service at the utility's option if such is normally provided in the course of routine service negotiation.
- (5) In addition to the above, each new consumer is to be furnished either a summary description of the current procedures whereby the utility, pursuant to provisions of G.S. 62-134(e), is permitted to increase or decrease its rates based solely upon the cost of fuel used in generation or production of power, or a copy of the Commission rule setting forth such procedures.

(b) Each utility is encouraged, but is not required, to furnish the following information to each new consumer at the time that it provides the information required to be provided by subparagraph (a) of this rule:

- (1) an explanation of its policies and rules with respect to consumer credit;
- (2) an explanation of its policies and practices with respect to meter reading and billing cycles;
- (3) an explanation of its service termination and reconnect procedures;
- (4) general company information concerning reporting power failures, billing information, requests for service changes, and the like; and
- (5) energy conservation tips and load management information.

(c) Nothing in this rule shall be construed to conflict with the provisions of Rule R8-25(a) or to negate the duty of the utility to supply any information to a consumer upon request as provided in that rule.

(NCUC Docket No. E-100, Sub 36, 1/5/81; NCUC Docket No. M-100, Sub 140, 12/03/13.)

#### **R8-49 NOTIFICATION TO CONSUMERS OF TARIFF CHANGES**

(a) Unless otherwise ordered by the Commission, each utility that files an application with the Commission seeking to change its rate tariffs, excluding adjustments of base rates for fuel costs, shall publish notice of such application in the local news media within thirty (30) days of the date of the Commission's order requiring such notice to be filed relative to the subject application. In addition, each utility will provide a bill insert notifying its consumers of such application within sixty (60) days of the Commission's order. The form of such notices will be supplied to the utility by the Commission and will normally contain the following information:

- (1) a description of the overall amount of the increase applied for in terms of dollars and in terms of percentage increase over current levels, and any proposed changes in tariff designs or tariff availability clauses;
- (2) a brief comparison of present versus proposed billings for the major rate categories for specified usage levels;
- (3) a schedule of times, dates, and locations of public hearings to be held with respect to the application;
- (4) a schedule of filing deadlines for persons interested in intervening in the case and a reference to Commission rules specifying the procedures for intervening;
- (5) a specification of a location where interested parties can review the documentation filed in support of the rate application and where copies of the proposed rate tariffs and pleadings filed in the case can be obtained by the general public; and
- (6) any other information deemed appropriate by the Commission with regard to the utility's application.

(NCUC Docket No. E-100, Sub 36, 1/5/81.)

#### **R8-50 NOTIFICATION OF AVAILABLE RATE SCHEDULES AND BREAKDOWN OF COMPANY OPERATING EXPENSES**

(a) At least once each calendar year, each electric utility shall notify its consumers of the rate schedules that are available within the rate classification in which such consumer falls. Such notice should contain brief summaries of all rate schedules within a consumer's rate classification. In addition, the notice shall contain a statement that "Complete Rate Schedules are available upon request." Each utility shall annually notify the Commission of the completion date of this notification.

(b) Each electric utility shall annually provide to each of its consumers a breakdown of its operating expenses for the most recent available twelve (12) month period expressed as a percent of each dollar of revenue. This information may be communicated graphically as part of a regular bill insert, or if the utility does not include inserts with its bills, in a special mailing.

(NCUC Docket No. E-100, Sub 36, 1/5/81.)

#### **R8-51 PROVISION OF PAST BILLING HISTORY UPON CONSUMER REQUEST**

Each utility, upon the request of one of its consumers, shall provide the past billing information of such consumer as provided in this rule. The minimum information which shall be provided shall include the following in an easily understood format: the name of the rate schedule under which such consumer is served; a clear specification of the months and years of data supplied (twelve month minimum); and a clear itemization of the demand billing units, basic facilities charge, kilowatt-hour usage, and dollar amount of bills for each bill rendered during the period to which the data relates. The utility may charge up to \$5.00 for all subsequent requests for a past billing history made by the same consumer for the same service location within a twelve (12) month period.

(NCUC Docket No. E-100, Sub 36, 1/5/81; NCUC Docket No. M-100, Sub 140, 12/03/13.)

#### **R8-52 MONTHLY FUEL REPORT**

(a) On or before the 15th day of each month, each electric public utility which uses fossil and/or nuclear fuel in the generation of electric power for providing North Carolina retail electric service shall file a Fuel Report for the second preceding month (i.e., up to 45 days after the end of the month being reported) for review by the Commission, the Public Staff, and any other interested party. The Monthly Fuel Report shall be filed in such formats as shall from time to time be approved by the Commission, and shall include the following information:

- (1) Details of power plant performance and generation;
- (2) Details of cost of fuel burned;
- (3) Details of cost of fuel transportation;
- (4) Details of fuel consumption and inventories;
- (5) Analysis of fossil fuel purchases;
- (6) Details of cost and inventories of ammonia, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions;
- (7) Details of transactions for purchases, sales, and interchanges of power, including (i) total delivered noncapacity related costs of purchases that are subject to economic dispatch or economic curtailment and (ii) capacity costs associated with purchases from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. 796, that are subject to economic dispatch;
- (8) Details of the total delivered costs of purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.8 and costs incurred to comply with any federal mandate that is similar to subsections (b), (d), (e), and (f) of G.S. 62-133.8;
- (9) Details of the fuel cost component of other purchased power;
- (10) Details of net gains or losses resulting from sales of fuel or other fuel-related costs components as defined in G.S. 62-133.2(a1);
- (11) Details of net gains or losses resulting from sales of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs as defined in G.S. 62-133.2(a1); and
- (12) Details of costs incurred to comply with the Swine Farm Methane Capture Pilot Program established in Section 4 of S.L. 2007-523.  
Subdivisions (6) and (7)(ii) of this subsection do not apply to the Monthly Fuel Report of an electric public utility that is subject to G.S. 62-133.2(a3).

(b) Each electric public utility which uses fossil and/or nuclear fuel in the generation of electric power shall file a Fuel Procurement Practices Report for review by the Commission at least once every ten (10) years, plus each time the utility's fuel procurement practices change. The Fuel Procurement Practices Report shall detail:

- (1) The process and/or methodology the utility uses to determine its fuel and fuel-related needs;
- (2) The process the utility uses to determine from which vendor it shall buy fuel and fuel-related inventories; and
- (3) The inventory management practices the utility follows to maintain its fuel and fuel-related inventories.

(NCUC Docket No. E-100, Sub 47, 5/1/84; (NCUC Docket No. E-100, Sub 113, 2/29/08, NCUC Docket No. E-100, Sub 113, 3/13/08.)

### **R8-53 MONTHLY POWER PLANT PERFORMANCE REPORT.**

(a) On or before the last day of each month, every public utility providing North Carolina retail electric service shall file a Power Plant Performance Report for the preceding month for review by the Commission, the Public Staff, and any other interested party.

(b) Definitions and methodologies used shall be consistent with the latest revision of North American Electric Reliability Corporation (NERC) Generating Availability Data Systems (GADS) Data Reporting Instructions.

- (1) For purposes of subsection (c) of this rule, the performance of generating units or power plants that meet both of the following two conditions (Performance Reporting Plants), shall be reported:
  - (i) Having a (A) 400 or greater megawatt (MW) Gross Maximum Capacity (GMC) rating for one unit or (B) 600 or greater MW GMC rating for the aggregate of multiple generating units of the same type at a single generation plant, and projected in the most recently filed integrated resource plan or integrated resource plan update (as applicable) to operate at 35% or greater annual Capacity Factor for the most recent 12-month period commencing January 1st of the next calendar year.
  - (ii) For purposes of this subsection (b)(1)(ii), the determination of the Capacity Factor shall occur on an annual basis after the filing of the integrated resource plan or integrated resource plan update (as applicable) and prior to January 1st of the next calendar year. Once established, the Performance Reporting Plants shall remain unchanged for the entire calendar year.
- (2) For purposes of subsection (d) of this rule, the outage information shall be provided for each electric generating unit that is projected in the most recently filed integrated resource plan or integrated resource plan update (as applicable) to operate at 65% or greater annual Capacity Factor for the 12-month period commencing January 1st of the next calendar year (Outage Reporting Plants). For purposes of this subsection (b)(2), the determination of the Capacity Factor shall occur on an annual basis after the September 1st filing of the integrated resource plan or integrated resource plan update (as applicable) and prior to January 1st of the next calendar year. Once established, the Outage Reporting Plants shall remain unchanged for the entire calendar year.

(c) The monthly Power Plant Performance Report shall provide summaries of the generation by each generating unit of all Performance Reporting Plants, with one summary for the reporting month and another summary for the 12-month period ending with the reporting month. The generation summaries for each generating unit of all Performance Reporting Plants shall include the following:

- (1) Gross Dependable Capacity (GDC) or Net Dependable Capacity (NDC) in megawatts (MW);
- (2) Hours in period;
- (3) Total net megawatt hours (MWh) possible in period;
- (4) Net MWh generated during period;
- (5) Capacity factor (as a % of GDC or NDC);
- (6) Equivalent availability (net MWh generation possible in period, less net MWh generation not available in period) divided by net MWh generation possible in period); and
- (7) Heat rate (in BTU per net kWh).

(d) The monthly Power Plant Performance Report shall list each outage during the period for each generating unit of the Outage Reporting Plants. The outage information shall include the following:

- (1) Generating unit affected by outage;
- (2) Date(s) of each outage;
- (3) Duration of each outage;
- (4) Cause of each outage;

- (5) Explanation for cause of outage, if known;
- (6) Remedial action to prevent recurrence of outage, if any; and
- (7) Whether the outage is forced or scheduled, and if scheduled, the classification of the outage.

*(NCUC Docket No. E-100, Sub 47, 5/1/84; NCUC Docket No. M-100, Sub 128, 10/27/99; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. E-100, Sub 172, 5/6/2022.)*

**R8-54** Repealed by NCUC Docket No. E-100, Sub 47, 8/14/86.

**R8-55 ANNUAL HEARINGS TO REVIEW CHANGES IN THE COST OF FUEL AND FUEL-RELATED COSTS**

(a) As used in this rule, "cost of fuel and fuel-related costs" means all of the following:

- (1) The cost of fuel burned.
- (2) The cost of fuel transportation.
- (3) The cost of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
- (4) The total delivered noncapacity related costs, including all related transmission charges, of all purchases of electric power by the electric public utility that are subject to economic dispatch or economic curtailment.
- (5) The capacity costs associated with all purchases of electric power from qualifying cogeneration facilities and qualifying small power production facilities, as defined in 16 U.S.C. 796, that are subject to economic dispatch by the electric public utility.
- (6) Except for those costs recovered pursuant to G.S. 62-133.8(h), the total delivered costs of all purchases of power from renewable energy facilities and new renewable energy facilities pursuant to G.S. 62-133.8 or to comply with any federal mandate that is similar to the requirements of subsections (b), (d), (e) and (f) of G.S. 62-133.8.
- (7) All costs incurred to comply with the Swine Farm Methane Capture Pilot Program established in Section 4 of S.L. 2007-523.
- (8) The fuel cost component of other purchased power.

Cost of fuel and fuel-related costs shall be adjusted for (a) any net gains or losses resulting from any sales by the electric public utility of fuel and other fuel-related costs components and (b) any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.

(b) For each electric public utility generating electric power by means of fossil and/or nuclear fuel for the purpose of furnishing North Carolina retail electric service, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.2(b) in order to review changes in the electric public utility's cost of fuel and fuel-related costs. The annual cost of fuel and fuel-related cost adjustment hearing for Duke Energy Carolinas, LLC, will be scheduled for the first Tuesday of June each year; for Duke Energy Progress, LLC., the annual hearing will be scheduled for the third Tuesday of September each year; and for Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, the annual hearing will be scheduled for the third Tuesday of November each year.

(c) The test periods for the hearings to be held pursuant to paragraph (b) above will be uniform over time. The test period for Duke Energy Carolinas, LLC will be the calendar year; for Duke Energy Progress, Inc., the test period will be the 12-month period ending March 31; and for Dominion North Carolina Power, the test period will be the 12-month period ending June 30.

(d) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates for changes in the cost of fuel and fuel-related costs used in providing its North Carolina customers with electricity from the cost of fuel and fuel-related costs established in the electric public utility's previous general rate case on the basis of cost per kilowatt-hour. The increment or decrement may be different among customer classes. The general methodology and procedures to be used in establishing the cost of fuel and fuel-related costs shall be as follows:

- (1) Cost of fuel and fuel-related costs will be preliminarily established utilizing the methods and procedures approved in the utility's last general rate case, except that capacity factors for nuclear production facilities will be normalized based generally on the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Corporation's Generating Availability Report, adjusted to reflect unique, inherent characteristics of the utility, including, but not limited to, plants 2 years or less in age and unusual events. The national average capacity factor for nuclear production facilities shall be based on the most recent 5-year period available and shall be weighted, if appropriate, for both pressurized water reactors and boiling water reactors. The costs shall be allocated among customer classes in accordance with

G.S. 62-133.2(a2), as applicable. A cost of fuel and fuel-related cost rider will then be determined based upon the difference between the cost of fuel and fuel-related costs thus established and the base cost of fuel and fuel-related cost component of the rates established in the utility's most recent general rate case. The foregoing normalization requirement assumes that the Commission finds that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period.

- (2) Cost of fuel and fuel-related costs will be modified as provided in G.S. 62-133.2(a3).
- (3) The cost of fuel and fuel-related costs as described above will be further modified through use of an experience modification factor (EMF) rider, which may be different among customer classes. The EMF rider will reflect the difference between reasonable and prudently incurred cost of fuel and fuel-related costs and the fuel-related revenues that were actually realized during the test period under the cost of fuel and fuel-related cost components of rates then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the cost of fuel and fuel-related costs up to thirty (30) days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual fuel and fuel-related costs adjustment hearing.
- (4) The cost of fuel and fuel-related cost rider and the EMF rider as described hereinabove will be charged as an increment or decrement to the base fuel cost component of rates established in the electric public utility's previous general rate case.
- (5) The EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings; provided, however, that such carry-through provision will not relieve the Commission of its responsibility to determine the reasonableness of the cost of fuel and fuel-related costs, other than that being collected through operation of the EMF rider, in any intervening general rate case proceeding.
- (6) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred cost of fuel and fuel-related costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(e) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information and data in the form and detail as set forth below:

- (1) Actual test period kWh sales, peak demand by customer class, fuel-related revenues, and fuel-related expenses for the utility's total system and for its North Carolina retail operations.
- (2) Test period kWh sales normalized for weather, customer growth and usage. Said normalized kWh sales shall be for the utility's total system and for its North Carolina retail operations. The methodology used for such normalization shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case.
- (3) Adjusted test period kWh generation corresponding to normalized test period kWh usage. The methodology for such adjustment shall be the same methodology adopted by the Commission in the utility's last general rate case, including adjustment by type of generation; i.e., nuclear, fossil, hydro, pumped storage, purchased power, etc. In the event that said methodology is inconsistent with the normalization methodology set forth in paragraph (d)(1) above, additional pro forma calculations shall be presented incorporating the normalization methodology reflected in paragraph (d)(1).
- (4) Cost of fuel and applicable fuel-related costs corresponding to the adjusted test period kWh generation, including a detailed explanation showing how such cost of fuel and fuel-related costs were derived. The cost of fuel shall be based on end-of-period unit fuel prices incurred during the test period, although the Commission may consider other fuel prices if test period fuel prices are demonstrated to be nonrepresentative on an on-going basis. Unit fuel prices shall include delivered fuel prices and burned fuel expense rates as appropriate.
- (5) Procurement practices and inventories for fuel burned and for ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions.
- (6) The cost of fuel burned and of ammonia, lime, limestone, urea, dibasic acid, sorbents, and catalysts consumed in reducing or treating emissions at each generating facility.
- (7) Any net gains or losses resulting from any sales by the electric public utility of fuel or other fuel-related costs components.

- (8) Any net gains or losses resulting from any sales by the electric public utility of by-products produced in the generation process to the extent the costs of the inputs leading to that by-product are costs of fuel or fuel-related costs.
- (9) All costs incurred to comply with the Swine Farm Methane Capture Pilot Program established in Section 4 of S.L. 2007-523.
- (10) The monthly fuel report and the monthly base load power plant performance report for the last month in the test period and any information required by Rules R8-52 and R8-53 for the test period which has not already been filed with the Commission. Further, such information for the complete 12-month test period shall be provided by the electric public utility to any intervenor upon request.
- (11) All workpapers supporting the calculations, adjustments and normalizations described above.
- (12) The nuclear capacity rating(s) in the last rate case and the rating(s) proposed in this proceeding. If they differ, supporting justification for the change in nuclear capacity rating(s) since the last rate case.
- (13) The proposed rate design to recover the electric public utility's cost of fuel and fuel-related costs.

An electric public utility that is subject to G.S. 62-133.2(a3) is required to provide only the applicable information prescribed by subdivisions (5), (6) and (8) of this subsection.

(f) The electric public utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed herein, and any changes in rates proposed by the electric public utility (if any), not less than 98 days prior to the hearing; . Nothing in this rule shall be construed to require the electric public utility to propose a change in rates or to utilize any particular methodology to calculate any change in rates proposed by the utility in this proceeding.

(g) The electric public utility shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.2(b) and setting forth the time and place of the hearing.

(h) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 21 days prior to the date of the hearing. Petitions to intervene filed less than 21 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(i) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 21 days prior to the hearing date. If a petition to intervene is filed less than 21 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(j) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 12 days prior to the hearing date.

(k) The burden of proof as to the correctness and reasonableness of any charge and as to whether the test year cost of fuel and fuel-related costs were reasonable and prudently incurred shall be on the utility. For purposes of determining the EMF rider, a utility must achieve either (a) an actual system-wide nuclear capacity factor in the test year that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Corporation's Generating Availability Report, appropriately weighted for size and type of plant or (b) an average system-wide nuclear capacity factor, based upon a two-year simple average of the system-wide capacity factors actually experienced in the test year and the preceding year, that is at least equal to the national average capacity factor for nuclear production facilities based on the most recent 5-year period available as reflected in the most recent North American Electric Reliability Corporation's Generating Availability Report, appropriately weighted for size and type of plant, or a presumption will be created that the utility incurred the increased cost of fuel and fuel-related costs resulting therefrom imprudently and that disallowance thereof is appropriate. The utility shall have the opportunity to rebut this presumption at the hearing and to prove that its test year cost of fuel and fuel-related costs were reasonable and prudently incurred. To the extent that the utility rebuts the presumption by the preponderance of the evidence, no disallowance will result.

(l) The hearing will generally be held in the Hearing Room of the Commission at its offices in Raleigh, North Carolina.

(m) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently incurred cost of fuel and fuel-related costs and cost of fuel and fuel-related costs recovered under rates in effect.

(n) If the Commission has not issued an order pursuant to G.S. 62-133.2 within 180 days after the date the electric public utility has filed any proposed changes in its rates and charges in this proceeding based solely on the cost of fuel and fuel-related costs, then the utility may place such proposed changes into effect. If such changes in the rates and charges are finally determined to be excessive, the electric public utility shall refund any excess plus interest to its customers in a manner directed by the Commission.

*(NCUC Docket No. E-100, Sub 47, 5/1/84; NCUC Docket No. E-100, Sub 47, 8/14/86; NCUC Docket No. E-100, Sub 55, 4/27/88; 6/22/88; 1/25/90; 12/11/90; NCUC Docket No. M-100, Sub 128, 10/27/99; NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. E-100, Sub 160, 10/11/18.)*

## **ARTICLE 11.**

### **RESOURCE PLANNING AND CERTIFICATION**

**R8-56 THROUGH R8-59 REPEALED BY NCUC DOCKET NO. E-100, SUB 78A, 4/29/98.**

#### **R8-60.1 SMART GRID TECHNOLOGY PLANS AND FILINGS**

*(Repealed by NCUC Docket Nos. E-100, Sub 126 & E-100, Sub 157.)*

#### **R8-60 INTEGRATED RESOURCE PLANNING AND FILINGS**

(a) Purpose. — The purpose of this rule is to implement the provisions of G.S. 62-2(3a) and G.S. 62-110.1 with respect to least cost integrated resource planning by a public utility furnishing electric service in North Carolina that is not designed as an "electric public utility" under G.S. 62-110.9.

(b) Applicability. — This rule is applicable to Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina.

(c) Integrated Resource Plan. — Each utility shall develop and keep current an integrated resource plan, which incorporates, at a minimum, the following:

- (1) a 15-year forecast of native load requirements (including any off-system obligations approved for native load treatment by the Commission) and other system capacity or firm energy obligations extending through at least one summer or winter peak (other system obligations); supply-side (including owned/leased generation capacity and firm purchased power arrangements) and demand-side resources expected to satisfy those loads; and the reserve margin thus produced; and
- (2) a comprehensive analysis of all resource options (supply-and demand-side) considered by the utility for satisfaction of native load requirements and other system obligations over the planning period, including those resources chosen by the utility to provide reliable electric utility service at least cost over the planning period.

Each utility shall include an assessment of demand- side management and energy efficiency in its integrated resource plan. G.S. 62-133.9(c). In addition, each utility's consideration of supply-side and demand-side resources, including alternative supply-side energy resources, and the provision of reliable electric utility service at least cost shall appropriately consider and incorporate the utility's obligation to comply with the Renewable Energy and Energy Efficiency Portfolio Standard (REPS). G.S. 62-133.8.

(d) Purchased Power. — As part of its integrated resource planning process, each utility shall assess on an on-going basis the potential benefits of soliciting proposals from wholesale power suppliers and power marketers to supply it with needed capacity.

(e) Alternative Supply-Side Energy Resources. — As part of its integrated resource planning process, each utility shall assess on an on-going basis the potential benefits of reasonably available alternative supply-side energy resource options. Alternative supply-side energy resources include, but are not limited to, hydro, wind, geothermal, solar thermal, solar photovoltaic, municipal solid waste, fuel cells, and biomass.

(f) Demand-Side Management. — As part of its integrated resource planning process, each utility shall assess on an on-going basis programs to promote demand-side management, including costs, benefits, risks, uncertainties, reliability and customer acceptance, where appropriate. For purposes of this rule, demand-side management consists of demand response programs and energy efficiency and conservation programs.

(g) Evaluation of Resource Options. — As part of its integrated resource planning process, each utility shall consider and compare a comprehensive set of potential resource options, including both demand-side and supply-side options, to determine an integrated resource plan that offers the least cost combination (on a long-term basis) of reliable resource options for meeting the anticipated needs of its system. The utility shall analyze potential resource options and combinations of resource options to serve its system needs, taking into account the sensitivity of its analysis to variations in future estimates of peak load, energy requirements, and other significant assumptions, including, but not limited to, the risks associated with wholesale markets, fuel costs, construction/implementation costs, transmission and distribution costs, and costs of complying with

environmental regulation. Additionally, the utility's analysis should take into account, as applicable, system operations, environmental impacts, and other qualitative factors.

(h) Filings.

- (1) By October 15, 2024, and every two years thereafter, each utility subject to this rule shall file with the Commission its then current integrated resource plan, together with all information required by subsection (i) of this rule. This biennial report shall cover the next succeeding two-year period.
- (2) By October 15 of each year in which a biennial report is not required to be filed, an update report shall be filed with the Commission containing an updated 15-year forecast of the items described in subparagraph (c)(1), as well as a summary of any significant amendments or revisions to the most recently filed biennial report, including amendments or revisions to the type and size of resources identified, as applicable.
- (3) Each biennial and update report filed shall be accompanied by a short-term action plan that discusses those specific actions currently being taken by the utility to implement the activities chosen as appropriate per the applicable biennial and update reports.
- (4) If a utility considers certain information in its biennial or update report to be proprietary, confidential, and within the scope of G.S. 132-1.2, the utility may designate the information as "confidential" and file it under seal.

(i) Contents of Biennial Reports. — Each utility shall include in each biennial report the following:

- (1) Forecasts of Load, Supply-Side Resources, and Demand-Side Resources. The forecasts filed by each utility as part of its biennial report shall include descriptions of the methods, models, and assumptions used by the utility to prepare its peak load (MW) and energy sales (MWh) forecasts and the variables used in the models. In the biennial reports, the forecasts filed by each utility shall include, at a minimum, the following:
  - (i) The most recent ten-year history and a forecast of customers by each customer class, the most recent ten-year history and a forecast of energy sales (MWh) by each customer class, and the most recent ten-year history and a forecast of the utility's summer and winter peak load (MW);
  - (ii) A tabulation of the utility's forecast for at least a 15-year period, including peak loads for summer and winter seasons of each year, annual energy forecasts, reserve margins, and load duration curves, with and without projected supply or demand-side resource additions. The tabulation shall also indicate the projected effects of demand response and energy efficiency programs and activities on the forecasted annual energy and peak loads on an annual basis for a 15-year period, and these effects also may be reported as an equivalent generation capacity impact; and
  - (iii) Where future supply-side resources are required, a description of the type of capacity/resource (MW rating, fuel source, base, intermediate, or peaking) that the utility proposes to use to address the forecasted need.
- (2) Generating Facilities. — Each utility shall provide the following data for its existing and planned electric generating facilities (including planned additions and retirements, but excluding cogeneration and small power production):
  - (i) Existing Generation. — The utility shall provide a list of existing units in service, with the information specified below for each listed unit. The information shall be provided for a 15-year period beginning with the year of filing:
    - a. Type of fuel(s) used;
    - b. Type of unit (e.g., base, intermediate, or peaking);
    - c. Location of each existing unit;
    - d. A list of units to be retired from service with location, capacity and expected date of retirement from the system;
    - e. A list of units for which there are specific plans for life extension, refurbishment or upgrading. The reporting utility shall also provide the expected (or actual) date removed from service, general location, capacity rating upon return to service, expected return to service date, and a general description of work to be performed; and
    - f. Other changes to existing generating units that are expected to increase or decrease generation capability of the unit in question by an amount that is plus or minus 10%, or 10 MW, whichever is greater.
  - (ii) Planned Generation Additions. — Each utility shall provide a list of planned generation additions, the rationale as to why each listed generation addition was selected, and a 15-year projection of the following for each listed addition:
    - a. Type of fuel(s) used;

- b. Type of unit (e.g. MW rating, baseload, intermediate, peaking);
  - c. Location of each planned unit to the extent such location has been determined; and
  - d. Summaries of the analyses supporting any new generation additions included in its 15-year forecast, including its designation as base, intermediate, or peaking capacity.
- (iii) Non-Utility Generation. — Each utility shall provide a separate and updated list of all non-utility electric generating facilities in its service areas, including customer-owned and stand-by generating facilities. This list shall include the facility name, location, primary fuel type, and capacity (including its designation as base, intermediate, or peaking capacity). The utility shall also indicate which facilities are included in its total supply of resources. If any of this information is readily accessible in documents already filed with the Commission, the utility may incorporate by reference the document or documents in its report, so long as the utility provides the docket number and the date of filing.
- (3) Reserve Margins. — The utility shall provide a calculation and analysis of its winter and summer peak reserve margins over the projected 15-year period. To the extent the margins produced in a given year differ from target reserve margins by plus or minus 3%, the utility shall explain the reasons for the difference.
- (4) Wholesale Contracts for the Purchase and Sale of Power.
- (i) The utility shall provide a list of firm wholesale purchased power contracts reflected in the biennial report, including the primary fuel type, capacity (including its designation as base, intermediate, or peaking capacity), location, expiration date, and volume of purchases actually made since the last biennial report for each contract.
  - (ii) The utility shall discuss the results of any Request for Proposals (RFP) for purchased power it has issued since its last biennial report. This discussion shall include a description of each RFP, the number of entities responding to the RFP, the number of proposals received, the terms of the proposals, and an explanation of why the proposals were accepted or rejected.
  - (iii) The utility shall include a list of the wholesale power sales contracts for the sale of capacity or firm energy for which the utility has committed to sell power during the planning horizon, the identity of each wholesale entity to which the utility has committed itself to sell power during the planning horizon, the number of megawatts (MW) on an annual basis for each contract, the length of each contract, and the type of each contract (e.g., native load priority, firm, etc.).
- (5) Transmission Facilities. — Each utility shall include a list of transmission lines and other associated facilities (161 kV or over) which are under construction or for which there are specific plans to be constructed during the planning horizon, including the capacity and voltage levels, location, and schedules for completion and operation. The utility shall also include a discussion of the adequacy of its transmission system (161 kV and above).
- (6) Demand-Side Management. — Each utility shall provide the results of its overall assessment of existing and potential demand-side management programs, including a descriptive summary of each analysis performed or used by the utility in the assessment. The utility also shall provide general information on any changes to the methods and assumptions used in the assessment since its last biennial report.
- (i) For demand-side programs available at the time of the report, the utility shall provide the following information for each resource: the type of resource (demand response or energy efficiency); the capacity and energy available in the program; number of customers enrolled in each program; the number of times the utility has called upon the resource; and, where applicable, the capacity reduction realized each time since the previous biennial report. The utility shall also list any demand-side resource it has discontinued since its previous biennial report and the reasons for that discontinuance.
  - (ii) For demand-side management programs it proposes to implement within the biennium for which the report is filed, the utility shall provide the following information for each resource: the type of resource (demand response and energy efficiency); a description of the new program and the target customer segment; the capacity and energy expected to be available from the program; projected customer acceptance; the date the program will be launched; and the rationale as to why the program was selected.
  - (iii) For programs evaluated but rejected the utility shall provide the following information for each resource considered: the type of resource (demand response or energy efficiency); a description of

the program and the target customer segment; the capacity and energy available from the program; projected customer acceptance; and reasons for the program's rejection.

- (iv) For consumer education programs the utility shall provide a comprehensive list of all such programs the utility currently provides to its customers, or proposes to implement within the biennium for which the report is filed, including a description of the program, the target customer segment, and the utility's promotion of the education program. The utility shall also provide a list of any educational program it has discontinued since its last biennial report and the reasons for discontinuance.
- (7) **Assessment of Alternative Supply-Side Energy Resources.** — The utility shall include its current overall assessment of existing and potential alternative supply-side energy resources, including a descriptive summary of each analysis performed or used by the utility in the assessment. The utility shall also provide general information on any changes to the methods and assumptions used in the assessment since its most recent biennial or update report.
  - (i) For the currently operational or potential future alternative supply-side energy resources included in each utility's plan, the utility shall provide information on the capacity and energy actually available or projected to be available, as applicable, from the resource. The utility shall also provide this information for any actual or potential alternative supply-side energy resources that have been discontinued from its plan since its last biennial report and the reasons for that discontinuance.
  - (ii) For alternative supply-side energy resources evaluated but rejected, the utility shall provide the following information for each resource considered: a description of the resource; the potential capacity and energy associated with the resource; and the reasons for the rejection of the resource.
- (8) **Evaluation of Resource Options.** — Each utility shall provide a description and a summary of the results of its analyses of potential resource options and combinations of resource options performed by it pursuant to subsection (g) of this rule to determine its integrated resource plan.
- (9) **Levelized Busbar Costs.** — Each utility shall provide information on levelized busbar costs for various generation technologies.

(j) **Contents of Update Reports.** — In addition to the information required by sections (h)(2)-(4) of this rule, each utility shall include in its update report data and tables that provide the following data for the planning horizon: (1) the information required by sections (i)(1) and (2) of this rule, including the utility's load forecast adjusted for the impacts of any new energy efficiency programs, existing generating capacity with planned additions, uprates, derates, and retirements, planned purchase contracts, undesignated future resources identified by type of generation and MW rating, renewable capacity, demand-side management capacity, and any resource gap; (2) cumulative resource additions necessary to meet load obligation and reserve margins; and (3) projections of load, capacity, and reserves for both the summer and winter periods. A total system IRP may be filed in lieu of an update report for purposes of compliance with this section.

(k) **Review of Biennial Reports.** — Within 150 days after the later of either October 15 or the filing of each utility's biennial report, the Public Staff or any other intervenor may file an integrated resource plan or report of its own as to any utility or may file an evaluation of or comments on the reports filed by the utilities, or both. The Public Staff or any intervenor may identify any issue that it believes should be the subject of an evidentiary hearing. Within 60 days after the filing of initial comments, the parties may file reply comments addressing any substantive or procedural issue raised by any other party. A hearing to address issues raised by the Public Staff or other intervenors may be scheduled at the discretion of the Commission. The scope of any such hearing shall be limited to such issues as identified by the Commission. One or more hearings to receive testimony from the public, as required by law, shall be set at a time and place designated by the Commission.

(l) **Review of Update Reports.** — Within 60 days after the later of either October 15 or the filing of each utility's update report required by section (j) of this rule, the Public Staff or any other intervenor may file an update report of its own as to any utility. Further, within the same time period the Public Staff shall report to the Commission whether each utility's update report meets the requirements of this rule. Intervenors may request leave from the Commission to file comments. Comments will be received or expert witness hearings held on the update reports only if the Commission deems it necessary. The scope of any comments or expert witness hearing shall be limited to issues identified by the Commission. One or more hearings to receive testimony from the public, as required by law, shall be set at a time and place designated by the Commission.

(m) By January 15 of each year, each utility individually or jointly shall hold a meeting to review its biennial or update report with interested parties.

*(NCUC Docket No. E-100, Sub 54, 12/8/88; NCUC Docket No. E-100, Sub 78A, 04/29/98; 08/11/98; NCUC Docket No. M-100, Sub 128, 10/27/99; NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC*

*Docket No. E-100, Sub 126, 4/11/2012; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. E-100, Sub 111, 7/20/2015; NCUC Docket No. E-100, Sub 126, 6/13/2016; NCUC Docket Nos. E-100, Subs 126 & 157; 11/13/2019; NCUC Docket No. E-100, Sub 191; 11/21/2023; NCUC Docket No. E-100, Sub 196 2/8/2024.)*

### **R8-60A BIENNIAL INTEGRATED RESOURCE PLANNING AND CARBON PLAN FILINGS**

(a) Purpose. — The purpose of this rule is to implement the provisions of G.S. 62-2(a)(3a), 62-110.1 and G.S. 62-110.9. The Carbon Plan constitutes the least cost integrated resource planning process for electric public utilities subject to G.S. 62-110.9 and the process for assessing and updating the integrated resource plan and the Carbon Plan for those utilities are therefore consolidated. The consolidated integrated resource plan and Carbon Plan (CPIRP) shall be reviewed every two years and may be adjusted as necessary in the determination of the Commission and the electric public utilities.

(b) Applicability. — This rule is applicable to Duke Energy Progress, LLC, and Duke Energy Carolinas, LLC, each of which is an "electric public utility" as defined in G.S. 62-110.9.

(c) Definitions. — As used in this rule, the following definitions shall apply:

- (1) "Base Planning Period" shall mean the 15-year period from the start of the year following the date the CPIRP is filed.
- (2) "Carbon Neutrality Planning Horizon" shall mean the period beyond the Base Planning Horizon that is designed to ensure that the electric public utilities remain on the least cost path towards achieving carbon neutrality (as defined by G.S. 62-110.9(ii)) consistent with the requirements of G.S. 62-110.9.

(d) Consolidated Carbon Plan and Integrated Resource Plan. — An electric public utility shall develop and keep current a proposed CPIRP to determine the planned generation and resource mix that complies with the requirements set forth in G.S. 62-110.9. The CPIRP shall incorporate, at a minimum, the following:

- (1) Base Planning for Native Load Requirements and Firm Planning Obligations. — The CPIRP shall include a forecast of native load requirements for the Base Planning Period (including known and quantified load reduction measures taken by wholesale customers pursuant to their FERC-jurisdictional wholesale power contracts) and other system capacity or firm energy obligations extending through at least one summer and one winter peak; supply-side resources (including owned or leased generation capacity and firm purchased power arrangements) and grid edge resources (including demand-side management programs, rate designs, voltage control, customer-sited generation and storage, and energy efficiency) expected to satisfy those loads; and the reserve margin thus produced.
- (2) Long-Term Planning for Carbon Neutrality. — The CPIRP shall include a longer-term planning forecast beyond the Base Planning Period that is designed to ensure that the electric public utilities remain on a path that complies with the provisions set forth in G.S. 62-110.9. For purposes of analyzing resource needs to achieve carbon neutrality beyond the Base Planning Period, the electric public utilities may use simplifying assumptions and analytical approaches recognizing the inherent uncertainty in long-range planning and the ability to make planning adjustments in future updates to the CPIRP.
- (3) Modeling Resource Needs Over Base Planning Period and Carbon Neutrality Planning Horizon. — The CPIRP shall include, at a minimum, a comprehensive analysis of all resource options (demand-side and supply-side) considered by the electric public utilities to serve native load requirements and firm planning obligations during the Base Planning Period and the Carbon Neutrality Planning Horizon in a manner that maintains or improves upon the adequacy and reliability of the existing grid as required by G.S. 62-110.9(3). The electric public utilities shall analyze potential resource options and combinations of resource options to serve its system needs, taking into account the sensitivity of their analysis to variations in future estimates of peak load, energy requirements, and other significant assumptions, including, but not limited to, the risks associated with extreme weather conditions, fuel costs, construction/implementation costs, and the costs of complying with environmental regulations. Additionally, this analysis should account for, as applicable, system operations, compliance with state and federal regulations, and other qualitative factors.
- (4) Resource Portfolios. — Each updated CPIRP shall include several resource portfolios developed with the purpose of fairly evaluating the range of demand-side, supply-side, energy storage, and other technologies available to meet the electric public utilities' service obligations during the Base Planning Period and the Carbon Neutrality Planning Horizon. For each resource portfolio, the electric public utilities shall identify planned resource additions and retirements, projected carbon emission reductions, present value revenue requirements over the Base Planning Period and the Carbon Neutrality Planning Horizon and explain whether, and if so to what extent, the electric public utilities plan to use offsets as allowed by G.S. 62-110.9 as part of the least cost path to achieving carbon neutrality. In addition, each CPIRP filed prior to 2030

shall include at least one resource portfolio that achieves the 70% reduction in carbon dioxide emissions by 2030.

- (5) Evaluation of Resource Options. — As part of its CPIRP process, each electric public utility shall consider and compare a comprehensive set of potential resource options, including both demand-side and supply-side options, to determine the least cost combination (on a long-term basis) of resource options for reliably meeting the anticipated needs of its system in achieving the State's authorized carbon reduction goals. The CPIRP should include an assessment of power generation, transmission and distribution, grid modernization, energy storage, energy efficiency measures, demand-side management, and the latest technological breakthroughs to achieve the least cost path consistent with the requirements of G.S. 62-110.9.
- (6) Ensuring Resource Adequacy and Reliability. — Each updated CPIRP shall describe how the proposed CPIRP ensures that generation and resource changes presented in the plan maintain or improve upon the adequacy and reliability of the existing grid. This analysis should address the electric public utilities' assessment of and plans to maintain appropriate planning reserve margins and maintain or improve the resource adequacy of their systems.
- (7) Resource Selection. — Each updated CPIRP shall identify the generation facilities and other resources proposed to be selected by the Commission pursuant to and subject to the requirements of G.S. 62-110.9(2). To the extent resources are selected based upon resource diversity, the electric public utilities shall provide additional support for their decisions based on the costs and benefits of alternatives to achieve the authorized carbon reduction goals and meet the requirements of G.S. 62-110.9.
- (8) Execution. — Each updated CPIRP shall include a near-term action plan that the electric public utilities propose to execute over the near term, identifying specific demand-side and supply-side development, procurement, and retirement activities, including upgrades to the transmission system necessary to interconnect new supply-side resources. The proposed near-term action plan should identify whether it is sufficient to support all of the resource portfolios identified pursuant subsection (d)(4). If the proposed near-term action is not sufficient to support any of the identified resource portfolios, the CPIRP shall identify any additional activities that would be necessary. The CPIRP should also identify longer-term resource planning risks, strategies, or other considerations that the electric public utilities are monitoring that could impact achieving the State's carbon reduction goals in a manner that complies with the requirements set forth in G.S. 62-110.9.

(e) Filings.

- (1) By September 1, 2023, and every two years thereafter, the electric public utilities shall file with the Commission their proposed CPIRP, together with all information required by subsection (f) of this rule. This CPIRP shall propose resources to be selected and a near-term action plan to be approved by the Commission for execution prior to Commission approval of the next succeeding CPIRP. Contemporaneous with filing the CPIRP, the electric public utilities make available complete CPIRP modeling input and output data files, as well as their method underlying the use of all modeling software and process steps utilized in the CPIRP, to the Public Staff and intervenors, subject to appropriate confidentiality protections.
- (2) Each CPIRP shall include an update on the progress the electric public utilities have made to advance the near-term action plan in the most recently approved CPIRP.
- (3) If an electric public utility considers certain information in its biennial comprehensive CPIRP to be proprietary, confidential, and within the scope of G.S. 132-1.2, the electric public utility may designate the information as "confidential" and file it under seal.

(f) Contents of Biennial CPIRP. — The electric public utilities shall include in each updated CPIRP the following:

- (1) Forecasts of Load, and Demand-Side and Supply-Side Resources. — The forecasts filed as part of the CPIRP shall include descriptions of the methods, models, and assumptions used by the electric public utilities to prepare their gross and net peak load in megawatts (MW) and energy sales (MWh) forecasts and the variables used in the models. The forecasts filed by the electric public utilities shall include, at a minimum, the following:
  - (i) The most recent ten-year history and a forecast of customers by each customer class, the most recent ten-year history and a forecast of energy sales (MWh) by each customer class, and the most recent ten-year history and a forecast of the electric public utility's summer and winter peak load (MW);
  - (ii) A detailed calculation of the impact of grid edge resources on gross load, including comparably quantified and verified information provided by wholesale customers within the electric public

- utility's balancing area, and an explanation of why those resources are treated as load modifying or as a resource modeled on the supply side;
- (iii) The electric public utility's forecast for at least the Base Planning Period, including peak loads for summer and winter seasons of each year, annual energy forecasts, reserve margins, and load duration curves, with and without projected demand-side or supply-side resource additions. The forecast shall also indicate the projected effects of grid edge resources on the forecasted annual energy and peak loads on an annual basis for the Base Planning Period, and these effects also may be reported as an equivalent generation capacity impact; and
  - (iv) For new technologies that may have significant impacts on the electric public utility's net load forecast, such as sector or process electrification or load modifying technologies, the electric public utility should provide a description of the forecast methodology and projections.
- (2) **Generating Facilities and Energy Storage.** — The electric public utilities shall provide the following data for their owned existing and planned electric generating facilities (including planned additions and retirements, but excluding cogeneration and small power production) and energy storage systems:
- (i) **Existing Generation.** — The electric public utilities shall include a list of existing generation resources in service, with the information specified below for each listed resource. The information shall be provided for the Base Planning Period:
    - a. Type of fuel(s) used by each generating unit;
    - b. Generating unit characteristics (type of unit, i.e., CT, nuclear, etc., summer and winter capacity ratings, in-service date, and planned retirement date, if applicable);
    - c. Location of each existing generating unit;
    - d. A list of generating units for which there are specific plans for life extension, refurbishment, or upgrading. The reporting electric public utility shall also provide the expected (or actual) date the unit is, or is expected to be, removed from service, the general location, the capacity rating upon return to service, the expected return to service date, and a general description of the work to be performed on the unit; and
    - e. Other changes to existing generating units that are expected to increase or decrease generation capacity of the unit in question by an amount that is plus or minus 10%, or 10 MW, whichever is greater.
  - (ii) **Existing Energy Storage.** — The electric public utilities shall include a summary of their existing energy storage in service, with the information specified below for each technology. The information shall be provided for the Base Planning Period:
    - a. Storage technology (pumped storage hydro, battery, etc.); and
    - b. Aggregate power capacity and designed storage duration.
  - (iii) **Planned Generation.** — The electric public utilities shall include a list of planned generation resource additions, the rationale as to why each listed resource addition was selected, and the following for each listed addition:
    - a. Type of fuel(s) used by each generating unit;
    - b. Generating unit characteristics (type of unit, i.e., CT, battery, etc., summer and winter capacity ratings, in-service date, and planned retirement date, if applicable);
    - c. Location of each planned generating unit to the extent such location has been determined; and
    - d. Summaries of the analyses supporting any new generation additions included in the forecast for the Base Planning Period, including its designation as baseload capacity, if applicable.
  - (iv) **Planned Energy Storage Additions.** — The electric public utilities shall include a list of planned energy storage additions, the rationale as to why each listed resource addition was selected, and the following for each listed addition:
    - a. Storage technology (pumped storage hydro, battery, etc.); and
    - b. Aggregate power capacity and designed storage durations.
- (3) **Non-Utility Generation.** — The electric public utilities shall provide a summary of all non-utility electric generating facilities and energy storage in their service areas, including customer-owned and stand-by generating facilities. This summary shall aggregate capacities by generation type (solar, hydro, biomass, etc.).
- (4) **Wholesale Contracts for the Purchase and Sale of Power.** —

- (i) The electric public utilities shall include a list of firm wholesale purchased power contracts currently in effect, including the primary fuel type, capacity (including the designation as base, intermediate, or peaking capacity), location, expiration date, treatment of the wholesale resource in CPIRP modeling after expiration, and volume of purchases actually made since the last CPIRP for each contract.
  - (ii) The electric public utilities shall discuss the results of any Request for Proposals (RFP) that the electric public utilities have issued for purchases of solar generation from third parties and for acquisition for utility ownership and, as applicable, RFPs for acquisition, transfer, or engineering, procurement and construction of other selected generation or storage resources since the last CPIRP. This discussion shall include a description of each RFP, the number of entities responding to the RFP, the number of proposals received, the terms of the proposals, and an explanation of why the proposals were accepted or rejected. The discussion shall also address how the results of the most recent RFP completed during the biennial CPIRP period are incorporated into the electric public utilities' analysis of their long-range energy and capacity needs. If any of this information is readily accessible in documents already filed with the Commission, the electric public utilities may incorporate by reference the document or documents in the CPIRP, so long as the electric public utilities provide the docket number and the date of filing.
  - (iii) The electric public utilities shall include a list of the wholesale power sales contracts for the sale of capacity or firm energy for which the electric public utilities have committed to sell power during the Base Planning Period, the identity of each wholesale entity to which the electric public utilities have committed itself to sell power during the planning horizon, the number of MWs on an annual basis for each contract, the length of each contract, and the type of each contract (e.g., native load priority, firm, etc.).
- (5) Demand-Side Management and Energy Efficiency. — The electric public utilities shall include an assessment of the portfolio of existing and future grid edge resources including demand-side management and energy efficiency programs consistent with the most recently filed DSM/EE cost recovery rider filed by the electric public utilities pursuant to Rule R8-69 and G.S. 62-133.9(c). The electric public utilities shall appropriately reflect grid edge resources as either load modifiers or as a resource considered on the supply side based upon the operating characteristics of the resource. For purposes of utility planning, the electric public utilities shall model energy efficiency as a load modifying resource, ensuring its priority in utility planning. The electric public utilities' modeling of the load modification associated with energy efficiency shall include low, base, and high cases.
- (6) Transmission System Planning and Facilities. —
- (i) Transmission System Planning - The electric public utilities shall discuss the adequacy of the transmission system and identified future transmission needs (100 kV and above). With respect to future needs, the electric public utilities shall include an overview of the electric public utilities' local and regional transmission planning process, a discussion of how the most recently approved CPIRP was incorporated into the electric public utilities' transmission planning processes, and discussion of the identified needs, as well as planned transmission lines and facilities, appearing in the most recent local transmission planning report that, as identified in that report, could reasonably be placed into service during the Base Planning Period.
  - (ii) Planned Improvements - The electric public utilities shall include a list of planned, new or to be upgraded, transmission lines (100 kV or over) and transformers (low side voltage 100 kV or over) which are under construction or for which there are specific plans to be constructed during the Base Planning Period, including the capacity and voltage levels, location, and schedules for completion and operation.
    - a. The electric public utilities shall describe how applicable planned improvements may enable specific siting of new resources or provide expected and planned impacts to other resource interconnection constraints or operations of the systems.
  - (iii) Non-wires alternatives — The electric public utilities shall provide an overall assessment methodology for non-wires alternatives, including a descriptive summary of analysis performed or used by the electric public utilities in the assessment of alternative solutions to transmission constraints that may be more cost-effective, such as locating generation in less constrained areas or strategically locating energy storage resources or the dispatch of distributed energy resources of the wholesale customers located within the electric public utilities' balancing area to the extent the

electric public utilities have rights to dispatch, operate, and control such resources in the same manner as the electric public utilities' own resources.

- (7) **Modeling of System Operations.** — The electric public utilities shall provide a discussion of or applicable study addressing how electric public utility relationships and system interconnections are modeled in the CPIRP including how relevant planning and operation functions influence modeling, such as modeled balancing areas and interconnections, joint dispatch agreements, energy exchange markets, and other future operating efficiencies planned by the electric public utilities during the Base Planning Period.
  - (i) The electric public utilities shall also include, as applicable, a discussion of other planning factors influencing CPIRP modeling, such as corporate emission reduction goals or generation resource restrictions, legal or regulatory requirements from other authorities or jurisdictions that materially impact the resource plan, and the impact of these factors on the electric public utilities' long-range resource plans over the Base Planning Period and Carbon Neutrality Planning Horizon, as applicable.
  - (ii) The electric public utilities shall discuss the results that are expected from integrated (generation, transmission and/or distribution) systems planning processes, how integrated systems planning is used in the CPIRP process, and the impact of it and their wholesale customers' distributed energy resources and non-traditional solutions on resource planning and load forecasting.
- (8) **Modeling of Generating and Energy Storage Resources.** — The electric public utilities shall include an overall modeling framework and methodology for existing and potential generating and storage resources, including a descriptive summary of material assumptions and analysis performed or used by the electric public utilities in the assessment. The electric public utilities shall also provide general information on any changes to the methods and assumptions used in the assessment since the most recently approved CPIRP, including supportive studies impacting assessment and selection of resources.
  - (i) To the extent that an updated unit retirement analysis is conducted as a part of the CPIRP, the electric public utilities shall include a descriptive summary of material assumptions and analysis performed that may impact the retirement date modeled such as transmission requirements or replacement resource needs to enable executable retirement of resources.
- (9) **Maintaining or Improving Upon the Adequacy and Reliability of the Existing Grid.** — The electric public utilities shall provide a description of, and justification for, the methodology by which the CPIRP will demonstrate that adequacy and reliability of the system will be maintained or improved throughout the Base Planning Period and Carbon Neutrality Planning Horizon. To the extent that the electric public utilities' standards for quantifying that the reliability of the system has been maintained has changed, the electric public utilities shall discuss the reasons for the changes to these standards, including impacts to resource adequacy studies, effective load carry capability studies, or other applicable reliability studies. The electric public utilities shall also describe coordination efforts with their wholesale customers to utilize their resources to maintain or improve reliability.
- (10) **Load, Capacity, and Reserve Tables.** — The electric public utilities shall provide a table for a reference portfolio that shows, for both winter and summer peaks, the available capacity, wholesale purchases and sales, capacity from non-utility generation, load (gross and net of grid edge resources), retirements, new capacity additions, and estimated reserve margin for each year of the Base Planning Period.
  - (i) The electric public utilities shall calculate and provide a description of, and justification for, the methodology by which the electric public utilities determine a first year of avoidable capacity need (First Year of Avoidable Capacity).
- (11) **Evaluation of Resource Portfolios and Selection of Resources.** — The electric public utilities shall provide a description and a summary of the results of their analyses of potential resource options and combinations of resource options (demand-side and supply-side), including relevant information pertaining to portfolio costs (present value of revenue requirements and average retail customer bill impact analyses), operability and reliability, and CO<sub>2</sub> emissions. Taking into account the resource portfolios presented in the proposed CPIRP, the electric public utilities shall designate resources for selection by the Commission as the proposed near-term action plan for implementation by the electric public utilities following the Commission's final order on the proposed CPIRP. The near-term action plan required by this Rule should discuss the specific actions the electric public utilities propose to take over the near-term to progress carbon emissions reductions in a least-cost manner, while maintaining or improving reliability of the grid and continue executing least cost planning, including actions to preserve optionality for future potential resources that could help achieve these objectives in future updates to the CPIRP.

- (12) Stakeholder Engagement Report – The electric public utilities shall provide a summary of its stakeholder engagement conducted pursuant to the plan described in section (h).
- (g) Procedure for Review.
- (1) At the time the electric public utilities file their proposed CPIRP with the Commission pursuant to subsection (e), the electric public utilities shall also file with the Commission testimony and exhibits of expert witnesses supporting the proposed CPIRP.
  - (2) No later than 180 days after the later of either September 1 or the filing of the electric public utilities' CPIRP, the Public Staff and intervenors may file testimony and exhibits of expert witnesses commenting on, critiquing, or giving alternatives to the electric public utilities' proposed CPIRP.
  - (3) No later than 45 days after the filing of intervenor testimony and exhibits, the electric public utilities may file rebuttal testimony and exhibits of its expert witnesses.
  - (4) The Commission shall schedule an expert witness hearing to review the CPIRP proposals beginning on the second Tuesday in May following the electric public utilities' proposed CPIRP filing. The scope of any such hearing may be limited to issues as identified by the Commission. The Commission will also schedule one or more hearings to receive testimony from the public at a time and place of the Commission's designation.
  - (5) The Commission will issue an order adopting the next CPIRP by no later than December 31 of the year after the year in which the proposed CPIRP is filed with the Commission.
- (h) The electric public utilities individually or jointly shall provide notice to the Commission of their plans for engaging with interested parties at least 200 days in advance of its planned biennial CPIRP. The notice to the Commission should provide, at a minimum, information on how the utilities:
- (1) Determined the timing, frequency, and location of stakeholder meetings, as well as whether to hold meetings virtually;
  - (2) Selected facilitators for the meetings;
  - (3) Notified stakeholders about the meetings; and
  - (4) Planned the structure and content of the meetings.

*(NCUC Docket No. E-100, Sub 191, 11/21/2023.)*

**R8-61 PRELIMINARY PLANS AND CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR CONSTRUCTION OF ELECTRIC GENERATION AND RELATED TRANSMISSION FACILITIES IN NORTH CAROLINA; CONSTRUCTION OF OUT-OF-STATE ELECTRIC GENERATING FACILITIES; PROGRESS REPORTS AND ONGOING REVIEWS OF CONSTRUCTION; PROJECT DEVELOPMENT COST REVIEWS FOR NUCLEAR GENERATING FACILITIES**

- (a) A public utility or other person that plans to build an electricity generating facility with a nameplate capacity of 300 megawatts (alternating current) or more shall file with the Commission and the Department of Environmental Quality its preliminary plans at least 120 days before filing an application for a certificate of public convenience and necessity. The preliminary plans shall include the following exhibits:
- (1) Exhibit 1 shall contain the following site information:
    - (i) A color map or aerial photo (a U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred) showing the proposed site boundary and layout, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;
    - (ii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree;
    - (iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site;
    - (iv) Justification for the adoption of the site selected, and general information describing the other locations considered;
    - (v) Information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, and local population;
    - (vi) A description of investigations completed, in progress, or proposed involving the subject site;

- (vii) A statement of existing or proposed plans known to the applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site;
  - (viii) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated gas facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;
  - (ix) A brief general description of practicable transmission line routes emanating from the site, including a color map showing their general location; and
  - (x) The gross, net, and nameplate generating capacity of each unit and the entire facility's total projected dependable capacity in alternating current (AC).
- (2) Exhibit 2 shall contain the following permitting information:
    - (i) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals; and
    - (ii) A statement of existing or proposed environmental evaluation programs to meet the applicable air and water quality standards.
  - (3) Exhibit 3 shall include a schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(b) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) in order to construct a generating facility in North Carolina, a public utility shall include the following exhibits supported by relevant testimony:

- (1) Exhibit 1 shall contain the following resource planning information:
  - (i) The utility's most recent biennial report and the most recent annual report filed pursuant to Rule R8-60, plus any proposals by the utility to update said reports;
  - (ii) The extent to which the proposed facility would conform to the utility's most recent biennial report and the most recent annual report that was filed pursuant to Rule R8-60;
  - (iii) A statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site.
  - (iv) An explanation of the need for the facility, including information on energy and capacity forecasts; and
  - (v) An explanation of how the proposed facility meets the identified energy and capacity needs, including the anticipated facility capacity factor, heat rate, and service life.
- (2) Exhibit 2 shall contain the siting and permitting information as listed in Rule R8-61(a), with updates as necessary for facilities that are 300 megawatts (alternating current) nameplate capacity or more, and for which this information had already been filed.
- (3) Exhibit 3 shall contain the following cost information for the proposed facility, and for the final alternatives that the applicant considered:
  - (i) An estimate of the construction costs for the generating facility, including the costs for new substation(s) and transmission line(s), and upgrades to existing substations(s) and transmission lines(s). For nuclear plants, construction costs shall include the plant's first core fuel load;
  - (ii) Estimated construction costs expressed as dollars per megawatt of capacity;
  - (iii) Estimated annual operating expenses by category, including fuel costs;
  - (iv) Estimated annual operating expenses expressed as dollars per net megawatt-hour.
  - (v) The projected cost of each major component of the generating facility and the projected schedule for incurring those costs;
  - (vi) The projected effect of investment in the generating facility on the utility's overall revenue requirement for each year during the construction period;
  - (vii) The anticipated in-service expenses associated with the generating facility for the 12-month period of time following commencement of commercial operation of the facility; and
  - (viii) The anticipated impact the facility will have on customer rates.
- (4) Exhibit 4 shall contain the following construction information:
  - (i) The anticipated construction schedule for the generating facility;
  - (ii) The specific type of units selected for the generating facility; the suppliers of the major components of the facility; the basis for selecting the type of units, major components, and suppliers; and arrangements made or planned to assure a dependable fuel supply;
  - (iii) The qualifications and selection process of principal contractors and suppliers for construction of the generating facility, other than those listed in Item (ii) above; and

- (iv) Risk factors related to the construction and operation of the generating facility, including a verified statement as to whether the facility will be capable of operating during the lowest temperature that has been recorded in the area using information from the National Weather Service Automated Surface Observing System (ASOS) First Order Station in Asheville, Charlotte, Greensboro, Hatteras, Raleigh or Wilmington, depending upon the station that is located closest to where the plant will be located.
  - (5) If the facility is a coal or nuclear-fueled facility, the application shall include Exhibit 5, which shall contain information demonstrating that energy efficiency measures; demand-side management; renewable energy resource generation; combined heat and power generation; or any combination thereof, would not establish or maintain a more cost-effective and reliable generation system and that the construction and operation of the facility is in the public interest.
- (c) The public utility shall submit a progress report and any revision in the construction cost estimate during each year of construction according to a schedule established by the Commission.
- (d) Upon the request of the public utility or upon the Commission's own motion, the Commission may conduct an ongoing review of construction of the generating facility as the construction proceeds.
- (e) A public utility requesting an ongoing review of construction of the generating facility pursuant to G.S. 62-110.1(f) shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity by the Commission; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause. Upon the filing of a request for an ongoing review, the Commission shall establish a schedule of hearings. The hearings shall be held no more often than every 12 months. The Commission shall also establish the time period to be reviewed during each hearing. The purpose of each ongoing review hearing is to determine the reasonableness and prudence of the costs incurred by the public utility during the period under review and to determine whether the certificate should remain in effect or be modified or revoked. The public utility shall have the burden of proof to demonstrate that all costs incurred are reasonable and prudent.
- (f) A public utility may file an application pursuant to G.S. 62-110.6 requesting the Commission to determine the need for an out-of-state electric generating facility that is intended to serve retail customers in North Carolina. If need for the generating facility is established, the Commission shall also approve an estimate of the construction costs and construction schedule for such facility. The application may be filed at any time after an application for a certificate of public convenience and necessity or license for construction of the generating facility has been filed in the state in which the facility will be sited. The application shall be supported by relevant testimony and shall include the information required by subsection (b) of this Rule to the extent such information is relevant to the showing of need for the generating facility and the estimated construction costs and proposed construction schedule for the generating facility. The public utility shall submit a progress report and any revision in the construction cost estimate for the out-of-state electric generating facility during each year of construction according to a schedule established by the Commission.
- (g) If the Commission makes a determination of need pursuant to G.S. 62-110.6 and subsection (f) of this Rule, the provisions of subsections (d) and (e) of this Rule shall apply to a request by a public utility for an ongoing review of construction of a generating facility to be constructed in another state that is intended to serve retail customers in North Carolina. An electric public utility shall file an application, supported by relevant testimony, for an ongoing review no later than 12 months after the date of issuance of a certificate of public convenience and necessity or license by the state commission in which the out-of-state generating facility is to be constructed; provided, however, that the public utility may, prior to the conclusion of such 12-month period, petition the Commission for a reasonable extension of time to file an application based on a showing of good cause.
- (h) A public utility may file an application pursuant to G.S. 62-110.7 requesting the Commission to review the public utility's decision to incur project development costs for a potential in-state or out-of-state nuclear generating facility that is intended to serve retail electric customers in North Carolina. The application, supported by relevant testimony, shall be filed prior to the filing of an application for a certificate to construct the facility.

*(NCUC Docket No. E 100, Sub 54, 12/8/88; E-100, Sub 78A, 04/29/98; NCUC Docket No. E-100, Sub 113, 02/29/2008; NCUC Docket No. E-100, Sub 134, 07/30/2012; NCUC Docket No. M-100, Sub 135, 09/10/2013; NCUC Docket No. E-100, Sub 134, 11/04/2014; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

**R8-62 CERTIFICATES OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF ELECTRIC TRANSMISSION LINES IN NORTH CAROLINA.**

(a) Each public utility or person, prior to commencing construction of a new transmission line for which a certificate is required pursuant to G.S. 62-101, shall first obtain a certificate of environmental compatibility and public convenience and necessity from the Commission. The requirement for such certificate may be satisfied by an applicable certificate granted by the Commission under G.S. 62-110 and Commission Rule R8-61.

(b) The procedures for the filing of an application for a certificate shall be as specified in Commission Rule R1-5.

(c) The filing of an application for a certificate shall include the following:

- (1) The reasons the transmission line is needed including when it is needed for the purpose described;
- (2) A description of the proposed location of the transmission line including a U.S. Geological Survey map showing the proposed route and alternative routes evaluated in relation to appropriate geographic reference points;
- (3) A description of the proposed transmission line including:
  - a. The facilities including structure type and their average height range (as determined by preliminary engineering), the right of way corridor including its width, the capacity and voltage level of the lines; and operation and maintenance considerations.
  - b. A showing of the projected cost of the line.
- (4) An environmental report setting forth:
  - a. The environmental impact of the proposed action including, as appropriate, its effect on natural resources, cultural resources, land use, and aesthetics;
  - b. Any proposed mitigating measures that may minimize the environmental impact; and
  - c. Alternative routes for the proposed lines;
- (5) A listing of residential, commercial, industrial and institutional development; other man-made features; natural features which influenced route selection and how they were considered in the selection process; and
- (6) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the transmission line and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
- (7) The application shall be accompanied by prefiled direct testimony incorporating and supporting the application. Provided, however, an applicant requesting a waiver of the notice and hearing requirements pursuant to Rule R8-62(k) and G.S. 62-101(d)(1) shall not be required to prefile direct testimony supporting the application unless the waiver request is subsequently denied by the Commission.

(d) The applicant shall file a written summary with the Commission explaining any proposed deviation from the approved certificate, unless the deviation is insignificant. The Commission will, within thirty (30) days, determine and notify the applicant if the deviation(s) will require the Company to file an application for an amended certificate. If the Commission determines that an amended certificate is necessary, the applicant shall, giving consideration to the circumstances that created the deviation, file the following:

- (1) The reasons the amendment is needed;
- (2) A brief description of the proposed amendment;
- (3) An amended environmental report, or addendum to the report filed with the initial application, containing the following information:
  - a. A U.S. Geological Survey Map showing the amended route in relation to all routes reviewed by the Commission in the initial application proceeding;
  - b. The right of way width and structures (structure type, approximate average height range and approximate locations as determined by preliminary engineering) along the amended route;
  - c. Revised project cost based on the proposed amended route;
  - d. A description of any changes in environmental impacts (either additional or reduced) of the proposed amended route, including, as appropriate, its effect on natural and cultural resources, land use and aesthetics; and
  - e. Any proposed mitigation measures specifically proposed to reduce environmental impacts of the amended segment of the line.
- (4) Notice for amending a certificate must be given as provided in Rule R8-62(e).

(e) Within 10 days after the filing of the application or application for amendment, the applicant shall serve a copy of the application on the parties listed in G.S. 62-102(b) in the manner provided in G.S. 1A-1, Rule 4. The copy of the application served on each party shall be accompanied by a notice specifying the date on which the application was filed and giving information on procedural steps to take and time deadlines to follow for intervention.

(f) At the time of filing, the applicant shall file a summary of the application to be used to fulfill the notice requirements of this certificate. The summary shall contain, at a minimum the following:

- (1) A summary of the proposed action;
- (2) A description of the location of the proposed transmission line written in readable style and the location of the nearest business office to the proposed line where detailed maps (U.S. Geological Survey Map, or equal) may be examined. Said maps to also be available for review in the Commission's Office of the Chief Clerk;
- (3) The date on which the application was filed; and
- (4) The date by which persons with substantial interest in the certification proceeding must intervene.

The Commission shall, within 3 business days after the date of the filing, notify the applicant of its approval or of any required changes or additions to the summary.

(g) Within 10 days after the filing of the application, the applicant shall give public notice to persons residing in each county and municipality in which the proposed transmission line is to be located by publishing the approved summary of the application in newspapers of general circulation in the affected cities and counties so as to substantially inform those persons of the filing of the application. This notice shall thereafter be published in those newspapers a minimum of three additional times before the time for parties to intervene has expired. The summary shall also be sent to the North Carolina State Clearinghouse.

If the Commission orders public hearings on the application, the applicant shall send a revised summary to the North Carolina State Clearinghouse that states when and where the hearing will be held. In addition, the applicant shall similarly revise the newspaper notice so that all published notices following the first shall describe the schedule of public hearings.

(h) After the initial public notice and for the duration of the proceeding, the applicant shall make a copy of the application available for public review at its office(s) in proximity to the proposed transmission line.

(i) Persons desiring to intervene and having a substantial interest in this proceeding in accordance with G.S. 62-103(b) shall file a petition with the Commission to intervene setting forth interest and basis for intervention no later than 100 days after the date of the filing of the application. A county or municipality shall comply with the requirements of G.S. 62-106 with respect to filing with the Commission and serving on the applicant the provisions of an ordinance that may affect the construction, operation or maintenance of the proposed transmission line. Local ordinances brought forward by municipalities or counties shall be presumed to be in the public interest; however, the Commission may find that the greater public interest requires preemption of the local ordinance.

(j) Testimony and exhibits by expert witnesses shall be filed pursuant to Commission Rule R1-24(g). Absent substantial cause, the Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses no later than the deadline established for filing petitions to intervene. Non-expert witness testimony is not required to be reduced to writing or filed prior to the hearing.

(k) The applicant may request in writing, as a part of the application, that the Commission waive the notice and hearing requirements. A completed application and the waiver request shall be prefiled with the Public Staff's Electric Division at least twenty (20) days before the application is filed to allow for investigation of the request. At the same time the applicant shall file a letter of intent to file for a waiver with the Commission. When the application is subsequently filed, it shall be accompanied by a written request for the waiver and a statement that the request has been prefiled as required by this Rule. The applicant shall identify and describe any conditions of the proposed transmission line which meets the waiver requirements set forth in G.S. 62-101(d)(1). The Commission shall rule on this waiver within 30 days after the date of the filing. A request to waive notice and hearing requirements will automatically waive the notice requirements of G.S. 62-102(b) and (c). If the Commission denies the request for a waiver, the applicant shall serve notice within 10 days, as prescribed in Rule R8-62(e), from the date the Commission serves notice of its decision.

(l) Pursuant to G.S. 62-101(d)(2), the applicant may request that the Commission waive the notice and hearing requirements because the urgency of providing electric service requires the immediate construction of the transmission line. In making this decision the Commission shall determine whether failure to build the line could result in unreliable or insufficient electrical supply to the public. The Commission shall rule on this request within 10 days of the application. If the Commission concurs, it shall waive the notice and hearing requirements but shall give notice to those parties listed in G.S. 62-102(b) and (c) before issuing a certificate or approving an amendment.

(m) The procedures for seeking exemption pursuant to G.S. 62-101(c)(3) or (5) from the requirement of obtaining a certificate shall be as follows:

- (1) A public utility or person is not required to obtain a certificate before beginning to construct a transmission line referred to in either G.S. 62-101(c)(3) or (5) if the Federal Energy Regulatory Commission (FERC) or the Rural Electrification Administration (REA), as appropriate, has conducted a proceeding on the line that is substantially equivalent to the proceeding required by Article 5A of G. S. Chapter 62.

- (2) A public utility or person shall be exempt from the requirement of a public hearing to obtain a certificate before beginning to construct a transmission line referred to in either G.S. 62-101(c)(3) or (5), if the FERC or the REA, as appropriate, has conducted a proceeding on the line that is substantially equivalent to the proceeding required by Article 5A of G. S. Chapter 62.
- (3) To apply for the exemption under section (1) above, the public utility or person shall file the following information with the Commission:
  - a. the location and transcript of each public hearing;
  - b. the notices of hearing and a description of how and to whom the notices were given;
  - c. a statement that the hearings were conducted in conformity with the FERC or REA laws, as appropriate, and a general description of what the applicable law requires; and
  - d. the final order of the FERC or the REA authorizing the construction of the line.
- (4) To apply for the exemption under section (2) above, the public utility or person shall file the information required by sections (3)a., b., and c. above.
- (5) The Commission shall within five (5) days of receipt of the application distribute copies of it to the Public Staff and any other party that has previously requested it. In addition the Commission shall promptly supply copies to any other parties who subsequently request them.
- (6) Within thirty (30) days from receipt of the application, the Commission shall enter an order granting the applicable exemption if it finds that the FERC or the REA has conducted a proceeding on the line that is substantially equivalent to the hearing required by the Commission's certification procedure under Article 5A of G. S. Chapter 62, and with respect to the exemption provided under section (1) above, that the FERC or the REA has issued a final order authorizing construction of the line.

(n) When justified by the public convenience and necessity and a showing that circumstances require immediate action, the Commission may permit an applicant for a certificate to proceed with initial clearing, excavation, and construction before receiving the certificate required by G.S. 62-101. In so proceeding, however, the applicant acts at its own risk, and by granting such permission, the Commission does not commit to ultimately grant a certificate for the transmission line.

(o) If, after proper notice of the application has been given, no significant protests are filed with the Commission the applicant may request the Commission in writing, or the Commission on its own motion, may cancel the hearing and decide the case on the filed record.

(p) Plans for the construction of transmission lines in North Carolina (161 kV and above) shall be incorporated in filings made pursuant to Commission Rule R8-60. In addition, each public utility or person covered by this rule shall provide the following information on an annual basis no later than September 1:

- (1) For existing lines, the information required on FERC Form 1, pages 422, 423, 424, and 425, except that the information reported on pages 422 and 423 may be reported every five years.
- (2) For lines under construction, the following:
  - a. Commission docket number;
  - b. location of end point(s);
  - c. length;
  - d. range of right-of-way width;
  - e. range of tower heights;
  - f. number of circuits;
  - g. operating voltage;
  - h. design capacity;
  - i. date construction started; and
  - j. projected in-service date (if more than 6 month delay from last report, explain).
- (3) For all other proposed lines, as the information becomes available, the following:
  - a. county location of end point(s);
  - b. approximate length;
  - c. typical right-of-way width for proposed type of line;
  - d. typical tower height for proposed type of line;
  - e. number of circuits;
  - f. operating voltage;
  - g. design capacity;
  - h. estimated date for starting construction (if more than 6 month delay from last report, explain); and
  - i. estimated in-service date (if more than 6 month delay from last report, explain).

(NCUC Docket No. E-100, Sub 62, 12/4/92; NCUC Docket No. E-100, Sub 78A, 04/29/98; NCUC Docket No. E-100, Sub 105, 02/27/06.)

**R8-63 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR MERCHANT PLANT; PROGRESS REPORTS.**

(a) Scope of Rule.

- (1) This rule applies to an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) by any person seeking to construct a merchant plant in North Carolina.
- (2) For purposes of this rule, the term "merchant plant" means an electric generating facility, other than one that qualifies for and seeks the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156, the output of which will be sold exclusively at wholesale and the construction cost of which does not qualify for inclusion in, and would not be considered in a future determination of, the rate base of a public utility pursuant to G.S. 62-133.
- (3) Persons filing under this rule are not subject to the requirements of Rule R8-61 or R8-64.

(b) Application. The application shall contain the exhibits listed below, which shall contain the information hereinafter required, with each exhibit and item labeled as set out below. Any additional information may be included at the end of the application.

- (1) Exhibit 1 shall contain the following information about the applicant:
  - (i) The full and correct name, business address, business telephone number and electronic mailing address of the applicant;
  - (ii) A description of the applicant, including the identities of its principal participant(s) and officers, and the name and business address of a person authorized to act as corporate agent or to whom correspondence should be directed;
  - (iii) A copy of the applicant's most recent annual report to stockholders, which may be attached as an exhibit, or, if the applicant is not publicly traded, its most recent balance sheet and income statement. If the applicant is a newly formed entity with little history, this information should be provided for its parent company, equity partner, and/or the other participant(s) in the project; and
  - (iv) Information about generating facilities in the Southeastern Electric Reliability Council region which the applicant or an affiliate has any ownership interest in and/or the ability to control through leases, contracts, options, and/or other arrangements and information about certificates that have been granted for any such facilities not yet constructed.
- (2) Exhibit 2 shall contain the following information about the proposed facility:
  - (i) The nature of the proposed generating facility, including its type, fuel, expected service life, and the gross, net, and nameplate generating capacity of each generating unit and the entire facility, as well as the facility's total projected dependable capacity, in megawatts (alternating current); the anticipated beginning date for construction; the expected commercial operation date; and estimated construction costs;
  - (ii) A color map or aerial photo (a U.S. Geological Survey map or aerial photo map prepared via the State's geographic information system is preferred) showing the proposed site boundary and layout, with all major equipment, including the generator, fuel handling equipment, plant distribution system, startup equipment, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;
  - (iii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
  - (iv) In the case of natural gas-fired facilities, a map showing the proximity of the facility to existing natural gas facilities; a description of dedicated facilities to be constructed to serve the facility; and any filed agreements, service contracts, or tariffs for interstate pipeline capacity;
  - (v) A list of all needed federal, state, and local approvals related to the facility and site, identified by title and the nature of the needed approval; a copy of such approvals or a report of their status; and a copy of any application related to eligible facility and/or exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992, including attachments and subsequent amendments, if any; and

- (vi) A description of the transmission facilities to which the facility will interconnect, and a color map showing their general location. If additional facilities are needed, a statement regarding whether the applicant would need to acquire rights-of-way for new facilities.
- (3) Exhibit 3 shall provide a description of the need for the facility in the state and/or region, with supporting documentation.
- (4) The application shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant.
- (5) The application shall be accompanied by pre-filed direct testimony incorporating and supporting the application.
- (6) The Chief Clerk will deliver a copy of the application to the Clearinghouse Coordinator in the Department of Administration for distribution to State agencies having an interest in the proposed generating facility.
- (7) Contemporaneous with the filing of the application with the Commission, all applicants proposing a generating facility that will use natural gas must provide written notice of the filing to the natural gas local distribution company or municipal gas system providing service or franchised to provide service at the location of the proposed generating facility.

(c) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

(d) Procedure upon Receipt of Application. No later than ten (10) business days after the application is filed with the Commission, the Public Staff shall, and any other party in interest may, file with the Commission and serve upon the applicant a notice regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information. Upon receipt of all required information, the Commission will promptly issue a procedural order setting the matter for hearing, requiring public notice, and dealing with other procedural matters.

(e) The Certificate.

- (1) The certificate shall specify the name and address of the certificate holder; the type, capacity, and location of the facility; and the conditions, if any, upon which the certificate is granted.
- (2) The certificate shall be subject to revocation if (a) any of the federal, state, or local licenses or permits required for construction and operation of the generating facility not obtained or, having been obtained, are revoked pursuant to a final, non-appealable order; (b) required reports or fees are not filed with or paid to the Commission; and/or (c) the Commission concludes that the certificate holder filed with the Commission information of a material nature that was inaccurate and/or misleading at the time it was filed; provided that, prior to revocation pursuant to any of the foregoing provisions, the certificate holder shall be given thirty (30) days' written notice and opportunity to cure.
- (3) The certificate must be renewed if the applicant does not begin construction within three years after the date of the Commission order granting the certificate.
- (4) A certificate holder must notify the Commission in writing of any plans to sell, transfer, or assign the certificate and the generating facility.

(f) Reporting. All applicants must submit annual progress reports and any revisions in cost estimates, as required by G.S. 62-110.1(f) until construction is completed.

(NCUC Docket No. E-100, Sub 85, 05/21/01; 07/27/01; 11/06/01; NCUC Docket No. E-100, Sub 134, 07/30/12; NCUC Docket No. E-100, Sub 134, 11/04/14.)

**R8-64 APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY CPRE PROGRAM PARTICIPANT, QUALIFYING COGENERATOR, OR SMALL POWER PRODUCER; PROGRESS REPORTS**

(a) Scope of Rule.

- (1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8, or by any person who is seeking the benefits of 16 U.S.C. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18), or

as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).

- (2) For purposes of this rule, the term "person" shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.
- (3) The construction of a facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.
- (4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.

(b) The Application. The application shall be comprised of the following five exhibits:

- (1) Exhibit 1 shall contain:
  - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
  - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina; and
  - (iii) The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site.
- (2) Exhibit 2 shall contain:
  - (i) A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred; and
  - (ii) The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
- (3) Exhibit 3 shall contain:
  - (i) The nature of the generating facility, including the type and source of its power or fuel;
  - (ii) A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
  - (iii) The gross and net projected maximum dependable capacity of the facility as well as the facility's nameplate capacity, expressed as megawatts (alternating current);
  - (iv) The projected date on which the facility will come on line;
  - (v) The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity;
  - (vi) Any provisions for wheeling of the electricity, if applicable;
  - (vii) Arrangements for firm, non-firm or emergency generation, if applicable;
  - (viii) The service life of the project;
  - (ix) The projected annual sales in kilowatt-hours; and
  - (x) Whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.
- (4) Exhibit 4 shall contain:
  - (i) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for.

- (ii) A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
  - (5) Exhibit 5 shall contain the expected cost of the proposed facility.
  - (6) An applicant who desires to enter into a contract for 5 years or more for the sale of electricity, whose facility will have a nameplate capacity of 5 megawatts alternating current or more, and whose facility is not a solar photovoltaic facility, shall include the three additional exhibits-as described in R8-64(b)(6)(i), (ii), and (iii) below, except an applicant who desires to enter into a contract of 5 years or more for the sale of electricity from a solar photovoltaic facility of 25 megawatts alternating current or more shall also include the three additional exhibits referenced herein.
    - (i) Exhibit 6 shall contain:
      - a. A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;
      - b. Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project; and
      - c. A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs.
    - (ii) Exhibit 7 shall contain:
      - a. The most current available balance sheet of the applicant;
      - b. The most current available income statement of the applicant;
      - c. An economic feasibility study of the project; and
      - d. A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application.
    - (iii) Exhibit 8 shall contain:
      - a. The projected annual hourly production profile for the first full year of operation of the renewable energy facility in kilowatt-hours, including an explanation of potential factors influencing the shape of the production profile, including the following, if applicable: fixed tilt or tracking panel arrays, inverter loading ratio, over-paneling, clipped energy, or inverter AC output power limits;
      - b. A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and
      - c. A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.
  - (7) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.
  - (8) Applications filed on behalf of a corporation are not subject to the provision of R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.
  - (9) Falsification of or failure to disclose any required information in the application may be grounds for denying or revoking any certificate.
  - (10) The application shall be in the form adopted by the Commission and accompanied by the filing fee required by G.S. 62-300. The application may be filed electronically or by transmission of an original to the Chief Clerk of the Utilities Commission.
  - (11) If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.
- (c) Procedure upon receipt of Application. — Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:
- (1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a newspaper of general circulation in the county where the generating facility

is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. Each electric utility shall provide on its website a mailing address to which the application and notice should be mailed. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.

- (2) If the applicant does not file the affidavit of publication and certificate of service within twelve months of the Commission's publication order, the Commission will automatically dismiss the application.
- (3) The Chief Clerk will provide a copy of the application and the notice to the State Environmental Review Clearinghouse for distribution by the Clearinghouse Coordinator to State agencies having an interest in the application.
- (4) If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.
- (5) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.

(d) The Certificate.

- (1) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and operation of the generating facility is not obtained and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.
- (2) The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate.
- (3) Both before the time construction is completed and after, all certificate holders must advise both the Commission and the utility involved of any plans to sell, transfer, or assign the certificate or the generating facility or of any significant changes in the information set forth in subsections (b)(1) thru (b)(5) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes. The following changes in information are exemplary of changes that require an amendment to the certificate issued for the facility: a transfer of the certificate or the facility, a change in the facility owner's name, a change in the fuel source, or a change in the generating capacity of the facility. The following changes in information are exemplary of changes that require notice to the Commission, but do not require an amendment to the certificate: a change in facility owner's contact information, or a change in the upstream ownership of the facility owner.

(e) In addition to complying with any other applicable filing requirements pursuant to this Rule or other Commission rules, the filing of an amendment to the certificate application, or the filing of a FERC Form No. 556 for the purpose of satisfying the notice requirements of 18 C.F.R. 292.207(c) or for the purpose of satisfying the requirements of subsection (d) of this Rule, shall be accompanied by a cover letter that identifies the facility, the facility owner, and the associated docket number assigned to the matter by the Chief Clerk, and includes a short, plain statement alerting the Commission to the changed information, if any.

*(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. M-100, Sub 136, 6/26/12; NCUC Docket No. E-100, Sub 134, 07/30/12; NCUC Docket No. E-100, Sub 134, 11/04/14; NCUC Docket No. E-100, Sub 113, 12/31/14; NCUC Docket No. E-100, Sub 134, 3/18/2015, NCUC Docket No. E-100, Sub 134, 5/23/2016; NCUC Docket No. E-100, Sub 150, 11/06/2017; NCUC Docket Nos. E-100, Subs 113, 121, & 134, 03/29/2018; NCUC Docket No. E-100, Sub 166, 08/31/2020; NCUC Docket No. M-100, Sub 147, 9/15/2023; NCUC Docket No. M-100, Sub 196, 9/19/2023.)*

DOCKET NO. SP-\_\_\_\_\_, SUB\_\_\_\_\_

Filing Fee Tendered \$\_\_\_\_\_

**Application for a Certificate of Public Convenience and Necessity – Rule R8-64**

Pursuant to Commission Rule R8-64, this form is required for use in applying for a Certificate of Public Convenience and Necessity (CPCN) by a person, other than an electric public utility, who is an owner of a renewable energy facility that is participating in the Competitive Procurement of Renewable Energy Program established in G.S. 62-110.8, or by a person who is seeking the benefits of 16 U.S.C. 624-3 or G.S. 62-156 as a qualifying co-generator or a qualifying small power producer as defined in 16 U.S.C. 796(17) and (18), or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification pursuant to G.S. 62-110.1(g). This form may be accompanied by any exhibits or additional responses incorporated by reference thereto and attached to this form. This form must be accompanied by the required filing fee of \$25.00.

You may file this application electronically; please see [www.ncuc.net](http://www.ncuc.net) for instructions.

If this form is filed by hard copy, the original must be presented at or transmitted to the office of the Chief Clerk. Regardless of the method of delivery, this form is not deemed filed until it is received by the Chief Clerk, along with the required filing fee.

The mailing address is:

Chief Clerk  
NC Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

<b>Exhibits required by Rule R8-64(b)</b>		<b>Applicant's Response</b>
(1)(i)	Full and correct name of the owner of the facility	
	Facility name	
	Business address	
	E-mail address	
	Telephone number	
(ii)	The owner is (check one)	Individual          Partnership          Corporation
	If a partnership, the name and business address of each general partner	
	If a corporation, the state and date of incorporation	
	If a partnership, the name and address of each general partner (add additional sheets if necessary)	
	Owner's agent for purposes of this application, if applicable:	
	Agent's business address	

	Agent's e-mail address	
	Agent's telephone number	
(iii)	The full and correct name of the site owner and, if the site owner is other than the applicant, the applicant's legal interest in the site	
(2)(i)	Attach a color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, the site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system (found at <a href="http://www.gis.ncdcr.gov/hpoweb/">www.gis.ncdcr.gov/hpoweb/</a> ) is preferred.	
(ii)	E911 street address of the proposed facility	
	County in which the proposed facility will be physically located	
	GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree	
(3)(i)	The nature of the facility, including its technology, and the source of its power and fuel(s)	
(ii)	A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation	
(iii)	The gross and net projected maximum dependable capacity of the facility in megawatts – Alternating Current	
	The facility's nameplate capacity in megawatts – Alternating Current	

(iv)	The projected date on which the facility will come on line	
(v)	The applicant's general plan for sale of the electricity to be generated, including the name of utility to which the applicant plans to sell the electricity	
(vi)	Any provisions for wheeling of the electricity, if applicable	
(vii)	Arrangements for firm, non- firm, or emergency generation, if applicable	
(viii)	The service life of the project	
(ix)	The projected annual sales in kilowatt-hours	
(x)	Whether the applicant intends to produce renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard  Yes      No	
(4)(i)	A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for	
(ii)	Attach a copy of those licenses, permits and exemptions that have been obtained; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained	
(5)	The expected cost of the proposed facility	\$
<p>(6) The following applicants shall complete this section with the information as described in R8-64(b)(6): 1) An applicant seeking to enter into a contract for the sale of electricity with a term of 5 years or more, and whose facility will have a projected generating capacity of 5 MWAC or greater and is not a solar photovoltaic facility, and</p> <p>2) An applicant seeking to enter into a contract for the sale of electricity with a term of 5 years or more, and whose facility is a solar photovoltaic facility with a generating capacity of 25 MWAC or more.</p>		
(i)a	A statement detailing the experience and expertise of the persons who will develop, design, construct, and operate the project to the extent such persons are known at the time of the application	

b	Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project
c	A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs
(ii)a	The most current available balance sheet of the applicant
b	The most current available income statement of the applicant
c	An economic feasibility study of the project
d	A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application
(iii)a	A detailed explanation of the anticipated kilowatt and kilowatt-hour outputs, on- peak and off-peak, for each month of the year. The explanation shall include a statement of the specific on-peak and off-peak hours underlying the applicant's quantification of anticipated kilowatt and kilowatt-hour outputs
b	A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser
c	A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application

Confidentiality

If an applicant considers certain of the required information above to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

Please read the "After You File" instructions on the last page of this document.

All applications shall be signed and verified (notarized) by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application. A blank verification page is attached below:

**VERIFICATION**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Signature of Owner's Representative or Agent

\_\_\_\_\_  
Title of Representative or Agent

\_\_\_\_\_  
Typed or Printed Name of Representative or Agent

The above named person personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Name of Notary Public – Typed or Printed

This original verification must be affixed to the original application that is submitted to the Commission.

## **After You File**

1. After you file an application for a CPCN, the Utilities Commission will automatically send a copy to the State Clearinghouse for a government agency review and will issue an Order Requiring Publication of Notice.
2. The State Clearinghouse will post the application on its website for a 30-day review by government agencies.
3. You must publish the Commission's Public Notice as required by the Order Requiring Publication of Notice.
4. You must send a copy of the application and the Commission's Public Notice to the interconnecting utility no later than the first date that publication begins in the newspaper. You must also file a notarized letter called a "certificate of service" that states you completed this requirement.
5. After the publication period, the publishing newspaper should send you a notarized affidavit of publication. You must file the affidavit of publication with the Chief Clerk of the Utilities Commission.
6. If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicant to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order issuing the certificate

## **R8-65 REPORT BY PERSONS CONSTRUCTING ELECTRIC GENERATING FACILITIES EXEMPT FROM CERTIFICATION REQUIREMENT**

- (a) All persons exempt from certification under G.S. 62-110.1(g) shall file with the Commission a report of the proposed construction of an electric generating facility before beginning construction of the facility. The report shall be in the form adopted by the Commission, shall include the information prescribed in subsection (g) below, and shall be signed and verified by the owner of the electric generating facility or by an individual duly authorized to act on behalf of the owner for the purpose of the filing. The facility owner shall also be required to report to the Commission the completion of each such facility by giving notice of the completion of construction to the Commission in accordance with section (i) of this Rule. Reports of proposed construction and notices of completion of construction shall be for informational purposes only, and shall not require action by the Commission or the Public Staff.
- (b) Reports filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.
- (c) The owner of the electric generating facility shall provide a copy of the report to the electric public utility, electric membership corporation, or municipality to which the generating facility is or will be interconnected. This requirement shall not apply to an offering utility, as defined in G.S. 62-126.3(10), with regard to an electric generating facility that is intended to be a community solar energy facility, as defined in G.S. 62-126.3(3).
- (d) The owner of the electric generating facility shall file the report electronically or file an original of the report of proposed construction with the Chief Clerk of the Utilities Commission. The report shall be accompanied by the fee required by G.S. 62-300.
- (e) Upon the filing of a report of proposed construction, the Chief Clerk will assign a new docket or sub-docket number to the filing.
- (f) The Commission may order a hearing on the report of proposed construction upon its own motion or upon receipt of a complaint specifying the basis thereof. Otherwise, no acknowledgment of receipt of the report of proposed construction will be issued nor will any other further action be taken by the Commission.
- (g) The Report.

- (1) The report shall be comprised of the following four exhibits:
  - (i) Exhibit 1 shall contain:
    - a. The full and correct name, business address, business telephone number, and electronic mailing address of the facility owner;
    - b. A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business address, business telephone number, and electronic mailing address of an individual duly authorized to act as corporate agent for the purpose of the report and, if a foreign corporation, whether domesticated in North Carolina; and
    - c. The full and correct name of the site owner and, if the owner is other than the facility owner, the facility owner's interest in the site.
  - (ii) Exhibit 2 shall contain:
    - a. A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, except such map or photo shall not be required for solar photovoltaic systems wherein solar panels are mounted on the roof of a residential or commercial building; and
    - b. The E911 street address, county in which the proposed facility will be physically located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree.
  - (iii) Exhibit 3 shall contain:
    - a. The nature of the generating facility, including the type and source of its power or fuel;
    - b. A description of the buildings, structures and equipment comprising the generating facility and the manner of its operation;
    - c. The gross and net generating capacity of each unit and the entire facility in alternating current (AC);
    - d. The projected date on which the facility will come on line;
    - e. The facility owner's general plan for sale of the electricity to be generated, including the utility to which the facility owner plans to sell the electricity;
    - f. the service life of the project;
    - g. the projected annual sales in kilowatt-hours; and
    - h. whether the facility owner intends to earn renewable energy certificates that are eligible for compliance with the State's renewable energy and energy efficiency portfolio standard, and, if the facility to be constructed is a community solar energy facility, as defined in G.S. 62-126.3(3), a statement that the renewable energy certificates will be offered to subscribers in a manner consistent with G.S. 62-126.8(e)(8) and the electric public utility's consumer solar energy facility program approved by the Commission.
  - (iv) Exhibit 4 shall contain the expected cost of the proposed facility.
- (2) All reports shall be signed and verified by the facility owner or by an individual duly authorized to act on behalf of the facility owner for the purpose of the report.
- (3) Falsification of or failure to disclose any required information in the report may be grounds for rejecting the report.
- (4) Both before the time construction is completed and after, each facility owner shall advise both the Commission and the utility to which the generating facility is or will be interconnected of any plans to sell, transfer, or assign the generating facility or of any significant changes in the information set forth in subsection (g) of this Rule.

(i) Notice of completion of construction of facility. Within thirty (30) days of the completion of construction of the facility, each facility owner shall notify the Commission that the construction of the facility is complete. This notice shall be made by filing a short, plain statement that construction of the facility is complete and the date on which the construction was completed.

*(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. M-100, Sub 136, 6/26/12; NCUC Docket No. E-100, Sub 134, 3/18/2015; NCUC Docket Nos. E-100, Subs 113, 121, & 134, 03/29/2018; NCUC Docket Nos. E-100, Sub 113, & M-100, Sub 158, 08/26/2020.)*

## **R8-66 REGISTRATION OF RENEWABLE ENERGY FACILITIES; ANNUAL REPORTING REQUIREMENTS**

(a) The following terms shall be defined as provided in G.S. 62-133.8: "electric power supplier"; "renewable energy certificate"; and "renewable energy facility."

(b) The owner, including an electric power supplier, of each renewable energy facility, whether or not required to obtain a certificate of public convenience and necessity pursuant to G.S. 62-110.1, that intends for renewable energy certificates it earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8, or for its facility to participate in the Competitive Procurement of Renewable Energy Program, shall register the facility with the Commission. The registration statement shall be in the form adopted by the Commission, may be filed separately or together with an application for a certificate of public convenience and necessity, or with a report of proposed construction by a person exempt from the certification requirement. All relevant renewable energy facilities shall be registered prior to their having RECs issued in the North Carolina Renewable Energy Tracking System (NC-RETS) pursuant to Rule R8-67(h). Contracts for power supplied by an agency of the federal government are exempt from the requirement to register and file annually with the Commission if the renewable energy certificates associated with the power are bundled with the power purchased by the electric power supplier.

- (1) The owner of each renewable energy facility that has not previously done so, including a facility that is located outside of the State of North Carolina, shall include in its registration statement the following information:
  - (i) The full and correct name, business address, electronic mailing address, and telephone number of the facility owner;
  - (ii) A statement of whether the facility owner is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name, business telephone number, electronic mailing address, and business address, of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina;
  - (iii) The nature of the renewable energy facility, including its technology, the type and source of its power or fuel(s); whether it produces electricity, useful thermal energy, or both; and the facility's projected dependable capacity in kilowatts AC and/or British thermal units per hour, as well as its maximum nameplate capacity;
  - (iv) The E911 address of the facility, the county in which the proposed facility will be physically located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree;
  - (v) A map, such as a county road map, with the location indicated on the map;
  - (vi) The ownership of the site and, if the site owner is other than the facility owner, the facility owner's legal interest in the site;
  - (vii) A complete list of all federal and state (not local) licenses, permits, and exemptions required for construction and operation of the facility, and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application. Wind facilities with multiple turbines, where each turbine is licensed separately, may provide copies of such approvals for one such turbine of each type in the facility, but shall attest that approvals for all of the turbines are available for inspection;
  - (viii) The date the facility began operating. If the facility is not yet operating, the owner shall provide the facility's projected in-service date;
  - (ix) If the facility is already operating, the owner shall provide information regarding the amount of energy produced by the facility, net of station use, for the most recent 12-month or calendar-year period. Energy production data for a shorter time period is acceptable for facilities that have not yet operated for a full year;
  - (x) The name of the entity that does (or will) read the facility's energy production meter(s) for the purpose of renewable energy certificate issuance;
  - (xi) For thermal energy facilities, describe the method to be used to determine the facility's thermal energy production, in Btus per hour, that is eligible for REC issuance;
  - (xii) Whether the facility participates in a REC tracking system, and if so, which one. If the facility does not currently participate in a REC tracking system, which tracking system the owner anticipates will be used for the purpose of REC issuance; and

- (xiii) If this facility has already been the subject of a proceeding or submittal before the Commission, such as a Report of Proposed Construction or a Certificate of Public Convenience and Necessity, provide the Commission Docket Number, if available.
- (2) If the facility is a combined heat and power system, the owner shall also include in its registration statement the following information:
- (i) A narrative description and one-line diagram of the electrical and thermal generation systems to include Btu meters, boilers, steam pressures, valves, turbines, and ultimate uses of the steam. Also, include any crossover of steam, cross connections (even if by spool piece), or the ability to supply steam from other means or to other loads;
  - (ii) A description of the parasitic electrical and parasitic thermal loads;
  - (iii) Calculations for the parasitic electrical and parasitic thermal loads and supporting documents;
  - (iv) A description of the method of collecting the waste heat from the electrical generating system;
  - (v) A description of the host(s) of the waste heat and an explanation of how the waste heat will be used and useful;
  - (vi) Calculations of the percent of energy that is delivered to the steam host(s) but not used and useful; and
  - (vii) Confirmation if the proposed operation will have any pressure reducing valves operating simultaneously in parallel with any back pressure turbines.
- (3) If the facility owner intends to earn multiple types of RECs by using a variety of fuels, the owner shall include in its registration statement the following additional information:
- (i) Example calculations for the energy production associated with each fuel used by the facility as required by the Appendix C (Multi-fuel Generation) to the operating procedures for the North Carolina Renewable Energy Tracking System. These calculations must ultimately show the electrical and thermal energy (if any) attributable to only the renewable fuels and how the number of renewable energy certificates is determined;
  - (ii) A description of each fuel to be used by the facility; and
  - (iii) A description of how the heat content of each fuel was determined.
- (4) The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that it is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources. If a credible showing is made that the facility is not in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources, the Commission shall refer the matter to the appropriate environmental agency for review. Registration shall not be revoked unless and until the appropriate environmental agency concludes that the facility is out of compliance and the Commission issues an order revoking the registration.
- (5) The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that the facility satisfies the requirements of G.S. 62-133.8(a)(5) or (7) as a renewable energy facility or new renewable energy facility, that the facility will be operated as a renewable energy facility or new renewable energy facility, and, if the facility has been placed into service, the date when it was placed into service
- (6) The owner of each renewable energy facility shall further certify in its registration statement and annually thereafter that any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates.
- (7) The owner of each renewable energy facility shall certify in its registration statement and annually thereafter that it consents to the auditing of its books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agrees to provide the Public Staff and the Commission access to its books and records, wherever they are located, and to the facility.
- (8) If the facility is already operating, the owner shall attest that the registration information is true and accurate for all years that the facility has earned RECs for compliance with G.S. 62-133.8. Each registration statement shall be signed and verified by the owner of the renewable energy facility or by an individual duly authorized to act on behalf of the owner for the purpose of the filing.

- (9) Renewable energy facilities and new renewable energy facilities that have RECs issued in NC-RETS shall provide their annual certification electronically via NC-RETS. Annual certifications are due April 1 each year.
  - (10) Registration statements filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 shall be applicable.
  - (11) The applicant may file the registration statement electronically or by filing an original of the registration statement with the Chief Clerk of the Utilities Commission. The registration statement shall be accompanied by the fee required by G.S. 62-300.
- (c) Each re-seller of renewable energy certificates derived from a renewable energy facility, including a facility that is located outside of the State of North Carolina, shall ensure that the owner of the renewable energy facility registers with the Commission prior to the sale of the certificates by the re-seller to an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f), except that the filing requirements in subsection (b) of this Rule shall apply only to information for the year(s) corresponding to the year(s) in which the certificates to be sold were earned.
- (d) Upon receipt of a registration statement, the Chief Clerk will assign a new docket or sub-docket number to the filing.
- (e) No later than twenty (20) business days after the registration statement is filed with the Commission, the Public Staff shall, and any other interested persons may, file with the Commission and serve upon the registrant a recommendation regarding whether the registration statement is complete and identifying any deficiencies. If the Commission determines that the registration statement is not complete, the owner of the renewable energy facility will be required to file the missing information. Upon receipt of all required information, the Commission will promptly issue an order accepting the registration, denying the registration, or setting the matter for hearing.
- (f) Any of the following actions may result in revocation of registration by the Commission:
- (1) Falsification of or failure to disclose any required information in the registration statement or annual filing;
  - (2) Failure to remain in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources;
  - (3) Remarketing or reselling any renewable energy certificate (whether or not bundled with electric power) after it has been sold to an electric power supplier or any other person for compliance with G.S. 62-133.8 or for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina or any other state or country, or offering or selling the electric power associated with the certificates with any representation that the power is bundled with renewable energy certificates;
  - (4) Failure to allow the Commission or the Public Staff access to its books and records necessary to audit REPS compliance; or
  - (5) Failure to provide the annual certifications required by Rule R8-66(b).
- (g) NC-RETS shall maintain on its website a list of all registration statement revocations.
- (h) An owner of a renewable energy facility that has registered with the Commission shall notify the Commission and the tracking system that issues the facility's RECs within fifteen (15) days of any change in the information contained in the registration statement, including ownership change, fuel change, or permit issuance or revocation. If there is a change in ownership of the facility, the Commission shall be notified, the registration of the facility in the name of that facility owner shall be cancelled, and the new owner may file a registration statement pursuant to this Rule. The following changes in information are exemplary of changes that require an amendment to the registration of the facility: a change in the facility owner's name, a change in the fuel source, a change in the multi-fuel calculations, or a change in the generating capacity of the facility. The following changes in information are exemplary of changes that require notice to the Commission, but do not require an amendment to the registration: a change in the facility owner's contact information, or a change in the upstream ownership of the facility owner.
- (i) In addition to complying with any other applicable filing requirements pursuant to this Rule or other Commission rules, the filing of a FERC Form No. 556 for the purpose of satisfying the notice requirements of 18 C.F.R. 292.207(c) or for the purpose of satisfying the requirements of section (h) of this Rule, shall be accompanied by a cover letter that identifies the facility, the facility owner, and the associated docket number assigned to the matter by the Chief Clerk, and includes a short, plain statement alerting the Commission to the changed information, if any.

*(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. M-100, Sub 136, 6/26/12; NCUC Docket No. E-100, Sub 134, 3/18/2015; NCUC Docket No. E-100, Sub 150, 11/06/2017; NCUC Docket Nos. E-100, Subs 113, 121, & 134, 03/29/2018; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*



DOCKET NO. \_\_\_\_\_ - \_\_\_\_\_, SUB \_\_\_\_\_

Filing Fee Tendered \$ \_\_\_\_\_

**Registration Statement for the Registration of a Renewable Energy Facility or New Renewable Energy Facility – Commission Rule R8-66**

**Pursuant to G.S. 62-133.8 and Commission Rule R8-66, this form is required for use by the owner of a renewable energy facility that intends for the renewable energy certificates the facility earns to be eligible for use by an electric power supplier to comply with G.S. 62-133.8, or for its renewable energy facility to participate in the Competitive Procurement of Renewable Energy Program. This form may be accompanied by any exhibits or additional responses incorporated by reference thereto and attached to this form. This form must be accompanied by the required filing fee of \$250.00.**

This form may be electronically filed. Please see [www.ncuc.net](http://www.ncuc.net) for instructions.

If this form is filed by hard copy, the original must be presented at the office of the Chief Clerk, or transmitted by the United States Postal Service or a designated delivery service authorized pursuant to 26 U.S. 7502(f)(2). Regardless of the method of delivery, this form is not deemed filed until it is received by the Chief Clerk, along with the required filing fee.

The mailing address is:

Chief Clerk  
NC Utilities Commission  
4325 Mail Service Center Raleigh,  
NC 27699-4325

Required Statements	Response
Facility name:	
Full and correct name of the owner of the facility:	
Business address:	
Electronic mailing address:	
Telephone number:	
<b> </b>	
Agent's business address:	
Agent's electronic mailing address:	
Agent's telephone number:	
<b> </b>	
The owner is:	Individual      Partnership      Corporation/LLC

If a corporation, provide the state and date of incorporation:	State _____ Date _____			
If a corporation that is incorporated outside of North Carolina, is it domesticated in North Carolina?	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%; text-align: center;">Yes</td> <td style="width: 20%; text-align: center;">No</td> <td style="width: 10%;"></td> </tr> </table>	Yes	No	
Yes	No			
If a partnership, the name and business address of each general partner. (Add additional sheets if necessary.)				
Nature of the renewable energy facility:				
1. Describe the facility, including its technology, and the source of its power and fuel(s). Thermal facilities should describe how its host uses the facility's thermal energy output. (Add additional sheets if necessary.)				
2. Whether it produces electricity, useful thermal energy, or both.				
3. Nameplate capacity in kW/MW (AC) and/or maximum Btu per hour for thermal facilities.				
4. The facility's projected dependable capacity in kW AC or Btu/hour.				
5. The E911 address of the facility.				
6. The county where the facility will be located.				
7. GPS coordinates of the approximate center of the facility site to the nearest second or one thousandth of a degree.				
8. The location of the facility set forth in terms of local highways, streets, rivers, streams, or other generally known local landmarks. Attach a map, such as a county road map, with the location indicated on the map.				
Site ownership:				

1. Is the site owner other than the facility owner? If yes, who is the site owner?	
2. What is the facility owner's legal interest in the site?	
<p>Federal and State licenses, permits, and exemptions.</p> <p>Note: Responses in this section should provide all federal and state (not local) licenses, permits, and/or exemptions required for construction and operation of the facility and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be attached to this registration statements. Wind facilities with multiple turbines, where each turbine is licensed separately, may provide copies of approvals for one such turbine, but shall add an attestation that approvals for all of the turbines are available for inspection.</p>	
1. Federal permits and licenses:	
2. State permits and licenses:	
3. Exemptions required for construction and operation of the facility:	
4. Statement of whether each has been obtained or applied for (attach copy of those that have been obtained with this application):	
1. If the facility has been placed into service, on what date did the facility begin operating?	
2. If the facility is not yet operating, on what date is the facility projected to be placed into service?	
1. If the facility is already operating, what is the amount of energy produced by the facility, net of station use, for the most recent 12-month or calendar-year period? Energy production data for a shorter time period is acceptable for facilities that have not yet operated for a full year.	

2. What entity does (or will) read the facility's energy production meter(s) for the purpose of issuing renewable energy certificates?	
3. For thermal energy facilities, describe the method to be used to determine the facility's thermal energy production, in BTUs, that is eligible for REC issuance.	
4. Does the facility participate in a REC tracking system and if so, which one? If not, which tracking system will the facility participate in for the purpose of REC issuance?	
5. If this facility has already been the subject of a proceeding or submittal before the Commission, such as a Report of Proposed Construction or a Certificate of Public Convenience and Necessity, please provide the Commission Docket Number, if available.	

**Information for Combined Heat and Power (CHP) Systems**

If the facility is a combined heat and power system, the owner shall also include in its registration statement the following information:

1. A narrative description and one-line diagram of the electrical and thermal generation systems to include Btu meters, boilers, steam pressures, valves, turbines, and ultimate uses of the steam. Also, include any crossover of steam, cross connections (even if by spool piece), or the ability to supply steam from other means or to other loads.	
2. A description of the parasitic electrical and parasitic thermal loads.	
3. Calculations for the parasitic electrical and parasitic thermal loads and supporting documents.	
4. A description of the method of collecting the waste heat from the electrical generating system.	
5. A description of the host(s) of the waste heat and an explanation of how the waste heat will be used and useful.	
6. Calculations of the percent of energy that is delivered to the steam host(s) but not used and useful.	
7. Confirmation if the proposed operation will have any pressure reducing valves operating simultaneously in parallel with any back pressure turbines.	

**Information for Multiple REC Types**

If the facility owner intends to earn multiple types of RECs by using a variety of fuels, the owner should include in its registration statement the following additional information:

1. Example calculations for the energy production associated with each fuel used by the family as required by the Appendix C (Multi-fuel Generation) to the operating procedures for the North Carolina Renewable Energy Tracking System. These calculations must ultimately show the electrical and thermal energy (if any) attributable to only the renewable fuels and how the number of renewable energy certificates is determined.	
2. A description of each fuel to be used by the facility.	
3. A description of how the heat content of each fuel was determined.	

The owner of the renewable energy facility shall provide the following attestations, signed and notarized:

1.  Yes  No I certify that the facility is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.
  
2.  Yes  No I certify that the facility satisfies the requirements of G.S. 62-133.8(a)(5) or (7) as a:
  - renewable energy facility, or new
  - renewable energy facility,
  - and that the facility will be operated as a: renewable energy
  - facility, or
  - new renewable energy facility.
  
3.  Yes  No I certify that 1) my organization is not simultaneously under contract with NC GreenPower to sell our RECs emanating from the same electricity production being tracked in NC-RETS; and
 

2) any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates.
  
4.  Yes  No I certify that I consent to the auditing of my organization's books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agree to provide the Public Staff and the Commission access to our books and records, wherever they are located, and to the facility.
  
5.  Yes  No I certify that the information provided is true and correct for all years that the facility has earned RECs for compliance with G.S. 62-133.8.
  
6.  Yes  No I certify that I am the owner of the renewable energy facility or am duly authorized to act on behalf of the owner for the purpose of this filing.

(Signature) \_\_\_\_\_  
 \_\_\_\_\_  
 (Name - Printed or Typed)

(Title) \_\_\_\_\_  
 \_\_\_\_\_  
 (Date)

**VERIFICATION**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

\_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this day of \_\_\_\_\_, 20 \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Name of Notary Public – Typed or Printed

The name of the person who completes and signs the annual certification must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. This original verification must be affixed to the original annual certification, and a copy of this verification must be affixed to the original copy that is submitted to the Commission at:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

**Annual Certification of Compliance with the Requirements of  
Commission Rule R8-66 for the Continuation of the Registration of a  
Renewable Energy Facility or New Renewable Energy Facility.**

**Docket No.** \_\_\_\_\_ -

**Facility Owner:** \_\_\_\_\_

<input type="checkbox"/> <b>YES</b>	<input type="checkbox"/> <b>NO</b>	I certify that the facility is in substantial compliance with all federal and state laws, regulations, and rules for the protection of the environment and conservation of natural resources.
<input type="checkbox"/> <b>YES</b>	<input type="checkbox"/> <b>NO</b>	I certify that the facility satisfies the requirements of G.S. 62-133.8(a)(5) or (7) as a (select one):Renewable Energy Facility and that the facility will be operated as a (select one): Renewable Energy Facility  To determine whether your facility meets either of these definitions, you should check your registration order or consult your legal counsel.
<input type="checkbox"/> <b>YES</b>	<input type="checkbox"/> <b>NO</b>	I certify that 1) my organization is not simultaneously under contract with NC GreenPower to sell our RECs emanating from the same electricity production being tracked in NC-RETS; and 2) any renewable energy certificates (whether or not bundled with electric power) sold to an electric power supplier to comply with G.S. 62-133.8 have not, and will not, be remarketed or otherwise resold for any other purpose, including another renewable energy portfolio standard or voluntary purchase of renewable energy certificates in North Carolina (such as NC GreenPower) or any other state or country, and that the electric power associated with the certificates will not be offered or sold with any representation that the power is bundled with renewable energy certificates.
<input type="checkbox"/> <b>YES</b>	<input type="checkbox"/> <b>NO</b>	I certify that I consent to the auditing of my organization's books and records by the Public Staff insofar as those records relate to transactions with North Carolina electric power suppliers, and agree to provide the Public Staff and the Commission access to our books and records, wherever they are located, and to the facility.
<input type="checkbox"/> <b>YES</b>	<input type="checkbox"/> <b>NO</b>	I certify that I am the owner of the renewable energy facility or am duly authorized to act on behalf of the owner for the purpose of this filing.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name – Printed or Typed)

\_\_\_\_\_  
(Date)

**VERIFICATION**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

\_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he or she believes.

WITNESS my hand and notarial seal, this day of \_\_\_\_\_, 20 \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

Signature of Notary Public \_\_\_\_\_

Name of Notary Public – Typed or Printed \_\_\_\_\_

The name of the person who completes and signs the annual certification must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. This original verification must be affixed to the original annual certification, and a copy of this verification must be affixed to the original copy that is submitted to the Commission at:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4325

**R8-67 RENEWABLE ENERGY AND ENERGY EFFICIENCY PORTFOLIO STANDARD (REPS)**

(a) Definitions.

- (1) The following terms shall be defined as provided in G.S. 62-133.8: "Combined heat and power system"; "demand-side management"; "electric power supplier"; "new renewable energy facility"; "renewable energy certificate"; "renewable energy facility"; "renewable energy resource"; and "incremental costs."
- (2) For purposes of determining an electric power supplier's avoided costs, "avoided cost rates" mean an electric power supplier's most recently approved or established avoided cost rates in this state, as of the date the contract is executed, for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978. If the Commission has approved an avoided cost rate for the electric power supplier for the year when the contract is executed, applicable to contracts of the same nature and duration as the contract between the electric power supplier and the seller, that rate shall be used as the avoided cost. Therefore, for example, for a contract by an electric public utility with a term of 15 years, the avoided cost rate applicable to that contract would be the comparable, Commission-approved, 15-year, long-term, levelized rate in effect at the time the contract was executed. In all other cases, the avoided cost shall be a good faith estimate of the electric power supplier's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed, taking into consideration the avoided cost rates then in effect as established by the Commission. In any event, when found by the Commission to be appropriate and in the public interest, a good faith estimate of an electric public utility's avoided cost, levelized over the duration of the contract, determined as of the date the contract is executed, may be used in a particular REPS cost recovery proceeding. Determinations of avoided costs, including estimates thereof, shall be subject to continuing Commission oversight and, if necessary, modification should circumstances so require.
- (3) "Energy efficiency measure" means an equipment, physical, or program change that when implemented results in less use of energy to perform the same function or provide the same level of service. "Energy efficiency measure" does not include demand-side management. It includes energy produced from a combined heat and power system that uses nonrenewable resources to the extent the system:

- (i) Uses waste heat to produce electricity or useful, measurable thermal or mechanical energy at a retail electric customer's facility; and
  - (ii) Results in less energy used to perform the same function or provide the same level of service at a retail electric customer's facility.
- (4) "Year-end number of customer accounts" means the number of accounts within each customer class as of December 31 for a given calendar year determined in a manner approved by the Commission pursuant to subsection (c)(4) or determined in the same manner as that information is reported to the Energy Information Administration, United States Department of Energy, for annual electric sales and revenue reporting.
- (5) "Utility compliance aggregator" is an organization that assists an electric power supplier in demonstrating its compliance with REPS. Such demonstration may include, among other things, filing REPS compliance plans or reports and participating in NC-RETS on behalf of the electric power supplier or a group of electric power suppliers.

(b) REPS compliance plan.

- (1) Each year, beginning in 2008, each electric power supplier or its designated utility compliance aggregator shall file with the Commission the electric power supplier's plan for complying with G.S. 62-133.8(b), (c), (d), (e) and (f). The plan shall cover the calendar year in which the plan is filed and the immediately subsequent two calendar years. At a minimum, the plan shall include the following information:
- (i) a specific description of the electric power supplier's planned actions to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) for each year;
  - (ii) a list of executed contracts to purchase renewable energy certificates (whether or not bundled with electric power), including type of renewable energy resource, expected MWh, and contract duration;
  - (iii) a list of those planned or implemented energy efficiency and demand side management measures that the electric power supplier plans to use toward REPS compliance, including a brief description of each measure, its projected impacts, and a measurement and verification plan if such plan has not otherwise been filed with the Commission;
  - (iv) the projected North Carolina retail sales and year-end number of customer accounts by customer class for each year;
  - (v) the current and projected avoided cost rates for each year;
  - (vi) the projected total and incremental costs anticipated to implement the compliance plan for each year;
  - (vii) a comparison of projected costs to the annual cost caps for each year;
  - (viii) for electric public utilities, an estimate of the amount of the REPS rider and the impact on the cost of fuel and fuel-related costs rider necessary to fully recover the projected costs; and
  - (ix) to the extent not already filed with the Commission, the electric power supplier shall, on or before September 1 of each year, file a renewable energy facility registration statement pursuant to Rule R8-66 for any facility it owns and upon which it is relying as a source of power or RECs in its REPS compliance plan.
- (2) Each electric power supplier shall file in a docket to be established by the Commission, its REPS compliance plan on or before September 1 of each year.
- (3) Approval of the REPS compliance plan shall not constitute an approval of the recovery of costs associated with REPS compliance or a determination that the electric power supplier has complied with G.S. 62-133.8(b), (c), (d), (e), and (f).
- (4) An REPS compliance plan filed by an electric power supplier not subject to Rule R8-60 or Rule R8-60A shall be for information only.

(c) REPS compliance report.

- (1) Each year, beginning in 2009, each electric power supplier or its designated utility compliance aggregator shall file with the Commission a report describing the electric power supplier's compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f) during the previous calendar year. The report shall include all of the following information, including supporting documentation:
- (i) the sources, amounts, and costs of renewable energy certificates, by source, used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f). Renewable energy certificates for energy efficiency may be based on estimates of reduced energy consumption through the implementation of energy efficiency measures, to the extent approved by the Commission;

- (ii) the actual North Carolina retail sales and year-end number of customer accounts by customer class;
  - (iii) the current avoided cost rates and the avoided cost rates applicable to energy received pursuant to long-term power purchase agreements;
  - (iv) the actual total and incremental costs incurred during the calendar year to comply with G.S. 62-133.8(b), (c), (d), (e) and (f);
  - (v) a comparison of the actual incremental costs incurred during the calendar year to the per-account annual charges (in G.S. 62-133.8(g)(4)) applied to its total number of customer accounts as of December 31 of the previous calendar year;
  - (vi) the status of compliance with the requirements of G.S. 62-133.8(b), (c), (d), (e) and (f);
  - (vii) the identification of any renewable energy certificates or energy savings to be carried forward pursuant to G.S. 62-133.8(b)(2)f or (c)(2)f;
  - (viii) the dates and amounts of all payments made for renewable energy certificates; and
  - (ix) for electric membership corporations and municipal electric suppliers, reduced energy consumption achieved in each year after January 1, 2008, through the implementation of energy efficiency or demand-side management programs, along with the results of each program's measurement and verification plan, or other documentation supporting an estimate of the program's energy reductions achieved in the previous year pending implementation of a measurement and verification plan. Supporting documentation shall be retained and made available for audit.
- (2) Each electric public utility shall file its annual REPS compliance report , together with direct testimony and exhibits of expert witnesses, on the same date that it files (1) its cost recovery request under Rule R8-67(e), and (2) the information required by Rule R8-55. The Commission shall consider each electric public utility's REPS compliance report at the hearing provided for in subsection (e) of this rule and shall determine whether the electric public utility has complied with G.S. 62-133.8(b), (d), (e) and (f). Public notice and deadlines for intervention and filing of additional direct and rebuttal testimony and exhibits shall be as provided for in subsection (e) of this rule.
  - (3) Each electric membership corporation and municipal electric supplier or their designated utility compliance aggregator shall file a verified REPS compliance report on or before September 1 of each year. The Commission may issue an order scheduling a hearing to consider the REPS compliance report filed by each electric membership corporation or municipal electric supplier, requiring public notice, and establishing deadlines for intervention and the filing of direct and rebuttal testimony and exhibits.
  - (4) In each electric power supplier's initial REPS compliance report, the electric power supplier shall propose a methodology for determining its cap on incremental costs incurred to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) and fund research as provided in G.S. 62-133.8(h)(1), including a determination of year-end number of customer accounts. The proposed methodology may be specific to each electric power supplier, shall be based upon a fair and reasonable allocation of costs, and shall be consistent with G.S. 62-133.8(h). The electric power supplier may propose a different methodology that meets the above requirements in a subsequent REPS compliance report filing. For electric public utilities, this methodology shall also be used for assessing the per-account charges pursuant to G.S. 62-133.8(h)(5).
  - (5) In any year, an electric power supplier or other interested party may petition the Commission to modify or delay the provisions of G.S. 62-133.8(b), (c), (d), (e) and (f), in whole or in part. The Commission may grant such petition upon a finding that it is in the public interest to do so. If an electric power supplier is the petitioner, it shall demonstrate that it has made a reasonable effort to meet the requirements of such provisions. Retroactive modification or delay of the provisions of G.S. 62-133.8(b), (c), (d), (e) or (f) shall not be permitted. The Commission shall allow a modification or delay only with respect to the electric power supplier or group of electric power suppliers for which a need for a modification or delay has been demonstrated.
  - (6) A group of electric power suppliers may aggregate their REPS obligations and compliance efforts provided that all suppliers in the group are subject to the same REPS obligations and compliance methods as stated in either G.S. 133.8(b) or (c). If such a group of electric power suppliers fails to meet its REPS obligations, the Commission shall find and conclude that each supplier in the group, individually, has failed to meet its REPS obligations.

(d) Renewable energy certificates.

- (1) Renewable energy certificates (whether or not bundled with electric power) claimed by an electric power supplier to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) must have been earned after January 1, 2008; must have been purchased by the electric power supplier within three years of the date they were earned; shall be retired when used for compliance; and shall not be used for any other purpose. A renewable energy certificate may be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f) in the year in which it is acquired or obtained by an electric power supplier or in any subsequent year; provided, however, that an electric public utility must use a renewable energy certificate to comply with G.S. 62-133.8(b), (d), (e) and (f) within seven years of cost recovery pursuant to subsection (e)(10) of this Rule.
- (2) For any facility that uses both renewable energy resources and nonrenewable energy resources to produce energy, the facility shall earn renewable energy certificates based only upon the energy derived from renewable energy resources in proportion to the relative energy content of the fuels used.
- (3) Renewable energy certificates earned by a renewable energy facility after the date the facility's registration is revoked by the Commission shall not be used to comply with G.S. 62-133.8(b), (c), (d), (e) and (f).
- (4) Renewable energy certificates must be issued by, or imported into, the renewable energy certificate tracking system established in Rule R8-67(h) in order to be eligible RECs under G.S. 62-133.8.

(e) Cost recovery.

- (1) For each electric public utility, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.8(h) to review the costs incurred by the electric public utility to comply with G.S. 62-133.8(b), (d), (e) and (f). The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.
- (2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable incremental costs prudently incurred to comply with G.S. 62-133.8(b), (d), (e) and (f). The cost of an unbundled renewable energy certificate, to the extent that it is reasonable and prudently incurred, is an incremental cost and has no avoided cost component.
- (3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.
- (4) Rates set pursuant to this section shall be recovered during a fixed cost recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.
- (5) The incremental costs will be further modified through the use of an REPS experience modification factor (REPS EMF) rider. The REPS EMF rider will reflect the difference between reasonable and prudently incurred incremental costs and the revenues that were actually realized during the test period under the REPS rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the incremental costs up to thirty (30) days prior to the date of the hearing, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual REPS cost recovery hearing.
- (6) The REPS EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.
- (7) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred incremental costs to be refunded to a utility's customers through operation of the REPS EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.
- (8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonable and prudently-incurred incremental costs and related revenues realized under rates in effect.
- (9) The incremental costs to be recovered by an electric public utility in any cost recovery period from its North Carolina retail customers to comply with G.S. 62-133.8(b), (d), (e), and (f) shall not exceed the per-account charges set forth in G.S. 62-133.8(h)(4) applied to the electric public utility's year-end number of customer accounts determined as of December 31 of the previous calendar year. These annual charges shall be collected through fixed monthly charges. Each electric public utility shall ensure that the incremental costs recovered under the REPS rider and REPS EMF rider during the cost recovery period, inclusive of gross receipts tax and the regulatory fee, from any given customer account do not exceed the applicable per-account charges set forth in G.S. 62-133.8(h)(4).
- (10) Incremental costs incurred during a calendar year toward a current or future year's REPS obligation may be recovered by an electric public utility in any 12-month recovery period up to and including the 12-month recovery period in which the RECs associated with any incremental costs are retired toward the prior year's

REPS obligation, as long as the electric public utility's charges to customers do not exceed, in any 12-month period, the per-account annual charges provided in G.S. 62-133.8(h)(4). A renewable energy certificate must be used for compliance and retired within seven years of the year in which the electric public utility recovers the related costs from customers. An electric public utility shall refund to customers with interest the costs for renewable energy certificates that are not used for compliance within seven years.

- (11) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the REPS compliance report for the 12-month test period established in subsection (3) normalized, as appropriate, consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.
  - (12) The electric public utility shall publish a notice of the annual hearing for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.8(h) and setting forth the time and place of the hearing.
  - (13) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.
  - (14) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.
  - (15) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.
  - (16) The burden of proof as to whether the costs were reasonable and prudently incurred shall be on the electric public utility.
- (f) Contracts with owners of renewable energy facilities.
- (1) The terms of any contract entered into between an electric power supplier and a new solar electric facility or new metered solar thermal energy facility shall be of sufficient length to stimulate development of solar energy.
  - (2) Each electric power supplier shall include appropriate language in all agreements for the purchase of renewable energy certificates (whether or not bundled with electric power) prohibiting the seller from remarketing the renewable energy certificates being purchased by the electric power supplier.
- (g) Metering of renewable energy facilities.
- (1) Except as provided below, for the purpose of receiving renewable energy certificate issuance in NC-RETS, the electric power generated by a renewable energy facility shall be measured by an electric meter supplied by and read by an electric power supplier. Facilities whose renewable energy certificates are issued in a tracking system other than NC-RETS shall be subject to the requirements of the applicable state commission and/or tracking system.
  - (2) The electric power generated by an inverter-based solar photovoltaic (PV) system with a nameplate capacity of 10 kW or less may be estimated using generally accepted analytical tools.
  - (3) The electric power generated by a renewable energy facility interconnected on the customer's side of the utility meter at a customer's location may be measured by (1) an ANSI-certified electric meter not provided by an electric power supplier provided that the owner of the meter complies with the meter testing requirements of Rule R8-13, or (2) another industry-accepted, auditable and accurate metering, controls, and verification system. The data provided by such meter or system may be read and self-reported by the owner of the renewable energy facility, subject to audit by the Public Staff. The owner of the meter shall retain for audit for 10 years the energy output data.
  - (4) Thermal energy produced by a combined heat and power system or solar thermal energy facility shall be the thermal energy recovered and used for useful purposes other than electric power production. The useful thermal energy may be measured by meter, or if that is not practicable, by other industry-accepted means that show what measurable amount of useful thermal energy the system or facility is designed and operated to produce and use. Renewable energy certificates shall be earned based on one certificate for every 3,412,000 British thermal units (Btu) of useful thermal energy produced. Meter devices, if used, shall be located so as to measure the actual thermal energy consumed by the load served by the facility. Thermal

energy output that is used as station power or to process the facility's fuel is not eligible for RECs. Thermal energy production data, whether metered or estimated, shall be retained for audit for 10 years.

(h) North Carolina Renewable Energy Certificate Tracking System (NC-RETS)

(1) Definitions

- (i) "Balancing area operator" means an electric power supplier that has the responsibility to act as the balancing authority for a portion of the regional transmission grid, including maintaining the load-to-generation balance, accounting for energy delivered into and exported out of the area, and supporting interconnection frequency in real time.
- (ii) "Multi-fuel facility" means a renewable energy facility that produces energy using more than one fuel type, potentially relying on a fuel that does not qualify for REC issuance in North Carolina.
- (iii) "Participant" means a person or organization that opens an account in NC-RETS.
- (iv) "Qualifying thermal energy output" is the useful thermal energy: (1) that is made available to an industrial or commercial process (net of any heat contained in condensate return and/or makeup water); (2) that is used in a heating application (e.g., space heating, domestic hot water heating); or (3) that is used in a space cooling application (i.e., thermal energy used by an absorption chiller).

- (2) A renewable energy certificate (REC) tracking system, to be known as NC-RETS, is established by the Commission. NC-RETS shall issue, track, transfer and retire RECs. It shall calculate each electric power supplier's REPS obligation and report each electric power supplier's REPS accomplishments, consistent with the compliance report filed under Rule R8-67(c). NC-RETS shall be administered by a third-party vendor selected by the Commission. Only RECs issued by or imported into NC-RETS are qualifying RECs under G.S. 62-133.8.
- (3) Each electric power supplier shall be a participant in NC-RETS and shall provide data to NC-RETS to calculate its REPS obligation and to demonstrate its compliance with G.S. 62-133.8. An electric power supplier may select a utility compliance aggregator to participate in NC-RETS on its behalf and file REPS compliance plans and compliance reports, but the supplier shall nonetheless remain responsible for its own compliance. For reporting purposes, an electric power supplier or its utility compliance aggregator may aggregate the supplier's compliance obligations and accomplishments with those of other suppliers that are subject to the same obligations under G.S. 62-133.8.
- (4) Each renewable energy facility or new renewable energy facility registered by the Commission under Rule R8-66 shall participate in NC-RETS in order to have RECs issued, or in another REC tracking system in order to have RECs issued and transferred into NC-RETS, but no facility's meter data for the same time period shall be used for simultaneous REC issuance in two such systems. Beginning June 1, 2011, renewable energy facilities registered in NC-RETS may only enter historic energy production data for REC issuance that goes back up to two years from the current date. Facilities that produce energy using one or more renewable energy resource(s) and another resource that does not qualify toward REPS compliance under G.S. 62-133.8 shall calculate on a monthly basis and provide to NC-RETS the percentage of energy output attributable to each fuel source. NC-RETS will issue RECs only for energy emanating from sources that qualify under G.S. 62-133.8.
- (5) Each balancing area operator shall provide monthly electric generation production data to NC-RETS for renewable and new renewable energy facilities that are interconnected to the operator's electric transmission system. Such balancing area operator shall retain documentation verifying the production data for audit by the Public Staff.
- (6) Each electric power supplier that has registered renewable energy facilities or new renewable energy facilities interconnected with its electric distribution system and that reads the electric generation production meters for those facilities shall provide monthly the facilities' energy output to NC-RETS, and shall retain for audit for 10 years that energy output data. Municipalities and electric membership corporations may elect to have the facilities' production data reported to NC-RETS and retained for audit by a utility compliance aggregator.
- (7) A renewable energy facility or new renewable energy facility that produces thermal energy that qualifies for RECs shall report the facility's qualifying thermal energy output to NC-RETS at least every 12 months. A renewable energy facility or new renewable energy facility that reports its data pursuant to Rule R8-67(g)(3) shall report its energy output to NC-RETS at least every 12 months.
- (8) The owner of an inverter-based solar photovoltaic system with a nameplate capacity of 10 kW or less may estimate its energy output using generally accepted analytical tools pursuant to Rule R8-67(g)(2). Such an

- owner, or its agent, of this kind of facility shall report the facility's energy output to NC-RETS at least every 12 months.
- (9) All energy output and fuel data for multi-fuel facilities, including underlying documentation, calculations, and estimates, shall be retained for audit for at least ten years immediately following the provision of the output data to NC-RETS or another tracking system, as appropriate.
  - (10) Each electric power supplier that complies with G.S. 62-133.8 by implementing energy efficiency or demand-side management programs shall use NC-RETS to report the energy savings of those programs. Municipal power suppliers and electric membership corporations may elect to have their energy savings from their energy efficiency and demand-side management programs reported to NC-RETS by a utility compliance aggregator, and to have their reported savings consolidated with the reported savings from other municipal power suppliers or electric membership corporations if and as necessary to permit aggregate reporting through their utility compliance aggregator. Records regarding which electric power supplier achieved the energy efficiency and demand-side management, the programs that were used, and the year in which it was achieved, shall be retained for audit.
  - (11) All Commission-approved costs of developing and operating NC-RETS shall be allocated among all electric power suppliers based upon their respective share of the total megawatt-hours of retail electricity sales in North Carolina in the previous calendar year. Each electric power supplier, or its utility compliance aggregator, shall, within 60 days of NC-RETS beginning operations, and by June 1 of each subsequent year, enter its previous year's retail electricity sales into NC-RETS, which sales will be used by NC-RETS to calculate each electric power supplier's REPS obligations and NC-RETS charges. NC-RETS shall update its billings beginning each July based on retail sales data for the previous calendar year. Such NC-RETS charges shall be deemed to be costs that are reasonable, prudent, incremental, and eligible for recovery through each electric public utility's annual rider established pursuant to G.S. 62-133.8(h).
  - (12) Each account holder in NC-RETS shall pay the NC-RETS administrator for service according to the following fee schedule:
    - (i) \$0.01 for each REC export to an account residing in a different REC tracking system.
    - (ii) \$0.01 for each REC retired for reasons other than compliance with G.S. 62-133.8.
  - (13) The Commission shall adopt NC-RETS Operating Procedures. The Commission shall establish an NC-RETS Stakeholder Group that shall meet from time to time and which may recommend changes to the NC-RETS Operating Procedures and NC-RETS.
  - (14) All data retention requirements of this Rule R8-67(h) may be accomplished via retention of electronic documents.

*(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. E-43, Sub 6, E-100, Sub 113, EC-33, Sub 58, EC-83, Sub 1, 5/14/2012; NCUC Docket No. E-100, Sub 191; 11/21/2023.)*

#### **R8-68 INCENTIVE PROGRAMS FOR ELECTRIC PUBLIC UTILITIES AND ELECTRIC MEMBERSHIP CORPORATIONS, INCLUDING ENERGY EFFICIENCY AND DEMAND-SIDE MANAGEMENT PROGRAMS**

(a) Purpose. — The purpose of this rule is to establish guidelines for the application of G.S. 62-140(c) to electric public utilities and electric membership corporations and G.S. 62-133.9 to electric public utilities that are consistent with the directives of those statutes and consistent with the public policy of this State as set forth in G.S. 62-2.

(b) Definitions.

- (1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in Rule R8-67(a), or if not defined therein, then as set forth in G.S. 62-3, G.S. 62-133.8(a) and G.S. 62-133.9(a).
- (2) "Consideration" means anything of economic value paid, given, or offered to any person by an electric public utility or electric membership corporation (regardless of the source of the "consideration") including, but not limited to: payments to manufacturers, builders, equipment dealers, contractors including HVAC contractors, electricians, plumbers, engineers, architects, and/or homeowners or owners of multiple housing units or commercial establishments; cash rebates or discounts on equipment/appliance sales, leases, or service installation; equipment/ appliances sold below fair market value or below their cost to the electric public utility or electric membership corporation; low interest loans, defined as loans at an interest rate lower than that available to the person to whom the proceeds of the loan are made available; studies on energy usage; model homes; and payment of trade show or advertising costs. Excepted from the definition

of "consideration" are favors and promotional activities that are de minimis and nominal in value and that are not directed at influencing fuel choice decisions for specific applications or locations.

- (3) "Costs" include, but are not limited to, all capital costs (including cost of capital and depreciation expenses), administrative costs, implementation costs, participation incentives, and operating costs. "Costs" does not include utility incentives.
- (4) "Electric public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for producing, transporting, distributing, or furnishing electric service to or for the public for consumption. For purposes of this rule, "electric public utility" does not include electric membership corporations.
- (5) "Net lost revenues" means the revenue losses, net of marginal costs avoided at the time of the lost kilowatt-hour sale(s), or in the case of purchased power, in the applicable billing period, incurred by the electric public utility as the result of a new demand-side management or energy efficiency measure. Net lost revenues shall also be net of any increases in revenues resulting from any activity by the electric public utility that causes a customer to increase demand or energy consumption, whether or not that activity has been approved pursuant to this Rule R8-68.
- (6) "New 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 to any such measure. Cost recovery for "new demand-side management measures" and "new energy efficiency measures" is subject to G.S. 62-133.9.
- (7) "Participation incentive" means any consideration associated with a new demand-side management or energy efficiency measure.
- (8) "Program" or "measure" means any electric public utility action or planned action that involves the offering of consideration.
- (9) "Utility incentives" means incentives as described in G.S. 62-133.9(d)(2)a-c.

(c) Filing for Approval.

- (1) Application of Rule.
  - (i) Prior to an electric public utility or electric membership corporation implementing any measure or program, the purpose or effect of which is to directly or indirectly alter or influence the decision to use the electric public utility's or electric membership corporation's service for a particular end use or to directly or indirectly encourage the installation of equipment that uses the electric public utility's or electric membership corporation's service, and prior to any electric power supplier to which Rule R8-60 applies implementing any new or modified demand-side management or energy efficiency measure, the electric public utility or the electric membership corporation, as applicable, shall obtain Commission approval, regardless of whether the measure or program is offered at the expense of the shareholders, ratepayers, or third-party.
  - (ii) This requirement shall also apply to measures and programs that are administered, promoted, or funded by the electric public utility's or electric membership corporation's subsidiaries, affiliates, or unregulated divisions or businesses if the electric public utility or electric membership corporation has control over the entity offering or is involved in the measure or program and an intent or effect of the measure or program is to adopt, secure, or increase the use of the electric public utility's public utility services.
  - (iii) Any application for approval by an electric public utility or electric membership corporation of a measure or program under this rule shall be made in a unique sub-docket of the electric public utility's or electric membership corporation's docket number.
- (2) Filing Requirements. — Each application for the approval shall include:
  - (i) Cover Page. — The electric public utility or electric membership corporation shall attach to the front of an application a cover sheet generally describing:
    - a. the measure or program;
    - b. the consideration to be offered;
    - c. the anticipated total cost of the measure or program;
    - d. the source and amount of funding to be used; and
    - e. the proposed classes of persons to whom it will be offered.
  - (ii) Description. — The electric public utility or electric membership corporation shall provide a description of each measure and program, and include the following:
    - a. the program or measure's objective;

- b. the duration of the program or measure;
  - c. the targeted sector and eligibility requirements;
  - d. examples of all communication materials to be used with the measure or program and the related cost for each program year;
  - e. the estimated number of participants;
  - f. the impact that each measure or program is expected to have on the electric public utility or electric membership corporation, its customer body as a whole, and its participating North Carolina customers; and
  - g. any other information the electric public utility or electric membership corporation believes is relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.
- (iii) Additionally, an electric public utility shall include or describe:
- a. the measure's proposed marketing plan, including a description of market barriers and how the electric public utility intends to address them;
  - b. the total market potential and estimated market growth throughout the duration of the program;
  - c. the estimated summer and winter peak demand reduction by unit metric and in the aggregate by year;
  - d. the estimated energy reduction per appropriate unit metric and in the aggregate by year;
  - e. the estimated lost energy sales per appropriate unit metric and in the aggregate by year; and
  - f. the estimated load shape impacts.
- (iv) **Costs and Benefits.** — The electric public utility or electric membership corporation shall provide the following information on the costs and benefits of each proposed measure or program: (a) the estimated total and per unit cost and benefit of the measure or program to the electric public utility or electric membership corporation, reported by type of benefit and expenditure (e.g., capital cost expenditures; administrative costs; operating costs; participation incentives, such as rebates and direct payments; and communications costs, and the costs of measurement and verification) and the planned accounting treatment for those costs and benefits; (b) the type, the maximum and minimum amount of participation incentives to be made to any party, and the reason for any participation incentives and other consideration and to whom they will be offered, including schedules listing participation incentives and other consideration to be offered; and (c) service limitations or conditions planned to be imposed on customers who do not participate in the measure. With respect to communications costs, the electric public utility or electric membership corporation shall provide detailed cost information on communications materials related to each proposed measure or program. Such costs shall be included in the Commission's consideration of the total cost of the measure or program and whether the total cost of the measure or program is reasonable in light of the benefits.
- (v) **Cost-Effectiveness Evaluation.** — The electric public utility or electric membership corporation shall provide the economic justification for each proposed measure or program, including the results of all cost-effectiveness tests. Cost-effectiveness evaluations performed by the electric public utility or electric membership corporation should be based on direct or quantifiable costs and benefits and should include, at a minimum, an analysis of the Total Resource Cost Test, the Participant Test, the Utility Cost Test, and the Ratepayer Impact Measure Test. In addition, an electric public utility shall describe the methodology used to produce the impact estimates as well as, if appropriate, methodologies considered and rejected in the interim leading to the final model specification.
- (vi) **Commission Guidelines Regarding Incentive Programs.** — The electric public utility or electric membership corporation shall provide the information necessary to comply with the Commission's Revised Guidelines for Resolution of Issues Regarding Incentive Programs, issued by Commission Order on March 27, 1996, in Docket No. M-100, Sub 124, set out as an Appendix to Chapter 8 of these rules.
- (vii) **Integrated Resource Plan.** — When seeking approval of a new demand-side management or new energy efficiency measure, the electric public utility shall explain in detail how the measure is consistent with the electric public utility's integrated resource plan filings pursuant to Rule R8-60.

- (viii) Other. — Any other information the electric public utility or electric membership corporation believes relevant to the application, including information on competition known by the electric public utility or the electric membership corporation.
- (3) Additional Filing Requirements. — In addition to the information listed in subsection (c)(2), an electric public utility filing for approval of a new or modified demand-side management or energy efficiency measure shall provide the following:
- (i) Costs and Benefits. — The electric public utility shall describe:
    - a. any costs incurred or expected to be incurred in adopting and implementing a measure or program to be considered for recovery through the annual rider under G.S. 62-133.9;
    - b. estimated total costs to be avoided by the measure by appropriate capacity, energy and measure unit metric and in the aggregate by year;
    - c. estimated participation incentives by appropriate capacity, energy, and measure unit metric and in the aggregate by year;
    - d. how the electric public utility proposes to allocate the costs and benefits of the measure among the customer classes and jurisdictions it serves;
    - e. the capitalization period to allow the utility to recover all costs or those portions of the costs associated with a new program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1).
    - f. The electric public utility shall also include the estimated and known costs of measurement and verification activities pursuant to the Measurement and Verification Reporting Plan described in paragraph (ii).
  - (ii) Measurement and Verification Reporting Plan for New Demand-Side Management and Energy Efficiency Measures. — The electric public utility shall be responsible for the measurement and verification of energy and peak demand savings and may use the services of an independent third party for such purposes. The costs of implementing the measurement and verification process may be considered as operating costs for purposes of Commission Rule R8-69. In addition, the electric public utility shall:
    - a. describe the industry-accepted methods to be used to evaluate, measure, verify, and validate the energy and peak demand savings estimated in (2)(iii)c and d above;
    - b. provide a schedule for reporting the savings to the Commission;
    - c. describe the methodologies used to produce the impact estimates, as well as, if appropriate, the methodologies it considered and rejected in the interim leading to final model specification; and
    - d. identify any third party and include all of the costs of that third party, if the electric public utility plans to utilize an independent third party for purposes of measurement and verification.
  - (iii) Cost recovery mechanism. — The electric public utility shall describe the proposed method of cost recovery from its customers.
  - (iv) Tariffs or rates. — The electric public utility shall provide proposed tariffs or modifications to existing tariffs that will be required to implement each measure or program.
  - (v) Utility Incentives. — When seeking approval of new demand-side management and energy efficiency measures, the electric public utility shall indicate whether it will seek to recover any utility incentives, including, if appropriate, net lost revenues, in addition to its costs. If the electric public utility proposes recovery of utility incentives related to the proposed new demand-side management or energy efficiency measure, it shall describe the utility incentives it desires to recover and describe how its measurement and verification reporting plan will demonstrate the results achieved by the proposed measure. If the electric public utility proposes recovery of net lost revenues, it shall describe estimated net lost revenues by appropriate capacity, energy and measure unit metric and in the aggregate by year. If the electric public utility seeks recovery of utility incentives, including net lost revenues, apart from its recovery of its costs under G.S. 62-133.9, it shall file estimates of the utility incentives and the net lost revenues associated with the proposed measure for each year of the proposed recovery. If the electric public utility seeks only the recovery of net lost revenues apart from its recovery of combined costs and utility incentives, it shall file estimates of net lost revenues for each year of the proposed recovery period.

(d) Procedure.

- (1) Automatic Tariff Suspension. – If an electric public utility files a proposed tariff or tariff amendment in connection with an application for approval of a measure or program, the tariff filing shall be automatically suspended pursuant to G.S. 62-134 pending investigation, review, and decision by the Commission.
- (2) Service and Response. — The electric public utility or electric membership corporation filing for approval of a measure or program shall serve a copy of its filing on the Public Staff; the Attorney General; the natural gas utilities, electric public utilities, and electric membership corporations operating in the filing electric public utility's or electric membership corporation's certified territory; and any other party that has notified the electric public utility or electric membership corporation in writing that it wishes to be served with copies of all filings. If a party consents, the electric public utility or electric membership corporation may serve it with electronic copies of all filings. Those served, and others learning of the application, shall have thirty (30) days from the date of the filing in which to petition for intervention pursuant to Rule R1-19, file a protest pursuant to Rule R1-6, or file comments on the proposed measure or program. In comments, any party may recommend approval or disapproval of the measure or program or identify any issue relative to the program application that it believes requires further investigation. The filing electric public utility or electric membership corporation shall have the opportunity to respond to the petitions, protests, or comments within ten (10) days of their filing. If any party raises an issue of material fact, the Commission shall set the matter for hearing. The Commission may determine the scope of this hearing.
- (3) Notice and Schedule. — If the application is set for hearing, the Commission shall require notice, as it considers appropriate, and shall establish a procedural schedule for prefiled testimony and rebuttal testimony after a discovery period of at least 45 days. Where possible, the hearing shall be held within ninety (90) days from the application filing date.

(e) Scope of Review. — In determining whether to approve in whole or in part a new measure or program or changes to an existing measure or program, the Commission may consider any information it determines to be relevant, including any of the following issues:

- (1) Whether the proposed measure or program is in the public interest and benefits the electric public utility's or electric membership corporation's overall customer body;
- (2) Whether the proposed measure or program unreasonably discriminates among persons receiving or applying for the same kind and degree of service;
- (3) Evidence of consideration or compensation paid by any competitor, regulated or unregulated, of the electric public utility or electric membership corporation to secure the installation or adoption of the use of such competitor's services;
- (4) Whether the proposed measure or program promotes unfair or destructive competition or is inconsistent with the public policy of this State as set forth in G.S. 62-2 and G.S. 62-140; and
- (5) The impact of the proposed measure or program on peak loads and load factors of the filing electric public utility or electric membership corporation, and whether it encourages energy efficiency.

(f) Cost Recovery for New Measures. — Approval of a program or measure under Commission Rule R8-68 does not constitute approval of rate recovery of the costs of the program or measure. With respect to new demand-side management and energy efficiency measures, the costs of those new measures, approved by application of this rule, that are found to be reasonable and prudently incurred shall be recovered through the annual rider described in G.S. 62-133.9 and Rule R8-69. The Commission may consider in the annual rider proceeding whether to approve the inclusion of any utility incentive pursuant to G.S. 62-133.9(d)(2)a-c. in the annual rider.

(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. M-100, Sub 140, 12/03/13.)

## **R8-69 COST RECOVERY FOR DEMAND-SIDE MANAGEMENT AND ENERGY EFFICIENCY MEASURES OF ELECTRIC PUBLIC UTILITIES**

(a) Definitions.

- (1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in Rules R8-67 and R8-68, or if not defined therein, then as set forth in G.S. 62-133.8(a) and G.S. 62-133.9(a).
- (2) "DSM/EE rider" means a charge or rate established by the Commission annually pursuant to G.S. 62-133.9(d) to allow the electric public utility to recover all reasonable and prudent costs incurred in adopting and implementing new demand-side management and energy efficiency measures after August 20, 2007, as well as, if appropriate, utility incentives, including net lost revenues.

- (3) "Large commercial customer" means any commercial customer that has an annual energy usage of not less than 1,000,000 kilowatt-hours (kWh), measured in the same manner as the electric public utility that serves the commercial customer measures energy for billing purposes.
- (4) "Rate period" means the period during which the DSM/EE rider established under this rule will be in effect. For each electric public utility, this period will be the same as the period during which the rider established under Rule R8-55 is in effect.
- (5) "Test period" shall be the same for each public utility as its test period for purposes of Rule R8-55, unless otherwise ordered by the Commission.

(b) Recovery of Costs.

- (1) Each year the Commission shall conduct a proceeding for each electric public utility to establish an annual DSM/EE rider. The DSM/EE rider shall consist of a reasonable and appropriate estimate of the expenses expected to be incurred by the electric public utility, during the rate period, for the purpose of adopting and implementing new demand-side management and energy efficiency measures previously approved pursuant to Rule R8-68. The expenses will be further modified through the use of a DSM/EE experience modification factor (DSM/EE EMF) rider. The DSM/EE EMF rider will reflect the difference between the reasonable expenses prudently incurred by the electric public utility during the test period for that purpose and the revenues that were actually realized during the test period under the DSM/EE rider then in effect. Those expenses approved for recovery shall be allocated to the North Carolina retail jurisdiction consistent with the system benefits provided by the new demand-side management and energy efficiency measures and shall be assigned to customer classes in accordance with G.S. 62-133.9(e) and (f).
- (2) Upon the request of the electric public utility, the Commission shall also incorporate the experienced over-recovery or under-recovery of costs up to thirty (30) days prior to the date of the hearing in its determination of the DSM/EE EMF rider, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual DSM/EE rider hearing.
- (3) Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred costs to be refunded to an electric public utility's customers through operation of the DSM/EE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate. The beginning date for measurement of such interest shall be the effective date of the DSM/EE EMF rider in each annual proceeding, unless otherwise determined by the Commission.
- (4) The burden of proof as to whether the costs were reasonably and prudently incurred shall be on the electric public utility.
- (5) Any costs incurred for adopting and implementing measures that do not constitute new demand-side management or energy efficiency measures are ineligible for recovery through the annual rider established in G.S. 62-133.9.
- (6) Except as provided in (c)(3) of this rule, each electric public utility may implement deferral accounting for costs considered for recovery through the annual rider. At the time the Commission approves a new demand-side management or energy efficiency measure under Rule R8-68, the electric public utility may defer costs of adopting and implementing the new measure in accordance with the Commission's approval order under Rule R8-68. Subject to the Commission's review, the electric public utility may begin deferring the costs of adopting and implementing new demand-side management or energy efficiency measures six (6) months prior to the filing of its application for approval under Rule R8-68, except that the Commission may consider earlier deferral of development costs in exceptional cases, where such deferral is necessary to develop an energy efficiency measure. Deferral accounting, however, for any administrative costs, general costs, or other costs not directly related to a new demand-side management or energy efficiency measure must be approved prior to deferral. The balance in the deferral account, net of deferred income taxes, may accrue a return at the net-of-tax rate of return approved in the electric public utility's most recent general rate proceeding. The return so calculated will be adjusted in any rider calculation to reflect necessary recoveries of income taxes. This return is not subject to compounding. The accrual of such return of on any under-recovered or over-recovered balance set in an annual proceeding for recovery or refund through a DSM/EE EMF rider shall cease as of the effective date of the DSM/EE EMF rider in that proceeding, unless otherwise determined by the Commission. However, deferral accounting of costs shall not affect the Commission's authority under this rule to determine whether the deferred costs may be recovered.

(c) Utility Incentives.

- (1) With respect to a new demand-side management or energy efficiency measure previously approved under Rule R8-68, the electric public utility may, in its annual filing, apply for recovery of any utility incentives,

including, if appropriate, net lost revenues, identified in its application for approval of the measure. The Commission shall determine the appropriate ratemaking treatment for any such utility incentives.

- (2) When requesting inclusion of a utility incentive in the annual rider, the electric public utility bears the burden of proving its calculations of those utility incentives and the justification for including them in the annual rider, either through its measurement and verification reporting plan or through other relevant evidence.
- (3) An electric public utility shall not be permitted to implement deferral accounting or the accrual of a return for utility incentives unless the Commission approves an annual rider that provides for recovery of an integrated amount of costs and utility incentives. In that instance, the Commission shall determine the extent to which deferral accounting and the accrual of a return will be allowed.

(d) Special Provisions for Industrial or Large Commercial Customers.

- (1) Pursuant to G.S. 62-133.9(f), any industrial customer or large commercial customer may notify its electric power supplier that: (i) it has implemented or, in accordance with stated, quantifiable goals, will implement alternative demand-side management or energy efficiency measures; and (ii) it elects not to participate in demand-side management or energy efficiency measures for which cost recovery is allowed under G.S. 62-133.9. Any such customer shall be exempt from any annual rider established pursuant to this rule after the date of notification.
- (2) At the time the electric public utility petitions for the annual rider, it shall provide the Commission with a list of those industrial or large commercial customers that have opted out of participation in the new demand-side management or energy efficiency measures. The electric public utility shall also provide the Commission with a listing of industrial or large commercial customers that have elected to participate in new measures after having initially notified the electric public utility that it declined to participate.
- (3) Any customer that opts out but subsequently elects to participate in a new demand-side management or energy efficiency measure or program loses the right to be exempt from payment of the rider for five years or the life of the measure or program, whichever is longer. For purposes of this subsection, "life of the measure or program" means the capitalization period approved by the Commission to allow the utility to recover all costs or those portions of the costs associated with a program or measure to the extent that those costs are intended to produce future benefits as provided in G.S. 62-133.9(d)(1).

(e) Annual Proceeding.

- (1) For each electric public utility, the Commission shall schedule an annual rider hearing pursuant to G.S. 62-133.9(d) to review the costs incurred by the electric public utility in the adoption and implementation of new demand-side management and energy efficiency measures during the test period, the revenues realized during the test period through the operation of the annual rider, and the costs expected to be incurred during the rate period and shall establish annual DSM/EE and DSM/EE EMF riders to allow the electric public utility to recover all costs found by the Commission to be recoverable. The Commission may also approve, if appropriate, the recovery of utility incentives, including net lost revenues, pursuant to G.S. 62-133.9(d)(2) in the rider.
- (2) The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55. Except as otherwise ordered by the Commission each electric public utility shall file its application for recovery of costs and appropriate utility incentives at the same time that it files the information required by Rule R8-55.
- (3) The DSM/EE EMF rider will remain in effect for a fixed 12-month period following establishment and will continue as a rider to rates established in any intervening general rate case proceeding.

(f) Filing Requirements and Procedure.

- (1) Each electric public utility shall submit to the Commission all of the following information and data in its application:
  - (i) Projected North Carolina retail monthly kWh sales for the rate period.
  - (ii) For each measure for which cost recovery is requested through the DSM/EE rider:
    - a. total expenses expected to be incurred during the rate period in the aggregate and broken down by type of expenditure, per appropriate capacity, energy and measure unit metric and the proposed jurisdictional allocation factors;
    - b. total costs that the utility does not expect to incur during the rate period as a direct result of the measure in the aggregate and broken down by type of cost, per appropriate capacity, energy and measure unit metric, and the proposed jurisdictional allocation

- factors, as well as any changes in the estimated future amounts since last filed with the Commission;
    - c. a description of the measurement and verification activities to be conducted during the rate period, including their estimated costs;
    - d. total expected summer and winter peak demand reduction per appropriate measure unit metric and in the aggregate;
    - e. total expected energy reduction in the aggregate and per appropriate measure unit metric.
  - (iii) For each measure for which cost recovery is requested through the DSM/EE EMF rider:
    - a. total expenses for the test period in the aggregate and broken down by type of expenditure, per appropriate capacity, energy and measure unit metric and the proposed jurisdictional allocation factors;
    - b. total costs that the utility did not incur for the test period as a direct result of the measure in the aggregate and broken down by type of cost, per appropriate capacity, energy and measure unit metric, and the proposed jurisdictional allocation factors, as well as any changes in the estimated future amounts since last filed with the Commission;
    - c. a description of, the results of, and the costs of all measurement and verification activities conducted in the test period;
    - d. total summer and winter peak demand reduction in the aggregate and per appropriate measure unit metric, as well as any changes in estimated future amounts since last filed with the Commission;
    - e. total energy reduction in the aggregate and per appropriate measure unit metric, as well as any changes in the estimated future amounts since last filed with the Commission;
    - f. a discussion of the findings and the results of the program or measure;
    - g. evaluations of event-based programs including the date, weather conditions, event trigger, number of customers notified and number of customers enrolled; and
    - h. a comparison of impact estimates presented in the measure application from the previous year, those used in reporting for previous measure years, and an explanation of significant differences in the impacts reported and those previously found or used.
  - (iv) For each measure for which recovery of utility incentives is requested, a detailed explanation of the method proposed for calculating those utility incentives, the actual calculation of the proposed utility incentives, and the proposed method of providing for their recovery and true-up through the annual rider. If recovery of net lost revenues is requested, the total net lost kWh sales and net lost revenues per appropriate capacity, energy, and program unit metric and in the aggregate for the test period, and the proposed jurisdictional allocation factors, as well as any changes in estimated future amounts since last filed with the Commission.
  - (v) Actual revenues produced by the DSM/EE rider and the DSM/EE EMF rider established by the Commission during the test period and for all available months immediately preceding the rate period.
  - (vi) The requested DSM/EE rider and DSM/EE EMF rider and the basis for their determination.
  - (vii) Projected North Carolina retail monthly kWh sales for the rate period for all industrial and large commercial accounts, in the aggregate, that are not assessed the rider charges as provided in this rule.
  - (viii) All workpapers supporting the calculations and adjustments described above.
- (2) Each electric public utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed in this proceeding, and any change in rates proposed by the electric public utility, by the date specified in subdivision (e)(2) of this rule. An electric public utility may request a rider lower than that to which its filed information suggests that it is entitled.
- (3) The electric public utility shall publish a notice of the annual hearing for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least thirty (30) days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.9(d) and setting forth the time and the place of the hearing.

- (4) Persons having an interest in any hearing may file a petition to intervene at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.
- (5) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.
- (6) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.

*(NCUC Docket No. E-100, Sub 113, 2/29/08; NCUC Docket No. E-100, Sub 113, 3/13/08; NCUC Docket No. E-100, Subs 113 & 121, 1/31/11; NCUC Docket No. E-100, Sub 160, 10/11/18.)*

**R8-70 COST RECOVERY FOR COSTS INCURRED BY AN ELECTRIC PUBLIC UTILITY TO ACQUIRE, OPERATE AND MAINTAIN INTEREST IN ELECTRIC GENERATING FACILITIES PURCHASED FROM A JOINT MUNICIPAL POWER AGENCY**

(a) Definitions.

- (1) Unless listed below, the definitions of all terms used in this rule shall be as set forth in G.S. 62-133.14.
- (2) "Acquired plant" means a joint agency's proportional ownership interest in electric generating facilities purchased by an electric public utility prior to December 31, 2016.
- (3) "Acquisition costs" means the amount paid by an electric public utility on or before December 31, 2016, to acquire the proportional ownership interest in electric generating facilities from a joint agency, including the amount paid above the net book value of the generating facilities. Acquisition costs include the amounts recorded by the joint agency in its accounting records for plant, accumulated depreciation, net nuclear fuel, spare parts, fuel and materials and supplies inventories, construction work in progress, and any other items related to the acquired plant, plus the amount paid by an electric public utility above the net book value of the generating facilities.
- (4) "Financing costs" means the debt and equity return on the electric public utility's average rate base investment determined using the weighted average net of tax cost of capital as authorized by the Commission in the electric public utility's most recent general rate case, including gross-up for income taxes.
- (5) "Joint agency" means a joint agency established under Chapter 159B of the General Statutes.
- (6) "Levelized" means an even amount of revenue requirement over a period of time that is equivalent to the present value of the stream of revenue requirements that would be determined for the same period of time based upon the declining book value of the items subject to the levelization. The return to be used in the present value calculations is based on the net of tax rate of return authorized by the Commission in the utility's last general rate case.
- (7) "Non-fuel operating costs" means the reasonable and prudent costs incurred to operate and maintain electric plant in service and the related depreciation and amortization expense, nuclear decommissioning expense, Commission regulatory fee, income taxes and property taxes, but excluding costs recoverable under G.S. 62-133.2.
- (8) "Joint Agency Asset rider" means a charge or rate established by the Commission annually pursuant to G.S. 62-133.14 to allow an electric public utility to recover the North Carolina retail portion of all reasonable and prudent costs incurred by the electric public utility to acquire, operate and maintain the acquired plant, as well as reasonable and prudent financing costs and non-fuel operating costs related to capital investments in the acquired plant.
- (9) "Rate period" means the period during which the Joint Agency Asset rider established under this rule will be in effect. For each public utility, this period will be the same as the period during which the rider established under Rule R8-55 is in effect, unless otherwise ordered by the Commission.
- (10) "Test period" shall be the calendar year that precedes the end of the test period for each electric public utility for purposes of Rule R8-55, unless otherwise ordered by the Commission.

(b) Recovery of Costs.

- (1) In determining the amount of the Joint Agency Asset rider, the Commission shall include the following:
  - i. The financing costs and depreciation and amortization expenses associated with the acquired plant, including the amount paid over book value, levelized over the remaining useful life of the

electric generating facilities. The remaining useful life will be determined at the time of the acquisition.

- ii. The financing costs associated with coal inventory and the acquisition costs not included in amounts being levelized in (b)(1)(i), including net nuclear fuel, fuel inventory, and materials and supplies inventory, but excluding construction work in progress.
  - iii. The estimated non-fuel operating costs for the acquired plant, not recovered through (b)(1)(i), based on the experience of the test period and the costs projected for the next 12 month rate period.
  - iv. The estimated financing costs and non-fuel operating costs associated with the reasonable and prudent proportional capital investments including allowance for funds used during construction (AFUDC) in the acquired plant that are placed in service subsequent to the acquisition date.
  - v. Adjustments to reflect changes in the North Carolina retail portion of financing and non-fuel operating costs related to the electric public utility's other used and useful generating facilities owned at the time of the acquisition to properly account for changes in the jurisdictional allocation factors that result from the addition of the joint agency to the load served by those other facilities.
  - vi. A Joint Agency Asset rolling recovery factor (Joint Agency Asset RRF) to reflect the under or over recovery balance. The electric public utility will maintain an under or over recovery balance and add to the balance the difference between the reasonable and prudent financing and non-fuel operating costs incurred by the electric public utility during the test period and the revenues to recover these costs during the test period that were actually realized.
  - vii. Upon request by the electric public utility, the experienced under or over recovery of financing and non-fuel operating costs incurred after the test period and up to thirty (30) days prior to the date of the hearing in its determination of the Joint Agency Asset rider, provided that the reasonableness and prudence of these costs shall be subject to review in the utility's next annual Joint Agency Asset rider hearing.
- (2) In determining cost recovery allocation, the Commission shall utilize the jurisdictional and customer class allocation methodology used in the electric public utility's most recent general rate case.
  - (3) Each electric public utility shall utilize deferral accounting for costs considered for recovery through the Joint Agency Asset rider. The balance in the deferral account, net of tax, shall accrue a monthly return at the net-of-tax rate of return, grossed up for income taxes, as approved in the electric public utility's most recent general rate proceeding.
  - (4) The provisions of this Rule shall not relieve the Commission of its responsibility to determine the reasonableness and prudence of the cost of capital additions or operating costs incurred related to the acquired plant in a general rate proceeding.
  - (5) The burden of proof as to the correctness, reasonableness, and prudence of the cost of capital additions or operating costs sought to be included in the Joint Agency Asset rider, including the Joint Agency Asset RRF, shall be on the electric public utility.

(c) Annual Proceeding.

- (1) Each year the Commission shall hold a hearing pursuant to G.S. 62-133.14 to establish an annual Joint Agency Asset rider for the applicable electric public utility.
- (2) The annual rider hearing will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55. Each electric public utility shall file its application for recovery of costs under this Rule at the same time that it files the information required by Rule R8-55.
- (3) After the initial establishment, the Joint Agency Asset rider will remain in effect, subject to annual updates as provided in this rule, until the end of the useful life of the acquired plant, with any remaining unrecovered costs deferred until the electric public utility's next general rate proceeding.

(d) Initial Rider.

- (1) For the initial filing to establish the Joint Agency Asset rider pursuant to this rule, the electric public utility shall submit an application no later than 60 days after the date of acquisition containing such information as the Commission may require to recover all estimated financing and non-fuel operating costs which the utility expects to incur during the period from the date of acquisition until the effective date of the rates approved by the Commission in the Company's next annual Joint Agency Asset Rider. After hearing, the Commission shall approve an initial Joint Agency Asset rider to the electric public utility's rates.

- (2) The initial filing should include a special fuel rider to be implemented on the same date as the initial Joint Agency Asset rider that reflects the estimated fuel savings to be experienced by the utility when the purchased Joint Agency assets are included in the utility's system fuel costs. This special fuel rider is eliminated at the effective date of the implementation of a fuel cost rate per Rule R8-55 which reflects a system fuel costs including the acquired plant assets.

(e) Filing Requirements and Procedure.

- (1) The electric public utility filing proposed adjustments to the Joint Agency Asset rider shall submit to the Commission the following information:
  - i. The deferred balance at the beginning of the test year plus any under or over recovery resulting from the operation of the Joint Agency Asset rider during the test period.
  - ii. Any rate changes necessary to recover costs forecasted for the rate period.
  - iii. The weighted average cost of capital as authorized by the Commission in the electric public utility's most recent general rate case, grossed-up for income taxes and Commission regulatory fee, applicable to the test period and rate period, after the initial establishment of the rider. This weighted average cost of capital should be applied to both the remaining acquisition costs and any additional capital investment placed in service made by the electric utility in the acquired electric generating facilities.
  - iv. Any changes to the customer allocation methodology determined in any general rate proceeding of the electric public utility occurring after the initial establishment of the rider.
  - v. The acquisition costs of the generating facilities and accumulated depreciation and amortization reserve as of the end of the test period.
  - vi. For each of the first ten years of the rider, the total test period fuel savings for the North Carolina retail jurisdiction, by customer class, arising as a result of the electric public utility's acquisition of the acquired plant.
- (2) The Commission shall require the electric public utility to file a monthly report, which shall contain such information as may be agreed to by the Public Staff and the electric public utility and approved by the Commission.

(f) The electric public utility shall publish notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-133.14 and setting forth the time and place of hearing.

(g) If the Commission has not issued an Order within 180 days after the electric utility has filed the proposed changes under this rule, then the electric utility may place such proposed changes into effect, subject to later refund of any amount collected plus interest that the Commission might determine to be in excess of the amount ultimately approved by the Commission.

(NCUC Docket No. E-100, Sub 144, 7/8/2015.)

### **R8-71 COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY**

(a) Purpose. - The purpose of this rule is to implement the provisions of G.S. 62-110.8, and to provide for Commission oversight of the CPRE Program(s) designed by the electric public utilities subject to G.S. 62-110.8 for the competitive procurement and development of renewable energy facilities in a manner that ensures continued reliable and cost-effective electric service to customers in North Carolina.

(b) Definitions.

- (1) "Affiliate" is defined as provided in G.S. 62-126.3(1).
- (2) "Avoided cost rates" – means an electric public utility's calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electric public utility's upcoming CPRE RFP Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electric public utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a CPRE RFP Solicitation. With respect to each CPRE RFP Solicitation, the electric public utility's avoided costs shall be calculated over the time period of the utility's pro forma contract(s) approved by the Commission.
- (3) "Competitive Procurement of Renewable Energy (CPRE) Program" means the program(s) established by G.S. 62-110.8 requiring Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, to jointly or individually procure an aggregate 2,660 megawatts (MW) of renewable energy resource nameplate capacity subject to the requirements and limitations established therein.

- (4) "CPRE Program Methodology" means the methodology used to evaluate all proposals received in a given CPRE RFP Solicitation.
- (5) "CPRE Program Procurement Period" means the initial 45-month period in which the aggregate 2,660 MW of renewable energy resource nameplate capacity is required to be procured under the CPRE Program(s) approved by the Commission.
- (6) "CPRE RFP Solicitation" means a request for proposal solicitation process to be followed by the electric public utility under this Rule for the competitive procurement of renewable energy resource capacity pursuant to the utility's CPRE Program.
- (7) "Evaluation Team" means employees and agents of an electric public utility that will be evaluating proposals submitted in response to the CPRE RFP Solicitation, including those acting for or on behalf of the electric public utility regarding any aspect of the CPRE RFP Solicitation evaluation or selection process.
- (8) "IA Website" means the website established and maintained by the Independent Administrator as required by subsection (d)(7) of this Rule.
- (9) "Independent Administrator" means the third-party entity to be approved by the Commission that is responsible for independently administering the CPRE Program in accordance with G.S. 62-110.8 and this rule, developing and publishing the CPRE Program Methodology, and for ensuring that all responses to a CPRE RFP Solicitation are treated equitably.
- (10) "Electric public utility" means an electric public utility that is required to comply with the requirements of G.S. 62-110.8.
- (11) "Market participant" means a person who has expressed interest in submitting a proposal in response to a CPRE RFP Solicitation or has submitted such a proposal, including, unless the context requires otherwise, an Affiliate or an electric public utility, through its Proposal Team.
- (12) "Proposal Team" means employees and agents of an electric public utility or an Affiliate that proposes to meet a portion of its CPRE Program requirements as provided in G.S. 62-110.8(b)(i) or (ii), which is more particularly described as a "Self-developed Proposal" in subsection (f)(2)(iv) of this rule, who directly support the Self-developed Proposal.
- (13) "Renewable energy certificate" is defined as provided in G.S. 62-133.8(a)(6).
- (14) "Renewable energy facility" means an electric generating facility that uses renewable energy resource(s) as its primary source of fuel, has a nameplate capacity rating of 80 MW or less, and is placed into service after the beginning of the CPRE Program Procurement Period.
- (15) "Renewable energy resource" is as defined as provided in G.S. 62-133.8(a)(8).
- (16) "T&D Sub-Team" means those members of the Evaluation Team responsible for assessing the impacts of proposals on the electric public utility's transmission and distribution systems and assigning any system upgrade costs attributable to each proposal pursuant to R8-71(f)(3)(iii). The T&D Sub-Team shall be designated in writing to the Independent Administrator and shall have no communication, either directly or indirectly, with the other members of the Evaluation Team or a market participant concerning any proposal, except through the Independent Administrator, from the date on which the draft CPRE RFP Solicitation documents are issued by the Independent Administrator until the CPRE RFP Solicitation is deemed closed.

(c) Initial CPRE Program Filings and Program Guidelines

- (1) Each electric public utility shall develop and seek Commission approval of guidelines for the implementation of its CPRE Program and to inform market participants regarding the terms and conditions of, and process for participating in, the CPRE Program. The electric public utility shall file its initial CPRE Program guidelines at the time it initially proposes a CPRE Program for Commission approval. The CPRE Program guidelines should, at minimum, include the following:
  - (i) Planned allocation between the electric public utilities of the 2,660 MW required to be procured during the CPRE Program Procurement Period;
  - (ii) Proposed timeframe for each electric public utility's initial CPRE RFP Solicitation(s) and planned initial procurement amount, as well as plans for additional CPRE RFP Solicitation(s) during the CPRE Program Procurement Period;
  - (iii) Minimum requirements for participation in the electric public utility's initial CPRE RFP Solicitation(s);
  - (iv) Proposed evaluation factors, including economic and noneconomic factors, for the evaluation of proposals submitted in response to CPRE RFP Solicitation(s); and
  - (v) Pro forma contract(s) to be utilized in the CPRE Program.

- (2) At the time an electric public utility files its proposed CPRE Program guidelines with the Commission, it shall also identify any regulatory conditions and/or provisions of the electric public utility's code of conduct that the electric public utility seeks to waive for the duration of the CPRE Program Procurement Period pursuant to G.S. 62-110.8(h)(2).

(d) Selection and Role of Independent Administrator.

- (1) In advance of the filing the initial CPRE Program required by subsection (c) of this Rule, the Commission shall invite and consider comments and recommendations from the electric public utilities, the Public Staff, and other interested persons, including market participants, regarding the selection of the Independent Administrator. In addition to the requirements in this Rule, the Commission may establish additional minimum qualifications and requirements for the Independent Administrator.
- (2) Any person requesting to be considered for approval as the Independent Administrator shall be required to disclose any financial interest involving the electric public utilities implementing CPRE Programs or any market participant, including, but not limited to, all substantive assignments for electric public utilities, Affiliate(s), or market participant during the preceding three (3) years.
- (3) In advance of the initial CPRE RFP Solicitation(s), the Commission shall select and approve the Independent Administrator. From the date the Independent Administrator is selected, no market participant shall have any communication with the Independent Administrator or the electric public utility pertaining to the CPRE RFP Solicitation, the RFP documents and process, or the evaluation process or any related subjects, except as those communications are specifically allowed by this rule.
- (4) The Independent Administrator will be retained by the electric public utility or jointly by the electric public utilities for the duration of the CPRE Program Procurement Period under a contract to be filed with the Commission at least sixty (60) days prior to the public utilities' initial CPRE RFP Solicitation(s). The Independent Administrator shall remain subject to ongoing Commission oversight as part of the Commission's review of the electric public utilities' annual CPRE Program Compliance Reports.
- (5) The Independent Administrator's duties shall include:
  - (i) Monitor compliance with CPRE Program requirements.
  - (ii) Review and comment on draft CPRE Program filings, plans, and other documents.
  - (iii) Facilitate and monitor permissible communications between the electric public utilities' Evaluation Team and other participants in the CPRE RFP solicitations.
  - (iv) Develop and publish the CPRE Program Methodology that shall ensure equitable review between an electric public utility's Self-developed Proposal(s) as addressed in subsection (f)(2)(iv) and proposals offered by third-party market participants.
  - (v) Receive and transmit proposals.
  - (vi) Independently evaluate the proposals.
  - (vii) Monitor post-proposal negotiations between the electric public utilities' Evaluation Team(s) and participants who submitted winning proposals.
  - (viii) Evaluate the electric public utility's Self-developed Proposals.
  - (ix) Provide an independent certification to the Commission in the CPRE Compliance Report that all electric public utility and third party proposals were evaluated under the published CPRE Program methodology and that all proposals were treated equitably through the CPRE RFP Solicitation(s).
- (6) Prior to the initial CPRE RFP Solicitation, but on or before the date determined by Commission order, Independent Administrator shall develop and publish the CPRE Program Methodology. Prior to developing and publishing the CPRE Program Methodology, the Independent Administrator shall meet with the Evaluation Team(s) to share evaluation techniques and practices. The Independent Administrator shall also meet with the Evaluation Team(s) at least 60 days prior to each subsequent CPRE RFP Solicitation to discuss the efficacy of the CPRE Program Methodology and whether changes to the CPRE Program Methodology may be appropriate based upon the anticipated contents of the next CPRE RFP Solicitation. If the CRPE RFP Solicitation allows for electric public utility self-build options or Affiliate proposals, the Independent Administrator shall ensure that if any non-publicly available transmission or distribution system information is used in preparing proposals by the electric public utility or Affiliate(s), such information is made available to third parties that notified the Independent Administrator or their intent to submit a proposal in response to the that CPRE RFP Solicitation.

- (7) The Independent Administrator shall maintain the IA Website to support administration and implementation of the CPRE Program and shall post the CPRE RFP Solicitation documents, the CPRE Program Methodology, participant FAQs, and any other pertinent documents on the IA Website.
  - (8) In carrying out its duties, the Independent Administrator shall work in coordination with the Evaluation Team(s) with respect to CPRE Program implementation and the CPRE RFP Solicitation proposal evaluation process in the manner and to the extent as more specifically provided in subsection (f) of this rule.
  - (9) If the Independent Administrator becomes aware of a violation of any CPRE Program requirements, the Independent Administrator shall immediately report that violation, together with any recommended remedy, to the Commission.
  - (10) The Independent Administrator's fees shall be funded through reasonable proposal fees collected by the electric public utility. The electric public utility shall be authorized to collect proposal fees up to \$10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electric public utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electric public utility shall pay the balance and subsequently charge the winning participants in the CPRE RFP Solicitation.
- (e) Communications Between CPRE Market Participants.
- (1) From the date an electric public utility announces a CPRE RFP Solicitation, until the Independent Administrator declares the CPRE RFP Solicitation closed, there shall be no communications between market participants regarding the substantive aspects of their proposals or between the electric public utility and market participants. Such communications shall be conducted through the Independent Administrator as permitted by this subsection.
  - (2) The Evaluation Team or the Independent Administrator may request further information from any market participant regarding its proposal during the process of evaluating and selecting proposals. These communications shall be conducted through the Independent Administrator and shall be conducted in a manner that keeps confidential the identity of the market participant.
  - (3) On or before the date an electric public utility announces a CPRE RFP Solicitation, the Proposal Team shall be separately identified and physically segregated from the Evaluation Team for purposes of all activities that are part of the CPRE RFP Solicitation process. The names and job titles of each member of the Proposal Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Administrator.
  - (4) There shall be no communications, either directly or indirectly, between the Proposal Team and Evaluation Team during the CPRE RFP Solicitation regarding any aspect of the CPRE RFP Solicitation process, except (i) necessary communications as may be made through the Independent Administrator and (ii) negotiations between the Proposal Team and the Evaluation Team for a final power purchase agreement after the Proposal Team has been selected by the electric public utility as a winning proposal. The Evaluation Team will have no direct or indirect contact or communications with the Proposal Team or any other participant, except through the Independent Administrator as described further herein, until such time as a winning proposal or proposals are selected by the electric public utility and negotiations for a final power purchase agreement(s) have begun.
  - (5) At no time shall any information regarding the CPRE RFP Solicitation process be shared with any market participant, including the Proposal Team, unless the information is shared with all competing participants contemporaneously and in the same manner.
  - (6) Within fifteen (15) days of the date an electric public utility announces a planned CPRE RFP Solicitation, each member of the Proposal Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsection (e) of this rule for the duration of the CPRE RFP Solicitation. If the Proposal Team's proposal is selected by the electric public utility after completion of the CPRE RFP Solicitation, each member of the Proposal Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e) of this rule. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.
  - (7) Should any participant, including an Affiliate or electric public utility's Proposal Team, attempt to contact a member of the Evaluation Team directly, such participant shall be directed to the Independent

Administrator for all information and such communication shall be reported to the Independent Administrator by the Evaluation Team member. Within ten (10) days of the date that the Independent Administrator issues the CPRE RFP Solicitation, each Evaluation Team member shall execute an acknowledgement that he or she agrees to abide by the conditions contained in subsection (e) of this rule for the duration of the CPRE RFP Solicitation. If the Proposal Team's proposal is selected by the electric public utility after completion of the CPRE RFP Solicitation, the Evaluation Team shall also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (e)(3)-(5) above. The electric public utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission in support of its annual CPRE Compliance Report.

(f) CPRE RFP Solicitation Structure and Process.

(1) Identification of Market Participants; Design of CPRE RFP Solicitation.

- (i) Prior to the initial CPRE RFP Solicitation, the electric public utility shall provide the Independent Administrator with a list of potential market participants that have expressed interest, in writing, in participating in the CPRE RFP Solicitation or have participated in recent renewable energy resource solicitations issued by the electric public utilities. The Independent Administrator shall publish notice of the draft CPRE RFP Solicitation on the IA Website, and prepare the list of potential participants to whom notice of the upcoming CPRE RFP Solicitation will be sent.
- (ii) The electric public utility shall prepare an initial draft of the CPRE RFP Solicitation guidelines and documents, including RFP procedures, evaluation factors, credit and security obligations, a pro forma power purchase agreement, the Avoided Cost Rate against which proposals will be evaluated, and a planned schedule for completing the CPRE RFP Solicitation and selecting winning proposals. No later than sixty (60) days prior to the planned issue date of the CPRE RFP Solicitation, the electric public utility shall provide the initial draft of the CPRE RFP Solicitation guidelines and documents to the Independent Administrator for posting on the IA Website.
- (iii) The evaluation factors included in the CPRE RFP Solicitation guidelines shall identify all economic and noneconomic factors to be considered by the Independent Administrator in its evaluation of proposals. In addition to the guidelines, a pro forma power purchase agreement containing all expected material terms and conditions shall be included in the CPRE RFP Solicitation documents provided to the Independent Administrator and shall be filed with the Commission at least thirty (30) days prior to the planned CPRE RFP solicitation issuance date.
- (iv) The Independent Administrator, in coordination with the electric public utility, may conduct a pre-issuance market participants' conference to publicly discuss the draft CPRE RFP Solicitation guidelines and documents with market participants. Market participants may submit written questions or recommendations to the Independent Administrator regarding the draft CPRE RFP Solicitation guidelines and documents in advance of the market participants' conference. All such questions and recommendations shall be posted on the IA Website. The Independent Administrator shall have no private communication with any potential participants regarding any aspect of the draft CPRE RFP Solicitation documents.
- (v) Based on the input received from potential participants, and on its own review of the draft CPRE RFP Solicitation documents, the Independent Administrator shall submit a report to the electric public utility, at least twenty (20) days prior to the planned CPRE RFP Solicitation issuance date, detailing market participants' comments and the Independent Administrator's recommendations for changes to the CPRE RFP Solicitation documents, if any. This report shall also be posted on the IA Website for review by potential participants.
- (vi) At least five (5) days prior to the planned CPRE RFP Solicitation issuance date, the electric public utility shall submit its final version of the CPRE RFP Solicitation documents to the Independent Administrator to be posted on the IA Website.
- (vii) At any time after the CPRE RFP Solicitation is issued, through the time winning proposals are selected by the electric public utility, the schedule for the solicitation may be modified upon mutual agreement of the electric public utility and the Independent Administrator, with equal notice provided to all market participants, or upon approval by the Commission. Any modification to the CPRE RFP Solicitation schedule will be posted to the IA Website.

(2) Issuance of CPRE RFP Solicitation.

- (i) The Independent Administrator shall transmit the final CPRE RFP Solicitation to the market participants via the IA Website. Upon issuance of the final CPRE RFP Solicitation, the only communications permitted prior to submission of proposals shall be conducted through the Independent Administrator. Participants' questions and the Independent Administrator's responses shall be posted on the IA Website, but, to the extent possible, shall be posted in a manner that the identity of the participant remains confidential. To the extent such questions and responses contain competitively sensitive information that a particular participant deems to be a trade secret, this information may be redacted by the participant.
  - (ii) The electric public utility shall not communicate with any market participant regarding the RFP Process, the content of the CPRE RFP Solicitation documents, or the substance of any potential response by a participant to the RFP; provided, however, the electric public utility shall provide timely, accurate responses to the Independent Administrator's request for information regarding any aspect of the CPRE RFP Solicitation documents or the CPRE RFP Solicitation process.
  - (iii) Participants shall submit proposals pursuant to the solicitation schedule contained in the CPRE RFP Solicitation, and in the format required by the Independent Administrator to facilitate the evaluation and selection of proposals. The Independent Administrator shall have access to all proposals and all supporting documentation submitted by market participants in the course of the CPRE RFP Solicitation process.
  - (iv) If the electric public utility wishes to consider an option for full or partial ownership of a renewable energy facility as part of the CPRE RFP solicitation, the utility must submit its construction proposal (Self-developed Proposal) to provide all or part of the capacity requested in the CPRE RFP solicitation to the Independent Administrator at the time all other proposals are due. Once submitted, the Self-developed Proposal may not be modified, except in the event that the electric public utility demonstrates to the satisfaction of the Independent Administrator that the Self-developed Proposal contains an error and that correction of the error will not be unduly harmful to the other market participants, the electric public utility may correct the error. Persons who have participated or assisted in the preparation of the Self-developed Proposal on behalf of the electric public utility's Proposal Team in any way may not be a member of the Affiliate's Proposal Team, nor communicate with the Affiliate's Proposal Team during the RFP Process about any aspect of the RFP Process.
- (3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a CPRE RFP Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission's oversight as provided in G.S. 62-110.8 and this rule.
- (i) In step one, the Independent Administrator shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the CPRE RFP Solicitation evaluation factors. As a result of the Independent Administrator's evaluation, the Independent Administrator shall, subject to the provisions of subsection (f)(3)(ii) of this Rule, eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors and then develop and deliver to the electric public utility's T&D Sub-Team a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals included in the list delivered to the electric public utility any information that identifies the market participant that submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.
  - (ii) As a part of the step one evaluation, the Independent Administrator may, in its discretion, allow a market participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal, and may consult with the electric public utility's Evaluation Team to determine whether a proposal meets the CPRE RFP Solicitation Evaluation factors. In consulting with the Evaluation Team, the Independent Administrator shall maintain the anonymity of the market participant that submitted the proposal. The Independent Administrator shall document the reasons for the elimination of a proposal.
  - (iii) In step two, the electric public utility's T&D Sub-Team shall assess the system impact of the proposals in the order ranked by the Independent Administrator and assign any system upgrade

costs attributable to each proposal included in the list provided by the Independent Administrator. The T&D Sub-Team shall conduct this assessment in a reasonable manner, with oversight by the Independent Administrator, and in parallel with the Independent Administrator's allowing modification or clarification of proposals and consultation with the Evaluation Team, as provided in (f)(3)(ii), if applicable. The electric public utility's T&D Sub-Team shall provide its assessment of system upgrade costs to the Independent Administrator, who shall first determine whether such system upgrade costs have been appropriately assigned and then determine whether the original ranking of proposals needs to be modified to recognize the system upgrade costs assigned to each proposal. The Independent Administrator shall also eliminate any proposal where necessary in order to comply with G.S. 62-110.8(b)(4). If no re-ranking is needed and the Independent Administrator has concluded its evaluation pursuant to (f)(3)(ii) of this Rule, if applicable, then the electric public utility shall select the winning proposals in accordance with subsection (iv) below. If the Independent Administrator modifies the original ranking as result of the assignment of system upgrade costs or the elimination of a proposal, it shall deliver to the T&D Sub-Team of the electric public utility such revised list of proposals ranked in order from most competitive to least competitive (with market participant information redacted as described in step one) and the assignment of system upgrade costs described in this subsection shall be performed again by the T&D Sub-Team and provided to the Independent Administrator, who will re-rank the proposals. This process shall continue on an iterative basis, as directed by the Independent Administrator, until the Independent Administrator determines that the total generating capacity sought in the CPRE RFP Solicitation is satisfied in the most cost-effective manner after taking into account the assignment of system upgrade costs through this step two.

- (iv) Upon completion of step two and determination by the Independent Administrator of the final ranking of the proposals, the Independent Administrator shall deliver to the Evaluation Team of the electric public utility the final ranked list of proposals. The electric public utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, and the Independent Administrator shall provide the electric public utility with the identity of the market participants that were so selected. Upon publication of the list of proposals selected, the Independent Administrator shall declare the CPRE RFP Solicitation closed.
- (v) The electric public utility shall proceed to execute contracts (where applicable) with each of the market participants who submitted a proposal that was selected. If a market participant selected pursuant to subsection (iv) fails to execute a contract during the contracting period identified in the CPRE RFP Solicitation, the electric public utility shall provide to the Independent Administrator a short and plain explanation regarding such failure and the Independent Administrator, after consultation with the Evaluation Team, shall determine whether the next-ranked proposal or proposals should be selected in order to procure the total generating capacity sought in the CPRE RFP Solicitation. For the avoidance of doubt, the Evaluation Team shall not have access to the identifying information of any such proposals prior to the Independent Administrator's determination. If no additional proposals are selected, the capacity amount associated with the proposal of the market participant that failed to execute a contract shall be included in a subsequent CPRE RFP Solicitation; provided that if, no further CPRE RFP Solicitations are scheduled, the electric public utility shall take such action as is directed by the Commission.

(g) CPRE Program Plan.

- (1) Each electric public utility shall file in a docket to be established by the Commission, its initial CPRE Program plan with the Commission at the time initial CPRE Program Guidelines are filed under subsection (c) and thereafter shall be filed on or before September 1 of each year.
- (2) Each year, beginning in 2018, each electric public utility shall file with the Commission an updated CPRE Program plan covering the remainder of the CPRE Program Procurement Period. At a minimum, the plan shall include the following information:
  - (i) an explanation of whether the electric public utility is jointly or individually implementing the aggregate CPRE Program requirements mandated by G.S. 62-110.8(a);
  - (ii) a description of the electric public utility's planned CPRE RFP Solicitations and specific actions planned to procure renewable energy resources during the CPRE Program planning period;

- (iii) an explanation of how the electric public utility has allocated the amount of CPRE Program resources projected to be procured during the CPRE Program Procurement Period relative to the aggregate CPRE Program requirements;
  - (iv) if designated by location, an explanation of how the electric public utility has determined the locational allocation within its balancing authority area;
  - (v) an estimate of renewable energy generating capacity that is not subject to economic dispatch or economic curtailment that is under development and projected to have executed power purchase agreements and interconnection agreements with the electric public utility or that is otherwise projected to be installed in the electric public utility's balancing authority area within the CPRE Program planning period; and
  - (vi) a copy of the electric public utility's CPRE Program guidelines then in effect as well as a pro forma power purchase agreement used in its most recent CPRE RFP Solicitation.
- (3) Upon the expiration of the CPRE Program Procurement Period, the electric public utility shall file a CPRE Program Plan in the following calendar year identifying any additional CPRE Program procurement requirements, as provided for in G.S. 62-110.8(a).
  - (4) In any year in which an electric public utility determines that it has fully complied with the CPRE Program requirements set forth in G.S. 62-110.8(a), the electric public utility shall notify the Commission in its CPRE Program Plan, and may petition the Commission to discontinue the CPRE Program Plan filing requirements beginning in the subsequent calendar year.
- (h) CPRE Program Compliance Report.
- (1) Each electric public utility shall file its annual CPRE Program compliance report, together with direct testimony and exhibits of expert witnesses, on the same date that it files its application to recover costs pursuant to subsection (j) of this rule. The Commission shall consider each electric public utility's CPRE Program compliance report at the hearing provided for in subsection (j) and shall determine whether the electric public utility is in compliance with the CPRE Program requirements of G.S. 62-110.8.
  - (2) Beginning in 2019, and each year thereafter, each electric public utility shall file with the Commission a report describing the electric public utility's competitive procurement of renewable energy resources under its CPRE Program and ongoing actions to comply with the requirements of G.S. 62-110.8 during the previous calendar year, which shall be the "reporting year." The report shall include the following information, including supporting documentation:
    - (i) a description of CPRE RFP Solicitation(s) undertaken by the electric public utility during the reporting year, including an identification of each proposal eliminated pursuant to subsection (f)(3)(ii) of this rule and an explanation of the utility's basis for elimination of each proposal;
    - (ii) a description of the sources, amounts, and costs of third-party power purchase agreements and proposed authorized revenues for utility-owned assets for renewable energy resources procured through CPRE RFP Solicitation(s) during the reporting year, including the dates of all CPRE Program contracts or utility commitments to procure renewable energy resources during the reporting year;
    - (iii) the forecasted nameplate capacity and megawatt-hours of renewable energy and the number of renewable energy certificates obtained through the CPRE Program during the reporting year;
    - (iv) identification of all proposed renewable energy facilities under development by the electric public utility that were proposed into a CPRE RFP Solicitation during the reporting year, including whether any non-publicly available transmission or distribution system operations information was used in preparing the proposal, and, if so, an explanation of how such information was made available to third parties that notified the utility of their intention to submit a proposal in the same CPRE RFP Solicitation;
    - (v) the electric public utility's avoided cost rates applicable to the CPRE RFP Solicitation(s) undertaken during the reporting year and confirmation that all renewable energy resources procured through a CPRE RFP Solicitation are priced at or below the electric public utility's avoided cost rates;
    - (vi) the actual total costs and authorized revenues incurred by the electric public utility during the calendar year to comply with G.S. 62-110.8;
    - (vii) the status of the electric public utility's compliance with the aggregate CPRE Program procurement requirements set forth in G.S. 62-110.8(a);

- (viii) a copy of the contract then in effect between the electric public utility and Independent Administrator, supporting information regarding the administrative fees collected from participants in the CPRE RFP Solicitation during the reporting year, as well as any cost incurred by the electric public utility during the reporting year to implement the CPRE RFP Solicitation; and
  - (ix) certification by the Independent Administrator that all public utility and third-party proposal responses were evaluated under the published CPRE Program Methodology and that all proposals were treated equitably through the CPRE RFP Solicitation(s) during the reporting year.
- (i) Compliance with CPRE Program Requirements.
  - (1) An electric public utility shall be in compliance with the CPRE Program requirements during a given year where the Commission determines that the electric public utility's CPRE Program plan is reasonably designed to meet the requirements of G.S. 62-110.8 and, based on the utility's most recently filed CPRE Program compliance report, that the electric public utility is reasonably and prudently implementing the CPRE Program requirements.
  - (2) An electric public utility, or other interested party, may petition the Commission to modify or delay the provisions of G.S. 62-110.8 in whole or in part. The Commission shall allow a modification or delay upon finding that it is in the public interest to do so.
  - (3) Renewable energy certificates purchased or earned by an electric public utility while complying with G.S. 62-110.8 must have been earned after January 1, 2018, and may be retired to meet an electric public utility's REPS compliance obligations under G.S. 62-133.8.
  - (4) The owner of any renewable energy facility included as part of a proposal selected through a CPRE RFP Solicitation shall register the facility as a new renewable energy facility under Rule R8-66 no later than 60 calendar days from receiving written notification that the facility was included as part of a proposal selected and shall participate in the North Carolina Renewable Energy Tracking System (NC-RETS) to facilitate the issuance or importation of renewable energy certificates contracted for under the CPRE Program.
- (j) Cost or authorized revenue recovery.
  - (1) Beginning in 2018, for each electric public utility, the Commission shall schedule an annual public hearing pursuant to G.S. 62-110.8(g) to review the costs incurred or anticipated to be incurred by the electric public utility to comply with G.S. 62-110.8. The annual rider hearing for each electric public utility will be scheduled as soon as practicable after the hearing held by the Commission for the electric public utility under Rule R8-55.
  - (2) The Commission shall permit each electric public utility to charge an increment or decrement as a rider to its rates to recover in a timely manner the reasonable and prudent costs incurred and anticipated to be incurred to implement its CPRE Program and to comply with G.S. 62-110.8. In any application for cost recovery and collection of authorized revenues wherein the utility proposes to recover costs or collect revenues attributable to a utility-owned renewable energy facility calculated on a market basis, in lieu of a cost-of-service basis, the utility shall support its application with testimony specifically addressing the calculation of those costs and revenues sufficient to demonstrate that recovery on a market basis is in the public interest.
  - (3) Unless otherwise ordered by the Commission, the test period for each electric public utility shall be the same as its test period for purposes of Rule R8-55.
  - (4) Rates set pursuant to this section shall be recovered during a fixed recovery period that shall coincide, to the extent practical, with the recovery period for the cost of fuel and fuel-related cost rider established pursuant to Rule R8-55.
  - (5) The costs and authorized revenue will be further modified through the use of a CPRE Program experience modification factor (CPRE EMF) rider. The CPRE EMF rider will reflect the difference between reasonable and prudently-incurred CPRE Program projected costs, authorized revenue, and the revenues that were actually realized during the test period under the CPRE Program rider then in effect. Upon request of the electric public utility, the Commission shall also incorporate in this determination the experienced over-recovery or under-recovery of the costs and authorized revenue up to 30 days prior to the date of the hearing, provided that the reasonableness and prudence of these costs and authorized revenues shall be subject to review in the utility's next annual CPRE Program cost recovery hearing.
  - (6) The CPRE EMF rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.

- (7) Pursuant to G.S. 62-130(e), any over-collection of reasonably and prudently-incurred costs and authorized revenues to be refunded to an electric public utility's customers through operation of the CPRE EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.
  - (8) Each electric public utility shall follow deferred accounting with respect to the difference between actual reasonably and prudently-incurred costs or authorized revenue and related revenues realized under rates in effect.
  - (9) The annual increase in the aggregate amount of costs recovered under G.S. 62-110.8(g) in any recovery period from its North Carolina retail customers shall not exceed one percent (1%) of the electric public utility's total North Carolina retail jurisdictional gross revenues for the preceding calendar year determined as of December 31 of the previous calendar year. Any amount in excess of that limit shall be carried over and recovered in the next recovery period when the annual increase in the aggregate amount of costs to be recovered is less than one percent (1%).
  - (10) Each electric public utility, at a minimum, shall submit to the Commission for purposes of investigation and hearing the information required for the CPRE Program compliance report for the 12-month test period established in subsection (3) consistent with Rule R8-55, accompanied by supporting workpapers and direct testimony and exhibits of expert witnesses, and any change in rates proposed by the electric public utility at the same time that it files the information required by Rule R8-55.
  - (11) The electric public utility shall publish a notice of the annual hearing for 2 successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of the hearing before the Commission pursuant to G.S. 62-110.8(g) and setting forth the time and place of the hearing.
  - (12) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed at the discretion of the Commission for good cause shown.
  - (13) The Public Staff and intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.
  - (14) The electric public utility may file rebuttal testimony and exhibits of expert witnesses no later than 5 days prior to the hearing date.
  - (15) The burden of proof as to whether CPRE Program-related costs or authorized revenues to be recovered under this section were reasonable and prudently-incurred shall be on the electric public utility.
- (k) Expedited review and approval of Certificate of Public Convenience and Necessity for renewable energy facilities owned by an electric public utility and procured under the CPRE Program.
- (1) Scope of Section.
    - (i) This section applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.8(h)(3) filed by an electric public utility for the construction and operation of renewable energy facilities owned by an electric public utility for compliance with the requirements of G.S. 62-110.8, and to petitions to transfer a certificate of public convenience and necessity to an electric public utility for compliance with the requirements of G.S. 62-110.8. Applications and petitions filed pursuant to this subsection shall be required to comply with the requirements of this subsection and shall not otherwise be required to comply with the requirements of G.S. 62-82 or 62-110.1, or Commission Rules R8-61 or R8-64.
    - (ii) The construction of a renewable energy facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.
    - (iii) This section shall apply to any person within its scope who begins construction of a renewable energy facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.
    - (iv) This section applies to a petition to transfer an existing certificate of public convenience and necessity issued for renewable energy facilities that an electric public utility acquires from a third party with the intent to own and operate the renewable energy facility to comply with the requirements of G.S. 62-110.8.

- (2) The Application. The application shall be comprised of the following exhibits:
- (i) Exhibit 1 shall contain:
    - 1. The full and correct name, business address, business telephone number, and electronic mailing address of the electric public utility;
    - 2. A statement describing the electric public utility's corporate structure and affiliation with any other electric public utility, if any; and
    - 3. The ownership of the facility site and, if the owner is other than the applicant, the applicant's interest in the facility site.
  - (ii) Exhibit 2 shall contain the following site information:
    - 1. A color map or aerial photo showing the location of the generating facility site in relation to local highways, streets, rivers, streams, and other generally known local landmarks, with the proposed location of major equipment indicated on the map or photo, including: the generator, fuel handling equipment, plant distribution system, startup equipment, site boundary, planned and existing pipelines, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities. A U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred;
    - 2. The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree; and
    - 3. Whether the electric public utility is the site owner, and, if not, providing the full and correct name of the site owner and the electric public utility's interest in the site.
  - (iii) Exhibit 3 shall include:
    - 1. The nature of the renewable energy facility, including the type and source of its power or fuel;
    - 2. A description of the buildings, structures and equipment comprising the renewable energy facility and the manner of its operation;
    - 3. The gross and net projected maximum dependable capacity of the renewable energy facility as well as the renewable energy facility's nameplate capacity, expressed as megawatts (alternating current);
    - 4. The projected date on which the renewable energy facility will come on line;
    - 5. The service life of the project;
    - 6. The projected annual hourly production profile for the first full year of operation of the renewable energy facility in kilowatt-hours, including an explanation of potential factors influencing the shape of the production profile, including the following, if applicable: fixed tilt or tracking panel arrays, inverter loading ratio, over-paneling, clipped energy, or inverter AC output power limits;
    - 7. The projected annual production of renewable energy certificates that is eligible for compliance with the State's renewable energy and energy efficiency portfolio standard.
  - (iv) Exhibit 3 shall include:
    - 1. A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the renewable energy facility and a statement of whether each has been obtained or applied for; and
    - 2. A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the application should be filed with the Commission as soon as they are obtained.
  - (v) Exhibit 4 shall contain the expected cost to construct, operate and maintain the proposed facility.
  - (vi) Exhibit 5 shall contain the following resource planning information:
    - 1. The utility's most recent biennial report and the most recent annual report filed pursuant to Rule R8-60, plus any proposals by the utility to update said reports;
    - 2. The extent to which the proposed facility would conform to the utility's most recent biennial report and the most recent annual report that was filed pursuant to Rule R8-60;
    - 3. A statement of how the facility would contribute to resource and fuel diversity, whether the facility would have dual-fuel capability, and how much fuel would be stored at the site;

4. An explanation of the need for the facility, including information on energy and capacity forecasts; and
  5. An explanation of how the proposed facility meets the identified energy and capacity needs, including the anticipated facility capacity factor, heat rate, and service life.
- (3) Petition for transfer of certificate of public convenience and necessity. When an electric public utility procures an operating renewable energy facility through a CPRE RFP Solicitation with intent to own and operate the facility and the renewable energy facility has been previously issued a certificate of public convenience and necessity, the electric public utility shall petition the Commission to transfer the certificate of public convenience and necessity. A petition requesting that the Commission transfer a certificate of public convenience and necessity shall include the following:
  - (i) a description of the terms and conditions of the electric public utility's procurement of the renewable energy facility under the CPRE Program and an identification of any significant changes to the information in the application for the certificate of public convenience and necessity, which the Commission considered in the issuance of the certificate for that facility;
  - (ii) The signature and verification of the electric public utility's employee or agent responsible for preparing the petition stating that the contents thereof are known to the employee or agent and are accurate to the best of that person's knowledge; and
  - (iii) The verification of a person authorized to act on behalf of the certificate holder that it intends to transfer the certificate of public convenience and necessity to the electric public utility.
- (4) Procedure for Acquiring Project Development Assets. — When an electric public utility purchases from a third party developer assets that include the rights to construct and operate a renewable energy facility that has been issued a certificate of public convenience and necessity with the intent of further developing the project and submitting the renewable energy facility in to a future CPRE RFP Solicitation, the electric public utility shall provide notice to the Commission in the docket where the certificate of public convenience and necessity was issued that the electric public utility has acquired ownership of the project development assets. The electric public utility shall not be required to submit a petition for transfer of the certificate of public convenience and necessity unless and until the project is selected through a CPRE RFP Solicitation or the electric public utility otherwise elects to proceed with construction of the renewable energy facility. If the project is selected through a CPRE RFP Solicitation or the electric public utility otherwise elects to proceed with construction of the renewable energy facility, the electric public utility shall file a petition to transfer the certificate of public convenience and necessity, and the Commission shall process the petition in the same manner provided in (6) of this subsection. In any event, the petition shall be filed prior to the electric public utility commencing the construction or operation of the renewable energy facility, and no rights under the certificate of public convenience and necessity shall transfer to the electric public utility unless and until the Commission approves transfer of the certificate.
- (5) Procedure for expedited review of applications for a certificate of public convenience and necessity. — The Commission will process applications for certificates of public convenience and necessity filed pursuant to this section as follows:
  - (i) The electric public utility shall file with the Commission its preliminary plans at least 30 days before filing an application for a certificate of public convenience and necessity. The preliminary plans shall include the following:
    1. Exhibit 1 shall contain the following site information:
      - a. A color map or aerial photo (a U.S. Geological Survey map or an aerial photo map prepared via the State's geographic information system is preferred) showing the proposed site boundary and layout, with all major equipment, including the generator and inverters, planned and existing roads, planned and existing water supplies, and planned and existing electric facilities;
      - b. The E911 street address, county in which the proposed facility would be located, and GPS coordinates of the approximate center of the proposed facility site to the nearest second or one thousandth of a degree;
      - c. The full and correct name of the site owner and, if the owner is other than the applicant, the applicant's interest in the site;
      - d. A brief general description of practicable transmission line routes emanating from the site, including a color map showing their general location; and

- e. The gross, net, and nameplate generating capacity of each unit and the entire facility's total projected dependable capacity in alternating current (AC).
  2. Exhibit 2 shall contain a list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals; and
  3. Exhibit 3 shall include a schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.
- (ii) Within ten days of the filing of its preliminary plans, the Applicant shall cause to be published a notice of its filing of preliminary plans to apply for an expedited certificate of public convenience and necessity in a newspaper having general circulation in the area where the generating facility. The notice shall be in the form provided in the Appendix to this Chapter, and the applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule;
  - (iii) The Chief Clerk will deliver 2 copies of the electric public utility's preliminary plans to the State Environmental Review Clearinghouse for distribution by the Clearinghouse Coordinator to State agencies having an interest in the application. The Chief Clerk will request comments from State agencies within 30 days of delivering notice to the Clearinghouse Coordinator.
  - (iv) The applicant shall file the application within 60 days of filing of its preliminary plans.
  - (v) The Commission will issue an order requesting the Public Staff to investigate the application and present its findings, conclusions, and recommendations at the Regular Commission Staff Conference to be held on the third Monday following the filing of the application, and requiring the applicant to publish notice of the application and of the time and place of the Staff Conference where the application will be considered. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.
  - (vi) If significant complaint(s) are filed with the Commission prior to the Regular Commission Staff Conference where the application is to be considered, the Public Staff shall report the same to the Commission and the Commission shall schedule a public hearing to determine whether a certificate should be awarded. The Commission will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party, and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.
  - (vii) If no significant complaint(s) are received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded. The Commission will give reasonable notice of the time and place of the hearing to the applicant and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is proposed to be constructed. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.
  - (viii) The Commission, for good cause shown, may order such additional investigation, further hearings, and required filings as it deems necessary and appropriate to address the issues raised in the application or by parties opposing the issuance of the requested certificate; and
  - (ix) If no significant complaint(s) are filed with the Commission and the Commission does not order a hearing on its own initiative nor order additional investigation, further hearings, or required filings, then the Commission shall consider the application at the Regular Commission Staff Conference as scheduled and, thereafter, issue an order on the application within 30 days after the application is filed, or as near after the 30<sup>th</sup> days as reasonably practicable. Where the Commission deems issuance of an order on the application within 30 days is impossible, the Commission may issue a notice of decision within 30 days after the application is filed and subsequently issue a final order in the matter.

- (6) Procedure for Expedited Transfer of certificate of public convenience and necessity. — The Commission shall process a petition to transfer a certificate of public convenience pursuant to the CPRE Program as follows:
- (i) Any petition to transfer an existing certificate of public convenience and necessity shall be signed and verified by the electric public utility applicant. A petition to transfer an existing certificate of public convenience and necessity shall also be verified by the entity which was initially granted the certificate of public convenience and necessity that it intends to transfer the certificate of public convenience and necessity to the electric public utility.
  - (ii) The Commission will issue an order requesting the Public Staff to investigate the petition and present its findings, conclusions, and recommendations at the Regular Commission Staff Conference to be held on the third Monday following the filing of the application, and requiring the applicant to publish notice of the petition and of the time and place of the Staff Conference where the application will be considered. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is located. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.
  - (iii) If significant complaint(s) are filed with the Commission prior to the Regular Commission Staff Conference where the petition is to be considered, the Public Staff shall report the same to the Commission and the Commission shall schedule a public hearing to determine whether the petition for transfer of the certificate should be granted. The Commission will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party, and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is located. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.
  - (iv) If no significant complaint(s) are received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded. The Commission will give reasonable notice of the time and place of the hearing to the applicant and require the applicant to publish notice of the time and place of the hearing. The notice shall be published once in a newspaper of general circulation in the area where the generating facility is located. The applicant shall be responsible for filing with the Commission an affidavit of publication to the effect that the notice was published as required by this rule.
  - (v) The Commission, for good cause shown, may order such additional investigation, further hearings, and required filings as it deems necessary and appropriate to address the issues raised in the application or by parties opposing the issuance of the requested certificate; and
  - (vi) If no significant complaint(s) are filed with the Commission and the Commission does not order a hearing on its own initiative nor order additional investigation, further hearings, or required filings, then the Commission shall consider the petition at the Regular Commission Staff Conference as scheduled and, thereafter, issue an order on the application within 30 days after the application is filed, or as near after the 30<sup>th</sup> days as reasonably practicable. Where the Commission deems issuance of an order on the application within 30 days is impossible, the Commission may issue a notice of decision within 30 days after the application is filed and subsequently issue a final order in the matter.

(l) CPRE Program Power Purchase Agreement Requirements

- (1) Prior to holding a CPRE RFP Solicitation, and on or before the date set by Commission order, the Independent Administrator shall post the pro forma contract to be utilized during the CPRE RFP Solicitation on the IA Website to inform market participants of terms and conditions of the competitive solicitation. The electric public utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electric public utility's most recent CPRE RFP Solicitation.
- (2) Each electric public utility shall include appropriate language in all pro forma contracts (i) providing the procuring electric public utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources; (ii) defining limits and compensation for resource dispatch and curtailments; (iii) defining environmental and renewable energy attributes to include all attributes that would be created by renewable energy facilities owned by the electric public

- utility; and (iv) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, including the renewable energy certificates being procured by the electric public utility under power purchase agreements entered into under the CPRE Program. An electric public utility may propose redefining its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future CPRE RFP Solicitations. In addition, an electric public utility may, within a single CPRE RFP Solicitation, propose multiple pro forma contracts that offer different rights to dispatch, operate, and control renewable energy facilities.
- (3) No later than 30 days after an electric public utility executes a power purchase agreement pursuant to a CPRE RFP Solicitation, the public utility shall file the power purchase agreement with the Commission. If the power purchase agreement is with an Affiliate, the electric public utility shall file the power purchase agreement with the Commission pursuant to G.S. 62-153(a).
  - (4) Upon expiration of the term of a power purchase agreement procured pursuant to a CPRE RFP Solicitation, a renewable energy facility owner, other than the electric public utility, may enter into a new contract with the electric public utility pursuant to G.S. 62-156 or obtain a new contract based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). If market-based authorized revenue for a generating facility owned by the electric public utility and procured pursuant to this Rule was initially determined by the Commission to be in the public interest, then the electric public utility shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism, as determined by the Commission pursuant to G.S. 62-110.8(a). Any market based rate for either utility owned or non-utility owned facilities shall not exceed the electric public utility's avoided cost rate established pursuant to G.S. 62-156. If the electric public utility's initial proposal includes assumptions about pricing after the initial term, such information shall be made available to the Independent Administrator and all participants.

*(NCUC Docket No. E-100, Sub 150, 11/06/2017; NCUC Docket No. E-100, Sub 150, 04/09/2018; NCUC Docket No. E-100, Sub 166, 08/31/2020; NCUC Docket No. M-100, Sub 196, 9/18/2023; NCUC Docket No. E-100, Sub 191, 11/21/2023.)*

#### **R8-72 COMMUNITY SOLAR PROGRAM**

(a) Purpose. The purpose of this Rule is to implement the provisions of G.S. 62-126.8 as they relate to each offering utility's implementation of a Community Solar Program for the participation of retail customers.

(b) Definitions. Unless listed below, the definitions of all terms used in this Rule shall be as set forth in G.S. Chapter 62. The following terms are defined for purposes of this Rule as:

- (1) "Community solar energy facility" or "facility" means a solar photovoltaic energy system that complies with the requirements set forth in G.S. 62-126.8(b) and (c), and is used to satisfy a portion of the generating capacity required by G.S. 62-126.8(a).
- (2) "Community Solar Program" or "Program" means the program offered by an offering utility for the procurement of electricity by the offering utility for the purpose of providing subscribers the opportunity to share the costs and benefits associated with the generation of electricity by the facility.
- (3) "Community Solar Program Plan" or "Program Plan" means the plan for implementation of the Community Solar Program, to be filed by each offering utility for the Commission's review and approval.
- (4) "Solar photovoltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.
- (5) "Subscriber" means a retail customer of the offering utility who subscribes to one or more blocks of community solar energy facility generating capacity, and is located in the state of North Carolina and in the same county or county contiguous to the facility, unless subject to an exemption pursuant to G.S. 62-126.8(c) and Section (e)(4) of this Rule.
- (6) "Subscription" means the individual block of community solar energy facility generating capacity, which represents 200 watts or more of such generating capacity but not more than 100% of each subscriber's maximum annual peak demand of electricity at the subscriber's premises, to be purchased by a subscriber for a set term of up to twenty-five (25) years, throughout which the subscriber receives a bill credit for the subscribed amount of electricity generated by the facility.
- (7) "Subscription fee" means any charge paid by a retail customer in exchange for a subscription to an approved Program.

(c) Community Solar Program Plan Filing Requirements.

- (1) Each offering utility shall file, on or before January 23, 2018, an initial proposed Program Plan, which shall meet the requirements of G.S. 62-126.8(e), and shall contain the following:
    - (i) the standards and processes for the offering utility to recover reasonable interconnection costs, administrative costs, fixed and variable costs associated with each facility, and any other forecasted costs and intended cost recovery mechanisms;
    - (ii) an explanation of how non-subscribing customers of the offering utility will be held harmless from the Program, including a description of how the offering utility intends to avoid cross-subsidization of Program costs with non-subscribing customers;
    - (iii) a description of and justification for Program participation options available to subscribers, including a description of any available payment plans or financing options, information on the treatment of subscriptions if a subscriber moves within or outside of the offering utility's service territory, and whether and how subscriptions may be transferred from a subscriber to another customer who is eligible to participate in the Program;
    - (iv) the methodology for determining the subscription fee, including whether a subscriber would retain his or her existing rate tariff, and a description and justification for any proposed upfront subscription fee and the projected impact of each such fee on overall participation in the Program;
    - (v) the methodology for determining the avoided cost rate at which subscribers will receive bill credits;
    - (vi) the methodology for determining nameplate capacity of a facility;
    - (vii) a discussion of how the Program will be promoted, including the projected costs associated with marketing and promotion efforts, examples of communications or marketing materials to be used, and identification of information to be provided to customers, including but not necessarily limited to: an itemized list of any and all charges composing the subscription fee and the schedule upon which the charges would be due, the process by which a subscriber can file a complaint with the Commission, and all offering utility and Commission rules governing the Program;
    - (viii) a tariff, pro forma contract between the subscriber and the offering utility, a statement of terms and conditions, or any or all of these, that contain all terms and conditions regarding costs, risks, and benefits to the subscriber, an itemized list of any one-time and ongoing subscription fees, an explanation of renewable energy certificates, and when and how the subscriber will receive notifications regarding project status and performance;
    - (ix) a description of a subscriber's option to own the renewable energy certificates produced by the facility, including how this information will be distributed to subscribers;
    - (x) an estimate of economic costs and benefits for an average program subscriber, estimated time period for a subscriber to receive a return on investment, and a description of any quantifiable economic or environmental benefits to non-subscribing customers;
    - (xi) a description of siting considerations and site selection process;
    - (xii) a description and analysis of how the offering utility's Program design will minimize costs and maximize benefits for each subscriber;
    - (xiii) a description of the offering utility's intended method for the procurement of solar energy for the Program, including a cost estimate and justification for each method proposed;
    - (xiv) an implementation schedule for installing 20 MW of solar energy, including a cost estimate and justification for the proposed schedule; and
    - (xv) a description of how the Program Plan is consistent with the public interest.
  - (2) The offering utility shall file annually with the Commission a report that includes any proposed amendments or revisions to its existing Program Plan and updates on Program implementation progress, marketing efforts, the number of participants subscribed, and capacity subscribed.
  - (3) An offering utility shall provide additional updates upon request by the Public Staff, or as required by the Commission.
  - (4) An offering utility shall apply for and obtain Commission approval before implementing any amendment to an existing Program Plan, including whether to delay, suspend, or close a Program to new subscribers.
- (d) Minimum Program requirements and procedures.
- (1) The offering utility may elect to own and operate facilities to procure energy for the Program, may procure energy for the Program through power purchase agreements with qualifying "small power production facilities" as defined in 16 U.S.C. § 796, or both.

- (2) Retail customers of each offering utility may voluntarily subscribe to the Program on a first-come, first-served basis in a manner consistent with any Program Plan approved by the Commission.
- (3) No single subscriber shall subscribe to more than a forty percent (40%) interest in an offering utility's Program.
- (4) Subscribers may subscribe to individual blocks, sized to represent 200 watts or more, of a facility's generating capacity.
- (5) Subscribers are responsible to pay the subscription fee for each block of facility capacity to which they subscribe.
- (6) Subscribers may purchase multiple subscriptions consistent with G.S. 62-126.8, subject to each offering utility's cap for residential, commercial, and industrial customers limited to no more than one hundred percent (100%) of the maximum annual peak demand of electricity of each subscriber at the subscriber's premises.
- (7) A subscriber shall be notified of Program enrollment prior to first being billed and credited in accordance with his or her subscription.
- (8) If enrollment exceeds availability, the offering utility shall add potential subscribers to a subscriber waiting list.

(e) Procedure for Review of Community Solar Program Plans.

- (1) The Commission may approve, disapprove, or modify an offering utility's initial Program Plan, annual report, or any proposed amendments to an existing Program Plan.
- (2) After the filing of an offering utility's Program Plan or request to amend an existing Program Plan, the Commission will issue a procedural order setting deadlines for intervention and comments, and will proceed as appropriate and in a manner consistent with this Rule and G.S. 62-126.8.
- (3) The Commission, for good cause shown, may order any investigation, hearing, or required filings as it deems necessary and appropriate to address the issues raised in a Program Plan, annual report, or any proposed amendments to an existing Program Plan filed by an offering utility. The scope of any such investigation, hearing, or required filings shall be limited to such issues as identified by the Commission.
- (4) To the extent the offering utility seeks an exemption of the requirement in G.S. 62-126.8(c) that subscribers must be located in the same county or county contiguous to where the facility is located, the offering utility shall file with the Commission a request for such an exemption. If the Commission determines the request is in the public interest, it shall approve the request, provided that the subscriber remains a resident of the State and that the facility is located no more than 75 miles from the county of the subscriber.
- (5) The offering utility shall have the burden of proof to demonstrate that the offering utility's Program Plan, annual reports, and any proposed amendments to an existing Program Plan are reasonable and comply with the requirements in G.S. 62-126.8 and this Rule.

*(NCUC Docket No. E-100, Sub 155, 12/19/2017.)*

**R8-73 APPLICATIONS FOR CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS AS AN ELECTRIC GENERATOR LESSOR; TRANSFERS; AND NOTICE**

(a) Scope of Rule.

- (1) This rule applies to applications for a certificate to engage in business as an electric generator lessor filed pursuant to G.S. 62-126.7 by any person seeking to own and lease one or more solar energy facilities as authorized by and subject to the provisions of Article 6B of Chapter 62.
- (2) The terms and definitions set forth in G.S. 62-126.3 apply for the purposes of this rule.
- (3) This rule shall apply to any offering utility, or any other person or entity who owns and leases a solar energy facility to another person, holds itself out as doing so or able to do so, solicits another person to enter into a lease of a solar facility, or that proposes such a transaction or arrangement, by whatever name, which substantively functions as a lease of a solar energy facility, without regard to whether such person or entity intends to do so for pecuniary gain.

(b) The Application.

- (1) The Application shall be comprised of the following:
  - (i) The full and correct name, business address, business telephone number, and electronic mailing address of the applicant;
  - (ii) A statement of whether the applicant is an individual, a partnership, a limited liability company, or a corporation; and, if a partnership, the name, telephone number, business address, and electronic

mailing address of each partner; and, if a limited liability company, the name, telephone number, business address, and electronic mailing address of each member; and, if a corporation, the name, telephone number, business address, and electronic mailing address of each corporate officer; and, if a foreign corporation, whether domesticated in North Carolina;

- (iii) A listing of the electric service providers within whose assigned service territory the applicant proposes to engage in or solicit business as an electric generator lessor;
  - (iv) The proof or certification required by G.S. 62-126.7 and this Rule, as appropriate; and
  - (v) A verification that the person submitting the application is authorized to do so on behalf of the applicant, has read and knows the content of the application, and that the contents of the application are true to the best of his or her information or belief.
- (2) Application for authority to engage in business as an electric generator lessor shall be made on the form furnished by the Commission and any exhibits must be attached thereto and made a part of the application. The original of the application, including exhibits, must be filed with the Commission with a copy to the Public Staff. No application shall be deemed filed until the Commission receives and collects the filing fee as set forth in G.S. 62-300.
- (3) Applications filed on behalf of a corporation are not subject to the provision of Rule R1-5(d) that requires corporate pleadings to be filed by a member of the Bar of the State of North Carolina. Should the Commission schedule a hearing on the application or establish a proceeding to review the certificate, the requirements of G.S. 84-4 and G.S. 84-4.1 shall apply.
- (4) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must sign and verify the application. The names and addresses of the officers of the corporation must be given and a certified copy of the corporate charter filed with the application. If the applicant is a limited liability company, a manager of the limited liability company must sign and verify the application. The names and addresses of the principal members and managers of the limited liability company must be given and a certified copy of the articles of organization filed with the application.
- (5) Pursuant to G.S. 62-126.7, the applicant shall provide proof or certification of the following:
- (i) That the applicant is fit, willing, and able to own and lease solar energy facilities;
  - (ii) That the applicant is financially solvent, able to obtain and continue adequate insurance protection, and able to maintain its equipment in a safe, dependable manner;
  - (iii) That the applicant maintains minimum limits of \$100,000 of general liability insurance coverage;
  - (iv) That the applicant will register with the Commission each solar energy facility that the applicant owns and leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or a report of proposed construction and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard, an application to register the facility as a new renewable energy facility pursuant to Rule R8-66;
  - (v) That the applicant's lease agreements meet the requirements of G.S. 62-126.6, and that any payments made under the lease are not based upon the metered output of the leased facility;
  - (vi) That the applicant will consent to the auditing of its books and records by the Public Staff and the Commission insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State;
  - (vii) That the applicant will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers; and
  - (viii) That the applicant will annually file on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.
- (c) Sale or Transfer of the Certificate.
- (1) No transfer or sale of a certificate may occur before the transferee or buyer, respectively, certifies to the Commission its present and future compliance with G.S. 62-126.7 and makes the following additional representations:
- (i) That the transferee or buyer is fit, willing, and able to own and lease solar energy facilities;

- (ii) That the transferee or buyer is financially solvent, able to obtain and continue adequate insurance protection, and maintain its equipment in a safe, dependable manner;
  - (iii) That the transferee or buyer maintains minimum limits of \$100,000 of general liability insurance coverage;
  - (iv) That the transferee or buyer will register with the Commission each solar energy facility that the transferee or buyer leases to a customer generator lessee by filing an application for a certificate of public convenience of necessity or report of proposed construction and, if the facility is intended to earn renewable energy certificates eligible for compliance with the North Carolina Renewable Energy and Energy Portfolio Standard, an application to register as a new renewable energy facility;
  - (v) That the transferee or buyer's lease agreements meet the requirements of G.S. 62-126.6, and that any payments made under the lease are not based upon the metered output of the leased facility;
  - (vi) That the transferee or buyer will consent to the auditing of its books and records by the Public Staff and the Commission insofar as those records relate to transactions with an offering utility or a customer generator lessee that is located in the State;
  - (vii) That the transferee or buyer will conduct its business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers; and
  - (viii) That the transferee or buyer will annually file on or before April 1 of each year, a certification of continuing compliance with G.S. 62-126.7 and this Rule.
- (2) If the transferee or buyer is a corporation, a true and accurate or certified copy of its corporate charter must be filed with said certification unless same is already on file with the Commission. If the transferee or buyer is a limited liability company, a true and accurate or certified copy of its articles of organization must be filed with said certification unless same is already on file with the Commission.

(d) Amendment to Certificate. A holder of a certificate to engage in business as an electric generator lessor shall notify the Commission within fifteen (15) days of any material change in status, including change in the assigned service territories where the certificate holder is operating as an electric generator lessor.

(e) Confidential Information. If an applicant considers certain of the required information to be confidential and entitled to protection from public disclosure, it may designate said information as confidential and file it under seal. Documents marked as confidential will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings made under seal and with nondisclosure agreements.

(f) Procedure upon receipt of Application. - Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:

- (1) The Chief Clerk will assign a new docket or sub-docket number to the filing.
- (2) The Commission will issue an order requiring the applicant to transmit notice thereof to each offering utility or municipal electric service provider within whose assigned service territory the applicant proposes to operate. The applicant shall be responsible for filing with the Commission a signed and verified certificate of service to the effect that the application and notice have been mailed to each offering utility or municipal electric service provider within whose assigned service territory the applicant proposes to operate.
- (3) If the applicant does not file the certificate of service within twelve (12) months of the Commission's order requiring mailing of notice, the Commission will dismiss the application.
- (4) No later than twenty (20) business days after the application is filed with the Commission, the Public Staff shall file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete and identifying any deficiencies. If the Commission determines that the application is not complete, the applicant will be required to file the missing information.
- (5) If no protests raising material issues of fact to the granting of the application are filed with the Commission within thirty (30) days after the certificate of service is filed, and the Commission does not order a hearing on its own initiative, the Commission shall proceed to decide the application on the basis of information contained in the application and exhibits and the recommendation required by subsection (f)(4) of this rule.
- (6) If a protest raising a material issue of fact to the granting of the application is filed within thirty (30) days after the certificate of service is filed, the Commission shall set the application for hearing and cause notice thereof to be given to the applicant and all other parties of record.

(g) Review, Suspension, Reinstatement, or Revocation of Certificate.

- (1) Upon the request of an electric public utility, a municipal electric service provider, an electric membership corporation, the Public Staff, a customer generator lessee, or other person having an interest in a certificate holder's conduct of its business, or upon the Commission's own motion for good cause, the Commission shall investigate whether the electric generator lessor is conducting business in compliance with the provisions of Article 6B of Chapter 62, the conditions on the certificate, or a lawful order of the Commission.
  - (2) In reviewing the certificate, the Commission may issue an order requiring the certificate holder to make appropriate filings to demonstrate its compliance with the provisions of Article 6B of Chapter 62 and this Rule, and setting a schedule for the proceeding, including setting the matter for hearing.
  - (3) By issuance of the order establishing a review proceeding, the Commission, in its discretion, may suspend the certificate and require the certificate holder to immediately cease and desist from engaging in business as an electric generator lessor.
  - (4) At any hearing instituted upon request of a complaining party for the purpose of reviewing the certificate holder's compliance with the provisions of Article 6B of Chapter 62 and this Rule, the complainant shall have the burden of proof. At any other hearing, including a hearing instituted by the Commission, the burden of proof shall be on the electric generator lessor.
  - (5) After the hearing, and for good cause shown, the Commission may, in its discretion, reinstate a suspended certificate, continue a suspension of a certificate, or revoke a certificate. In addition, the Commission may impose a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence for any person whom the Commission determines either directly or indirectly engaged in any unfair or deceptive practice in the leasing of solar energy facilities, otherwise violated the requirements of G.S. 62-126.6, or operated in violation of the terms of the certificate.
  - (6) The certificate shall be subject to administrative revocation if the certificate holder fails to file the certificate of compliance required by this rule on or before April 1 of each year, or if the certificate holder is demonstrated to have failed to conduct business in substantial compliance with all federal and State laws, regulations, and rules for the protection of the environment and conservation of natural resources, the provision of electric service, and the protection of consumers, and that fact is brought to the attention of the Commission.
- (h) Procedure on Complaint that a Person is Operating without a Certificate.
- (1) Upon complaint of an electric public utility, a municipal electric service provider, an electric membership corporation, the Public Staff, a customer generator lessee, or other person having an interest in the conduct of a person who is alleged to be operating as an electric generator lessor without a valid certificate, the Commission shall enter upon a proceeding to investigate the complaint.
  - (2) In a proceeding to investigate a complaint that a person is alleged to be operating as an electric generator lessor without a valid certificate, the Commission shall issue an order establishing the proceeding, requiring appropriate filings from the parties, and setting a schedule for the proceeding, including setting the matter for hearing.
  - (3) By issuance of the order establishing a proceeding to investigate a complaint that a person is alleged to be operating without a valid certificate, the Commission may require such person to immediately cease and desist from engaging in business as an electric generator lessor.
  - (4) At the hearing in a proceeding to investigate a complaint that a person is alleged to be operating without a valid certificate, the complainant shall have the burden to show that the person is soliciting business or otherwise operating as an electric generator lessor without a valid certificate.
  - (5) The Commission, upon determining that the person is soliciting business or otherwise operating as an electric generator lessor without a valid certificate may, by final order issued in such an investigatory proceeding, declare such person to have violated the provisions of Article 6B of Chapter 62, restrain permanently the person from engaging in the conduct complained of, and impose a civil penalty of not more than ten thousand dollars (\$10,000) per occurrence.
- (i) Reporting.
- (1) Each offering utility shall file with the Commission a report, on or before April 1, 2019, and each calendar year thereafter, which contains the following information: (i) the total installed capacity of all solar energy facilities on an offering utility's system that are leased pursuant to G.S. 62-126.7; (ii) the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand; and (iii) the percentage of available installed capacity remaining until the statutory cap set forth in G.S. 62-126.5(d) is reached.

- (2) In addition to the report required in subsection (i)(1) of this Rule, the offering utility shall file with the Commission a notice when the total installed capacity of all solar energy facilities installed on the utility's system that are leased pursuant to G.S. 62-126.7 represents 0.25 percent, 0.5 percent, and 0.75 percent of the previous five-year average of the North Carolina retail contribution to the offering utility's coincident retail peak demand. The report required by this subsection shall be filed within twenty (20) days after the offering utility having reached the respective level of installed capacity.

*(NCUC Docket No. E-100, Sub 156, 1/08/2018; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

#### **R8-74 FINANCING FOR COSTS ASSOCIATED WITH THE EARLY RETIREMENT OF SUBCRITICAL COAL-FIRED GENERATING FACILITIES**

(a) Purpose. – The purpose of this Rule is to implement and comply with Section 5 of House Bill 951, S.L. 2021-165, relating to securitization of costs associated with early retirement of subcritical coal-fired electric generating facilities owned by any electric public utility as defined in N.C. Gen. Stat. § 62-3(23) serving at least 150,000 North Carolina retail jurisdictional customers as of January 1, 2021.

(b) Definitions. – The following definitions apply in this Rule:

- (1) Ancillary agreement. – A bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with coal plant retirement bonds.
- (2) Assignee. – A legally recognized entity to which a public utility assigns, sells, or transfers, other than as security, all or a portion of its interest in or right to coal plant retirement property. The term includes a corporation, limited liability company, general partnership or limited partnership, public authority, trust, financing entity, or any entity to which an assignee assigns, sells, or transfers, other than as security, its interest in or right to coal plant retirement property.
- (3) Bond advisory team. – An advisory body of representatives from the public utility, Commission, and Public Staff established at the Commission's discretion to provide input and advice to the public utility regarding the public utility's decisions on structuring, marketing, and pricing of the coal plant retirement bonds.
- (4) Bondholder. – A person who holds a coal plant retirement bond.
- (5) Coal plant retirement activity. – An activity or activities by a public utility, its affiliates, or its contractors, directly and specifically in connection with early retirement of subcritical coal-fired electric generating facilities.
- (6) Coal plant retirement bonds. – Bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidence of indebtedness or ownership that are issued by a public utility or an assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance Commission-approved coal plant retirement costs and financing costs, and that are secured by or payable from coal plant retirement property. If certificates of participation or ownership are issued, references in this Rule to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates.
- (7) Coal plant retirement charge. – The amounts authorized by the Commission to repay, finance, or refinance coal plant retirement costs and financing costs and that are nonbypassable charges (i) imposed on and part of all retail customer bills, (ii) collected by a public utility or its successors or assignees, or a collection agent, in full, separate and apart from the public utility's base rates, and (iii) paid by all existing or future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this State.
- (8) Coal plant retirement costs. – All of the following, as determined by the Commission in a separate proceeding:
  - (a) Fifty percent (50%) of the remaining net book value of all of a public utility's subcritical coal-fired electric generating facilities retired early or to be retired early to achieve the authorized carbon reduction goals set forth in Section 1 of House Bill 951 that are appropriate for recovery from existing and future retail customers receiving transmission or distribution service from such public utility.
  - (b) The public utility's cost of capital from the date of the applicable coal plant retirement to the date the coal plant retirement bonds are issued calculated using the public utility's weighted average

cost of capital as defined in its most recent base rate case proceeding before the Commission net of applicable income tax savings related to the interest component; provided, however, if the coal plant is included in base rates in the interval between the public utilities' petition for financing order and the corresponding issuance of coal plant retirement bonds, coal plant retirement costs shall not include the public utility's cost of capital until such time the plant has been removed from the base rate calculation of rates.

- (c) Coal plant retirement costs shall be net of applicable insurance proceeds, tax benefits, and any other amounts intended to reimburse the public utility for coal plant retirement activities such as government grants, or aid of any kind and where determined appropriate by the Commission. Coal plant retirement costs include costs of repurchasing equity or retiring any existing indebtedness relating to the early retirement of a subcritical coal-fired electric generating facility.
  - (d) With respect to coal plant retirement costs that the public utility expects to incur, any difference between costs expected to be incurred and actual, reasonable and prudent costs incurred, or any other ratemaking adjustments appropriate to fairly and reasonably assign or allocate coal plant retirement cost recovery to customers over time, shall be addressed in a future general rate proceeding, as may be facilitated by other orders of the Commission issued at the time or prior to such proceeding; provided, however, that the Commission's adoption of a financing order and approval of the issuance of coal plant retirement bonds may not be revoked or otherwise modified.
- (9) Coal plant retirement property. – All of the following:
- (a) All rights and interests of a public utility or successor or assignee of the public utility under a financing order, including the right to impose, bill, charge, collect, and receive coal plant retirement charges authorized under the financing order and to obtain periodic adjustments to such charges as provided in the financing order.
  - (b) All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.
- (10) Code. – The Uniform Commercial Code, Chapter 25 of the General Statutes.
- (11) Commission. – The North Carolina Utilities Commission.
- (12) Financing costs. – The term includes all of the following:
- (a) Interest and acquisition, defeasance, or redemption premiums payable on coal plant retirement bonds.
  - (b) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to coal plant retirement bonds.
  - (c) Any other cost related to issuing, supporting, repaying, refunding, and servicing coal plant retirement bonds, including servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, structuring adviser fees, administrative fees, placement and underwriting fees, independent director and manager fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other costs necessary to otherwise ensure the timely payment of coal plant retirement bonds or other amounts or charges payable in connection with the bonds, including costs related to obtaining the financing order.
  - (d) Any taxes and license fees or other fees imposed on the revenues generated from the collection of the coal plant retirement charge or otherwise resulting from the collection of coal plant retirement charges, in any such case whether paid, payable, or accrued.
  - (e) Any State and local taxes, franchise, gross receipts, and other taxes or similar charges, including regulatory assessment fees, whether paid, payable, or accrued.
  - (f) Any costs incurred by the Commission or Public Staff for any outside consultants or counsel retained in connection with the securitization of coal plant retirement costs.
- (13) Financing order. – An order that authorizes the issuance of coal plant retirement bonds; the imposition, collection, and periodic adjustments of a coal plant retirement charge; the creation of coal plant retirement property; and the sale, assignment, or transfer of coal plant retirement property to an assignee.

- (14) Financing party. – Bondholders and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of bondholders.
- (15) Financing statement. – Defined in Article 9 of the Code.
- (16) House Bill 951. – Session Law 2021-165 signed by the State Governor on October 13, 2021.
- (17) Pledgee. – A financing party to which a public utility or its successors or assignees mortgages, negotiates, pledges, or creates a security interest or lien on all or any portion of its interest in or right to coal plant retirement property.
- (18) Public utility. – A public utility, as defined in N.C.G.S. § 62-3, that sells electric power to retail electric customers in the State.
- (19) Subcritical coal-fired generating facility. – A plant that utilizes pulverized coal combustion technology in which the steam pressure within the boiler is below 3200 pounds per square inch and the temperature is below 1025 degrees Fahrenheit (550 degrees Celsius) and has a conversion of the energy in the coal to electricity of no greater than 37%.

(c) Financing Orders. –

- (1) A public utility may petition the Commission for a financing order. The petition shall include all of the following:
  - (a) A description of the subcritical coal-fired electric generating facilities that the public utility has retired early or proposes to retire early for the purpose of achieving the authorized carbon reduction goals set forth in Section 1 of House Bill 951, or if the public utility is subject to a settlement agreement as contemplated by subsection (c)(2) of this Rule, a description of the settlement agreement.
  - (b) The coal plant retirement costs and estimate of the costs of any coal plant retirement activities that are being undertaken but are not completed.
  - (c) An estimate of the financing costs related to the coal plant retirement bonds.
  - (d) An estimate of the coal plant retirement charges necessary to recover the coal plant retirement costs and financing costs and the period for recovery of such costs.
  - (e) A comparison between the net present value of the costs to customers that are estimated to result from the issuance of coal plant retirement bonds and the costs that would result from the application of the traditional method of financing and recovering coal plant retirement costs from customers. The comparison should demonstrate that the issuance of coal plant retirement bonds and the imposition of coal plant retirement charges are expected to provide quantifiable benefits to customers.
  - (f) Direct testimony and exhibits supporting the petition.
- (2) If a public utility is subject to a settlement agreement that governs the type and amount of principal costs that could be included in coal plant retirement costs, then the public utility must file a petition with the Commission for review and approval of those costs no later than 90 days before filing a petition for a financing order pursuant to this Rule.
- (3) Petition and order. –
  - (a) Proceedings on a petition submitted pursuant to this subdivision begin with the petition by a public utility, filed subject to the time frame specified in Rule R8-74(c)(2), if applicable, and shall be disposed of in accordance with the requirements of Chapter 62 and the rules of the Commission, except as follows:
    - (i) Within 14 days after the date the petition is filed, the Commission shall establish a procedural schedule that permits a Commission decision no later than 135 days after the date the petition is filed.
    - (ii) No later than 135 days after the date the petition is filed, the Commission shall issue a financing order or an order rejecting the petition. A party to the Commission proceeding may petition the Commission for reconsideration of the financing order within five days after the date of its issuance.
  - (b) A financing order issued under this Rule by the Commission to a public utility shall include all of the following elements:
    - (i) Except for changes made pursuant to the formula-based mechanism authorized under this Rule, the amount of coal plant retirement costs to be financed using coal plant retirement bonds. The Commission shall describe and estimate the amount of financing

- costs that may be recovered through coal plant retirement charges and specify the period over which coal plant retirement costs and financing costs may be recovered.
- (ii) A finding that the proposed issuance of coal plant retirement bonds and the imposition and collection of a coal plant retirement charge are expected to provide quantifiable benefits to customers as compared to the costs that would have been incurred absent the issuance of coal plant retirement bonds.
  - (iii) A finding that the structuring and pricing of the coal plant retirement bonds are reasonably expected to result in the lowest coal plant retirement charges consistent with market conditions at the time the coal plant retirement bonds are priced and the terms set forth in such financing order.
  - (iv) A requirement that, for so long as the coal plant retirement bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of coal plant retirement charges authorized under a financing order shall be nonbypassable and paid by all existing and future retail customers receiving transmission or distribution service, or both, from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in this State.
  - (vi) A formula-based true-up mechanism for making, at least annually, expeditious periodic adjustments in the coal plant retirement charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the charges or to otherwise ensure the timely payment of coal plant retirement bonds and financing costs and other required amounts and charges payable in connection with the coal plant retirement bonds.
  - (vii) The coal plant retirement property that is, or shall be, created in favor of a public utility or its successors or assignees and that shall be used to pay or secure coal plant retirement bonds and all financing costs.
  - (viii) The degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the coal plant retirement bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs.
  - (ix) How coal plant retirement charges will be allocated among customer classes.
  - (x) A requirement that, after the final terms of an issuance of coal plant retirement bonds have been established and before the issuance of coal plant retirement bonds, the public utility determines the resulting initial coal plant retirement charge in accordance with the financing order and that such initial coal plant retirement charge be final and effective upon the issuance of such coal plant retirement bonds without further Commission action so long as the coal plant retirement charge is consistent with the financing order.
  - (xi) A method of tracing funds collected as coal plant retirement charges, or other proceeds of coal plant retirement property, and determine that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any coal plant retirement property subject to a financing order under applicable law.
  - (xii) Any other conditions not otherwise inconsistent with this Rule that the Commission determines are appropriate.
- (c) A financing order issued to a public utility may provide that creation of the public utility's coal plant retirement property is conditioned upon, and simultaneous with, the sale or other transfer of the coal plant retirement property to an assignee and the pledge of the coal plant retirement property to secure coal plant retirement bonds.
  - (d) If the Commission issues a financing order, the public utility shall file with the Commission at least annually a petition or a letter applying the formula-based mechanism and, based on estimates of consumption for each rate class and other mathematical factors, requesting administrative approval to make the applicable adjustments. The review of the filing shall be limited to determining whether there are any mathematical or clerical errors in the application of the formula-based mechanism relating to the appropriate amount of any overcollection or undercollection of coal plant retirement charges and the amount of an adjustment. The adjustments shall ensure the recovery of revenues sufficient to provide for the payment of

principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of coal plant retirement bonds approved under the financing order. Within 30 days after receiving a public utility's request pursuant to this paragraph, the Commission shall either approve the request or inform the public utility of any mathematical or clerical errors in its calculation. If the Commission informs the utility of mathematical or clerical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this paragraph shall apply to a refiled request.

- (e) Subsequent to the transfer of coal plant retirement property to an assignee or the issuance of coal plant retirement bonds authorized thereby, whichever is earlier, a financing order is irrevocable and, except for changes made pursuant to the formula-based mechanism authorized in this Rule, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust coal plant retirement charges approved in the financing order. After the issuance of a financing order, the public utility retains sole discretion regarding whether to assign, sell, or otherwise transfer coal plant retirement property or to cause coal plant retirement bonds to be issued, including the right to defer or postpone such assignment, sale, transfer, or issuance.
- (f) A financing order issued under this Rule by the Commission to a public utility may include a bond advisory team.
  - (i) Following issuance of a financing order, bond advisory team meetings shall be held to provide timely information to members regarding aspects of the structuring, marketing, and pricing of the coal plant retirement bonds.
  - (ii) The public utility, the Commission, and the Public Staff may designate staff, counsel, and consultants to participate on the bond advisory team on their behalf. However, the Public Staff, the Public Staff's designees, the Commission, and the Commission designees are not agents of the public utility in any manner by their participation on a bond advisory team.
  - (iii) The bond advisory team may be present during communications with underwriters, credit rating agencies, and investors, the public utility shall use reasonable means to invite bond advisory team to such communications; the public utility shall invite members of the bond advisory team to join bond advisory team meetings to review and comment on material aspects of the structuring, pricing, and marketing of the coal plant retirement bonds, including without limitation the following: the selection and retention of underwriters and other transaction participants; the terms of all transaction documents; the length of the bond terms; the interest rates of the bonds (including whether the interest rate is floating or fixed); the capitalization of the bonds; the transaction structure; the issuance strategy; appropriate credit enhancements; and the credit rating process.
  - (iv) The public utility shall have the sole right to select all counsel and advisors for the public utility, the underwriters, and any issuing entity.
  - (v) The public utility shall retain all decision-making authority with respect to the structuring, marketing, and pricing of the coal plant retirement bonds.
- (4) At the request of a public utility, the Commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding coal plant retirement bonds issued pursuant to the original financing order if the Commission finds that the subsequent financing order satisfies all of the criteria specified in this Rule for a financing order. Effective upon retirement of the refunded coal plant retirement bonds and the issuance of new coal plant retirement bonds, the Commission shall adjust the related coal plant retirement charges accordingly.
- (5) Within 60 days after the Commission issues a financing order or a decision denying a request for reconsideration or, if the request for reconsideration is granted, within 30 days after the Commission issues its decision on reconsideration, an adversely affected party may petition for judicial review in the Supreme Court of North Carolina. Review on appeal shall be based solely on the record before the Commission and briefs to the Court and is limited to determining whether the financing order, or the order on reconsideration, conforms to the State Constitution and State and federal law and is within the authority of the Commission under House Bill 951.
- (6) Duration of financing order. –

- (a) A financing order remains in effect and coal plant retirement property under the financing order continues to exist until coal plant retirement bonds issued pursuant to the financing order have been paid in full or defeased and, in each case, all Commission-approved financing costs of such coal plant retirement bonds have been recovered in full.
- (b) A financing order issued to a public utility remains in effect and unabated notwithstanding the reorganization, bankruptcy or other insolvency proceedings, merger, or sale of the public utility or its successors or assignees.

(d) Exceptions to Commission Jurisdiction. –

- (1) The Commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this Chapter, consider the coal plant retirement bonds issued pursuant to a financing order to be the debt of the public utility other than for federal income tax purposes, consider the coal plant retirement charges paid under the financing order to be the revenue of the public utility for any purpose, or consider the coal plant retirement costs or financing costs specified in the financing order to be the costs of the public utility, nor may the Commission determine any action taken by a public utility which is consistent with the financing order to be unjust or unreasonable.
- (2) The Commission may not order or otherwise directly or indirectly require a public utility to use coal plant retirement bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. After the issuance of a financing order, the public utility retains sole discretion regarding whether to cause the coal plant retirement bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance. Nothing shall prevent the public utility from abandoning the issuance of coal plant retirement bonds under the financing order by filing with the Commission a statement of abandonment and the reasons therefor. The Commission may not refuse to allow a public utility to recover coal plant retirement costs in an otherwise permissible fashion, or refuse or condition authorization or approval of the issuance and sale by a public utility of securities or the assumption by the public utility of liabilities or obligations, solely because of the potential availability of coal plant retirement bond financing.

(e) Public Utility Duties. – The electric bills of a public utility that has obtained a financing order and caused coal plant retirement bonds to be issued must comply with the provisions of this Rule; however, the failure of a public utility to comply with this Rule does not invalidate, impair, or affect any financing order, coal plant retirement property, coal plant retirement charge, or coal plant retirement bonds. The public utility must do the following:

- (1) Explicitly reflect that a portion of the charges on such bill represents coal plant retirement charges approved in a financing order issued to the public utility and, if the coal plant retirement property has been transferred to an assignee, must include a statement to the effect that the assignee is the owner of the rights to coal plant retirement charges and that the public utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee. The tariff applicable to customers must indicate the coal plant retirement charge and the ownership of the charge.
- (2) Include the coal plant retirement charge on each customer's bill as a separate line item and include both the rate and the amount of the charge on each bill.

(f) Coal plant retirement Property. –

- (1) Provisions applicable to coal plant retirement property. –
  - (a) All coal plant retirement property that is specified in a financing order constitutes an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of coal plant retirement charges depends on the public utility, to which the financing order is issued, performing its servicing functions relating to the collection of coal plant retirement charges and on future electricity consumption. The property exists (i) regardless of whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and (ii) notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by the public utility or its successors or assignees and the future consumption of electricity by customers.
  - (b) Coal plant retirement property specified in a financing order exists until coal plant retirement bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of such coal plant retirement bonds have been recovered in full.
  - (c) All or any portion of coal plant retirement property specified in a financing order issued to a public utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the public utility and created for the limited purpose of

acquiring, owning, or administering coal plant retirement property or issuing coal plant retirement bonds under the financing order. All or any portion of coal plant retirement property may be pledged to secure coal plant retirement bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of coal plant retirement property by a public utility, or an affiliate of the public utility, to an assignee, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission.

- (d) If a public utility defaults on any required payment of charges arising from coal plant retirement property specified in a financing order, a court, upon application by an interested party, and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the coal plant retirement property to the financing parties or their assignees. Any such financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the public utility or its successors or assignees.
  - (e) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in coal plant retirement property specified in a financing order issued to a public utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the public utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the public utility or any other entity.
  - (f) Any successor to a public utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of public utility restructuring or otherwise, must perform and satisfy all obligations of, and have the same rights under a financing order as, the public utility under the financing order in the same manner and to the same extent as the public utility, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the coal plant retirement property. Nothing in this subdivision is intended to limit or impair any authority of the Commission concerning the transfer or succession of interests of public utilities.
  - (g) Coal plant retirement bonds shall be nonrecourse to the credit or any assets of the public utility other than the coal plant retirement property as specified in the financing order and any rights under any ancillary agreement.
- (2) Provisions applicable to security interests. –
- (a) The creation, perfection, and enforcement of any security interest in coal plant retirement property to secure the repayment of the principal and interest and other amounts payable in respect of coal plant retirement bonds; amounts payable under any ancillary agreement and other financing costs are governed by this Rule and not by the provisions of the Code.
  - (b) A security interest in coal plant retirement property is created, valid, and binding and perfected at the later of the time: (i) the financing order is issued, (ii) a security agreement is executed and delivered by the debtor granting such security interest, (iii) the debtor has rights in such coal plant retirement property or the power to transfer rights in such coal plant retirement property, or (iv) value is received for the coal plant retirement property. The description of coal plant retirement property in a security agreement is sufficient if the description refers to this Rule and the financing order creating the coal plant retirement property.
  - (c) A security interest shall attach without any physical delivery of collateral or other act, and, upon the filing of a financing statement with the office of the Secretary of State, the lien of the security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien. Also upon this filing, a transfer of an interest in the coal plant retirement property shall be perfected against all parties having claims of any kind, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, and shall have priority over all competing claims other than any prior security interest, ownership interest, or assignment in the property previously perfected in accordance with this Rule.
  - (d) The Secretary of State shall maintain any financing statement filed to perfect any security interest under this Rule in the same manner that the Secretary maintains financing statements filed by

transmitting utilities under the Code. The filing of a financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code.

- (e) The priority of a security interest in coal plant retirement property is not affected by the commingling of coal plant retirement charges with other amounts. Any pledgee or secured party shall have a perfected security interest in the amount of all coal plant retirement charges that are deposited in any cash or deposit account of the qualifying utility in which coal plant retirement charges have been commingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the assignee or a financing party.
  - (f) No application of the formula-based adjustment mechanism as provided in this Rule will affect the validity, perfection, or priority of a security interest in or transfer of coal plant retirement property.
  - (g) If a default or termination occurs under the coal plant retirement bonds, the financing parties or their representatives may foreclose on or otherwise enforce their lien and security interest in any coal plant retirement property as if they were secured parties with a perfected and prior lien under the Code, and the Commission may order amounts arising from coal plant retirement charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On application by or on behalf of the financing parties, the Superior Court of Wake County shall order the sequestration and payment to them of revenues arising from the coal plant retirement charges.
- (3) Provisions applicable to the sale, assignment, or transfer of coal plant retirement property. –
- (a) Any sale, assignment, or other transfer of coal plant retirement property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the coal plant retirement property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer other than for federal and State income tax purposes. For all purposes other than federal and State income tax purposes, the parties' characterization of a transaction as a sale of an interest in coal plant retirement property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. A transfer of an interest in coal plant retirement property may be created only when all of the following have occurred: (i) the financing order creating the coal plant retirement property has become effective, (ii) the documents evidencing the transfer of coal plant retirement property have been executed by the assignor and delivered to the assignee, and (iii) value is received for the coal plant retirement property. After such a transaction, the coal plant retirement property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the coal plant retirement property perfected in accordance with subsection (f)(2) of this Rule.
  - (b) The characterization of the sale, assignment, or other transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by the occurrence of any of the following factors:
    - (i) Commingling of coal plant retirement charges with other amounts.
    - (ii) The retention by the seller of (a) a partial or residual interest, including an equity interest, in the coal plant retirement property, whether direct or indirect, or whether subordinate or otherwise, or (b) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of coal plant retirement charges.
    - (iii) Any recourse that the purchaser may have against the seller.
    - (iv) Any indemnification rights, obligations, or repurchase rights made or provided by the seller.
    - (v) The obligation of the seller to collect coal plant retirement charges on behalf of an assignee.
    - (vi) The transferor acting as the servicer of the coal plant retirement charges or the existence of any contract that authorizes or requires the public utility, to the extent that any interest in coal plant retirement property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the coal plant retirement charges for the

benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party.

- (vii) The treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes.
- (viii) The granting or providing to bondholders a preferred right to the coal plant retirement property or credit enhancement by the public utility or its affiliates with respect to such coal plant retirement bonds.
- (ix) Any application of the formula-based adjustment mechanism as provided in this Rule.
- (c) Any right that a public utility has in the coal plant retirement property before its pledge, sale, or transfer or any other right created under this Rule or created in the financing order and assignable under this Rule or assignable pursuant to a financing order is property in the form of a contract right or a chose in action. Transfer of an interest in coal plant retirement property to an assignee is enforceable only upon the later of (i) the issuance of a financing order, (ii) the assignor having rights in such coal plant retirement property or the power to transfer rights in such coal plant retirement property to an assignee, (iii) the execution and delivery by the assignor of transfer documents in connection with the issuance of coal plant retirement bonds, and (iv) the receipt of value for the coal plant retirement property. An enforceable transfer of an interest in coal plant retirement property to an assignee is perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with subsection (f)(2)(c) of this Rule. The transfer is perfected against third parties as of the date of filing.
- (d) The Secretary of State shall maintain any financing statement filed to perfect any sale, assignment, or transfer of coal plant retirement property under Rule R8-74(f) in the same manner that the Secretary maintains financing statements filed by transmitting utilities under the Code. The filing of any financing statement under this Rule shall be governed by the provisions regarding the filing of financing statements in the Code. The filing of such a financing statement is the only method of perfecting a transfer of coal plant retirement property.
- (e) The priority of a transfer perfected under this Rule is not impaired by any later modification of the financing order or coal plant retirement property or by the commingling of funds arising from coal plant retirement property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under subsection (f)(2) of this Rule, is terminated when they are transferred to a segregated account for the assignee or a financing party. If coal plant retirement property has been transferred to an assignee or financing party, any proceeds of that property must be held in trust for the assignee or financing party.
- (f) The priority of the conflicting interests of assignees in the same interest or rights in any coal plant retirement property is determined as follows:
  - (i) Conflicting perfected interests or rights of assignees rank according to priority in time of perfection. Priority dates from the time a filing covering the transfer is made in accordance with subsection (f)(2)(c) of this Rule.
  - (ii) A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee.
  - (iii) A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right.

(g) Description or Indication of Property. – The description of coal plant retirement property being transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, granted or pledged to a pledgee in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the financing order that created the coal plant retirement property and states that the agreement or financing statement covers all or part of the property described in the financing order. This Rule applies to all purported transfers of, and all purported grants or liens or security interests in, coal plant retirement property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed.

(h) Financing Statements. – All financing statements referenced in this Rule are subject to Part 5 of Article 9 of the Code, except that the requirement as to continuation statements does not apply.

(i) Choice of Law. – The law governing the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the transfer of an interest or right or the pledge or creation of a security interest in any coal plant retirement property shall be the laws of this State.

(j) Coal plant retirement Bonds Not Public Debt. – Neither the State nor its political subdivisions are liable on any coal plant retirement bonds, and the bonds are not a debt or a general obligation of the State or any of its political subdivisions, agencies, or instrumentalities, nor are they special obligations or indebtedness of the State or any agency or political subdivision. An issue of coal plant retirement bonds does not, directly, indirectly, or contingently, obligate the State or any agency, political subdivision, or instrumentality of the State to levy any tax or make any appropriation for payment of the coal plant retirement bonds, other than in their capacity as consumers of electricity. All coal plant retirement bonds must contain on the face thereof a statement to the following effect: "Neither the full faith and credit nor the taxing power of the State of North Carolina is pledged to the payment of the principal of, or interest on, this bond."

(k) Legal Investment. – All of the following entities may legally invest any sinking funds, moneys, or other funds in coal plant retirement bonds:

- (1) Subject to applicable statutory restrictions on State or local investment authority, the State, units of local government, political subdivisions, public bodies, and public officers, except for members of the Commission.
- (2) Banks and bankers, savings and loan associations, credit unions, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business.
- (3) Personal representatives, guardians, trustees, and other fiduciaries.
- (4) All other persons authorized to invest in bonds or other obligations of a similar nature.

(l) Obligation of Nonimpairment. –

- (1) The State and its agencies, including the Commission, pledge and agree with bondholders, the owners of the coal plant retirement property, and other financing parties that the State and its agencies will not take any action listed in this subdivision. This paragraph does not preclude limitation or alteration if full compensation is made by law for the full protection of the coal plant retirement charges collected pursuant to a financing order and of the bondholders and any assignee or financing party entering into a contract with the public utility. The prohibited actions are as follows:
  - (a) Alter the provisions of this Rule, which authorize the Commission to create an irrevocable contract right or chose in action by the issuance of a financing order, to create coal plant retirement property, and make the coal plant retirement charges imposed by a financing order irrevocable, binding, or nonbypassable charges.
  - (b) Take or permit any action that impairs or would impair the value of coal plant retirement property or the security for the coal plant retirement bonds or revises the coal plant retirement costs for which recovery is authorized.
  - (c) In any way impair the rights and remedies of the bondholders, assignees, and other financing parties.
  - (d) Except for changes made pursuant to the formula-based adjustment mechanism authorized under this Rule, reduce, alter, or impair coal plant retirement charges that are to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related coal plant retirement bonds have been paid and performed in full.
- (2) Any person or entity that issues coal plant retirement bonds may include the language specified in this subsection (1) in the coal plant retirement bonds and related documentation.

(m) Not a Public Utility. – assignee or financing party is not a public utility or person providing electric service by virtue of engaging in the transactions described in this Rule.

(n) Conflicts. – If there is a conflict between this Rule and any other law regarding the attachment, assignment, or perfection, or the effect of perfection, or priority of, assignment or transfer of, or security interest in coal plant retirement property, this Rule shall govern.

(o) Consultation. – In making determinations under this Rule, the Commission or Public Staff or both may engage an outside consultant and counsel.

(p) Effect of Invalidity. – If any provision of this Rule is held invalid or is invalidated, superseded, replaced, repealed, or expires for any reason, that occurrence does not affect the validity of any action allowed under this Rule which is taken by a public utility, an assignee, a financing party, a collection agent, or a party to an ancillary agreement; and any such action

remains in full force and effect with respect to all coal plant retirement bonds issued or authorized in a financing order issued under this Rule before the date that such provision is held invalid or is invalidated, superseded, replaced, or repealed, or expires for any reason.

(NCUC Docket No. E-100, Sub 177, 4/5/2022.)

## CHAPTER 8 APPENDIX

### REVISED GUIDELINES FOR RESOLUTION OF ISSUES REGARDING INCENTIVE<sup>2</sup> PROGRAMS

1. To obtain Commission approval of a residential or commercial program involving incentives per Rule R1-38 [now Rule R6-95 or R8-68], the sponsoring utility must demonstrate that the program is cost effective for its ratepayers.
  - (a) Maximum incentive payments to any party must be capable of being determined from an examination of the applicable program.
  - (b) Existing approved programs are grandfathered. However, utilities shall file a listing of existing approved programs subject to these guidelines, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all within 60 days after approval of these guidelines.
  - (c) Utilities shall file a description of any new program or of a change in an existing program, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all at least 30 days prior to changing or introducing the program.
  - (d) The matter of the relative efficiency of electricity versus natural gas under various scenarios (space heating alone, space heating plus A/C, etc.) cannot now be resolved. A better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.
  - (e) The criteria for determining whether or not to approve an electric program pursuant to G.S. 62-140(c) should not include consideration of the impact of an electric program on the sales of natural gas, or vice versa.
  - (f) Approval of a program pursuant to Commission Rule R1-38 [now Rule R6-95 or R8-68] does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings.
2. If a program involves an incentive per Rule R1-38 [now Rule R6-95 or R8-68] and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.
  - (a) If the presumption that a program is promotional is not successfully rebutted, the cost of the incentive may not be recoverable from the ratepayers unless the Commission finds good cause to do so.
  - (b) If the presumption that a program is promotional is successfully rebutted, the cost of the incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers. The amount of any recovery shall not exceed the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.
  - (c) The presumption that a program is promotional may generally be rebutted at the time it is filed for approval by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards, subject to Commission approval.
3. If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall be advised by the sponsoring utility that the builder may receive the incentive on a per structure basis without having to agree to:
  - (a) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or
  - (b) the type of any given structure (gas or electric) to be built in a given subdivision development.

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<sup>2</sup> All incentives referenced in these Revised Guidelines are participation incentives as now defined in Rule R8-68(b)(7).

- (a) Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.
  - (b) A builder shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.
  - (c) A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.
4. The promotional literature for any program offering energy-efficiency mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.
  5. Duke's proposed Food Service Program shall be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with guideline number 1 above.
    - (a) The nature or amount of incentive contained in each program encouraging the installation of commercial appliances (electric or gas) that use the sponsoring utility's energy product, such as Duke's Food Service Program, shall be unaffected by the availability or use of alternate fuels in the applicable customer's facility.
    - (b) Commercial clients (builders, customers, etc.) who are offered incentives for installation of appliances shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.
  6. Rates, rate design issues, and terms and conditions of service approved by the Commission are not subject to these guidelines.
  7. Pending applications involving incentive programs are subject to these guidelines.

PUBLIC NOTICE OF FILING OF PRELIMINARY PLANS TO MAKE APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. E-\_\_\_, SUB \_\_\_

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of (Electric Public Utility) for	)	
a Certificate of Public Convenience and Necessity to	)	PUBLIC NOTICE
Construct a (Nameplate Generating Capacity)(Renewable	)	
Resource Fuel Source) Electric	)	
Generating Facility in (County Name)	)	
County, North Carolina	)	
	)	

NOTICE IS HEREBY GIVEN that on (DATE), (ELECTRIC PUBLIC UTILITY), filed a letter in this docket giving notice of its intent to file an application on or after (DATE), for a certificate of public convenience and necessity (CPCN) to construct a (NAMEPLATE GENERATING CAPACITY)(RENEWABLE RESOURCE FUEL SOURCE) located at (E911 ADDRESS, IF AVAILABLE; LOCATION DESCRIPTION, IF E911 ADDRESS IS NOT AVAILABLE) in (COUNTY NAME) County, North Carolina. (ELECTRIC PUBLIC UTILITY) will apply for this certificate under the procedure for expedited review of a CPCN for a facility that is owned by an electric public utility and participating in the Competitive Procurement of Renewable Energy Program established pursuant to G.S. 62-110.8.

The North Carolina Utilities Commission anticipates considering this matter at the Regular Commission Staff Conference scheduled for (DATE OF 3<sup>rd</sup> MONDAY FOLLOWING FILING OF APPLICATION) to be held at 10:00 a.m., in the Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

Details of the application, once filed, may be obtained from the Office of the Chief Clerk of the North Carolina Utilities Commission, 430 N. Salisbury Street, 5th Floor, Dobbs Building, Raleigh, North Carolina 27603 or 4325 Mail Service Center, Raleigh, North Carolina 27699-4325 or on the Commission's website at [www.ncuc.net](http://www.ncuc.net).

Persons desiring to be heard with respect to the application may file a statement with the Commission and should include in such statement any information that they wish to be considered by the Commission in connection with the application. If significant complaint(s) are filed with the Commission prior to the Regular Commission Staff Conference on (DATE OF 3<sup>rd</sup> MONDAY FOLLOWING FILING OF APPLICATION), the Commission will schedule this matter for hearing. Such statements will be included in the Commission's official files; however, any such written statements are not evidence unless those persons appear at a public hearing and testify concerning the information contained in their written statements. Such statements should reference Docket No. E-\_\_, Sub \_\_\_\_ and should be addressed to Chief Clerk, North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325.

Statements may also be directed to Christopher J. Ayers, Executive Director, Public Staff-North Carolina Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326 or to The Honorable Josh Stein, Attorney General of North Carolina, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001.

PUBLISHED PURSUANT TO COMMISSION RULE R8-71(k).

NOTE TO PRINTER: Advertising cost shall be paid by (Electric Public Utility). It is required that an Affidavit of Publication be filed with the Commission by (Electric Public Utility).

*(NCUC Docket No. E-100, Sub 113, 02/29/08; NCUC Docket No. E-100, Sub 150, 11/06/2017.)*

#### **R9-01 SAFETY RULES AND REGULATIONS**

The current rules and regulations of the American National Standards Institute (ANSI) entitled "National Electrical Safety Code" are hereby adopted by reference as the communication safety rules of this Commission and shall apply to all telephone utilities which operate in North Carolina under the jurisdiction of the Commission.

*(NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 12/8/81; 4/9/84; 6/23/87; 12/5/89; 12/8/92; 1/7/97; 04/02/02.)*

#### **R9-02 UNIFORM SYSTEM OF ACCOUNTS**

Effective January 1, 1988, the Uniform System of Accounts (USOA) for telephone companies as prescribed by the Federal Communications Commission (FCC) on May 15, 1986, and all subsequent revisions thereto, are adopted by this Commission and shall be used by all telephone companies under its jurisdiction subject to the following exceptions and conditions unless otherwise ordered by the Commission:

- (1) All references to federal statutes, federal regulations, and other federal documents are to be ignored or deleted because they are not applicable to the jurisdiction exercised by this Commission.
- (2) Instead of telephone companies being divided into Class A and Class B categories, all companies shall be treated as Class A companies.
- (3) Each local exchange carrier with nonregulated operations shall provide to the Public Staff two copies of its cost allocation plan or cost allocation practices relating to the allocation of joint costs between regulated and nonregulated operations. Subsequent updates and revisions shall be provided within 30 days of implementation.
- (4) Each local exchange carrier shall provide the Public Staff with two copies of its list of accounts and subsidiary record codes by name and number together with a brief description of each. Subsequent updates and revisions shall be provided within 30 days of implementation.
- (5) Accounting records shall be maintained in a manner such that a reasonable audit trail exists with respect to all affiliated company transactions. It is noted with respect to all future general rate increase requests and such other investigations as may be undertaken concerning affiliated company transactions that the Commission will require the utilities to provide the information now required by the Commission in its minimum filing requirements, Form P-1, pertaining to affiliated company transactions.
- (6) The Public Staff shall maintain the Commission's official copies of the information required by Item Nos. 3 and 4 as set forth hereinabove.
- (7) Filings made by the telephone companies pursuant to this rule shall be made with the North Carolina Utilities Commission addressed as follows: North Carolina Utilities Commission, Public Staff - Accounting Division, 4326 Mail Service Center, Raleigh, NC 27699-4326.

(NCUC Docket No. P-100, Sub 8, 2/4/64; NCUC Docket No. P-100, Sub 8, 1/17/66 (Second Supplemental Order); NCUC Docket No. P-100, Sub 98, 12/18/87; NCUC Docket No. M-100, Sub 128, 04/10/00.)

**R9-03** Rescinded by NCUC Docket Nos. P-100, Sub 19; P-100, Sub 168, 4/09/10.

**R9-04 FILING OF TELEPHONE AND TELEGRAPH TARIFFS AND MAPS**

(a) Definitions. — The term "tariff" as used herein means a publication containing rates, charges, rules and regulations of the telephone or telegraph public utility. The term "map" as used herein means a map which is used to define service and rates areas.

(b) Requirements as to Size, Form, Identification, and Filing of Tariffs.

- (1) All tariffs except maps shall be in loose leaf form of size eight and one-half inches by eleven inches and shall be plainly printed or reproduced on paper of good quality.
- (2) Each regulated telephone utility in North Carolina shall have on file with the North Carolina Utilities Commission, for each exchange it serves a map of scale one inch equals one mile showing exchange service area, base rate area, and if any exist, rural zones. Said maps, when originally drawn, shall be made from current North Carolina State Highway Maintenance maps.
- (3) A margin of not less than three-fourths inch without any printing thereon shall be allowed at the binding edge of each tariff sheet.
- (4) Tariff sheets are to be numbered consecutively by section, sheet, and revision number. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the company and the name of the tariff and title of the section in a consistent manner.
- (5) When it is desired to make changes in the rates, rules, maps, or other provisions of the tariff, an official tariff filing shall be made to the North Carolina Utilities Commission addressed as follows: Public Staff— North Carolina Utilities Commission, Communications Division, 4326 Mail Service Center, Raleigh, NC 27699-4326.

(c) Transmittal Letters. — Each tariff filing shall include a letter of transmittal (five copies). All explanations shall be made in such form as to be readily understood by persons not fully familiar with technical language. Each transmittal letter shall include:

- (1) A list of sheets filed by section, sheet and revision.
- (2) A paragraph describing the type of filing (new service, change of regulation, rate increase, rate reduction, etc.).
- (3) A paragraph or more explaining the reasons necessary and a full explanation of each change, new offering, new regulation, etc., and details of operations of each new service.
- (4) A paragraph giving a full explanation of the impact of each proposed change on existing subscribers.
- (5) A paragraph giving the estimated gross revenue and net revenue that a new service will produce annually over a three-year period, explaining how the estimate was obtained.

[NOTE] Each tariff revision of wording, rearrangement, other changes, additions or deletions shall be explained in consecutive order in the transmittal letter in the sequence in which they appear.

Each tariff filing shall be treated as original in that all required information shall be submitted with each filing regardless if similar or identical information such as cost study data or technical data has been submitted with previous filings.

Unrelated new service offerings shall not be included in the same tariff filing. Neither shall unrelated tariff changes be included in the same tariff filing.

One copy of technical explanation, marketing data or other information necessary to describe the proposed additions or changes shall be included as a part of the tariff filing.

(d) Cost Study Data. — Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with more than 12,500 access lines. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.

Any telephone utility with 12,500 or fewer access lines in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.

Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

This subsection shall not apply to a telephone utility that is subject to price regulation unless cost study data (i) is requested by the Public Staff or the Commission; or (ii) is required to be filed in response to a complaint alleging anticompetitive conduct by the utility.

(e) Notice of Change; Special Permission; Symbols. — Each tariff filing shall include new or revised tariff sheets (five copies) with notations in the right hand margin indicating each change made on these sheets. Notations to be used are (C) to signify change in regulation, (D) to signify discontinued rate or regulation, (I) to signify a rate increase, (N) to signify a new rate or regulation, (R) to signify a rate reduction, (T) to signify a change in text, but no change in rate or regulation. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the next number of revision from the existing sheet and should cancel the existing sheet.

Any tariff filings to make changes of existing maps shall include three (3) copies of said map plus a location map so marked with the proposed changes indicated in red pencil in lieu of the right hand margin notation specified in the preceding paragraph.

All tariff filings shall be received at the Commission offices at least 30 days before the date upon which they are to become effective, except as provided in G.S. 62-134, and except those tariff filings made in response to a Commission order.

(f) Commission Order Tariff Filings. — Tariff filings made in response to an order issued by the North Carolina Utilities Commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed and any other information necessary. The transmittal letter shall be exempt from all other requirements of subsection (c) above. Said tariff sheets shall comply with all rules in this Chapter and shall include all changes ordered and absolutely no others. The effective date and/or wording of said tariffs shall comply with the ordering provisions of the order being complied with.

(g) Availability of Tariffs. — Each telephone and telegraph utility shall make available to the public at each of its business offices within North Carolina all of its tariffs currently on file with the North Carolina Utilities Commission and its employees shall lend assistance to seekers of information therefrom and afford inquirers an opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire. Utilities shall not be required to furnish copies without charge.

(h) Effective Date of This Chapter. — The rules of this Chapter shall be applicable to all tariff filings and maps filed on and after a date ten days subsequent to the adoption of this Chapter as a part of the Commission's Rules and Regulations. All maps on file shall be in compliance with Rule R9-4(b) (2) by April 1, 1974. Western Union Telegraph Company is exempt from the map requirements of this Chapter.

(i) Compliance. — Any tariff filings filed with the Commission and found to be noncompliant with this Chapter shall be so marked and one copy shall be returned to the filing utility with a brief explanation advising in what way the tariff does not comply and advise that the Commission does not consider said tariff as having been filed. Record of any tariff filings returned for noncompliance with this Chapter shall be made in the Commission files. Full compliance with this rule shall not guarantee Commission approval or preclude requests for additional information or clarification.

(NCUC Docket No. P-100, Sub 30, 1/15/73; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. P-100, Sub 127, 4/21/94; NCUC Docket No. M-100, Sub 128, 04/10/00; NCUC Docket No. P-100 Sub 164, 4/24/08.)

#### **R9-05 911 EMERGENCY TELEPHONE NUMBER SYSTEM**

It is the policy of the Commission that regulated telephone companies shall make 911 emergency telephone service available to local governmental agencies upon reasonable terms and time schedules as prescribed in relevant orders of the Commission. Every telephone company shall notify the Commission within ten (10) working days of an official request from a local governmental authority for the availability costs and implementation dates for the 911 emergency telephone number in the exchange(s) of that authority's jurisdiction. The telephone company's response must be made to the inquiring authority within sixty (60) days. Notice of the inquiry and telephone company's response shall be filed with the Chief Clerk who shall provide copies to the Communications Division of the Public Staff and to the North Carolina 911 Board. The implementation of the 911 service shall be further in accordance with the provisions of the Commission's modified order of October 19, 1979, in Docket No. P-100, Sub 48, Investigation of 911 Emergency Telephone Number.

(NCUC Docket No. P 100, Sub 48, 7/27/79; NCUC Docket No. P 100, Sub 48, 10/19/79; NCUC Docket No. M-100, Sub 196, 9/18/2023.)

#### **R9-06 LIFELINE AND TRIBAL LINK UP PROGRAMS**

(a) Description of programs.

- (1) Lifeline service is a federally administered program providing a monthly discount to qualifying low-income consumers for voice telephone service or broadband service.
- (2) Tribal Link Up service is a federally administered program providing a discount to the customary charge for commencing telecommunications service to a qualifying consumer on Tribal lands.

(b) Obligations of local exchange companies.

All local exchange companies designated as eligible telecommunications companies (ETCs) by the Utilities Commission in this State pursuant to Section 254(e) of the Telecommunications Act of 1996 shall provide Lifeline and Link Up services on such terms as are set out in subsection (c), (d), and (e), and in the Orders of the Utilities Commission. All local exchange companies designated as ETCs shall submit such information to the Utilities Commission, the Federal Communications Commission (FCC), and the Universal Service Administrative Company (USAC) as is necessary to fully implement the Lifeline and Link Up programs.

(c) Program eligibility.

In order to be eligible for assistance, a consumer must meet the eligibility requirements as set forth in 47 C.F.R. part 54, subpart E of the FCC's rules.

(d) Verification of eligibility.

The method for verification of the eligibility criteria set forth in (c) above shall be a national eligibility verifier. Until the national eligibility verifier has been established to verify eligibility in North Carolina, the verification method will be self-certification by the recipients of the eligible programs.

(e) Support.

The support provided to consumers through the Lifeline and Link Up programs is set forth in 47 C.F.R. part 54, subpart E of the FCC's rules.

(NCUC Docket No. P 100, Sub 95, 9/30/87; 4/4/89; NCUC Docket No. P-100, Sub 133f, 12/23/97; 2/3/98; 6/1/98; 07/27/99; NCUC Docket No. P-100, Sub 133f, 3/2/10; NCUC Docket No. P-100, Sub 133f, 5/03/12; NCUC Docket No. P-100, Sub 133f, 6/25/12; NCUC Docket No. P-100, Sub 133f, 10/27/2016.)

## **R9-07 PROCEDURES REGARDING REQUESTS FOR EXTENDED AREA SERVICE**

(a) Purpose. This rule is intended to further the public interest through the establishment of a set of consistent general guidelines, standards, practices, and procedures for the filing, acceptance, and processing of requests for extended area service (EAS) in North Carolina.

(b) Definitions. For purposes of this rule, the following definitions shall apply:

- (1) Extended Area Service. - EAS is a switching and trunking arrangement which provides for nonoptional, unlimited, two-way, flat rate calling service between two or more telephone exchanges, provided at either the applicable local exchange rate or the applicable local exchange rate plus an EAS increment rather than at the toll message rate.
- (2) Incremental EAS Cost Study. - An incremental EAS cost study shall be deemed to include all additional incremental equipment costs applicable to the EAS arrangement plus those embedded costs supporting investments which have previously been used to provide toll services, but which will, upon approval of EAS, be utilized for EAS rather than toll service. Lost toll revenues will generally not be considered a proper cost to be included in an incremental EAS cost study.
- (3) Community of Interest Factor (CIF). - Number of customer calls (messages) divided by the total number of local customer lines/trunks. For the purpose of Rule R9-7, customer calls shall consist of: 1-plus and operator-assisted MTS toll calls and optional toll calling plan calls generated over Key, PBX trunks, Centrex trunks, ESSX trunks, ISDN, simple business and residence customer lines/trunks.
- (4) Percentage Making Calls (PMC). - Number of access lines making calls divided by the total number of local customer lines/trunks.

(c) Community of Interest, Public Hearings, and Geographical Boundaries.

- (1) Any entity or group requesting the Commission to open a formal docket to investigate the need for EAS in a particular area shall be required to demonstrate to the initial satisfaction of the Public Staff and subsequently to the Commission that the subscribers in each affected exchange have demonstrated broad-based support for the requested EAS. Such support may be demonstrated by resolutions and letters from civic groups, institutions, local governments, elected officials and petitions signed by the affected subscribers. The Commission retains the flexibility to determine whether the demonstrated support is sufficient to justify further pursuit of the request for EAS.
- (2) The Commission may hold a public hearing, if necessary, to consider issues such as whether the public interest is sufficient to proceed, whether a poll should be conducted, and to determine the applicable rate increases for EAS at each exchange. The Commission may decide to conduct an EAS poll of affected subscribers without first holding a public hearing where the particular facts and circumstances of a case do not necessitate a hearing prior to polling.

- (3) While consideration may be given to the geographical nature of an EAS proposal, it is not appropriate to limit EAS arrangements based solely on geographical location. So long as a significant community of interest and support for the EAS can be demonstrated, the Commission will consider each request for EAS on a case-by-case basis. A chief consideration in any request for EAS is the public interest and need for EAS, which is not necessarily constrained by geographical boundaries.

(d) Toll Calling Studies.

- (1) All proposals for EAS shall be accompanied by toll calling studies concerning the affected exchanges.
  - (a) Toll calling studies shall be for thirty-day periods, unless circumstances are shown to warrant a longer study period and shall be broken down into residential and business categories. Toll calling studies shall include information concerning community of interest factors (CIFs) and percentage of access lines making one or more calls (percentage making calls or PMCs) in the relevant time period.
  - (b) Upon request from the local exchange company, an interexchange carrier shall provide appropriate toll calling information for affected interLATA routes.
  - (c) When a telephone membership corporation (TMC) is involved in an EAS proposal, the TMC shall be requested to provide toll calling studies.
- (2) Absent special circumstances, an EAS proposal shall generally not be approved for polling unless all the affected exchanges in the proposal meet the relevant CIF and PMC standards on at least a one-way basis as set out below:
  - (a) For intra-county, county-seat EAS proposals, a CIF of 1.0 or greater in the residential category or a CIF of 2.0 or greater in the residential and business categories combined.
  - (b) For other intra-county EAS proposals, a CIF of 2.0 or greater in the residential category or a CIF of 2.5 or greater in the residential and business categories combined and a PMC of 25% or greater.
  - (c) For inter-county EAS proposals between exchanges with a common boundary, a CIF of 2.5 or greater in the residential and business categories combined and a PMC of 45% or greater.
  - (d) For inter-county EAS proposals between exchanges without a common boundary, a CIF of 3.0 or greater in the residential and business categories combined and a PMC of 50% or greater.
- (3) Notwithstanding Rule R9-7(d)(2), the Commission may approve, disapprove, narrow, or limit an EAS proposal for polling if special circumstances require such action.

(e) Cost Studies.

- (1) It is appropriate to utilize cost studies in order to establish the applicable local rate increases which should apply to requests for EAS if ultimately approved by the Commission. Except under unusual and extenuating circumstances, cost studies generally will not be required for those telephone companies who have had EAS matrix plans approved by the Commission. Past Commission practice in developing applicable rate increases has generally allowed consideration of only the incremental equipment costs necessary to provide the EAS in question. As a general rule, the Commission has not authorized telephone companies to consider lost toll revenues in developing applicable EAS charges. The Commission will continue to follow this general policy in future EAS cases unless it can be clearly demonstrated in a particular case that a failure to consider lost toll revenues will in fact result in serious financial distress to the LEC and, in turn, to its remaining local customers. However, in all cases, the toll revenue losses may be computed and included in the analysis as information to the Commission.
- (2) In EAS cases involving non-matrix telephone companies, the affected company or companies will be required to conduct cost studies based upon incremental costs exclusive of toll losses. Such incremental cost studies shall be deemed to include all additional incremental equipment costs applicable to the EAS arrangement plus those embedded costs supporting investments which have previously been used to provide toll services, but which will, upon approval of EAS, be utilized for EAS rather than toll service. The Commission recognizes that these latter specified facilities will have generally been included in a previously established test year period and that rates were likely set to produce revenues necessary to cover expenses and capital costs associated with these facilities. Therefore, to the extent that there would be a double recovery of expenses associated with these facilities, a deferred account shall be established to eliminate such recovery and the monies placed in the deferred account shall be returned to the general body of ratepayers, with interest, upon further order of the Commission.

- (f) Matrix Rating Plans. For telephone companies which have an approved EAS matrix plan in effect, the applicable customer charge(s), which shall be used for polling purposes, will be determined by application of said matrix plan.

(g) Regrouping Charges. A cost study based on incremental costs as defined above will be the basis for any rate increase(s) associated with implementation of EAS for non-matrix companies. At the time of the next general rate case following the implementation of EAS, the affected exchange(s) will be placed in the proper rate group(s) and a determination of whether the EAS differential(s) should be eliminated will be made at that time. If applicable, the customer notice used for EAS polling purposes shall state that a regrouping charge of the given amount will apply at the time of the company's next general rate case.

(h) Polling Procedures.

- (1) When the Commission determines that the public interest and need for EAS involving two exchanges is dominant in one direction, which is generally the case when the EAS request involves a large exchange and a small exchange, the Commission will determine on a case-by-case basis whether to poll both exchanges. In cases where only one exchange is polled, the Commission will make a determination based on the results of the poll of that one exchange. As a general rule, the EAS will be approved if a simple majority of the ballots returned by subscribers vote in favor of the proposal. In cases where only minimal or de minimis rate increases would result to subscribers in the large exchange, the Commission will impose those charges on customers in the larger exchange without a poll if the polling results of customers in the other exchange are favorable.
- (2) In cases where dominant interest does not exist at one exchange, both exchanges will generally be polled using rate increases based upon incremental costs as described in subparagraph (e) of this rule, except where the increase in one of the exchanges is minimal or de minimis, in which case no poll will be conducted in that exchange, but the EAS rate increase shall apply at the time the EAS, if approved, is implemented.
- (3) In proposals where EAS is being considered among several exchanges, the Commission will determine, in its discretion, whether or not all or only some of the affected exchanges will be polled and what rate increases shall apply at the time the EAS, if approved, is implemented.
- (4) The customer notice which is used in conjunction with an EAS poll shall specify that if the subscriber wishes to have a voice in the decision, he must return his marked ballot.

(i) Polling Results. EAS polling results shall be reported broken down by residential and business categories. All decisions regarding EAS poll results will be based on the valid ballots returned. A subscriber shall be entitled to as many votes as that subscriber has access lines. Generally, a simple majority of those valid ballots returned voting in favor of the EAS will constitute a positive vote for EAS as to that exchange. An EAS proposal will be approved if each of the polled exchanges is in favor of the EAS proposal. When two or more exchanges are polled and mixed results occur, the approval or disapproval of the request will be based on the individual poll results as well as other factors that may be reflective of any unique circumstances affecting the request, including valid public policy considerations such as economic development and county-seat calling. In making a final decision, the Commission will exercise its discretion in considering all relevant factors. (NCUC Docket No. P-100, Sub 89, 10/28/87; 12/16/87; 5/5/92; 3/25/93; 6/14/93.)

**R9-08 SERVICE OBJECTIVES FOR REGULATED LOCAL EXCHANGE TELEPHONE COMPANIES AND COMPETING LOCAL PROVIDERS (CLPS)**

(a) Service Objectives. Each regulated local exchange telephone company and CLP shall perform and provide service in accordance with the following uniform service objectives:

<i>Measure No.</i>	<i>Description</i>	<i>Objective</i>
1	Intraoffice completion rate	99% or more
2	Interoffice completion rate	98% or more
3	EAS transmission loss	95% or more between 2 and 10 dB
4	EAS trunk noise	95% or more 30 dBrc or less
5	Operator "0" answertime	90% or more of calls answered within 10 seconds or ASA of 6 seconds
6	Directory assistance answertime	85% or more of calls answered within 10 seconds or ASA of 6 seconds

7	Business office answertime	ASA of 30 seconds
8	Repair service answertime	ASA of 30 seconds
9	Initial customer trouble reports	4.75 or less per 100 total access lines
10	Repeat reports	1.0 report or less per 100 total access lines
11	Out-of-service troubles cleared within 24 Hours	95% or more
12	Regular service orders completed within 5 working days	90% or more
13	New service installation appointments not met for Company reasons	5% or less
14	New service held orders not completed within 30 days	0.1% or less of total access lines

(b) This rule shall not preclude flexibility in considering future circumstances that may justify changes in or exceptions to these service objectives.

(c) Force Majeure. A company may seek a waiver of part or all of Rule R9-8 due to force majeure. To request a waiver, a company should file adjusted data and unadjusted data along with its waiver request. In order to secure Commission approval, the waiver request should clearly demonstrate that (1) the force majeure event was sufficiently serious and unusual to warrant adjustment of the monthly service quality statistics, including a detailed description of the adverse consequences of the event on the ratepayers' service and the company's facilities; (2) to the extent reasonably foreseeable, the company prudently planned and prepared in advance for such emergencies; (3) despite these plans and preparations, and the best efforts of the company personnel before, during, and after the event, failures to satisfy the service objectives could not reasonably have been avoided; and (4) the extent and nature of the adjustments requested are appropriate for the circumstances. The Commission shall grant waiver requests if the Commission finds that all four criteria have been met.

(d) Reporting Requirement. Each regulated local exchange telephone company and CLP actually providing basic local residential and/or business exchange service to customers in North Carolina shall file a report each calendar quarter with the Chief Clerk of the Commission detailing the monthly results of its compliance with Measures 5 – 14 as set forth in this Rule. The report may be filed by either (1) submitting an original, three (3) hard copies, and two electronic copies in Excel to the Chief Clerk, or (2) submitting the report electronically with the Chief Clerk pursuant to Commission Rule R1-28, the Chief Clerk's Office shall forward one hard copy and one electronic copy to the Public Staff – Communications Division. Companies should reflect the company name as certified by the Commission. Additionally, the hard copies and electronic copies on diskette should be clearly marked with the company name, the docket number, and the reporting period. The Commission will specify the format of the report. Companies not providing service in North Carolina or not providing basic local residential and/or business exchange service to customers in North Carolina shall file a letter, in lieu of a report, each quarter specifying why a report does not have to be filed.

Each regulated local exchange company and CLP shall report its performance results for the following six objectives on an exchange level:

- Initial Customer Trouble Reports (Measure 9);
- Repeat Reports (Measure 10);
- Out-of-Service Troubles Cleared Within 24 Hours (Measure 11);
- Regular Service Orders Completed Within 5 Working Days (Measure 12);
- New Service Installation Appointments Not Met for Company Reasons (Measure 13); and
- New Service Held Orders Not Completed Within 30 Days (Measure 14).

**[COMMISSION NOTE:** After one year, companies may petition the Commission for exemption from the requirement to report these results on an exchange level.]

Each regulated local exchange company and CLP that uses separate call or service centers or service representatives to provide service to their business and residential customers shall file performance results for the following measures for the following categories of customers: (1) all North Carolina business<sup>1</sup> customers; (2) all North Carolina residential customers; and (3) all North Carolina customers:

- Business Office Answertime (Measure 7);
- Repair Service Answertime (Measure 8);
- Out-of-Service Troubles Cleared Within 24 Hours (Measure 11);

- Regular Service Orders Completed Within 5 Working Days (Measure 12);
- New Service Installation Appointments Not Met for Company Reasons (Measure 13); and
- New Service Held Orders Not Completed Within 30 Days (Measure 14).

If a company's residential call or service centers handle the calls or service for small businesses of five lines or less, the company may include the statistics for these small businesses in the residential customer category, but must notate this inclusion and verify that there is no preferential treatment given to either class of customers in its quarterly report.

Companies are not required to report statistics for customer groups that are not served by call or service centers, but on an individual account basis. In the first report following the effective date of the amendments to this rule, each company should note which customer groups are excluded from the report and notify the Commission if customer groups that are excluded should change.

**[COMMISSION NOTE:** After one year, companies may petition the Commission for exemption from the requirement to separately report residential, business, and combined residential and business results for these six objectives.]

The quarterly report shall be filed no later than twenty (20) days after the last day of the quarter covered by the report and the person submitting the report shall verify its accuracy under oath. Such verification shall be in the following form:

**VERIFICATION UNDER OATH  
REGARDING ACCURACY OF SERVICE OBJECTIVES REPORT**

I, \_\_\_\_\_, state and attest that the attached Service Objectives Report is filed on behalf of \_\_\_\_\_ (Name of Public Utility as certificated) as required by North Carolina Utilities Commission Rule R9-8; that I have reviewed said Report and, in the exercise of due diligence, have made reasonable inquiry into the accuracy of the information provided therein; and that, to the best of my knowledge, information, and belief, all of the information contained therein is accurate and true, no material information or fact has been knowingly omitted or misstated therein, and all of the information contained in said Report has been prepared and presented in accordance with all applicable North Carolina General Statutes, Commission Rules, and Commission Orders.

<sup>1</sup> Companies are not required to report statistics for business customer groups that are not served by service or repair centers, but on an individual account basis. In the first report under the new rule, the company should note what business customer groups are excluded. If the company should thereafter change what business groups are excluded, it should notate the change on the first subsequent report.

\_\_\_\_\_  
Signature of Person Making Verification

\_\_\_\_\_  
Job Title

\_\_\_\_\_  
Date

Subscribed and sworn before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**COMMISSION NOTE:** A website reporting section will be added by the Commission at a later date after the Parties have negotiated all of the specific details.

(e) Data Retention. Each local exchange company and CLP is required to retain complete records of the data collected and procedures used to calculate each service quality performance result for a minimum of one year from the date a report is filed with the Commission. Within this one-year period, local exchange companies and CLPs will provide, upon reasonable request by the Public Staff or Commission, breakdowns by wire center of their monthly service quality results for Measures 9

-14. If a company can show that it is unable to provide wire center level data, it may provide data at the most granular level possible, such as at the switch level.

(f) Uniform Measurement Procedures. Each company shall adhere to the following uniform measurement procedures when calculating its service objectives:

### **Answertimes - General Considerations**

Companies are expected to engineer the switching and interoffice facilities they use to provide operator "O", directory assistance, business office services, and repair services to customers in order to minimize the possibility of lost, misdirected, or abandoned calls and to keep customer delays to a minimum, consistent with Commission requirements and industry standards. All facilities, including network, ports, and trunks, used for provision of these services shall be engineered to provide a maximum blocking probability of one percent (1%) or less. No call that has been directed to a live operator or service representative queue should be blocked from entering the queue or deflected (abandoned by company action without consent of the calling party) after it has entered a queue.

Callers to operator "O", directory assistance, business office, and repair service must be explicitly advised that they may press a "O" at any time during the call and have the call transferred to a live attendant if the respective menus exceed 45 seconds. All menu options, including any sub-menus, must be used in the calculation of the 45 seconds.

Where an opt-out message is required, the option must be offered within the first 45 seconds of the initial menu. There is no requirement for offering the opt-out message when a menu, including sub-menus, is 45 seconds or less. Calls initially directed to a menu shall be transferred to a live attendant or a live attendant queue immediately if the customer presses a key to request the transfer or within 10 seconds if the customer fails to interact with the menu system following any prompt by pressing a key of a Dual-Tone Multi-Frequency (DTMF) telephone keypad or providing a voice response.

Any company that obtains its operator "O" service, directory assistance, business office service, or repair service from another source shall identify the company that actually provides the service in its monthly report. The company that provides service to the customer is responsible for selecting a service provider that furnishes answertime service that satisfies Commission requirements.

Companies must ensure that the monthly service quality statistics they report to the Commission reflect the performance they provide to North Carolina customers. Companies that submit performance results to the Commission reflecting regionwide or nationwide performance must be prepared to demonstrate to the Commission that the performance they provide to their North Carolina customers is equivalent to the performance they report on a regionwide or nationwide basis.

Companies without automatic answertime testing may evaluate their answertime performance by manually placing test calls as long as they place a sufficient number of calls at appropriate times to ensure that a statistically valid and representative sample is obtained each month. These companies should notate on their reports that their answertimes are calculated through random sampling and should describe the methodology used, including the number of test calls completed per month and the times such calls were made.

### **Operator "O" Answertime (Measure 5):**

Measured quantity: (a) The percentage of operator "O" calls from North Carolina each month that reach a live operator within 10 seconds; or (b) the average length of time it takes for calls from North Carolina to operator "O" telephone numbers to be answered each month.

Measurement procedures:

- (1) For calls routed directly to live operators (no initial menu): Each answertime measurement shall begin at the instant the call arrives at the switch serving the operator service positions and continue until a live operator prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements. Companies may utilize a recorded branding announcement, not over 10 seconds in length, after the call has reached the switch. The timing for a branded call will begin at the end of the recorded announcement and continue until a live operator prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.
- (2) For calls initially routed to an automated menu: Each answertime measurement shall begin at the instant the call enters the queue leading to a live operator and continue until a live operator prepared to offer immediate assistance answers the call. The answertime for the call is the interval between these two time measurements.

- (3) For calls initially routed to an automated menu and handled without the intervention of a live operator: The answer time for these calls should be counted as one second.

The monthly performance figure reported to the Commission may be calculated as a % in x seconds or as an average speed of answer.

(a) % in x seconds format: Operator "O" answer time =

$$\frac{100 \times \text{Total Operator "O" calls with answer times of 10.0 seconds or less}}{\text{Total calls routed to live "O" operators}}$$

Companies shall exclude from the numerator and denominator of this calculation data for all calls in which the caller abandons the call within 10 seconds after it (1) arrives at the switch serving the operator service positions (for calls routed directly to a live operator) or (2) enters the queue leading to a live "O" operator (for calls initially routed to a menu). The operator "O" answer time calculation shall reflect all other "O" calls that are routed to live operators, including calls abandoned after 10 seconds.

(b) Average speed of answer format: Operator "O" answer time =

$$\frac{\text{Sum of queue holding times for all Operator "O" calls}}{\text{Total Operator "O" calls}}$$

Monthly reporting requirement: Companies shall report either the percentage of Operator "O" calls from North Carolina answered within 10 seconds by a live "O" Operator or their Operator "O" average speed of answer using the appropriate formula set forth above to the nearest tenth of a percent.

**Directory Assistance (DA) Answer time (Measure 6):**

Measured quantity: (a) The percentage of calls from North Carolina to all publicly available local DA telephone numbers each month that access a live DA operator within 10 seconds; or (b) the average length of time it takes for calls from North Carolina to all publicly available local DA telephone numbers to be answered each month.

Measurement procedures:

- (1) For calls routed directly to live DA operators (no initial menu): Each answer time measurement shall begin at the instant the call arrives at the switch serving the DA operator positions and continue until a live DA operator prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements. Companies may utilize a recorded branding announcement, not over 10 seconds in length, after the call has reached the switch. The timing for a branded call will begin at the end of the recorded announcement and continue until a live DA operator prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.
- (2) For calls initially routed to an automated menu: Each answer time measurement shall begin at the instant the call enters the queue leading to a live DA operator and continue until a live DA operator prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.
- (3) For calls initially routed to an automated menu and handled without the intervention of a live DA operator: The answer time for these calls should be counted as one second.

The monthly performance figure reported to the Commission may be calculated as a % in x seconds or as an average speed of answer.

(a) % in x seconds format: DA answer time =

$$\frac{100 \times \text{Total number of DA calls with answer times of 10.0 seconds or less}}{\text{Total calls made to DA and routed to live operators}}$$

Companies shall exclude from the numerator and denominator of this calculation data for all calls in which the caller abandons the call within 10 seconds after it (1) arrives at the switch serving the live DA operator positions (for calls routed directly to a live DA operator) or (2) enters the queue leading to a live DA operator (for calls initially routed to a menu). The DA answer time calculation shall reflect all other DA calls that are routed to live DA operators, including calls abandoned after 10 seconds.

(b) Average speed of answer format: DA answer time =

Sum of queue holding times for all DA calls

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Total DA calls

Monthly reporting requirement: Companies shall report either the percentage of DA calls from North Carolina answered within 10 seconds by a live DA operator or their DA average speed of answer using the appropriate formula set forth above to the nearest tenth of a percent.

**Business Office Answer time (Measure 7):**

Measured quantity: The average length of time it takes for calls from North Carolina to all publicly available company business office telephone numbers to be answered each month.

Measurement procedures:

- (1) For calls routed directly to live business office representatives (no initial menu): Each answer time measurement shall begin at the instant the call arrives at the switch serving the business office representative positions and continue until a live business office representative prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.
- (2) For calls initially routed to an automated menu and then routed to a live business office representative: Answer time measurement shall begin at the instant the call enters the queue leading to a live business office representative and continue until a live business office representative prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.
- (3) For calls initially routed to an automated menu and handled without the intervention of a live business office representative: The answer time for these calls should be counted as one second.

The monthly performance figure reported to the Commission shall be calculated as follows:

Business office answer time =

Sum of queue holding times for all business office calls

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Total business office calls

Live business office representatives are expected to be available to handle incoming calls from North Carolina for a minimum of nine hours per day Monday through Friday, excluding company holidays.

Monthly reporting requirement: Companies shall report their business office average speed of answer using the formula set forth above to the nearest tenth of a percent.

**Repair Service Answer time (Measure 8):**

Measured quantity: The average length of time it takes for calls from North Carolina to all publicly available company repair service telephone numbers to be answered each month.

Measurement procedures:

- (1) For calls routed directly to live repair service representatives (no initial menu): Each answer time measurement shall begin at the instant the call arrives at the switch serving the repair service representative positions and continue until a live repair service representative prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.

- (2) For calls initially routed to an automated menu and then routed to a live repair service representative: Answer time measurement shall begin at the instant the call enters the queue leading to a live repair service representative and continue until a live repair service representative prepared to offer immediate assistance answers the call. The answer time for the call is the interval between these two time measurements.
- (3) For calls initially routed to an automated menu and handled without the intervention of a live repair service representative: The answer time for these calls should be counted as one second.

The monthly performance figure reported to the Commission shall be calculated as follows:

Repair service answer time =

Sum of queue holding times for all repair service calls

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Total repair service calls

For carriers with 10,000 access lines or more, live repair service representatives are expected to be available to handle incoming calls from North Carolina customers 24 hours a day, seven days a week.

Monthly reporting requirement: Companies shall report their repair service average speed of answer using the formula set forth above to the nearest tenth of a percent.

### **Trouble Reports, Service Orders, and Customer Appointments – General Considerations**

A trouble report is defined as "any report from a subscriber or end user of telephone service to the telephone company indicating improper functioning or defective conditions with respect to the operation of telephone facilities over which the telephone company has control." Such reports shall be date and time stamped immediately upon receipt and date and time stamped again immediately after the troubles have been cleared by company personnel. **Note:** Whenever Rule R9-8 requires a date and/or time stamp, the date and/or time stamp may be recorded electronically or otherwise so long as the date and/or time is saved for future reference.

Service orders and new service installation appointment requests shall also be date and time stamped immediately upon receipt and again after the service order has been completed or the new service installation appointment has been met.

Reported troubles that involve different access lines shall be regarded as separate troubles, even if the access lines terminate at the same premises, and/or the troubles result from a common cause, such as damaged cable or defective common equipment at a central office.

Each company shall file with its initial quarterly report a detailed list of the specific categories of troubles, service orders, and appointments it considers excludable for purposes of reporting trouble reports, service ordering, or appointment statistics. This list should reflect exclusion of such categories as inside wiring, terminal equipment, voice mail, and long distance services. Each company shall notify the Commission promptly in writing of any changes to this list.

Subsequent reports and duplicate reports of previously reported troubles that have not been cleared by the company shall not be included in either initial or repeat trouble report totals.

#### **Initial Customer Trouble Reports (Measure 9):**

Measured quantity: The number of initial troubles reported by telephone company subscribers in proportion to the number of total company access lines.

Company measurement procedures: Companies should continuously track the initial trouble reports that are received by their trouble reporting center(s). The statistic reported to the Commission shall be computed by taking the count of initial troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

Initial customer trouble reports =

100 x initial trouble reports received during month

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Total access lines in service at the end of month

Troubles associated with nonregulated equipment, products, or services, and subsequent reports of the same trouble that are made after the initial report has been received but before the company has cleared the trouble condition should be excluded from the numerator of this formula. Companies shall identify in their quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for initial trouble reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

In the event a company systematically excludes the initial troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its quarterly service quality report any deviation between the access line count used for monthly reporting of initial troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Reporting requirement: All companies shall file statistics on initial customer trouble reports per 100 total access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area and each exchange. If the monthly figure for any exchange exceeds 7.125 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

**Repeat Reports (Measure 10):**

Measured quantity: The number of repeat troubles reported by telephone company subscribers in proportion to the number of company access lines.

Company measurement procedures: Companies should continuously track the repeat trouble reports that are reported to their trouble reporting center(s). A repeat trouble is a trouble reported on an access line for which another trouble or troubles has been reported within the preceding 30 days and subsequently cleared. The statistic reported to the Commission shall be computed by taking the count of repeat troubles reported in a given area between 12:00 midnight at the beginning of the first day of the calendar month and 12:00 midnight at the end of the last day of the same month, dividing this figure by the total access lines in service in that same area at the end of the last day of the month, and multiplying the quotient by 100.

Repeat customer trouble reports =

$$100 \times \text{repeat trouble reports received during month}$$

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$$\text{Total access lines in service at end of month}$$

Repeat troubles associated with nonregulated equipment, products, or services shall be excluded from the count appearing in the numerator of this formula. Companies shall identify in their quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for repeat trouble reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

In the event that a company systematically excludes the repeat troubles reported by a class or classes of customers (for example, large business customers) from the troubles counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its quarterly service quality report any deviation between the access line count used for monthly reporting of repeat troubles per 100 access lines and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: All companies shall file statistics on repeat customer trouble reports per 100 access lines. Figures shall be reported to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area and for each exchange. If the monthly figure for any exchange exceeds 1.5 per 100 access lines, a brief explanation should be provided for the failure to meet this objective.

**Out-of-Service Troubles Cleared Within 24 Hours (Measure 11):**

Measured quantity: The percentage of total out-of-service troubles that are cleared within 24 hours during the reporting month.

Company measurement procedures: Companies should continuously track the out-of-service troubles (troubles involving inability to make outgoing calls or receive incoming calls, or line impairments so severe that they render voice communication impossible) that are reported by company subscribers and end users. Each out-of-service trouble report should be date and time stamped immediately upon receipt and date and time stamped immediately after the trouble condition is cleared. The time taken to clear the trouble is the difference between these two times. To obtain the reported statistic, the company shall count the number of out-of-service troubles that was cleared during the calendar month and within 24 hours of their receipt, divide this figure by the total number of out-of-service trouble reports cleared during the calendar month, and then multiply by 100 to obtain the percentage cleared within 24 hours:

Out-of-service troubles cleared within 24 hours =

$$\frac{100 \times \text{total out-of-service troubles cleared within 24 hours during month}}{\text{Total out-of-service troubles cleared during month}}$$

Troubles associated with nonregulated equipment, products, or services and troubles that do not involve out-of-service conditions shall be excluded from the troubles counted in the numerator and denominator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for out-of-service trouble reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown. Troubles in which the customer specifically requested an appointment beyond 24 hours shall be excluded from the troubles counted in the numerator and denominator of this formula.

Monthly reporting requirement: All companies shall file statistics on out-of-service troubles cleared within 24 hours of receipt, reported to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area and for each exchange. If the monthly figure for any exchange is below 80%, a brief explanation should be provided for the failure to meet this objective.

#### **Regular Service Orders Completed Within 5 Working Days (Measure 12):**

Measured quantity: The percentage of regular service orders that are completed during any calendar month within five working days of receipt by the company.

Company measurement procedures: Companies should continuously track the receipt and completion dates and times of all regular service orders (service orders placed by residential customers and by business customers with five or fewer access lines). Each regular service order should be date and time stamped immediately upon receipt by the company and date and time stamped immediately after the order has been completed. The reported statistic shall be calculated as follows:

Regular service orders completed within 5 working days =

$$\frac{100 \times \text{regular service orders completed during month within 5 working days of receipt}}{\text{Total regular service orders completed during month}}$$

For purposes of this calculation, "working days" shall be considered to be all days except Saturdays, Sundays, New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, provided these are observed as paid company holidays.

Orders for nonregulated equipment, products, or services shall be excluded from both the numerator and denominator of this formula. Companies shall identify in their quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for regular service order reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown. Orders wherein a customer specifically requests an appointment beyond 5 days and/or the delay was specifically and solely caused by the customer should be excluded from both the numerator and denominator of this formula.

Monthly reporting requirement: All companies shall report the percentage of regular service orders completed during the calendar month within five working days of receipt by the company. Figures shall be reported to the nearest tenth of a

percent. Each company shall report a separate figure for its entire North Carolina service area and for each exchange. If the monthly figure for any exchange is below 80%, a brief explanation should be provided for the failure to meet this objective.

**New Service Installation Appointments Not Met for Company Reasons (Measure 13):**

Measured quantity: The percentage of new service installation appointments that are scheduled to be completed during the calendar month but are missed due to company reasons.

Company measurement procedures: Companies shall maintain a record of the new service installation appointments that are scheduled to be completed during each calendar month. The company shall track the scheduled dates and times for these appointments and the actual completion dates and times and, for those appointments that are not kept, shall maintain a detailed record of the reason(s) for failure to keep them. The percentage of new service installation appointments missed during the calendar month due to company reasons shall be calculated as follows:

New service installation appointments not met for company reasons =

$$100 \times \frac{\text{new service installation appointments not met because of company reasons}}{\text{New service installation appointments scheduled to be met}}$$

Any new service installation appointment missed due to customer actions shall be excluded from the numerator of this formula.

Appointments associated with installation or moving of, or changes or repairs to, nonregulated equipment, products, or services shall be excluded from the numerator and denominator of this formula. Companies shall identify in their quarterly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for customer appointments reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

Companies, at a minimum, shall offer customers scheduling premises appointments the opportunity to select from a set of two or more four-hour appointment "windows" that will be made available for each day that appointments are being scheduled. An appointment will be considered "missed" if the company representative responsible for performing the premises work fails to arrive at the premises and begin work within the appointment window, or if the representative fails to complete the requested work by 12:00 midnight at the end of the appointment date.

Monthly reporting requirement: Companies shall file the percentage of total new service installation appointments not met during the month for company reasons to the nearest tenth of a percent. Each company shall report a separate figure for its entire North Carolina service area and for each exchange. If the monthly figure for any exchange exceeds 7.5%, a brief explanation should be provided for the failure to meet this objective.

**New Service Held Orders Not Completed Within 30 Days (Measure 14):**

Measured quantity: The number of new access line orders that, at any time during the calendar month, have been held for over 30 calendar days following receipt, in proportion to the total company access lines in service.

Company measurement procedures: Companies shall date and time stamp each new service order immediately upon receipt and shall identify and count all orders during the calendar month that have not been completed within 30 days from the date and time they were received. Each such order shall be counted as a new service held order not completed within 30 days. The total number of new service held orders not completed within 30 days shall be reported to the Commission as a percentage of total company access lines as of midnight at the end of the last day of the month:

New service held orders not completed within 30 days =

$$100 \times \frac{\text{new service orders not completed within 30 days at any time during month}}{\text{Total access lines in service at the end of month}}$$

Delays caused by the customer that prevent the company from completing an order within 30 days of receipt shall be excluded from the numerator of this formula. Further, orders with customer-requested appointments beyond 30 days shall be excluded from the numerator of this formula.

New service orders for nonregulated equipment, products, or services shall be excluded from the numerator of this formula. Companies shall identify in their monthly reports the specific categories of equipment, products, or services that they consider nonregulated and exempt from Commission jurisdiction for new service held order reporting purposes. Carriers may request a waiver of this requirement, and the Commission may grant such a waiver for good cause shown.

In the event a company systematically excludes the new service held orders for a class or classes of customers (for example, large business customers) from the held orders counted in the numerator of this calculation, the company shall also exclude the access lines for the same class(es) of customers from the total access lines figure appearing in the denominator. The company shall explain in its quarterly service quality report any deviation between the access line count used for monthly reporting of held orders and the total access line count which it furnishes each month in its access line report.

Monthly reporting requirement: Companies shall report the percentage of new service held orders not completed within 30 days, to the nearest hundredth of a percent. Each company shall report a separate figure for its entire North Carolina service area and for each exchange. If the monthly figure for any exchange is above 0.15% of total access lines, a brief explanation should be provided for the failure to meet this objective.

(g) Directory Assistance Listing Updates. Carriers must update their DA customer listings in any directory database the company maintains and/or controls within 48 hours of a service order resulting in a new or changed listing, excluding Saturdays, Sundays, and holidays or within 48 hours excluding Saturdays, Sundays, and holidays of either notification of such a new or changed listing or receipt of a completed service order from another carrier or DA provider. Carriers that provide DA to their customers from a third party should select a provider that updates new or changed listings within 48 hours of notification; these carriers must provide updated information to the third party provider within 24 hours of receipt.

(h) Directory Assistance Refunds. Carriers are required to provide DA refunds, upon request, for an incorrect listing provided to a DA customer. Carriers are further required to provide annual notification to customers either by bill message, direct mail, or email (when email is affirmatively selected by the customer) informing them of the uniform DA refund policy and to publish the uniform DA policy permanently in the directory assistance section of the local telephone directory.

(NCUC Docket No. P-100, Sub 99, 12/20/88; 09/20/00; 11/29/00; 03/22/01; NCUC Docket No. M-100, Sub 128, 11/30/01; NCUC Docket No. P-100, Sub 99, 09/11/02; NCUC Docket No. P-100, Sub 99 and P-100, Sub 99a, 06/04/04; NCUC Docket No. P-100, Sub 99 and P-100, Sub 99a, 06/11/04; NCUC Docket No. P-100, Sub 99, 09/13/05; NCUC Docket No. P-100, Sub 99, 07/06/09; NCUC Docket No. M-100, Sub 139 & P-100, Sub 99, 05/13/14.)

## **R9-09 FINANCIAL AND OPERATING REPORTING REQUIREMENTS FOR TELEPHONE COMPANIES**

(A) All local exchange companies except for these under price plans, shall file the following financial and operating information with the Public Staff and Commission Staff:

- (1) Total Company Balance Sheet - Current year and prior year
- (2) Total Company Income Statement - Current year and prior year
- (2-1) North Carolina Operations Income Statement - Current year and prior year
- (3) Calculation of Intrastate Rate Base
- (4) Calculation of Intrastate Net Operating Income for Return
- (5) Analysis of Telecommunications Plan in Service - North Carolina operations
- (6) Analysis of Depreciation Reserve - North Carolina operations
- (7) Analysis of Salaries and Wages - North Carolina operations
- (8) Long-term Debt Interest Charges - Total Company
- (9) Preferred Stock Issuances and Dividends - Total Company
- (10) Miscellaneous Information on Access Lines, Number of Employees, Common and Preferred Stock Dividends, and Toll Settlements

(B) All company-generated schedules or comparable substitutes for those schedules listed above which are prepared on a monthly basis shall be filed with the Commission on a monthly basis. The remainder of the schedules shall be filed on a quarterly basis.

(C) These statements shall be filed 45 days after the last day of each month unless unusual circumstances dictate that additional time is needed, whereupon the telephone company may request and be granted up to an additional 15 days to complete the statements. The telephone companies shall file these statements with the North Carolina Utilities Commission - Operations Division and the Public Staff - Accounting Division.

(NCUC Docket No. P-100, Sub 103, 11/29/88; 1/11/89; 4/15/93; 4/21/95; NCUC Docket No. P-100, Sub 72b, 01/02/04.)

#### **R10-01 APPLICATION OF RULES**

These rules apply to sewer utilities operating in North Carolina under the jurisdiction of the North Carolina Utilities Commission as defined in G.S. 62-3.

(NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R10-02 DEFINITIONS**

(a) Utility. - The term "utility" when used in these rules and regulations includes persons and corporations, or their lessees, trustees, and receivers, now, or hereafter, furnishing sewer service to the public for compensation as defined in G.S. 62-3.

(b) Customers. - The word "customers" as used in these rules shall be construed to mean any person, group of persons, firm, corporation, institution, or other service body furnished sewer service by a sewer utility.

(c) Municipality. - The term "municipality" when used in these rules includes, a city, a county, a village, a town, and any other public body existing, created, or organized as a government under the Constitution or laws of the State.

(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R10-03 RECORDS AND REPORTS**

(a) Location and Preservation of Records. - All records shall be kept at the office or offices of the utility in North Carolina and shall be available during regular business hours for examination by the Commission, the Public Staff or their duly authorized representatives.

(b) Reports to Commission. - Each utility shall prepare and file an annual report to the Commission in prescribed form, giving required information respecting its general operations. Special reports shall also be made concerning any particular matter upon request by the Commission.

(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. M-100, Sub 75, 10/27/77.)

#### **R10-04 APPROVAL AND FILING OF RATE SCHEDULES, RULES AND REGULATIONS; SPECIAL RULES**

(a) Approval Required. - Rates, schedules, rules, regulations, special contracts, and other charges for sewer service shall not become effective until filed with and approved by the Commission.

(b) Manner of Filing. - Tariffs containing all the rates, rules, and regulations of each utility shall be filed in the manner and form prescribed by the Commission.

(c) Utility's Special Rules.

(1) A utility desiring to establish any rule or requirement affecting its customers shall first make application to the Commission for approval of the same, clearly stating in its application the reason for such establishment.

(2) On or after ninety days from the effective date of these rules and regulations any utility's special rules and regulations now on file with the Commission which conflict with these rules will become null and void unless they have been refiled and approved by the Commission.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

#### **R10-05 MAPS AND RECORDS**

Each utility shall keep on file in its office suitable maps, plans, and records showing the entire layout of its collecting lines and sewer treatment facilities with the location, size and capacity of each unit of plant, size of each collecting line, and other facilities used in the furnishing of sewerage service.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

#### **R10-06 ACCESS TO PROPERTY**

A utility shall at all reasonable times have access to service connections, and other property owned by it on customer's premises for purposes of maintenance and operation, including cutting off sewer service for any of the causes provided for in these rules and regulations or the rules and regulations of the utility.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

#### **R10-07 ADEQUACY OF FACILITIES**

All public sewer utilities shall comply with the rules of the North Carolina Department of Environmental Quality and the rules of other state and local governmental agencies in the design, construction, operation, and maintenance of its sewer facilities and in the collection, treatment and discharge of the sewage being treated.

*(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. W-100, Sub 24, 2/22/94; NCUC Docket No. M-100, Sub 140, 12/03/2013; NCUC Docket No. M-100, Sub 196, 9/18/2023.)*

#### **R10-08 SERVICE INTERRUPTION**

(a) Record. - Each utility shall keep a record of all interruptions of service upon its entire system or major divisions thereof, including a statement of time, duration, and cause of such interruptions.

(b) Notice Required. - Insofar as practical every customer affected shall be notified in advance of any contemplated work which will result in interruption of service of any long duration, but such notice shall not be required in case of interruption due to accident, the elements, public enemies, or strikes, which are beyond the control of the utility.

*(NCUC Docket No. S-100, Sub 1, 8/23/67.)*

#### **R10-09 RECORDS OF ACCIDENTS**

Each utility shall make and keep a record of each accident happening in connection with the operation of its plant, station, property, and equipment, whereby any person shall have been killed or seriously injured, or any substantial amount of property damaged or destroyed, which report shall be filed with the Commission within sixty (60) days of said accident.

*(NCUC Docket No. S-100, Sub 1, 8/23/67.)*

**R10-10** Rescinded by NCUC Docket No. W-100, Sub 24, 2/22/94.

#### **R10-11 SERVICE CONNECTIONS**

(a) Each sewer utility shall adopt a standard method for installing a sewer service connection, which may be included in the "connection charge." Such method shall be set out with a written description and drawings, together with a schedule of connection charges, to the extent necessary for a clear understanding of the requirements and shall be submitted to the Commission for its approval.

(b) Temporary service shall be installed by mutual agreement.

(c) The customer shall furnish and lay the necessary pipe to make the connection from the property line nearest the utility's sewer line to the point of use and shall keep the service line in good repair. The customer shall not make any change in or rebuild such service line without giving written notice to the utility. All of the foregoing shall be designated as "customer's service line."

(d) In any case where a reasonable doubt exists as to the proper location and size for "customer's service line," the utility shall be consulted and its approval of the location and size of line be secured in writing.

*(NCUC Docket No. S-100, Sub 1, 8/23/67.)*

#### **R10-12 EXTENSION OF MAINS**

(a) General Provisions.

(1) A bona fide customer as referred to in subsections (b) and (c) hereinafter shall be a customer of permanent and established character, exclusive of the real estate developer or builder, who receives sewer service at a premises improved with structures of a permanent nature.

(2) Any facilities installed hereunder shall be the sole property of the utility.

(3) The size, type, quality of materials, and their location will be specified by the utility, and the actual construction will be done by the utility or by a constructing agency acceptable to it.

(4) Adjustment of any difference between the estimated cost and the reasonable actual cost of any collection system extension made hereunder will be made within 60 days after the actual cost of the installation has been ascertained by the utility.

(5) In case of disagreement or dispute regarding the application of any provision of this rule, or in circumstances where the application of this rule appears impracticable or unjust to either party, the utility, application or applicants may refer the matter to the Utilities Commission for settlement.

(6) Extensions for temporary service will not be made under this rule.

(b) Extensions to Service Individuals.

(1) The utility will extend its sewer collection system to serve new bona fide customers at its own expense, other than to serve subdivisions, tracts, housing projects, industrial or residential developments, or

organized service districts, when the required total length of the sewer collection system extension from the nearest existing sewer collection system is not in excess of 100 feet per service connection. If the total length of the sewer collection system extension is in excess of 100 feet per service connection applied for, the applicant or applicants for such service shall be required to advance to the utility before construction is commenced that portion of the reasonable estimated cost of such extension over and above the estimated reasonable cost of 100 feet of the sewer collection system extension per service connection, exclusive of the cost of service connections and exclusive of any costs of increasing the size or capacity of the utility's existing facilities used or necessary for supplying the proposed extension. The money so advanced will be refunded by the utility without interest in payments equal to the reasonable actual cost of 100 feet of the sewer collection system extension, for which advance was made for each additional service connection, exclusive of that of any customer formerly served at the same location. Refunds will be made within 180 days after the date of first service to a bona fide customer. No refunds will be made after a period of 5 years from the date of completion of the sewer collection system extension, and the total refund shall not exceed the amount advanced.

- (2) Where a group of five or more individual applicants request service from the same extension, or in unusual cases after obtaining Commission approval, the utility at its option may require that the individual or individuals advance the entire cost for the sewer collection system extension as herein provided and the utility will refund this advance as provided in subsection (c)(2) of this rule.
- (3) In addition to refunds made on the basis of service connections attached directly to the extension for which the cost was advanced as provided in subdivision (1) of this subsection, refunds also will be made to the party or parties making the advances in those cases where additional bona fide customers are serviced by a subsequent sewer collection system extension, supplied from the original extension upon which an advance is still refundable, whenever the length of such further extension is less than 100 feet per service connection. Such additional refunds will equal the difference between the 100-foot allowance per service connection and the length of each required subsequent extension multiplied by the average cost per foot of the extension used as the basis for determining the amount advanced. In those cases where subsequent customers are served through a series of such sewer collection system extensions, refunds will be made to the party or parties making the advances in chronological order beginning with the first of the extensions in the series from the original point of supply, until the amount advanced by any parties fully repaid within the period of 5 years as specified above. In those cases where two or more customers have made a joint advance on the same extension, refunds will be made in the same proportion that each advance bears to the total of said joint advance. Where the utility installs a sewer collection system larger than that for which the cost was advanced to serve an individual or individuals, and a subsequent extension is supplied from such sewer collections systems, the original individual or individuals will not be entitled to refunds which might otherwise accrue from subsequent extensions.

(c) Extensions to Serve Subdivisions, Tracts, Housing Projects, Industrial or Residential Developments or Organized Service Districts.

- (1) An applicant for a sewer collection system extension to serve a new subdivision, tract, housing project, industrial, or residential development, or organized service district shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of such facilities, including the estimated reasonable cost associated with the installation of any reasonable and prudent amount of excess capacity, if any, upon approval by the Commission. If additional facilities are required specifically to provide service exclusively for the service requested, the cost of such facilities may be included in the advance upon approval by the Commission.
- (2) The funds so advanced will be subject to refund by the utility without interest to the party or parties entitled thereto. The total amount so refunded shall not exceed the amount advanced. Refunds will be made under the following method:

Proportionate Cost Method:

For each service connection directly connected to the extension, exclusive of that of any customer formerly served at the same location, the utility will refund within 180 days after the date of first service to a bona fide customer that portion of the total amount of the advance which is determined from the ratio of the allocated capacity of the sewer facilities acquired to the total allocated capacity of the sewer facilities for which the cost was advanced. No refunds will be made after a period of 5 years from the date of completion of the main extension.

(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. W-100, Sub 6, 4/18/88.)

### **R10-13 REFUSAL TO SERVE APPLICANTS**

(a) Noncompliance with Rules and Regulations. — Any utility may decline to serve an applicant until he has complied with State regulations governing sewer service and the approved rules and regulations of the utility.

(b) Utility's Facilities Inadequate. — Until adequate facilities can be provided, a utility may decline to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities to render service applied for or if the intended use is of a character that is likely to affect unfavorable service to other customers.

(c) Applicant's Recourse. — In the event that the utility shall refuse to serve an applicant under the provisions of this rule, or on other rules incorporated herein, the utility shall inform the applicant of the basis of its refusal, and the applicant may apply to the Commission for a ruling thereon.

(d) Applicant's Facilities Inadequate. — The utility may refuse to serve an applicant if, in its judgment, the applicant's installation of sewer piping is regarded as hazardous or of such character that satisfactory service cannot be given.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

**R10-14** Rescinded by NCUC Docket Nos. M-100, Sub 86; M-100, Sub 28; M-100, Sub 61, 10/1/80.

### **R10-15 CUSTOMER'S DISCONTINUANCE OF SERVICE**

Any customer desiring service discontinued shall give a written notice to the utility unless otherwise incorporated in the rules and regulations of the utility. Until the utility shall have such notice the customer may be held responsible for all service rendered.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

### **R10-16 UTILITY'S DISCONTINUANCE OF SERVICE**

(a) Violation of Rules. — Neglect or refusal on the part of a customer to comply with these rules or the utility's rules properly filed with the Commission shall be deemed to be sufficient cause for discontinuance of service on the part of the utility. Whenever sewer service is discontinued for any reason the utility shall send a report of termination of service to the local county board of health for compliance with G.S. 130A-335.

(b) Access to Property. — The utility shall at all reasonable times have access to service connections, and other property owned by it on customer's premises for purposes of maintenance and operation. Neglect or refusal on the part of the customer to provide reasonable access to his premises for the above purposes shall be deemed to be sufficient cause for discontinuance of service on the part of the utility.

(c) Notice of Discontinuance. — No utility shall discontinue service to any customer for violation of its rules or regulations without first having diligently tried to induce the customer to comply with its rules and regulations. After such effort on the part of the utility, service may be discontinued only after at least five days' written notice excluding Sundays and holidays shall have been given the customer by the utility, provided, however, where an emergency exists or where fraudulent use is detected, or where a dangerous condition is found to exist on the customer's premises, the sewer service may be cut off without such notice.

(d) Disputed Bills. — In the event of a dispute between the customer and the utility respecting any bill, the utility shall make forthwith such investigation as shall be required by the customer. In the event that the matter in dispute cannot be compromised or settled by the parties, either party may submit the facts to the Commission for its decision, and pending such decision, service shall not be discontinued.

(e) Reconnection Charge. — Whenever the sewer service is cut off for the violation of rules and regulations, or nonpayment of bill, the utility may make a reconnection charge, approved by the Commission, payable in advance, for restoring the service. The fee shall be no more than fifteen dollars (\$15.00) for restoring said service; except, if the utility proves that its actual and reasonable cost for restoring the service is greater than fifteen dollars (\$15.00), the fee may be set at no more than the proven cost.

(f) Report of Discontinuance of Service to Be Filed with Health Department. — Whenever sewer service is discontinued for any reason the utility shall send a report of termination of service to the local county board of health for compliance with G.S. 130A-335.

(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. M-100, Sub 28, 5/6/70, effective 7/1/70; NCUC Docket No. W-100, Sub 48, 12/31/09; NCUC Docket No. M-100, Sub 140, 12/03/13.)

### **R10-17 INFORMATION TO CUSTOMERS**

(a) Information as to Service and Rates. - A utility shall, when accepting application for sewer service, give full information to the applicant concerning type of service to be rendered and rates which will be applicable.

(b) Posting of Rates, Rules and Regulations. - Every utility shall provide in its business office, near the cashier's window, where it may be available to the public the following:

- (1) A copy of the rates, rules and regulations of the utility applicable to the territory served from that office.
- (2) A copy of these rules and regulations.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

**R10-18 Rescinded**

(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. W-100, Sub 48, 12/31/09.)

**R10-19 INFORMATION ON BILLS**

All bills for sewerage service shall state whether the charge is based on a percentage of the water bill, flat rate, or other charge.

- (1) Those bills based upon a water meter billing shall show the readings of the water meter at the beginning and end of the time for which bill is rendered, the dates on which the readings were taken, the amount supplied and the price per unit.
- (2) Utilities desiring to adopt mechanical billing of such nature as to render compliance with all the terms of subdivision (1) impractical may make application to this Commission for relief therefrom. After considering such application, the Commission may, in its discretion, allow a departure from subdivision (1).
- (3) Meters will be read or flat rate billings rendered as nearly as possible at regular intervals. This interval may be monthly, or quarterly, however no change shall be made in the billing interval except on approval of the Commission.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

**R10-20 SALE OF SEWER SERVICE**

No utility shall charge or demand or collect or receive any greater or less or different compensation for sale of sewer service, or for any service connected therewith, than those rates and charges approved by the Commission and in effect at that time.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

**R10-21 ACCOUNTING**

(a) Uniform System of Accounts. - The Uniform System of Accounts for Sewer Utilities as revised in 1984 by the National Association of Regulatory Utility Commissioners, and all subsequent revisions thereto unless otherwise ordered by the Commission, are hereby adopted by this Commission as the accounting rules of this Commission for sewer companies and are prescribed for the use of all sewer utilities under the jurisdiction of the North Carolina Utilities Commission having annual gross operating revenues of \$10,000 or more derived from the sales of sewer service, viz:

Uniform System of Accounts for Class A Sewer Utilities-1984.

Uniform System of Accounts for Class B Sewer Utilities-1984.

Uniform System of Accounts for Class C Sewer Utilities-1984.

(b) Multicompany Filings. - Each sewer utility operating in more than one subdivision shall maintain its accounts in such a manner that the operating revenue, the investment, the related depreciation reserve and contributions for each subdivision can be obtained from its records.

(NCUC Docket No. S-100, Sub 1, 8/23/67; NCUC Docket No. W-100, Sub 18, 6/1/92.)

**R10-22 SAFETY PROGRAM**

Each utility shall adopt and execute a safety program, fitted to the size and type of its operations. As a minimum, the safety program shall:

- (1) Require employees to use suitable tools and equipment in order that they may perform their work in a safe manner.
- (2) Instruct employees in safe methods of performing their work.
- (3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation or drowning, in accepted methods of artificial respiration.

(NCUC Docket No. S-100, Sub 1, 8/23/67.)

**R10-23 AVAILABILITY RATES**

(a) Definitions:

- (1) "Availability rate" - means a fee or charge paid to a sewer utility by a subscriber thereof for the availability of sewer service being provided by the utility in a specific subdivision or real estate development.
  - (2) "Customer" or "subscriber" - for purposes of this rule, means a person who is a nonuser of the sewer service provided by a sewer utility and who has subscribed to the availability of sewer service.
    - (a) If a person subscribes to availability of service to more than one lot, that person shall be considered a separate customer for each separate lot served; except that two lots occupied by a single dwelling may be considered as a single lot when the dwelling occupies a portion of both lots in such a manner that no additional separate dwellings can reasonably be anticipated on the lots.
  - (3) "Availability of sewer service" - means that safe, sanitary and unoffensive collection, treatment and disposal of sewage is available at all times by means of a sewer main located within 75 feet of the boundary of the subscriber's property served, or such other distance as the Commission deems reasonable, whether or not sewage is actually delivered to the system by the subscriber, and whether or not a service outlet is located inside the boundary of the property served.
- (b) Disclosure to Customer Required. - Each utility shall first ensure that its customers have been given adequate disclosure of any availability rate, in accordance with the provisions of this rule, prior to accepting a customer's subscription to availability service or accepting the initial assignment of a contract for availability service.
- (1) Form of disclosure - The disclosure form shall be a written instrument signed by the customer, and if reasonably practical it shall be separate from other documents pertaining to the sale of property. The written instrument may be part of a uniform contract entered into between the developer of a subdivision and a lot purchaser in the subdivision, or it may be part of a written agreement between the customer and the utility. Acceptable sample disclosure forms are set out as an Appendix to Chapter 7 of these rules.
  - (2) Information in disclosure - The disclosure form shall contain the following information:
    - (a) Definitions of "availability rate" and of "availability of sewer service" as contained in this rule.
    - (b) A statement specifying whether or not the availability rate shall continue to be applicable to the subscriber even if at some time in the future the subscriber's property should no longer be in use and the sewer service should no longer be required by the subscriber.
    - (c) The amount of the availability rate approved by the Utilities Commission, or if no amount has been approved, the amount that is to be submitted for approval.
    - (d) A statement relating to the nature and amount of any charges or fees that the customer may be obligated to pay if he should wish to become a sewer user; i.e., tap on fees.
    - (e) Written certification by the customer that the customer understands the meaning of such availability rate and that he subscribes to the imposition of such rate for the availability of water service.
- (c) Approval of Disclosure Form Required. - The sample disclosure forms contained in the Appendix to Chapter 7 of these rules shall constitute adequate disclosure forms. Any disclosure form varying from the sample disclosure forms shall be submitted to and approved by the Utilities Commission prior to accepting the customer's subscription to availability service or accepting the assignment of a contract for availability service. The Commission shall either approve or disapprove the submitted form as promptly as possible.
- (d) Improper Disclosure Is Grounds for Denial of Franchise and Rates. - In the event the Utilities Commission finds that disclosure of the availability rate has not been made in accordance with the provisions of this rule, the Commission may conclude that the availability rate in whole or in part should not be allowed.
- (e) Record of Subscription. - Each utility shall maintain in its files a permanent record of each written certification, subscription or contract relating to an availability rate imposed by that utility.
- (f) Collection of Availability Rate. - No utility shall collect an availability rate unless and until a tariff providing for such availability rate has first been filed with and approved by the Utilities Commission.
- (g) Not Applicable When User Rates Are in Effect. - No availability rate approved by the Utilities Commission shall be applicable to any property when the regular user rates are in force for that property.
- (h) Applicable Only When Franchise in Force. - All availability rates approved by the Utilities Commission shall be applicable only during the period of time that the utility franchise remains in force for the property served, unless such Commission approval specifies otherwise.
- (i) Amount of Availability Rate. - No availability rate shall exceed the minimum rate established by the Commission for water users. Both the availability rate and the minimum user rate are subject to change from time to time upon approval by the Utilities Commission.

(j) Denial of User Service. - No utility may deny sewer user service to its customers for nonpayment of availability rates imposed under contracts entered into prior to the effective date of this rule, except where such availability rates had been authorized under a Commission rule.

(k) This rule shall become effective on and after April 2, 1975.

(NCUC Docket No. W-100, Sub 4, 4/2/75.)

#### **R10-24 BONDS**

(a) Except as provided in paragraph (f), before temporary operating authority, or a certificate of convenience and necessity is granted to a water or sewer utility company, or before a water or sewer utility company extends service into territory contiguous to that already occupied, without regard to the date of the issuance of the existing franchise, the company must furnish a bond to the Commission as required by G.S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. In setting the amount of a bond, the Commission shall consider and make appropriate findings as to the following:

- (1) Whether the applicant holds other water or sewer franchises in this State, and if so its record of operation,
- (2) The number of customers the applicant now serves and proposes to serve,
- (3) The likelihood of future expansion needs of the service,
- (4) If the applicant is acquiring an existing company, the age, condition and type of the equipment,
- (5) Any other relevant factors, including the design of the system, and
- (6) In the case of a contiguous extension, both the original service area and the proposed extension.

The bond shall be in an amount, not less than ten thousand dollars (\$10,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars (\$500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement. Where a utility proposes to secure its bond by means of a commercial surety bond of nonperpetual duration issued by a corporate surety, the bond and commercial surety bond must specify that (a) if, for any reason, the surety bond is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the surety bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325, that the surety bond will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the surety bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the surety bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted surety bond shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond. If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

- (1) Obligations of the United States of America
- (2) Obligations of the State of North Carolina
- (3) Certificates of deposit drawn on and accepted by commercial banks and savings and loan associations incorporated in the State of North Carolina
- (4) Irrevocable letters of credit issued by financial institutions acceptable to the Commission. If the irrevocable letter of credit is nonperpetual in duration, the bond and letter of credit must specify that (a) if, for any reason, the irrevocable letter of credit is not to be renewed upon its expiration, the financial institution shall, at least 60 days prior to the expiration date of the irrevocable letter of credit, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina

Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325, that the irrevocable letter of credit will not be renewed beyond the then current maturity date for an additional period, (b) failure to renew the irrevocable letter of credit shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the irrevocable letter of credit to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and (c) the cash proceeds from the converted irrevocable letter of credit shall be used to post a cash bond on behalf of the utility pursuant to section (e)(3) of this rule.

(5) Such other evidence of financial responsibility deemed acceptable to the Commission. If the utility proposes to post evidence of financial responsibility other than that permitted in (1), (2), (3), and (4) above, a hearing will be held to determine if the form of the proposed security serves the public interest and if the amount of the bond proposed by the utility should be higher due to its lack of liquidity. At this hearing, the burden of proof will be on the utility to show that the proposed security under subparagraph (5) and the proposed amount of the bond will be in the public interest.

(f) If a utility subject to the Commission's jurisdiction is operating without a franchise and either

(1) it applies for a franchise, or

(2) the Commission asserts jurisdiction over it, the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(g) The company shall attach a separate statement to its annual report which is due on or before April 30th of each year signed under penalty of perjury stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

*(NCUC Docket No. W-100, Sub 5, 9/2/87; 3/18/88; 7/19/94; 8/31/94; 9/8/94; 5/3/95; 5/4/95; 5/23/95; 11/7/97; NCUC Docket No. M-100, Sub 128, 04/10/00; NCUC Docket No. M-100, Sub 160, 3/30/2022.)*

(SAMPLE FORM OF WATER OR SEWER BOND ACCOMPANIED BY DEPOSIT OF CASH OR SECURITIES)  
BOND

(Name of utility) of (City), (State), as Principal, is bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_ ) and for which payment to be made, the Principal by this bond binds (himself)(itself) and (his)(its) successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility)

\_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and

WHEREAS, the Principal has delivered to the Commission (description of security) \_\_\_\_\_ with an endorsement as required by the Commission, and,

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Name)

(SAMPLE FORM OF WATER OR SEWER BOND WITH INDIVIDUAL SURETY)  
BOND

(Name of Utility) of (City), (State), as Principal, and (Name of Surety) as Surety, (hereinafter called "Surety") are bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_ ) and for which payment to be made, the Principal and Surety by this bond binds themselves their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility)

\_\_\_\_\_  
and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(a) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consent to the conditions of this Bond and agree to be bound by them.

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

(SAMPLE FORM OF WATER OR SEWER BOND WITH CORPORATE SURETY)  
BOND

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_ ) and for which payment to be made, the Principal and Surety by this bond binds themselves their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility)

\_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and, Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(a) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consent to the conditions of this Bond and agree to be bound by them.

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)  
\_\_\_\_\_  
(Surety)  
By: \_\_\_\_\_

(SAMPLE FORM OF WATER OR SEWER BOND SECURED BY IRREVOCABLE LETTER OF CREDIT OF  
NONPERPETUAL DURATION)  
BOND

(Name of Utility) of (City), (State), as Principal, is bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_ )  
and for which payment to be made, the Principal by this bond binds (himself) (itself) and (his) (its) successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the  
rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water and/or sewer utility  
(describe utility)

\_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water and/or sewer service to  
furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in G.S. § 62-110.3, and  
Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal has delivered to the Commission an Irrevocable Letter of Credit from (Name of Bank) with an  
endorsement as required by the Commission, and,

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with G.S. 62-118(b) or by  
the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Irrevocable Letter of Credit is not to be renewed upon its expiration, the Bank shall, at least  
60 days prior to the expiration date of the Irrevocable Letter of Credit, provide written notification by means of certified mail,  
return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh,  
NC 27699-4325, that the Irrevocable Letter of Credit will not be renewed beyond the then current maturity date for an  
additional period, and

WHEREAS, failure to renew the Irrevocable Letter of Credit shall, without the necessity of the Commission being required to  
hold a hearing or appoint an emergency operator, allow the Commission to convert the Irrevocable Letter of Credit to cash  
and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Irrevocable Letter of Credit shall be used to post a cash bond on behalf of  
the Principal pursuant to North Carolina Utilities Commission Rules R7-37(e) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year  
unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)  
By: \_\_\_\_\_

(SAMPLE FORM OF WATER OR SEWER BOND SECURED BY COMMERCIAL SURETY BOND OF  
NONPERPETUAL DURATION ISSUED BY CORPORATE SURETY)  
BOND

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State, as Surety, (hereinafter called "Surety")), are bound to the State of North Carolina in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_ ) and for which payment to be made, the Principal and Surety by this bond bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water and/or sewer utility (describe utility)

\_\_\_\_\_ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water and/or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and Commission Rules R7-37 and/or R10-24, and

WHEREAS, the Principal and Surety have delivered to the Commission a Surety Bond with an endorsement as required by the Commission, and

WHEREAS, the appointment of an emergency operator, either by the Superior Court in accordance with G.S. § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, if for any reason, the Surety Bond is not to be renewed upon its expiration, the Surety shall, at least 60 days prior to the expiration date of the Surety Bond, provide written notification by means of certified mail, return receipt requested, to the Chief Clerk of the North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, NC 27699-4325, that the Surety Bond will not be renewed beyond the then current maturity date for an additional period, and

WHEREAS, failure to renew the Surety Bond shall, without the necessity of the Commission being required to hold a hearing or appoint an emergency operator, allow the Commission to convert the Surety Bond to cash and deposit said cash proceeds with the administrator of the Commission's bonding program, and

WHEREAS, said cash proceeds from the converted Surety Bond shall be used to post a cash bond on behalf of the Principal pursuant to North Carolina Utilities Commission Rules R7-37(a) and/or R10-24(e), and

WHEREAS, this bond shall become effective on the date executed by the Principal, for an initial \_(No of years)\_ year term, and shall be automatically renewed for additional \_(No. of Years)\_ year terms, unless the obligations of the principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consents to the conditions of this Bond and agrees to be bound by them.

This the \_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
(Principal)  
BY: \_\_\_\_\_

\_\_\_\_\_  
(Corporate Surety)  
BY: \_\_\_\_\_

### **R10-25 NOTIFICATION OF CONTIGUOUS EXTENSION**

(a) At least 30 days prior to constructing, acquiring, or beginning the operation of any public utility plant or equipment capable of providing sewer utility service to customers in territory contiguous to that already occupied, for which, by virtue of its contiguity, no certificate of public convenience and necessity is required, a public utility shall provide written notice to the Commission of its intention to construct, acquire, or begin operation of such plant. The notice shall be in a form approved by the Commission and shall identify the area to be served by the extension.

(b) For purpose of this Rule, the phrase "territory contiguous to that already occupied" shall mean territory that is immediately adjacent. In order to be immediately adjacent, the territory must share a significant common boundary line with that already occupied. There may be a geographic feature such as a roadway or stream along this boundary line, but there must not be any intervening land or any substantial body of water. The territory must be immediately adjacent to territory that is already occupied by the sewer utility. A sewer utility occupies a territory by the presence of its plant in the territory. A contiguous extension may not be made across unoccupied territory that will not be served by the extension, whether franchised to the utility or not.

(NCUC Docket No. W-100, Sub 17, 2/28/95.)

### **R10-26 SEWER SYSTEM IMPROVEMENT CHARGE MECHANISM**

(a) Scope of Rule. – This rule provides the procedure for the approval and administration of a rate adjustment mechanism pursuant to G.S. 62-133.12 to allow a utility to recover the incremental depreciation expense and capital costs related to the utility's reasonable and prudently incurred investment in eligible sewer system improvements.

(b) Definitions. – As used in this rule:

- (1) "Capital costs" means the pretax return on costs permitted to be capitalized pursuant to the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts, net of accumulated depreciation and accumulated deferred income taxes, using the current federal and state income tax rates and the utility's capital structure, cost of long-term debt, and return on equity approved in the utility's most recent general rate case.
- (2) "Depreciation expense" means the annual depreciation accrual rates employed in the utility's most recent general rate case for the plant accounts in which the cost of each eligible sewer system improvement is recorded applied to the cost of eligible sewer system improvements.
- (3) "Eligible sewer system improvements" means the improvements set forth in G.S. 62-133.12(d) and shall include only those improvements found necessary by the Commission to provide safe, reliable, and efficient service in accordance with applicable effluent standards.
- (4) "Incremental depreciation expense and capital costs" means depreciation expense and capital costs that have been incurred since the utility's most recent rate case and have not been included in the utility's cost of service for ratemaking purposes.
- (5) "Sewer System Improvement Charge or SSIC" means an adjustment to customer bills that allows a utility to recover the SSIC Revenue Requirement.
- (6) "SSIC Revenue Requirement" means the annual revenue required to allow a utility to recover the annual incremental depreciation expense and capital costs of eligible sewer system improvements.
- (7) "SSIC Period" means the 12-month period ended December 31 for Aqua North Carolina, Inc. and the 12-month period ended March 31 for Utilities, Inc., and its North Carolina affiliates. The SSIC Period for other sewer utilities shall be a 12-month period established by the Commission in conjunction with the approval of a SSIC mechanism for that utility.
- (8) "SSIC mechanism" means a rate adjustment mechanism approved by the Commission in a general rate case pursuant to G.S. 62-133.12.

(c) Request for Sewer System Improvement Charge Mechanism. – A utility seeking approval of a SSIC mechanism shall include in its application for a general rate increase under G.S. 62-133 and Commission Rule R1-17 the following:

- (1) A three-year plan that includes the following:
  - a. A detailed description of all proposed eligible sewer system improvements expected to be completed in the initial SSIC Period and an estimate of the cost of the improvements and dates when the improvements will be placed into service; and
  - b. A brief description of the proposed eligible sewer system improvements, estimated costs, and completion dates for improvements that the utility plans to complete during the two years following the initial SSIC Period.
- (2) The proposed effective dates of the SSIC and semiannual adjustments to the charge.

- (3) Testimony, affidavits, exhibits, or other evidence demonstrating that a SSIC is in the public interest and will enable the utility to provide safe, reliable, and efficient service in accordance with applicable effluent standards.
  - (4) Any other information required by the Commission.
- (d) Customer Notice. – The notice to customers of the utility's general rate increase application shall include the proposed SSIC mechanism and the estimated impact of charges under the mechanism on the utility's monthly service rates. The Notice shall include the following statement:

**Sewer System Improvement Charge Mechanism**

Pursuant to G.S. 62-133.12 and Commission Rule R10-26, the Company is requesting that the Commission approve a Sewer System Improvement Charge Mechanism. This mechanism will allow the Company to recover the annual incremental depreciation expense and capital costs of eligible sewer system improvements completed and placed in service between rate cases. In support of this request, the Company has filed a three-year plan with its Application which list various projects which may be eligible for recovery pursuant to this mechanism, the cost and/or estimated costs of those projects, and the estimated completion date of those projects. By law, the cumulative maximum charges between rate cases that the Company can recover through the use of this mechanism cannot exceed five percent of the total service revenues that the Commission will approve in this rate case. Customers may subscribe to the Commission's electronic notification system through the Commission's website at [www.ncuc.net](http://www.ncuc.net) to receive notification of any Company requests to utilize the Sewer System Improvement Charge Mechanism, if approved.

In this Application, the Company has requested that the Commission allow it to recover total service revenues of \$\_\_\_\_\_. Five percent of these revenues is \$\_\_\_\_\_. If the Commission permits the Company to recover the revenue requirements requested in the Application, the Company projects that the average monthly sewer bill for a typical residential customer (based upon monthly water usage of x,xxx gallons) would be \$\_\_\_\_\_. Based upon these figures, the Company estimates that the maximum that the average residential customer's monthly sewer bill could be increased by this adjustment mechanism between rate cases is \$\_\_\_\_\_.

The Commission may eliminate or modify any rate adjustment mechanism approved in this case upon a finding that it is no longer in the public interest.

- (e) General Rate Case Review. – Following notice and hearing, the Commission shall approve a SSIC mechanism only upon a finding that it is in the public interest.
- (f) Initiation of Charge. – Once a SSIC mechanism is approved and eligible sewer system improvements are in service, the utility may file a request with the Commission for authority to impose the sewer system improvement charge pursuant to the mechanism, to be effective no less than 60 days after filing the request. The Company shall also provide a copy of the request to the Public Staff.<sup>3</sup> Prior to the effective date, the Public Staff shall schedule the request for Commission consideration at the regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed sewer system improvement charge. The Public Staff shall formally notify the Commission at least 15 days in advance of the date that the request shall be scheduled for Commission consideration at the regularly scheduled staff conference.
- (g) Computation of the SSIC Revenue Requirement. – The SSIC Revenue Requirement shall be computed for each SSIC Period as follows:

Eligible sewer system improvements	\$X,XXX,XXX
Less: Accumulated depreciation	X,XXX,XXX
Less: Accumulated deferred income taxes	<u>X,XXX,XXX</u>
Net plant investment	\$X,XXX,XXX
Pre-tax rate of return	<u>X.XX%</u>
Capital costs	\$X,XXX,XXX

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<sup>3</sup> Parties interested in receiving notice of these filings may subscribe to the Commission's electronic notification system through the Commission's website at [www.ncuc.net](http://www.ncuc.net).

Plus: Depreciation expense	<u>XXX,XXX</u>
Subtotal, excluding regulatory fee	\$X,XXX,XXX
Regulatory fee gross-up factor	<u>XXXX</u>
Total	\$X,XXX,XXX

(h) Computation of Sewer System Improvement Charge. –

- (1) The SSIC shall be expressed as a percentage carried to two decimal places and shall be applied to the total utility bill of each customer under the utility's applicable service rates and charges.
- (2) The SSIC shall be computed by dividing the annual SSIC Revenue Requirement by the projected revenues of the utility during the 12-month period following implementation of the charge.

(i) Semiannual Adjustments. – A utility may file a request for a SSIC adjustment no more frequently than semiannually.

- (1) The request shall include the computation and supporting data for the adjustment.
- (2) Cumulative SSIC Revenue Requirements may not exceed five percent of the total annual service revenues approved in the utility's last general rate proceeding.
- (3) The procedural requirements set forth in subsection (f) of this Rule shall apply to requests for semiannual adjustments.

(j) Experience Modification Factor. – The SSIC shall be modified through the use of an experience modification factor (EMF) that reflects the difference between the SSIC Revenue Requirement and the revenues that were actually realized under the SSIC during the SSIC Period. The EMF shall remain in effect for a 12-month period. Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred costs of the utility for eligible sewer system improvements to be refunded to a utility's customers through operation of the EMF shall include an amount of interest at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate.

(k) Sewer System Improvement Charge Reset. – The SSIC shall be reset at zero as of the effective date of new base rates established in the utility's general rate case. Thereafter, only the incremental depreciation expense and capital costs of new eligible sewer system improvements that have not previously been reflected in the utility's rates shall be recoverable through the SSIC.

(l) Audit and Reconciliation. – The SSIC shall be subject to the following:

- (1) Within 60 days following the end of each SSIC Period, each utility shall file a report, in a format prescribed by the Commission, reconciling its actual eligible sewer system improvement costs, actual SSIC revenues, and EMF computation.
- (2) The Public Staff shall audit the utility's actual eligible sewer system improvement costs, actual SSIC revenues, and EMF computation, and shall file a report on its audit no later than four months after the end of the SSIC Period of the utility.

(m) Ongoing Three-Year Plan. – Within 60 days following the end of each SSIC Period, the utility shall file an updated three-year plan containing the information prescribed in Section (c)(1) of this Rule and any other information required by the Commission.

(n) Quarterly Filings with the Commission. – Within 45 days after the end of each calendar quarter, the utility shall file the following reports:

- (1) A quarterly earnings report consisting of the following:
  - a. A balance sheet and income statement for the calendar quarter and calendar year to date for the utility;
  - b. A statement of the per books net operating income for the calendar quarter and calendar year to date for each rate division of the utility based on North Carolina ratemaking;
  - c. A statement of rate base at the end of the calendar quarter for each rate division of the utility based on North Carolina ratemaking; and
  - d. The number of customers and gallons sold for each month of the calendar quarter for each rate division by rate type (meter size, flat rate, etc.).
- (2) A quarterly report of SSIC collections from customers consisting of amounts collected for the quarter by rate division and rate type.
- (3) A construction status report which includes by rate division the following information for each eligible system improvement project:
  - a. The costs incurred during the quarter;
  - b. The cumulative amount incurred;
  - c. The estimated total cost of each project;
  - d. The estimated completion date; and
  - e. The actual completion date.

(o) Elimination or Modification of SSIC Mechanism. – After notice to the utility and opportunity to be heard, the Commission may eliminate or modify any previously authorized SSIC mechanism upon a finding that it is not in the public interest.

(p) Burden of Proof. – The burden of proof as to whether a SSIC mechanism is in the public interest, the correctness and reasonableness of any SSIC, and whether the investment in the sewer system improvements was reasonable and prudently incurred shall be on the utility.

(NCUC Docket No. W-100, Sub 54, 6/06/2014.)

### **R10-27 CONSUMPTION ADJUSTMENT MECHANISM FOR SEWER UTILITIES**

(a) Scope of Rule.—This Rule provides the procedure for the approval and administration of a rate adjustment mechanism pursuant to G.S. 62-133.12A, known as a Consumption Adjustment Mechanism for Sewer Utilities (CAM-S ). This mechanism, if authorized by the Commission in a general rate case proceeding, allows a sewer utility to track and true-up variations in average per customer sewer usage from baseline consumption levels established by the Commission in the utility's most recent general rate case proceeding and to subsequently apply to the Commission for authority to establish and adjust charges or credits to recover from or refund to customers the revenue associated with these variations. The rate adjustment mechanism allowed pursuant to this Rule is not applicable to a sewer utility's customers that are charged based upon a flat rate or purchased bulk sewer rate or to customers that are served by systems that the utility acquired after the date on which the utility filed its application and were not included in its most recent general rate case proceeding.

(b) Request for Approval of CAM-S.—A utility seeking approval of a CAM-S shall include in its application for a general rate increase pursuant to G.S. 62-133 and Commission Rule R1-17 the following:

- (1) A proposed structure of the CAM-S and a proposed method for calculating the charge or credit resulting from the CAM-S that are in sufficient detail to facilitate the Commission's review and determination whether the rate adjustment mechanism is appropriate to track and true-up variations in average per customer usage and whether the rate adjustment mechanism is in the public interest;
- (2) A description of the customer classifications used within the current and any proposed rate schedules that the proposed CAM-S would apply to and the criteria used to group customers in a fair and reasonable manner;
- (3) A three-year billing data analysis that includes a detailed breakdown of the monthly active customer counts and monthly usage data by blocks of 1,000 gallons for each year, customer classification, and rate schedule;
- (4) Testimony, affidavits, exhibits, sample calculations, or other evidence demonstrating that the CAM-S is appropriate to track and true-up variations in average per customer usage and that the CAM-S is in the public interest; and
- (5) Any other information that the Commission may require by order or otherwise in the general rate case proceeding.

(c) Customer Notice.—The notice to customers of the utility's general rate case application shall include notice of the request for approval of the proposed CAM-S.

(d) General Rate Case Review.—Following notice and hearing, in the general rate case proceeding the Commission will review the utility's proposed use of a CAM-S and determine whether the CAM-S is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding and whether the CAM-S is in the public interest. In conjunction with the Commission's determination that the CAM-S is appropriate and in the public interest, the Commission will establish an average per customer consumption level on an annual basis and/or on a monthly basis for the applicable 12-month period based on the relevant historical consumption data, subject to reasonable pro forma adjustment and normalization, which shall be used to establish a baseline consumption measure or measures.

(e) Procedure for Establishment of Charge or Credit Resulting from CAM-S; Setting of Adjustment Date.— On or before the date established by Commission order, but in no event less than 12 months after the Commission issues an order in a general rate case proceeding approving the use of the CAM-S, the utility shall file a request for authority to establish the charge or credit resulting from the CAM-S. The utility's request shall comply with the following:

- (1) The proposed effective date for the charge or credit resulting from the CAM-S shall be no sooner than 60 days after the filing of the request;
- (2) The request shall include a proposed calculation of the charge or credit resulting from the CAM-S specific to each customer classification and rate schedule;
- (3) The proposed calculation shall be consistent with the approved CAM-S structure and make use of the Commission-approved baseline consumption measure or measures; and
- (4) The utility shall provide a copy of the request to the Public Staff.

Prior to the proposed effective date, the Public Staff shall schedule the request for Commission consideration at a regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed charge or credit resulting from the CAM-S. The Public Staff shall notify the Commission by an appropriate filing in the relevant docket at least 15 days in advance of the date that the request is scheduled for Commission consideration at the regularly scheduled staff conference. In its order approving the charge or credit resulting from the CAM-S, the Commission shall establish the effective date for the establishment of the charge or credit resulting from the CAM-S and the effective date for the utility's subsequent annual adjustments to the credit or charge previously established. Where practical, the Commission will set the effective date for subsequent annual adjustments to the charge or credit resulting from the CAM-S on the same date of each year coinciding with the effective date of the charge or credit resulting from the CAM-S as initially established.

(f) Annual Adjustments.—A utility authorized to establish a charge or credit resulting from the CAM-S shall annually file a request for an adjustment in the charge or credit resulting from the CAM-S. The request and the supporting calculation and data for an annual adjustment shall be filed with the Commission at least 45 days prior to the annual adjustment date established pursuant to section (e) of this Rule. The utility shall also provide a copy of the request to the Public Staff. Prior to the annual adjustment date, the Public Staff shall schedule the request for Commission consideration at a regularly scheduled staff conference and recommend that the Commission issue an order approving, modifying and approving, or rejecting the proposed adjustment to the charge or credit resulting from the CAM-S. In reviewing the proposed adjustment, the Commission will also consider whether it is appropriate and in the public interest to modify the baseline consumption measure or measures adopted in the rate case proceeding. The Public Staff shall notify the Commission by an appropriate filing in the relevant docket at least 15 days in advance of the date that the requested adjustment is scheduled for Commission consideration at the regularly scheduled staff conference.

(g) Reporting and Auditing.—A utility authorized to establish a charge or credit resulting from the CAM-S shall report to the Commission and the Public Staff shall audit these reports, as provided in this section.

- (1) Monthly Filings with the Commission.—Within 30 days of the end of each calendar month, the utility shall file the following reports:
  - (i) A balance sheet and income statement for the calendar month and calendar year to date;
  - (ii) A statement of per books net operating income for the calendar month and calendar year to date for each rate division of the utility based on North Carolina ratemaking;
  - (iii) The actual number of customers and gallons sold for each month for each rate division, customer classification, and rate schedule;
  - (iv) Total actual monthly service revenues for each rate division, customer classification, and rate schedule, excluding revenues from customers to which this Rule does not apply; and
  - (v) Any other information that the Commission may require by order or otherwise;
  - (vi) Provided that, if the Commission has authorized the utility to implement a SSIC mechanism and the utility is appropriately submitting the required quarterly filings pursuant to Commission Rule R10-26, the utility may fulfill the reporting requirements subdivisions a. and b. of this subsection by reference to its quarterly filings required pursuant to Rule R10-26.
- (2) Annual Report.—In conjunction with its request to establish the charge or credit resulting from the CAM-S or for an annual adjustment in the charge or credit resulting from the CAM-S, the utility shall annually file a report in a format prescribed by the Commission detailing its actual gallons billed, service revenues, and revenues from the charge or credit resulting from the CAM-S for each rate division, customer classification, and rate schedule for the applicable 12-month period. The annual report shall also include the calculation of the actual average per customer usage for each rate division, customer classification, and rate schedule for the applicable 12-month period, an update to the three years of consumption data that was provided in the general rate case proceeding with its request to approve the CAM-S or in the utility's last annual report, and an updated average per customer usage baseline consumption measure or measures utilizing the updated consumption data.
- (3) Audit and Reconciliation.—The Public Staff shall audit the utility's monthly and annual reports and file the results of the audit to the Commission. The Public Staff's audit of the annual report and the final monthly report in a given 12-month period shall be filed with the Commission as a part of the Public Staff's staff conference agenda item for the consideration of the annual adjustment in the charge or credit resulting from the CAM-S.

(h) Burden of Proof.—The burden of proof as to whether the CAM-S is appropriate to track and true-up variations in average per customer usage by rate schedule from levels adopted in the general rate case proceeding, whether the CAM-S is in the public interest, and the correctness and reasonableness of the charge or credit resulting from the CAM-S shall be on the utility.

(i) Elimination or Modification of CAM-S.—After notice to the utility and opportunity to be heard, the Commission may eliminate or modify any previously authorized CAM-S upon a finding that the CAM-S is no longer appropriate to track and true-up variations in average per customer usage or is no longer in the public interest.

*(NCUC Docket No. W-100, Sub 61, 5/12/2020.)*

**R10-28 PROCEDURE FOR DETERMINING FAIR VALUE AND ESTABLISHING RATE BASE FOR ACQUISITION OF GOVERNMENT-OWNED WASTEWATER SYSTEMS**

(a) Scope of Rule.—This Rule provides the procedural and filing requirements for the determination of the value of utility property for ratemaking purposes applicable when a utility acquires an existing wastewater system owned by a municipality or county, or an authority or district established under Chapter 162A of the General Statutes, and the utility makes an election pursuant to G.S. 62-133.1A(a) to establish its rate base associated with the acquisition by using the fair value of the acquired property instead of original cost.

(b) Definitions.

- (1) "Local Government Utility" means an existing wastewater system owned by a municipality, county, or an authority or district established under Chapter 162A of the General Statutes.
- (2) "Rate Division" means a separate rate schedule of a wastewater utility for one or more established customer service areas.
- (3) "Utility Valuation Expert" means a person qualified as an expert in the appraisal of utility plant whose proficiency is demonstrated and established pursuant to subsection (c) of this Rule.
- (4) "Professional Engineer" means a person who has been duly licensed by the North Carolina State Board of Examiners for Engineers and Surveyors established by Chapter 89C of the General Statutes, including those persons who may be licensed by comity or endorsement.
- (5) "Asset Purchase Agreement" means a contract for the sale of an existing wastewater system between a wastewater utility, as buyer, and a Local Government Utility, as seller, which is to be valued for purposes of rate base. The Asset Purchase Agreement shall reflect the price negotiated between the Public Utility purchaser and the Local Government Utility.

(c) Establishment of List of Utility Valuation Experts.—The Commission shall establish a generic proceeding in Docket No. W-100, Sub 60A for the purpose of creating and maintaining a list of accredited, impartial Utility Valuation Experts as required pursuant to G.S. 62-133.1A(b). A person seeking to become a Utility Valuation Expert shall apply to the Commission by furnishing the following:

- (1) a demonstration of the person's education and experience specific to providing valuations and appraisals of utility plant, as differentiated from other types of appraisals, such as for real estate;
- (2) a written attestation that a Utility Valuation Expert owes a fiduciary duty to provide a thorough, objective, and fair valuation;
- (3) a demonstration of financial and technical fitness, such as through production of professional licenses, technical certifications, and names of current or past clients with a description of dates and types of services provided;
- (4) a demonstration of adequate utility valuation and appraisal experience to support the Commission's decision to consider these persons or entities as experts in this field;
- (5) a statement that the Utility Valuation Expert will make use of the assessment of the tangible assets of the system to be acquired, which assessment shall be from a Professional Engineer jointly retained by the utility and the Local Government Utility and make use of the Water and Wastewater Fair Value Engineering Assessment Form included in the Appendix to this Chapter as a template for the engineer's assessment;
- (6) a statement that the Utility Valuation Expert will comply with the requirements of G.S. 62-133.1A in conducting their appraisal, including that the Utility Valuation Expert shall appraise the subject property in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value; and
- (7) any other information as required by the Commission.

(d) Application for Election to Establish Rate Base Using Fair Value.—A wastewater utility may elect to establish rate base using the fair value of the utility property acquired from a Local Government Utility by filing with the Commission an application pursuant to G.S. 62-133.1A and this Rule. The form of the application shall be as provided in the Appendix to this Chapter. In addition to providing the information required pursuant to G.S. 62-133.1A in the completed application form, the application shall contain a narrative explanation of the object and purposes desired by the application and how the public interest served by the acquisition, along with any other information required by the Commission. The application shall be

accompanied by the testimony of the acquiring utility's president or another person employed by the utility who is personally familiar with the contents thereof and who verifies that the contents of the application are true and accurate.

(e) Procedure upon receipt of Application.—Contemporaneous with the filing of an application with the Commission pursuant to G.S. 62-133.1A and this Rule, the utility shall serve a copy of the application on the Public Staff. The Public Staff shall review the application and no later than ten days after the application is filed, the Public Staff shall file with the Commission and serve upon the applicant a recommendation regarding whether the application is complete or identify any deficiencies noted. If the Commission determines that the application is incomplete as submitted, the utility will be required to file the omitted information.

Once the Commission determines that the application is complete, the Commission will promptly issue an order establishing procedural deadlines and discovery guidelines and requiring the utility to provide notice of the pending application to the customers of the Local Government Utility. If the Commission receives significant written complaints against the application, then the Commission will issue a further order setting the application for hearing. The Commission will endeavor to schedule the hearings to be held within three months of the filing of the application to facilitate issuance of a final order within six months of the filing of a completed application as directed pursuant to G.S. 62-133.1A(d).

(f) Rate Division Assignment.—Pursuant to G.S. 62-133.1A(c)(8), service to customers in the service area of the Local Government Utility shall be under a tariff that includes rates equal to the rates of the selling utility until the utility's next general rate case, unless otherwise ordered by the Commission for good cause shown. An application filed pursuant to G.S. 62-133.1A and this Rule shall include a proposed tariff that reflects such rates and a statement as to whether the utility intends to propose in its next general rate case that the service area of the Local Government Utility be integrated into an existing Rate Division of the acquiring utility or be established as a new Rate Division. A determination as to whether the service area of the Local Government Utility should be integrated into an existing Rate Division or established as a new Rate Division shall be preserved for the Commission's consideration in the utility's next general rate case.

(g) Final Order on Application.—Consistent with the direction provided in G.S. 62-133.1A(d), the Commission will endeavor to issue a final order on the application filed pursuant to G.S. 62-133.1A and this Rule within six months of the filing of a completed application. The Commission's final order will resolve all substantive issues and, if the Commission determines that the Application should be approved, the Commission will specifically determine the rate base value of the acquired property for rate-making purposes in a manner consistent with G.S. 62-133.1A and the provisions of this Rule, as follows:

- (1) Determination of Rate Base.—The rate base value of the acquired system shall be the lesser of the purchase price reflected in the Asset Purchase Agreement or the average of the three appraisals as required pursuant to G.S. 62-133.1A (b)(1), unless the Commission specifically finds that the average of the appraisals will not result in a reasonable fair value, in which case the Commission may adjust the fair value pursuant to G.S. 62-133.1A(e) as it deems appropriate and in the public interest;
- (2) Certain Costs Eligible to be Included in Rate Base Value.—Consistent with G.S. 62-133.1A(b), the Commission will allow the inclusion of the costs of the engineering assessment, transaction and closing costs incurred by the utility, and fees paid to Utility Valuation Experts, including fees paid by the acquiring utility to a Utility Valuation Expert that represents the Public Staff, in the rate base value of the acquired system upon a finding that those costs were reasonably and prudently incurred;
- (3) Depreciation.—The Commission will require the utility to apply the normal rules of depreciation against the rate base value from the date of the purchase of the system; and
- (4) Tariffs.—The Commission will approve the establishment of a new tariff for the provision of wastewater service to customers in the acquired service territory, which shall also determine whether the acquired service territory will be treated as a separate Rate Division.

(h) Burden of Proof.—The utility shall have the burden of proof regarding all aspects of the proceeding on an application filed pursuant to G.S. 62-133.1A and this Rule, and for demonstrating that the acquisition of the Local Government Utility is in the public interest.

(i) Payment of Fees for Public Staff Utility Valuation Expert. —The acquiring utility shall pay the fees of the Utility Valuation Expert that represents the Public Staff whether the Commission approves the application, denies the application, or if the acquiring utility withdraws the application.

*(NCUC Docket No. W-100, Sub 60, 12/30/2020.)*

#### **R11-01 UNIFORM SYSTEM OF ACCOUNTS**

All union bus terminal operators are required to keep their accounts and records in conformity with the Uniform System of Accounts for Union Bus Terminals as adopted by this Commission. (NCUC Docket No. M-100, Sub 15, 11/8/67.)

### **R12-01 DECLARATION OF PUBLIC POLICY**

The Utilities Commission, hereinafter referred to as the "Commission," declares that it is in the public interest that any utility requiring a deposit from its customer shall fairly and indiscriminately administer a reasonable policy reflected by written regulations, in accord with these rules, for the requirement of a deposit for connecting utility service, or for an existing customer to continue or to reconnect service. A cash deposit to establish, maintain or reestablish service shall be required only in compliance with these rules, and to avoid, to the extent practicable, the creation of a burden arising from uncollectible bills which would have to be borne ultimately by all the utility's ratepayers. Any utility requiring a deposit shall apply a deposit policy in accord with these rules in an equitable and nondiscriminatory manner to all applicants for service and to all customers throughout the service area without any different application in any part thereof, and such deposit policy shall be predicated upon the credit risk of the individual without regard to the area in which he lives.  
(NCUC Docket No. M-100, Sub 28, 5/6/70.)

### **R12-02 ESTABLISHMENT OF CREDIT BY CUSTOMER**

- (a) Each utility may require an applicant for service to satisfactorily establish credit which will be deemed established if:
- (1) The applicant owns the premises to be served or other real estate within the county, unless the applicant is an unsatisfactory credit risk; or
  - (2) The applicant demonstrates that he is a satisfactory credit risk by appropriate means including, but not limited to, references which may be quickly and inexpensively checked by the utility; or
  - (3) The applicant has been a customer of the utility for a similar type of service within a period of twenty-four consecutive billings preceding the date of application and during the last twelve consecutive billings for that prior service has not had service discontinued for nonpayment of bill or had more than two occasions in which a bill was not paid when it became due; provided, that the average periodic bill for such previous service was equal to at least fifty per centum of that estimated for the new service; and provided further, that the credit of the applicant is unimpaired; or
  - (4) The applicant furnishes a satisfactory guarantor to secure payment of bills for the service requested in a specified amount not to exceed the amount of the cash deposit prescribed in Rule R12-4 of these rules; or
  - (5) The applicant makes a cash deposit to secure payment of bills for service as prescribed in Rule R12-4 of these rules.
- (b) The establishment of credit under the provisions of this rule, or the reestablishment of credit under the provisions of Rule R12-3 of these rules, shall not relieve the applicant for service or customer from compliance with the reasonable regulations of the utility including, but not limited to, the prompt payment of bills and the rules for discontinuance of service for the nonpayment of bills due for service furnished.

(NCUC Docket No. M-100, Sub 28, 5/6/70.)

### **R12-03 REESTABLISHMENT OF SERVICE**

- (a) An applicant for service who previously has been a customer of the utility and whose service has been discontinued by the utility during the last twelve months of that prior service, because of nonpayment of bills, may be required to reestablish credit in accordance with Rule R12-2 of these rules; *except* that an applicant for residential service shall not be denied service for failure to pay such bills for classes of nonresidential service.
- (b) Subject to the additional requirements of Rule R12-17 for telephone utilities, a customer who fails to pay a bill within a reasonable period after it becomes due and who further fails to pay such bill within five (5) days after presentation of a discontinuance of service notice for non-payment of bill (regardless of whether or not service was discontinued for such nonpayment) may be required to pay such bill, together with a reasonable reconnection charge, if service was discontinued after notice as provided in Rule R12-8, and reestablish his credit by depositing the amount prescribed in Rule R12-2 of these rules in case the conditions of service or basis on which credit was originally established have materially changed.
- (c) A customer may be required to reestablish his credit in accordance with Rule R12-2 of these rules in case the conditions of service or basis on which credit was originally established have materially changed.

(NCUC Docket No. M-100, Sub 28, 5/6/70; NCUC Docket No. P-100, Sub 140, 4/3/00.)

### **R12-04 DEPOSIT; AMOUNT; RECEIPT; INTEREST**

- (a) No utility shall require a cash deposit to establish or reestablish service in an amount in excess of two-twelfths of the estimated charge for the service for the ensuing twelve months; and, in the case of seasonal service, in an amount in excess of one-half of the estimated charge for the service for the season involved (except that in the case of seasonal natural gas customers, the cash deposit may not be in an amount in excess of one-third of the estimated charge for the service for the

season involved). Each utility, upon request, shall furnish a copy of these Rules to the applicant for service or customer from whom a deposit is required, and such copy shall contain the name, address, and telephone number of the Commission.

(b) Upon receiving a cash deposit, the utility shall furnish to the applicant for service or customer, a receipt showing: (i) the date thereof; (ii) the name of the applicant or customer and the address of the premises to be served or served; (iii) the service to be furnished or furnished; and (iv) the amount of the deposit and the rate of interest to be paid thereon.

(c) Each utility shall pay interest on any deposit held more than ninety (90) days at the rate of eight percent per annum. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to the customer by deducting such interest from the amount of the next bill for service following the accrual date. A utility shall pay interest on a deposit beginning with the 91st day after it is collected and continuing until such deposit is lawfully tendered back to the customer by first-class mail, or to his legal representative or until it escheats to the State, with accrued interest.

(d) Nothing in this rule shall preclude a natural gas utility from exercising reasonable discretion in waiving or extending the deposit requirement to prevent undue hardship to an applicant or customer.

(NCUC Docket No. M-100, Sub 28, 5/6/70; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 9/7/78; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 12/17/79; NCUC Docket No. M-100, Sub 86, 9/12/80.)

#### **R12-05 REFUND OF DEPOSIT**

(a) Upon discontinuance of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest, or the balance, if any, in excess of the unpaid bills for service furnished by the utility. A transfer of service from one premises to another within the service area of the utility shall not be deemed a discontinuance within the meaning of these rules.

(b) On one stated date each calendar year, each utility company shall review its customers deposit accounts and shall automatically refund the deposit of any customer who has paid his bills for service for the preceding twelve consecutive bills without having had service discontinued for nonpayment of bill or had more than two occasions in which a bill was not paid when it became due, and the customer is not then delinquent in the payment of his bills.

(c) The utility shall promptly return the deposit, plus accrued interest, at any time upon request, if the customer's credit has been otherwise established in accordance with Rule R12-2 of these rules.

(d) At the option of the utility, a deposit, plus accrued interest, may be refunded, in whole or in part, at any time earlier than the times hereinabove prescribed in this rule.

(NCUC Docket No. M-100, Sub 28, 5/6/70.)

#### **R12-06 RECORD OF DEPOSIT**

Each utility holding a cash deposit shall keep a record thereof until the deposit is refunded. The record shall show: (a) the name and current billing address of each depositor; (b) the amount and date of the deposit; and (c) each transaction concerning the deposit.

(NCUC Docket No. M-100, Sub 28, 5/6/70.)

#### **R12-07 APPEAL BY APPLICANT OR CUSTOMER**

Each utility shall direct its personnel engaged in initial contact with an applicant for service or customer, seeking to establish or reestablish credit under the provisions of these rules, to inform him, if he expresses dissatisfaction with the decision of such personnel, of his right to have the problem considered and acted upon by supervisory personnel of the utility. Each utility shall further direct such supervisory personnel to inform such an applicant or customer, who expresses dissatisfaction with the decision of such supervisory personnel and requests governmental review, of his right to have the problem reviewed by the Commission and shall furnish him the name of the Commission official to be contacted and his address and telephone number. Any customer who is not satisfied as to his deposit requirement by informal complaint to the Commission may file a written complaint with the Commission to be served on the utility under the procedure of Rule R1-9.

(NCUC Docket No. M-100, Sub 28, 5/6/70.)

#### **R12-08 DISCONTINUANCE OF SERVICE FOR NONPAYMENT**

No utility shall discontinue service to a customer or impose toll denial for nonpayment of bill without first having diligently tried to induce the customer to pay the same and until after at least five (5) calendar days written notice of discontinuance of service to the customer. The written notice may be given by first-class mail, or by other delivery to the premises served, or by other legal means of service of process, and the five (5) days' notice period shall begin to run from the day following deposit of the notice in the post office or from the day of otherwise delivery of the notice to the premises served, or from the day of other legal service. Provided, however, that in the case of any customer who has a record of abuse of or excessive use of metered or toll service for which the customer's deposit would not furnish security for such five (5) days' notice period,

service may be discontinued after 24-hour notice. Further provided, that in the case of any residential telephone customer who has a record of abuse of or excessive use of toll service for which the customer's deposit would not furnish security for such five (5) days' notice period, local service may not be discontinued but toll service may be globally denied after 24-hour notice. A report of all such service disconnections or toll denials made on such 24-hour notice under this proviso shall be filed with the Utilities Commission within thirty (30) days after the discontinuance of service. (NCUC Docket No. M-100, Sub 28, 5/6/70; NCUC Docket No. P-100, Sub 140, 4/3/00.)

#### **R12-9 UNIFORM BILLING PROCEDURE**

(a) Declaration of Policy. -- No 'penalties,' 'discounts' or 'net-and-gross' rate differentials shall be imposed upon North Carolina consumers for regulated services offered by public utilities subject to the jurisdiction of this Commission, for the reason that those rate differentials are confusing and misleading, and the monthly rates of 5% or 10% heretofore charged are arbitrary and unreasonable. This Commission recognizes, however, that there are interest, finance, or service costs directly attributable to customers who excessively delay payment of utility bills, and considers that it is appropriate for a utility to attempt to recoup a portion of those costs by applying such interest, finance or service charges as may be reasonable and lawful.

(b) Billing Date. -- All bills for utility services are due and payable as of the billing date, or if not received by said billing date, upon receipt. The billing date shall be printed on the bill and the bill shall be placed, postage prepaid, in the U.S. Mail (or if the mail is not used, delivered to the customer) prior to or no later than the billing date.

(c) Past Due or Delinquent Bills. -- The past due or delinquent date is the first date upon which the utility may initiate disconnect proceeding under N.C.U.C. Rule R12-8. The past due or delinquent date shall be disclosed on the bill and shall be not less than fifteen (15) days after the billing date. In the event the utility fails to place the bill in the mail (or deliver it as in paragraph (b) above) prior to or on said billing date, the consumer shall have the right to require that the utility adjust the billing date by the number of days by which the postmark (or delivery as in paragraph (b) above) exceeds the original billing date.

(d) Finance charges. -- No interest, finance, or service charge for the extension of credit shall be imposed upon the consumer or creditor if the account is paid within twenty-five (25) days from the billing date. No utility shall apply a late payment, interest, or finance charge to the balance in arrears at the rate of more than 1% per month. The bill shall clearly state the interest rate or the amount that would be due if not paid within the allowed amount of time, including the interest, finance or service charge. All utilities which are required to file tariffs and which apply an interest, finance, or service charge must file tariff provisions to that effect. All utilities must apply the appropriate interest, finance, or service charge on a uniform basis.

(e) Acceleration of Past Due or Delinquent Date in Rare Cases and with Good Cause -- If a utility with good cause determines that the credit rating of a customer has been jeopardized by unusually extensive use of a metered or toll service, such as long distance telephone service, or by other factors which indicate the likelihood that the customer cannot pay his outstanding bill, and for which the customer's deposit, if there be one, does not furnish adequate security, the utility may accelerate the past due or delinquent date and proceed with disconnect or toll denial procedures under N.C.U.C. Rule R12-8 and R12-17; provided, however, that it must state to the customer in writing its cause for so doing and file a copy of said statement with the Commission.

*(NCUC Docket No. M-100, Sub 39, 11/24/72; NCUC Docket No. M-100, Sub 39, 10/19/73; NCUC Docket No. P-100, Sub 72, 5/23/96; P-100, Sub 140, 4/3/00; 4/5/00; NCUC Docket No. P-100, Sub 72b, 01/02/04; P-100, Sub 140a, 08/16/07.)*

#### **R12-10 DISCONNECTION OF RESIDENTIAL CUSTOMER'S NATURAL GAS SERVICE**

(a) The date after which the bill is due, or the past due after date, shall be disclosed in the bill and shall not be less than twenty-five (25) days after the billing date. Payment within this twenty-five day period will either maintain or count toward establishment of the customer's credit with the utility.

(b) For purposes of this rule, payment shall be defined as delivery of the amount due to a company business office or designated payment agency during regular business hours by 5:00 p.m. on the twenty-fifth (25th) day, unless such day is a Saturday, Sunday, or legal holiday in which event the last day for payment runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Those natural gas customers from whom deposits are required under the provisions of Commission Rules R12-2 or R12-3 and who receive their largest bills seasonally (such as customers who use natural gas for heating) may be considered seasonal customers in determining the amount of deposit under Rule R12-4. The deposits collectible from such customers shall not exceed one-third of the estimated charge for service for the season involved. For purposes of this provision the heating season shall be the calendar months October through March.

(d) Each gas utility shall file tariffs with the Commission to impose charges, not to exceed the charges allowed by G.S. 25-3-506, for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(e) Each gas utility, through its meter reader, office, or designated payment agency is authorized to collect payment by cash or check for bills past due and in arrears, and for current bills once the meter reader has left the office with a list of customers whose service is to be disconnected, unless the day on which the meter reader has left the office with such list is prior to the third day preceding the past due date of the current bill of any customer whose service is to be disconnected, in which case the utility is authorized only to collect payment for bills past due and in arrears.

"Current bill" is defined as a bill rendered but not past due. "Bill in arrears" is defined as a bill rendered and past due.

(f) Each gas utility operating under the jurisdiction of the North Carolina Utilities Commission shall revise its billing procedures to conform to the following approximate schedule with respect to all customers:

Approximate Billing Cycle Day	Standard Procedure
1	Service begins.
30	Meter read.
35	Bill mailed.
60	Meter read for second month's service.
65	Bill marked showing charge for second month's service and arrears separately; if arrears is shown on bill, notice enclosed in conformity with subsection (h) of this rule also stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT THE UTILITY IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENTS IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to notify customer, receive payment or defer disconnection in accordance with Rule R12-10(i)(2), make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnect service. Customer has immediate recourse to the utility for reconnection action.

(g) No disconnects will be made prior to their being personally reviewed and ordered by a supervisor.

(h) Gas service to a residential customer shall not be terminated for nonpayment of a delinquent account until the utility has given such customer at least 10 days' written notice that his service is subject to termination. This notice of proposed termination shall, at a minimum, contain the following information:

- (1) A clear explanation of the reasons which underlie the proposed termination.
- (2) The date of the proposed termination, which shall not be less than 10 days from the date of issuance of such notice.
- (3) A statement advising the customer that gas service will not be terminated if, prior to the proposed termination date, the customer is able to establish that he is unable to pay his account in full and he agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for gas usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage.
- (4) Statements advising the customer that he should first contact the utility with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to the Commission either by calling the Public Staff-North Carolina Utilities Commission,

Consumer Services Division at (919) 733-9277 or by appearing in person or by writing the Public Staff-North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, NC 27699-4326.

- (5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.
- (6) With respect to bills rendered between November 1 and March 31 of every year and in conformity with the policy considerations expressed by Congress in the Public Utility Regulatory Policies Act (PURPA) of 1978, the notice of proposed termination shall also contain a statement that no termination shall take place without the express approval of the Commission if the customer can establish all of the following:
  - (a) That a member of the customer's household is either certifiably handicapped or elderly (65 years of age or older), or both.
  - (b) That the customer is unable to pay for such service in full or in accordance with subsection (h)(3) of this rule.
  - (c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such pro-grams.

(i) Personal Contact Prior to Termination.

- (1) At least 24 hours prior to a proposed service termination, the utility shall, in good faith, attempt to contact a customer to whom a written disconnect notice has been mailed (as well as any third party who may have been designated by the customer to receive notice pursuant to subsection (j) of this rule), either by telephone or by visit to the customer's premises. The purpose of this personal contact shall be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under this rule.
- (2) Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, or postpone termination for another 24 hours if the customer is prepared to pay but the utility has determined that its representatives should not be required to accept payments from customers on the premises; make satisfactory credit arrangements; agree to postpone termination during the period November 1 to March 31 if the customer qualifies for postponement under subsection (h)(6) of this rule; or, in the absence of any of the arrangements or circumstances listed above, terminate service. If personal contact cannot be made by the utility, a notice indicating that service has been terminated shall be left in a conspicuous place at the residence where such service was terminated. Such notice shall specify that the customer may have immediate recourse to the utility in order to arrange for reconnection of service.
- (3) The utility shall fully document its efforts under this subsection to personally contact the customer and any designated third party representative.

(j) Each gas utility shall offer its residential customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. Each residential customer shall be given notification of this option at the time service is initiated and at least once annually thereafter. Notice of the availability of this option shall be given in writing, either by mailing a copy of such notice as a bill insert or by means of a separate mailing, to all residential customers. Such notice shall clearly indicate that this duplicate notification process will not obligate the third party to pay the customer's bill.

(k) Informal Appeal of Termination Action.

- (1) Any residential customer may informally appeal the decision of a utility to terminate service by notifying the Consumer Services Division of the Public Staff-North Carolina Utilities Commission. Such notification may be made by the customer either in person, in writing, or by telephone.
- (2) Upon receipt of any such appeal, the Consumer Services Division of the Public Staff shall immediately notify the utility that such an in-formal appeal as been filed. If service has not been terminated as of the time an appeal is filed, the utility shall not terminate the customer's service without securing express approval from the Commission or its designated representative. If service has already been terminated by the time the customer files his appeal with the Public Staff, the Commission may order the utility to restore service upon such terms as are deemed just and reasonable pending resolution of the appeal.
- (3) If the matter cannot be resolved informally, the customer shall then have the right to file a formal complaint with the Commission pursuant to Rule R1-9 and to request a hearing thereon.

(l) Residential gas service shall not be terminated on Fridays, on weekends, on state or federal holidays, or on days before state or federal holidays. If a disconnection occurs, the customer shall have immediate recourse to the utility regardless of the time of day.

(m) Each gas utility shall establish an internal procedure whereby the utility will endeavor to identify by a special code a customer whose household is known to have an individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. The purpose of assigning such code shall be to identify that account for careful handling whenever service to such account becomes subject to termination as a result of nonpayment of a delinquent bill.

(n) Nothing in this rule shall preclude a natural gas utility from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

(NCUC Docket No. M-100, Sub 61, 11/17/75; NCUC Docket No. M-100, Sub 61, 11/18/75; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 9/7/78; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 9/21/78; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 2/23/79; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 3/7/79; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 3/15/79; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 11/14/79; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 11/20/79; NCUC Docket Nos. M-100, Sub 28A, M-100, Sub 61A, 6/18/98; NCUC Docket No. M-100, Sub 128, 04/10/00.)

**R12-11 DISCONNECTION OF RESIDENTIAL CUSTOMER'S ELECTRIC SERVICE**

(a) The date after which the bill is due, or the past due after date, shall be disclosed on the bill and shall not be less than twenty-five (25) days after the billing date. Payment within this twenty-five day period will either maintain or count toward improvement of the customer's credit code classification. Payment of a bill after the specified due date could result in the lowering of a customer's credit code relating to one which permits the utility to disconnect on an earlier date.

(b) For purposes of this rule, payment shall be defined as delivery of the amount due to a company business office or designated payment agency during regular business hours by 5:00 p.m. on the twenty-fifth (25th) day, unless such day is a Saturday, Sunday, or legal holiday in which event the last day for payment runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Those electric customers from whom deposits are required under the provisions of Commission Rules R12-2 or R12-3 and who receive their largest bills seasonally (such as customers who use electricity for heating) may be considered seasonal customers in determining the amount of deposit under Rule R12-4. The deposits collectible from such customers shall not exceed one-half (1/2) of the estimated charge for service for the season involved. For purposes of this provision the heating season shall be the calendar months October through March.

(d) Each electric utility shall file tariffs with the Commission to impose charges, not to exceed the charges allowed by G.S. 25-3-506, for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(e) Each electric utility, through its meter reader, office, or designated payment agency is authorized to collect payment by cash or check for bills past due and in arrears, and for current bills once the meter reader has left the office with a list of customers whose service is to be disconnected, unless the day on which the meter reader has left the office with such list is prior to the third day preceding the past due date of the current bill of any customer whose service is to be disconnected, in which case the utility is authorized only to collect payment for bills past due and in arrears.

"Current bill" is defined as a bill rendered but not past due. "Bill in arrears" is defined as a bill rendered and past due.

(f) Each electric utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following approximate schedules:

- A. Customers beyond their first twelve months of service with "good credit established."

Approximate Billing Cycle Day	Standard Procedure
1	Meter read.
5	Bill mailed.
31	Meter read.

Approximate Billing Cycle Day	Standard Procedure
35	Second bill mailed, showing 1-month prior account balance and current bill.
61	Meter read.
65	Third bill mailed with a reminder notice.
79	Disconnect notices prepared in conformity with subsection (l) of this rule are reviewed by the utility before mailing to customers. Seven days allowed to make credit arrangements.
89	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
91	Meter read and the field representative makes the effort to notify the customer, receive payment or defer disconnection in accordance with Rule R12-11(m)(2), make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the utility for reconnection action.

- B. All customers within their first twelve months of service and customers beyond their first twelve months of service with "good credit not established" will have delinquency started on the 35th rather than the 65th day. The billing schedule will then be approximately as follows:

Approximate Billing Cycle Day	Standard Procedure
1	Meter read.
5	Bill mailed.
31	Meter read.
35	Second bill mailed, showing 1-month prior account balance and current bill, and with a reminder notice.
49	Disconnect notices prepared in conformity with subsection (l) of this rule are reviewed by the utility before mailing to customers. Seven days allowed to make credit arrangements.
59	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
61	Meter read and the field representative makes the effort to notify the customer, receive payment or defer disconnection in accordance with Rule R12-11(m)(2), make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the utility for reconnection action.

(g) The delinquency procedures for these customers will be as described above. This procedure ensures that no disconnect proceeding will be instituted prior to issuance of a second month's bill.

(h) No disconnects will be made prior to their being personally reviewed and ordered by a supervisor.

(i) The disconnect notice to the customer will state that the utility can be contacted within a 7-day period to discuss credit arrangements if payment of the bill is not possible.

(j) Each electric utility shall submit its system of residential customer credit code classification to the Commission for approval. With regard further to the classifications "good credit established" and "good credit not established," no customer shall be classified at a level below "good credit not established."

(k) Following approval by the Commission, each electric utility using a system of credit codes to classify its customers shall advise each customer of the method by which the code operates, the customer's present classification in the credit code, and at any time when a customer's classification changes.

(l) Electric service to a residential customer shall not be terminated for nonpayment of a delinquent account until the utility has given such customer at least 10 days' written notice that his service is subject to termination. This notice of proposed termination shall, at a minimum, contain the following information:

- (1) A clear explanation of the reasons which underlie the proposed termination.
- (2) The date of the proposed termination, which shall not be less than 10 days from the date of issuance of such notice.
- (3) A statement advising the customer that electric service will not be terminated if, prior to the proposed termination date, the customer is able to establish that he is unable to pay his account in full and he agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for electric usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage.
- (4) Statements advising the customer that he should first contact the utility with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to the Commission either by calling the Public Staff-North Carolina Utilities Commission, Consumer Services Division at (919) 733-9277 or by appearing in person or by writing the Public Staff-North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, NC 27699-4326.
- (5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.
- (6) With respect to bills rendered between November 1 and March 31 of every year and in conformity with the policy considerations expressed by Congress in the Public Utility Regulatory Policies Act (PURPA) of 1978, the notice of proposed termination shall also contain a statement that no termination shall take place without the express approval of the Commission if the customer can establish all of the following:
  - (a) That a member of the customer's household is either handicapped or elderly (65 years of age or older), or both.
  - (b) That the customer is unable to pay for such service in full or in accordance with subsection (l)(3) of this rule.
  - (c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such programs.

(m) Personal Contact Prior to Termination.

- (1) At least 24 hours prior to a proposed service termination, the utility shall, in good faith, attempt to contact a customer to whom a written disconnect notice has been mailed (as well as any third party who may have been designated by the customer to receive notice pursuant to subsection (n) of this rule), either by telephone or by visit to the customer's premises. The purpose of this personal contact shall be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under this rule.
- (2) Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, or postpone termination for another 24 hours if the customer is prepared to pay but the utility has determined that its representatives should not be required to accept payments from customers on the premises; make satisfactory credit arrangements; agree to postpone termination during the period November 1 to March 31 if the customer qualifies for postponement under subsection (l)(6) of this rule; or, in the absence of any of the arrangements or circumstances listed above, terminate service. If personal contact cannot be made by the utility, a notice indicating that service has been terminated shall be left in a

conspicuous place at the residence where such service was terminated. Such notice shall specify that the customer may have immediate recourse to the utility in order to arrange for reconnection of service.

- (3) The utility shall fully document its efforts under this subsection to personally contact the customer and any designated third party representative.

(n) Each electric utility shall offer its residential customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. Each residential customer shall be given notification of this option at the time service is initiated and at least once annually thereafter. Notice of the availability of this option shall be given in writing, either by mailing a copy of such notice as a bill insert or by means of a separate mailing, to all residential customers. Such notice shall clearly indicate that this duplicate notification process will not obligate the third party to pay the customer's bill.

(o) Informal Appeal of Termination Action.

- (1) Any residential customer may informally appeal the decision of a utility to terminate service by notifying the Consumer Services Division of the Public Staff-North Carolina Utilities Commission. Such notification may be made by the customer either in person, in writing, or by telephone.
- (2) Upon receipt of any such appeal, the Consumer Services Division of the Public Staff shall immediately notify the utility that such an informal appeal has been filed. If service has not been terminated as of the time an appeal is filed, the utility shall not terminate the customer's service without securing express approval from the Commission or its designated representative. If service has already been terminated by the time the customer files his appeal with the Public Staff, the Commission may order the utility to restore service upon such terms as are deemed just and reasonable pending resolution of the appeal.
- (3) If the matter cannot be resolved informally, the customer shall then have the right to file a formal complaint with the Commission pursuant to Rule R1-9 and to request a hearing thereon.

(p) Residential electric service shall not be terminated on Fridays, on weekends, on state or federal holidays, or on days before state or federal holidays. If a disconnection occurs, the customer shall have immediate recourse to the utility regardless of the time of day.

(q) Each electric utility shall establish an internal procedure whereby the utility will endeavor to identify by a special code a customer whose household is known to have an individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. The purpose of assigning such code shall be to identify that account for careful handling whenever service to such account becomes subject to termination as a result of nonpayment of a delinquent bill.

(r) Nothing in this rule shall preclude an electric utility from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

(NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 11/14/79; NCUC Docket Nos. M-100, Sub 28, M-100, Sub 61, 11/20/79; NCUC Docket Nos. M-100, Sub 28A, M-100, Sub 61A, 6/18/98; NCUC Docket No. M-100, Sub 128, 04/10/00.)

## **R12-12 DEFINITIONS**

For purposes of the rules set forth in this Chapter, the following definitions shall apply:

- (a) "Advertising" means the commercial use, by a public utility, of any media, including newspaper, printed matter, bill insert, radio, television, social media, or other means of communication, in order to transmit a message to a substantial number of members of the public or to such public utility's customers.
- (b) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any issue of public importance.
- (c) "Promotional advertising" means any of the following: (1) advertising for the purpose of encouraging any person to select or use the service or additional service of any utility or the selection or installation of any appliance or equipment designed to use such utility's service, where such appliance, equipment, or service would promote or encourage indiscriminate and wasteful consumption of energy contrary to subsection (d)(5) of this rule, (2) advertising intended to enhance the utility's image or to achieve other objectives not related to the provision of utility service and, (3) advertising intended to compete with other utility service providers for additional customers or load.
- (d) "Lobbying" means (1) influencing or attempting to influence legislative or executive action through direct communication or activities with a designated individual, or that individual's immediate family, (2) developing goodwill through communications or activities, including the building of relationships, with a designated individual, or that individual's immediate family, with the intention of influencing current or future legislative or executive action, or (3) obtaining the services of another person, including through

membership in a trade or other organization, to engage in any of the activities identified in (1) or (2). For purposes of this subsection, the definitions of words and terms in G.S. 120C-100 shall apply, unless modified by these rules.

"Lobbying" does not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both. In addition, "lobbying" shall not include a utility's participation in judicial or quasi-judicial proceedings in any federal or state court or judicial or quasi-judicial administrative tribunal or commission, or in any other administrative or regulatory proceedings before this Commission, before the Federal Energy Regulatory Commission, or before any other state regulatory agency or commission whose jurisdiction is comparable to this Commission's jurisdiction.

For purposes of this definition, "designated individual" means a public servant, a state, local, or federal legislative or executive official or that official's employing agency, and any such official's or agency's employee or agent.

- (e) "Charitable contribution" means money, services, or a thing of value donated to an organization, affiliate of a utility, or other person that is religious, charitable, educational, scientific, or literary in purpose.
- (f) "Political contribution" means money, services, or a thing of value donated to an elected public official, a candidate for public office, a political party, or an entity that provides money, property, services, or other things of value for the purpose of supporting the election or re-election of an elected public official or a candidate for public office.
- (g) The terms "political advertising" and "promotional advertising" as defined hereinabove do not include —
  - (1) advertising which informs electric, or natural gas consumers how they can conserve energy or can reduce peak demand for energy, or water or sewer consumers how they can conserve water,
  - (2) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,
  - (3) advertising regarding service interruptions, safety measures (including utility location services), or emergency conditions,
  - (4) advertising concerning employment opportunities with such public utility,
  - (5) advertising which promotes the use of energy efficient appliances, equipment or services, or appliances, equipment, or services that conserve water, or
  - (6) any explanation or justification of existing or proposed rate schedules or billing practices or notifications of hearings thereon.
- (h) "Bill insert" means any written or printed matter included and distributed with a utility bill, other than (1) the bill itself, (2) the envelope or other container for the bill, and (3) any written or printed matter explaining or otherwise directly related to the bill or to the account for which the bill is rendered.

*(NCUC Docket No. M-100, Sub 80, 10/14/80; 10/31/80; NCUC Docket No. M-100, Sub 150, 08/10/2021.)*

## **R12-13 ADVERTISING, LOBBYING, CHARITABLE CONTRIBUTIONS, AND POLITICAL CONTRIBUTIONS BY ELECTRIC, NATURAL GAS, WATER AND SEWER UTILITIES**

(a) Except as may otherwise be permitted by this Rule, in ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric, or natural gas, water, or sewer utility shall be permitted to recover from its ratepayers any direct or indirect expenditure made by such utility for nonutility advertising, or any of the following as defined in Rule R12-12: lobbying, a charitable contribution, political advertising, promotional advertising, or a political contribution. In every application for a change in rates, the utility shall certify in its prefiled testimony that its application does not include costs for lobbying, political or promotional advertising, a political contribution, or a charitable contribution. Further, if the utility seeks to recover costs based on an exception under Rule R12-12(g), or under subsections (d) or (e) of this Rule, the utility shall include prefiled testimony stating the amount claimed and the basis for the exception. The utility shall maintain detailed records sufficient, and no less than what would be maintained in the absence of such certification, to allow the Commission and parties to determine whether the utility has complied with this subsection, including the executive branch agencies contacted, the individuals contacted at the executive branch agencies, the subjects of discussion, and the amount of person-hours spent in preparation for and in the discussions.

(b) Political and promotional advertisements as defined by Rule R12-12 and other nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:

**THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF** (the electric or natural gas utility sponsoring the advertisement).

This statement shall be so located and of such size so as to be readily visible or audible to those individuals who may be exposed to the advertisement or communication.

(c) Expenditures made by an electric, natural gas, water, or sewer utility for the types of advertising described in Rule R12-12(g) will generally be deemed to be reasonable operating expenses, provided however, that the Commission shall not be precluded from determining, on a case-by-case basis, the extent to which such expenditures may have exceeded a reasonable level or amount.

(d) Expenditures made by an electric, natural gas, water, or sewer utility for advertising of a type or nature other than that described in subsections (b), (c), or (g) of Rule R12-12 or for other nonutility advertising shall be considered by the Commission to represent reasonable operating expenses, in whole or in part in the Commission's determination, to the extent that it can be established, on a case-by-case basis, that —

- (1) the advertising is primarily of benefit to the using and consuming public, or
- (2) the advertising enhances the ability of the public utility to provide efficient and reliable service.

(e) Expenditures made by an electric, natural gas, water, or sewer utility for lobbying activities directed at executive branch agencies or designated individuals at executive branch agencies may be considered by the Commission to represent reasonable operating expenses, in whole or in part in the Commission's discretion, to the extent, but only to the extent, that it can be established, on a case-by-case basis, that —

- (1) the lobbying activity is conducted primarily for the benefit of the using and consuming public, or
- (2) the lobbying activity is conducted primarily for the purpose of enhancing the ability of the public utility to provide efficient and reliable service to its customers.

*(NCUC Docket No. M-100, Sub 80, 10/14/80; NCUC Docket No. M-100, Sub 150, 08/10/2021.)*

#### **R12-14 ADVERTISING BY TELEPHONE COMPANIES**

(a) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company shall be permitted to recover from its ratepayers any direct or indirect expenditure made by such utility for political advertising as defined in Rule R12-12 or for nonutility advertising.

(b) Political advertisements as defined by Rule R12-12 and other nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:

THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the telephone company sponsoring the advertisement).

This statement shall be so located and of such size so as to be readily visible or audible to those individuals who may be exposed to the advertisement or communication.

(c) Expenditures made by a telephone company for advertising of a type or nature other than that which may be defined as political or nonutility in nature shall be considered by the Commission on a case-by-case basis in order to determine the extent to which such expenditures may represent reasonable operating expenses for rate-making purposes.

*(NCUC Docket No. M-100, Sub 80, 10/14/80.)*

#### **R12-15 BILL INSERTS FOR ELECTRIC AND NATURAL GAS UTILITIES**

(a) Each electric and natural gas utility shall maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Rule R12-12(d). Such records and accountings, together with copies of the bill insert to which they relate, shall be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and shall be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

(b) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric or natural gas utility shall be permitted to recover from its ratepayers any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political or promotional advertising as defined in Rule R12-12 or other nonutility advertising. Nor shall any of the incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political, promotional, or nonutility bill inserts be charged to the ratepayers of the public utility distributing such bill inserts. Such direct and incremental costs are not properly includable as a just and reasonable operating expense of an electric or natural gas utility and shall be assigned to a nonoperating (or nonutility) expense account or accounts when incurred.

(c) Nothing in this rule shall preclude the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distribution costs incurred by an electric or natural gas utility in conjunction with the preparation, printing, and distribution of political, promotional, or nonutility bill inserts should be

excluded as an operating expense of the utility disseminating such bill inserts. Nor shall the Commission be precluded from determining, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other than that which may be defined as political, promotional, or nonutility in nature may have exceeded a reasonable level or amount for rate-making purposes.

(d) Bill inserts containing either political or promotional advertisements as defined by Rule R12-12 or other nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:

THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the electric or natural gas utility distributing the bill insert).

This statement shall be so located and of such size so as to be readily visible to those individuals who may be exposed to the bill insert.

(NCUC Docket No. M-100, Sub 80, 10/14/80; 10/31/80.)

### **R12-16 BILL INSERTS FOR TELEPHONE COMPANIES**

(a) Each telephone company shall maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Rule R12-12(d). Such records and accountings, together with copies of the bill insert to which they relate, shall be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and shall be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

(b) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company shall be permitted to recover from its ratepayers any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political advertising as defined in Rule R12-12 or other nonutility advertising. Nor shall any of the incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political or nonutility bill inserts be charged to the ratepayers of the public utility distributing such bill inserts. Such direct and incremental costs are not properly includable as a just and reasonable operating expense of a telephone company and shall be assigned to a nonoperating (or nonutility) expense account or accounts when incurred.

(c) Nothing in this rule shall preclude the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distribution costs incurred by a telephone company in conjunction with the preparation, printing, and distribution of political or nonutility bill inserts should be excluded as an operating expense of the utility disseminating such bill inserts. Nor shall the Commission be precluded from determining, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other than that which may be defined as political or nonutility in nature may have exceeded a reasonable level or amount for rate-making purposes.

(d) Bill inserts containing either political advertisements as defined by Rule R12-12 or other nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:

THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the telephone company distributing the bill insert).

This statement shall be so located and of such size so as to be readily visible to those individuals who may be exposed to the bill insert.

(NCUC Docket No. M-100, Sub 80, 10/14/80; 10/31/80.)

### **R12-17 DISCONNECTION, DENIAL, AND BILLING OF TELEPHONE SERVICE.**

(a) For purposes of this rule, the following definitions shall apply:

- (1) For purposes of this rule, "Local service" includes basic local exchange service (including extended area service [EAS]), expanded local calling (ELCA), and any other NCUC-regulated telephone service offered by a single corporate entity within a single LATA.
- (2) "Charges for local service" include charges for local service, as defined in Rule R12-17(a)(1), the state sales tax and federal excise tax associated with local service, the subscriber line charge (SLC), the primary interexchange carrier charge (PICC) applied by and on behalf of the local carrier, the local number portability (LNP) charge, and state and federal universal service surcharges applied by and on behalf of the

local carrier. "Charges for local service" do not include charges applied by the local carrier on behalf of another carrier or entity, the E911 and telecommunications relay service surcharges or other nonregulated charges, e.g., charges for intraLATA toll service, interLATA toll service, or operator service, charges for voicemail, Internet service, inside wiring, customer premises equipment, and wireless service.

- (3) "Bundled local service" is a combination of local service, as defined above, and one or more other services, either regulated or nonregulated, which are offered either by a local service provider alone, or by a local service provider jointly with one or more other entities.
- (4) "Toll denial" is the blocking of an end user's ability to place intraLATA and interLATA toll calls. Such intraLATA and interLATA toll calls include all interexchange calls which are not included in an end user's charges for local services. "Toll service" includes the provision of such interexchange calls, whether charged to the end user on a per call or flat fee basis. "Global toll denial" occurs when the local service provider blocks the end user's access to toll services, whether offered by the local service provider or an interexchange carrier, by restricting dialing patterns that access toll services in accordance with Rule R12-17(d)(3). "Selective toll denial" occurs when access is blocked to one carrier's toll facilities, but the end user is able to access another carrier's facilities for completion of toll calls.
- (5) "Unbundled MTS" is intraLATA measured toll service not provided on a significantly discounted or flat rate basis as part of a package with local service.

(b) No telephone utility may disconnect local service or bundled local service to residence customers for nonpayment of past due charges except in accordance with these principles:

- (1) Local service may be disconnected for nonpayment of past due charges for local service provided by the telephone utility as a single corporate entity.
- (2) Bundled local service may be disconnected for failure to pay the total past due charges for the service.
- (3) If a customer fails to pay the past due balance for bundled local service in full, a notice will be provided advising the customer of the total amount that needs to be paid to avoid disconnection. For telephone utilities who offer unbundled local service, the notice will provide instructions on how the customer may avoid discontinuation of basic local service if he is unable or unwilling to pay the full amount owed for the bundled local service; otherwise the customer's basic local service will be discontinued when the bundled local service is disconnected. When the account is paid in full, the customer may contact the telephone company and request reconnection of the bundle.
- (4) If the customer chooses to convert to unbundled local service, and if the regulated past due balance owed for local service or a surrogate amount has been paid in full or is sufficiently current, the telephone utility will continue to provide the customer with the customer's current local service. If toll service charges remain unpaid, global toll denial may be imposed, after appropriate notice under Commission rules. The notice of global toll denial will also advise the customer that the customer may subscribe to any local services, as defined in Rule R12-17(a)(1), offered by the utility.
- (5) If a customer's local service has been disconnected for nonpayment, the telephone utility will re-establish local service with the local service option of the customer's choice, provided that the customer pays the regulated past due balance owed for local service. This provision applies whether service was disconnected before or after implementation of this rule.
- (6) If the telephone utility does not provide local service on an unbundled basis, Rules R12-17(b)(3)-(5) will not apply, and the telephone utility may require the customer to pay the past due balance owed (excluding amounts billed by the telephone utility on behalf of third parties for service other than the bundled service) before bundled local service is restored.
- (7) A telephone utility may not disconnect a customer's local service, nor impose global toll blocking, for nonpayment of disputed charges.
- (8) If a residence customer under global toll denial incurs charges for toll service which are billed on the customer's local telephone bill, by abuse or fraud, which includes the obtaining, or attempting to obtain, or assisting another to obtain or to attempt to obtain, toll service message telecommunications service by rearranging, tampering with, or making connection with any facilities of the telephone utility, or by any trick, scheme, false representation, or false credit device, or by or through any other fraudulent means or device whatsoever, with intent to avoid the payment, in whole or in part, of the regular charge for such service, the telephone utility may discontinue the customer's local service.

(c) Partial payments to telephone utilities. In the absence of the customer's or agent's instruction to apply the payment otherwise, partial payments will be allocated as follows: first to local service, and second to other service, except that if a

partial payment is within \$1.00 of the past due amount, the payment may be allocated first to past due local service and second to other past due service.

(d) Global toll denial for residential telephone customers.

- (1) A local service provider may impose global toll denial for failure to pay any of the following charges:
  - (A) Charges for unbundled interLATA toll service and unbundled intraLATA MTS (whether carried by the preferred interexchange carrier (PIC) or by using dial-around services (101XXXX));
  - (B) Charges for collect interLATA and intraLATA toll calls;
  - (C) Charges for interLATA and intraLATA toll service that is provided by a third party as part of a bundle offered jointly with the local service provider;
  - (D) Charges for toll calls made through 8XX toll-free numbers which result in charges for regulated services being billed back on the local service provider bill; or
  - (E) Charges for international calls to information service providers (ISPs) on the third occasion as addressed in Rule R12-17(g) below.
- (2) A local service provider may not impose global toll denial for failure to pay charges for:
  - (A) Calls to 900 numbers and nonregulated charges other than toll services; or
  - (B) International calls to ISPs on the first and second occasion as addressed in Rule 12-17(g) below.
- (3) When global toll denial is imposed, the local service provider may block the customer's ability to place interLATA and intraLATA toll calls. The customer's current local service will not be impaired and the utility will provide the customer with local service in accordance with Rule R12-17(b)(4). Further, the global toll denial mechanism may not block 8XX toll free numbers; except that a local service provider may choose, at its discretion, to block certain 8XX toll free numbers that result in toll charges being billed on the customer's local telephone bill. Local service providers may also provide, at their discretion, other blocking services to a customer when global toll blocking is imposed, such as blocking of all 8XX toll free numbers, if the customer affirmatively chooses such blocking services.
- (4) Global toll denial will not block access to expanded local service or toll service that is included along with local service in a bundle of services for which the customer pays a flat monthly rate.
- (5) Global toll denial includes billed number screening.

(e) Regulated service may not be discontinued for failure to pay nonregulated charges, except in the case of nonregulated services included in bundled local service offered by a carrier which does not offer unbundled local service.

(f) No telephone utility providing local telecommunications service or intrastate long distance service shall discontinue a customer's service for nonpayment of Designated Services. For purposes of this rule, the term "Designated Services" means 900 service, 976 service, or 500 or 700 service when such service is used in a 900-like manner. In such cases the telephone utility shall follow these procedures:

- (1) If the subscriber is willing to make payments, the telephone utility shall attempt to make reasonable arrangements for payment.
- (2) If the subscriber challenges the bill or is otherwise unwilling or unable to pay, the telephone utility shall remove the charges from the customer's bill on the first occasion and shall offer the subscriber free blocking of Designated Services. If the subscriber declines to allow the free blocking, the telephone utility must inform the subscriber in writing that any charges incurred after that date will result in blocking of Designated Services.
- (3) On the second occasion that the subscriber challenges the bill, or is unwilling or unable to pay, the telephone utility shall remove the charges from the subscriber's bill and shall impose free blocking of Designated Services on the subscriber.

(g) No telephone utility providing local telecommunications service or intrastate long-distance service shall discontinue a customer's service for nonpayment of international calls to information service providers except as provided herein. In such cases, the telephone utility shall follow these procedures:

- (1) If the subscriber is willing to make payments, the telephone utility shall attempt to make reasonable arrangements for payment.
- (2) If the subscriber challenges the bill, or is otherwise unwilling or unable to pay, the telephone utility shall remove the charges from the subscriber's bill on the first occasion. The local carrier shall offer the subscriber free global toll denial.
- (3) If, after the first occasion, the subscriber incurs additional charges for international calls to information service providers and challenges the bill, or is unwilling or unable to pay, even in installments, the telephone utility shall remove the charges from the subscriber's bill. The local carrier shall offer the subscriber free global toll denial and shall advise the subscriber in writing that any additional charges

incurred will not be removed and will result in imposition of global toll denial unless the charges are paid. If the IXC does its own billing and intends eventually to apply selective toll denial for nonpayment of such charges, the IXC shall advise the subscriber in writing that any additional charges incurred will not be removed and will result in imposition of selective toll denial unless the charges are paid.

- (4) If the subscriber incurs additional charges for international calls to information service providers after charges have been removed on two previous occasions, and after written notice as described above, and the subscriber refuses to pay the additional charges or to commit to and honor reasonable payment arrangements for the additional charges upon demand, the local carrier may impose global toll denial on the subscriber's lines and the IXC may impose selective toll denial.
- (h) Treatment of debts for telephone service that are more than three years old.
- (1) No telephone utility may deny local service to a customer for nonpayment of charges that were incurred more than three years prior to the date of such denial, unless the utility filed and is actively pursuing a pending court action or has secured a valid court judgment for nonpayment of local charges within three years of the date when such charges were incurred. No telephone utility may deny bundled local service to a customer for nonpayment of charges that were incurred more than three years prior to the date of such denial; provided that the utility may deny bundled local service to a customer for nonpayment of charges for local or bundled local service if it filed and is actively pursuing a pending court action or has secured a valid court judgment against the customer for nonpayment of such charges within three years of the date when the charges were incurred.
  - (2) A telephone utility may deny unbundled toll service to customers for nonpayment to that utility of outstanding charges for unbundled toll service that are more than three years old only through selective toll denial. Provided, that this provision shall not impose an affirmative duty on the utility to suspend global toll denial on its own initiative after such three year period. However, if a customer requests that the utility suspend global toll denial after such time, the utility may not continue to impose global toll denial for nonpayment of such a debt. A telephone utility may impose global toll denial for debts that are more than three years old if the utility filed and is actively pursuing a pending court action or has secured a valid court judgment for nonpayment of such charges within three years of the date when such charges were incurred.
- (i) Disconnect notices, billing statements and bundled customer notification for telephone utilities.
- (1) Disconnect notices.
    - (A) Local carriers.
      - (i) Disconnect notices for residence customers shall state clearly the minimum amount that must be paid in order to maintain local service and the minimum amount that must be paid in order to maintain both local and toll service.
      - (ii) Disconnect notices for residence customers who are subject to the imposition of global toll denial shall clearly describe the type of toll blocking that will be imposed if charges for toll services are not paid. The notice shall offer the customer the option of maintaining his or her choice of available local service options and shall inform the customer as to what local service will be provided by the carrier if the customer does not express a preference. The notice shall also advise the customer of his responsibility for paying for any calls that appear on his bill as a result of not blocking ELCA calls.
      - (iii) For telephone utilities who offer unbundled local service, disconnect notices for residence customers will provide instructions on how the customer may avoid discontinuation of basic local service if he is unable or unwilling to pay the full amount owed for the bundled local service, and should specify the amount due to maintain local service; otherwise the customer's basic local service will be discontinued when the bundled local service is disconnected. For carriers that offer only bundled local service, disconnect notices shall clearly state the minimum amount that must be paid in order to maintain the bundled local service.
    - (B) IXCs. Disconnect notices shall clearly state the minimum amount that must be paid in order to maintain toll service.
    - (C) Periodic notification of disconnect policy. Carriers that bill customers for local service and IXCs that bill customers directly shall provide periodic notification of the disconnect policy established by this Rule to all customers through a bill insert or special mailing issued immediately after the implementation of these rules and annually thereafter.
  - (2) Billing statements.

- (A) Where the services of any provider other than the billing utility are stated, the name of the service provider offering the service and a toll-free contact number or numbers for the service provider shall be clearly and conspicuously identified. The toll-free contact number for the service provider may be a number of the company that handles the inquiry for the service provider.
  - (B) Language must appear on the bill clearly explaining the consequences of failing to pay particular charges shown on the bill. Such language must be prominently displayed either on the summary page of the bill or in close proximity to the specific charges to which it applies, or in a section dedicated to that purpose.
  - (C) Language, prominently displayed, must also appear on the bill clearly identifying either those charges for which nonpayment will not result in disconnection of local service or the amount that must be paid in order to prevent disconnection of local service.
  - (D) If a telephone utility bills for a bundle of services offered in part by a third-party provider, the name of the third-party provider, with the associated toll-free contact information, must be identified on the bill as a co-provider of the bundle. If the third-party provider is affiliated with the billing utility, and the billing utility is authorized and capable of responding to customer inquiries on behalf of the third-party provider, this requirement is not applicable.
  - (E) The billing format must be in accordance with the FCC's Truth in Billing regulations. Interested parties are free to seek additional billing format changes in the public interest.
- (3) Bundled Customer Notification: Whenever a residence customer subscribes to bundled local service, concurrent with the customer's first billing statement, notification must be provided by a bill insert, bill message, or direct mail (including email when affirmatively selected by the customer) as set forth below, and a similar bill insert, bill message, or direct mail (including email when affirmatively selected by the customer) must be sent to the customer annually thereafter. The bill insert, bill message, or direct mail (including email when affirmatively selected by the customer) shall read as follows:
- (A) For local carriers who offer unbundled local service:  
You are a subscriber to a bundled local telephone service. **Please note** that if you do not pay your **entire** bill for bundled local service, **all** components of the bundled local service are subject to disconnection. However, before your bundled local service is disconnected, you will have the option of maintaining local service by paying the regulated past due balance owed for unbundled local service.
  - (B) For local carriers who offer only bundled local service:  
You are a subscriber to a bundled local telephone service. **Please note** that if you do not pay your **entire** bill for bundled local service, **all** components of the bundled local service are subject to disconnection. You do not have the right to retain selected components of the bundled local service by paying for only those components.
  - (C) Modification of bill insert, bill message, or direct mail (including email when affirmatively selected by the customer) requirements may be requested to address jurisdictional conflicts and other legitimate issues on an individual basis.

(NCUC Docket No. P-100, Sub 140, 4/3/00; 4/13/00; 4/14/00; NCUC Docket No. P-100, Sub 72b, 01/02/04; 01/05/04; NCUC Docket No. P-100, Sub 140, 04/12/05; NCUC Docket No. P-100, Sub 140, 04/03/06; P-100, Sub 140, 08/27/07; NCUC Docket No. P-100, Sub 140, 02/28/08; NCUC Docket No. P-100, Sub 140, 04/09/08.)

### **R13-01 DEFINITIONS**

- (a) Access Line Provider (ALP). The provider of PSP access lines or PSP trunks for PSP instruments as authorized by G.S. 62-110(c) or as otherwise provided by Commission rule or the North Carolina General Statutes.
- (b) Automated Collect Call. A call placed and billed to the called telephone number without the assistance or intervention of a human operator.
- (c) Confinement Facility. Any local, state, or federal facility, including juvenile facilities, for the confinement of criminals and persons accused or convicted of crimes.
- (d) Cut-Off Switch or Key. An item of terminal equipment which enables a PSP instrument to be easily connected or disconnected from the exchange network. A cut-off switch or key does not have the capability of switching a given PSP instrument from one PSP access line or PSP trunk to another. Cut-off switches or keys may be used only in confinement facilities and only at the request of the administration of the confinement facility.
- (e) End User. The person initiating a call from a pay telephone instrument.

(f) Facsimile. The device or process by which information on documents is converted to an electronic format, conveyed over the telephone network, and reconverted into documentary form. A facsimile device which does not incorporate a telephone is a "voiceless-facsimile device."

(g) Line Concentrator. An item of registered terminal equipment which enables two or more PSP instruments to obtain access, through manual or automatic switching, to the same PSP trunk but denies connection to the same trunk at the same time. Such equipment may be used only in confinement facilities and only with the express written consent of the administration of the confinement facility.

(h) Pay Telephone Service. The provision of coin, coinless, or key-operated telephone service utilizing a PSP instrument.

(i) Payphone Service Provider (PSP). The subscriber to a PSP access line or PSP trunk who offers telephone service to the public by means of a coin, coinless, or key-operated PSP instrument.

(j) PSP Instrument. A coin, coinless, or key-operated telephone or facsimile device, other than a voiceless-facsimile device, capable of originating and receiving voice telephone calls.

(k) PSP Access Line. The exchange access facility furnished by the access line provider which is used to connect PSP instruments to the network when a line concentrator is not utilized.

(l) PSP Trunk. The exchange access facility furnished by the access line provider which is required in lieu of a PSP access line when the PSP utilizes a line concentrator between the PSP instrument and the exchange network as allowed by Rule R13-6.

(m) Sent-Paid Call. A call paid for at the time and place of origination with cash.

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 6/9/93; NCUC Docket No. P-100, Sub 84a, 10/7/97.)

### **R13-02 PSP ACCESS LINE OR TRUNK**

(a) All PSP instruments and all voiceless facsimile devices operated for compensation, other than those located in detention areas of confinement facilities and connected through line concentrators as specified in Rule R13-6 following, must be connected to the telephone network through PSP access lines furnished by the access line provider. Except as specified in Rule R13-6, connection through other facilities or systems is prohibited.

(b) All PSP instruments and all voiceless facsimile devices connected to the network through line concentrators as specified in Rule R13-6 require the use of PSP trunks furnished by the access line provider for connection of the line concentrator to the network.

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 6/9/93; NCUC Docket No. P-100, Sub 84a, 10/7/97.)

### **R13-03 CERTIFICATE**

(a) Every PSP, before offering any telephone service other than voiceless-facsimile service, shall obtain a certificate (COCOT or PSP certificate) from the Commission. A certificate is not required for provision of voiceless facsimile service.

(b) Application shall be made on a form specified by the Commission.

(c) Every holder of a COCOT or PSP certificate wishing to offer automated collect service shall first obtain specific additional authority from the Commission to do so. Application for additional authority shall be made on a form specified by the Commission. PSPs making initial application for PSP certification may request authority to offer automated collect service on the initial application.

(d) Every PSP is responsible for ensuring that the name which appears on the COCOT or PSP certificate also appears on all access line provider bills for lines installed pursuant to that certificate. The PSP is responsible for ensuring that the information which appears on its certificate is kept current.

(e) Copies of the COCOT or PSP certificate must be provided to the access line provider prior to the establishment of service. (NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 7/2/96; NCUC Docket No. P-100, Sub 84a, 10/7/97.)

### **R13-04 REQUIRED NOTICE**

(a) The following information must be posted at each PSP instrument other than those located in the detention areas of local, state, or federal confinement facilities:

- (1) The appropriate emergency number (911, operator or other).
- (2) Clear operating instructions and procedures for handling repair, refunds, and billing disputes.
- (3) The current telephone number of the PSP access line and the local address.
- (4) The name and address of the PSP. The name and address shown on the instrument must be the same as those shown on the COCOT or PSP certificate.

- (5) The charge for a local sent-paid coin call, including notice of any time limits that are imposed on the call.
- (6) The charge, if any, for directory assistance calls, unless such notice is given by voice message when the end user attempts to place such a call.
- (7) The name of the carrier to which 0+, 00-, and 00+ calls will be routed. In the event that a PSP changes the carrier to which 0+, 00-, or 00+ calls will be routed, the name of the new carrier must be posted within 30 days.
- (8) Whether international calling capability is blocked from the PSP instrument, unless such specific notice is given by voice message when the end user attempts to place such a call.
- (9) Clear operating instructions and the charges for any enhanced services offered by the PSP from the PSP instrument.

(b) The following information must be posted at each PSP instrument located in the detention areas of local, state, or federal confinement facilities. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

- (1) Notice that only collect calls are allowed and that all other calls are prohibited unless, in accordance with R13-6(d) the telephone is arranged to permit 1+ toll and seven-digit local dialing. In that case, the notice shall state the types of calls that are permitted and that all other calls are prohibited.
- (2) Clear operating instructions and procedures for reporting equipment or service problems.
- (3) The current telephone number of the PSP instrument unless the instrument is arranged or programmed to allow outward-only calling.
- (4) The name of the PSP. The name shown at the instrument must be the same as the name shown on the COCOT or PSP certificate.
- (5) The cost of a local collect call.

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 8/13/92; 1/27/93; 8/9/95; 7/2/96; NCUC Docket No. P-100, Sub 84a, 10/7/97.)

### **R13-05 GENERAL REQUIREMENTS – SERVICE AND EQUIPMENT**

- (a) The PSP is responsible for the installation, maintenance, and operation of PSP instruments and other terminal equipment.
- (b) The PSP is responsible for meeting all federal, state, and local requirements with respect to provision of customer-provided telephone equipment for use by hearing-impaired and handicapped persons.
- (c) The PSP may not contract with, or arrange for his PSP instruments to automatically access, any non-certified carrier for completion of intrastate calls.
- (d) The PSP may not contract with, or arrange for his PSP instruments to automatically access, any carrier to carry local intrastate calls originated from his PSP instruments unless that carrier has been certified by the Commission to complete and bill local calls.
- (e) All PSP instruments and all other terminal equipment must be connected to the telephone network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. PSP subscribers may, upon request, be required to provide the access line provider with the FCC registration number of each item of terminal equipment to be connected prior to its connection.
- (f) All PSP instruments and all other terminal equipment must be installed in compliance with the current National Electrical Code and National Electrical Safety Code.
- (g) All PSP instruments must be capable of completing local and long distance calls; provided, however, that sent-paid international calling capability may be blocked.
- (h) All PSP instruments must allow the end user to access the access line provider operator by dialing "0." All PSP instruments must allow completion of 0- local and 0- long distance calls billed to a commercial credit card, a calling card, a third number, or the called number (collect) at no charge to the end user.
- (i) All PSP instruments must allow completion of 0+ local and long distance calls billed to a commercial credit card, a calling card, a third number, or the called number (collect).
- (j) All PSP instruments must allow access to 911 Emergency Service, where available, at no charge to the end user.
- (k) All PSP instruments must provide access to local and long distance directory assistance.
- (l) All PSP instruments must allow receipt of incoming calls at no charge for an initial period of at least ten (10) minutes. After the initial period, PSPs may impose a charge for the continued use of the PSP Instrument in an amount equal to the charge for a local call.
- (m) All PSP instruments must allow access to all available interexchange carriers on a non-discriminatory basis. In an equal access environment, this requires that the end user be allowed to access a chosen carrier by dialing 10xxx-0+, 101xxxx-0+, 10xxx-0-, 101xxxx-0-, toll free 1-8XX numbers, or 950-xxxx. The requirement for 10xxx-0+ and 10xxx-0- access will

remain in effect until September 1, 1998, or the dialing sequences are disallowed by the FCC, whichever is later. Access through 10xxx-1+, 101xxxx-1+, 10xxx-011+, or 101xxxx-011+ is not required.

- (n) Coin-operated PSP instruments must be equipped to return the coins to the caller in the case of an incomplete call.
  - (o) Coin-operated PSP instruments must be equipped to accept nickels, dimes, and quarters. The coin chute capacity of any PSP instrument must be sufficient to enable an end user to complete any sent-paid call using a single type of coin or any combination of nickels, dimes, and quarters.
  - (p) The PSP shall at all times maintain a current and complete local telephone directory, including white and yellow pages, at each PSP instrument.
  - (q) Notwithstanding any other rules in this chapter, a PSP may restrict incoming and/or outgoing calls at any specific PSP instrument in the interest of public safety and welfare under the following conditions:
    - (1) Such restrictions have been requested in writing as to the specific PSP instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The PSP shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The PSP shall retain copies of the requests for restrictions so long as the pay phones remain restricted.
    - (2) A notice of the restrictions applicable to a PSP instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.
    - (3) Access to 911 emergency service may not be prevented.
  - (r) With the exception of PSP instruments located in confinement facilities where the administration has specifically requested that keypad operation be blocked, the keypad of a PSP instrument must be kept open and capable of transmitting tones or dial pulses at all times.
  - (s) All keypads of PSP instruments must be of standard twelve-key touchtone design. Each numerical key must be clearly and permanently labeled with both the numeral and its standard associated combination of upper case letters.
  - (t) All PSP instruments must allow end users to access PSP refund and repair service at no charge.
  - (u) Each PSP must ensure that all operator service providers that provide service at its payphones satisfy the following requirements for each and every non-access code operator-assisted call made from the PSP's payphones. The operator service provider must:
    - (1) Identify itself, audibly and distinctly, to the consumer (the party who will be billed for the telephone call) at the beginning of each call and before the consumer incurs any charge for the call;
    - (2) Permit the consumer to terminate the telephone call at no charge before the call is connected;
    - (3) Disclose immediately to the consumer, upon request and at no charge before the call is connected:
      - (i) A quotation of its rates or charges for the call;
      - (ii) The methods by which such rates or charges will be collected; and
      - (iii) The methods by which complaints concerning such rates, charges, or collection practices will be resolved; and
    - (4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any intrastate non-access code operator service call, how to obtain the total cost of the call, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line. The phrase 'total cost of the call' as used in this paragraph means both the variable (duration-based) charges for the call and the total per-call charges, exclusive of taxes, that the PSP or carrier, or its billing agent, may collect from the consumer for the call.
- (NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 1/27/93; 6/9/93; 6/16/93; 12/8/94; 9/1/95; 7/2/96; NCUC Docket No. P-100, Sub 84a, 10/7/97; 05/28/98; NCUC Docket No. P-100, Sub 72b, 07/02/04.)

### **R13-06 SPECIAL RULES FOR SERVICE WITHIN CONFINEMENT FACILITIES**

Notwithstanding any other rules in this Chapter, PSP instruments located in the detention areas of confinement facilities:

- (a) May, if specifically requested by the administration of the confinement facility, be arranged or programmed to allow outward-only calling;

- (b) May, if specifically requested by the administration of the confinement facility and if the access line provider and presubscribed interexchange carrier are notified by the PSP, be arranged or programmed to terminate calls after 10 minutes of conversation time;
- (c) Shall be arranged or programmed to block directory assistance (411) calls, provided that a copy of a current local telephone directory, including white and yellow pages, must be available for inmate access;
- (d) Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls including, but not limited to, local direct calls, credit card calls, third number calls, 1+ sent-paid calls, 0+ sent-paid calls, 0- sent-paid calls, 0- calls, toll free 8XX calls, 900 calls, 976 calls, 950 calls, 911 calls, 10xxx, and 101xxxx calls. Provided, however, that if specifically requested by the administration of the confinement facility, 1+ toll and seven-digit local dialing may be permitted if the access line provider or the PSP instrument can block additional digit dialing after initial call set-up.
- (e) May, if specifically requested by the administration of the confinement facility, be arranged to block access to certain specific numbers identified by the administration or to allow access to only certain specific numbers identified by the administration.
- (f) Shall, at the request of the administration of the confinement facility, provide for the cutoff of designated PSP instruments through the use of cutoff keys or switches placed on the PSP's side of the network interface;
- (g) May, with the express written consent of the administration of the confinement facility, terminate PSP trunks provided by the access line provider for use at the facility in manual or automatic line concentrators; the concentrator may not be arranged or programmed to allow access by more than one PSP instrument to a single PSP trunk at any time; prior to connection of the equipment, the PSP is obligated to advise the access line provider of its intent to connect a concentrator to the access line provider's facilities, specifically identify the trunks which will terminate in the concentrator and, upon demand, provide the FCC registration number of the equipment.
- (h) May, with the express written consent of the administration of the confinement facility, be arranged to provide three-way call detection and call detail from the payphones located within the confinement facility subject to the following conditions:
  - (1) Three-way call detection may be arranged at the request of the facility administrator such that the call may be disconnected or noted for further investigation. When three-way call detection is arranged for disconnection, a recorded announcement shall inform the called party, before acceptance of the call, that the call may be disconnected if an attempt to use three-way calling is detected. The PSP shall give credit for wrongful disconnections according to its established credit procedures.
  - (2) Call detail information such as date and time of calls, duration of calls, and called and calling telephone numbers may be provided to the confinement facility administrator at his request.

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 6/9/93; 11/8/93; 9/1/95; 7/2/96; NCUC Docket No. P-100, Sub 84a, 10/7/97; 05/28/98.)

### **R13-07 AUTOMATED COLLECT CAPABILITY**

PSP instruments may be arranged or programmed to provide automated collect calling and the PSP may bill called parties who agree to pay for calls, provided:

- (a) The PSP has secured the authority to furnish such service as specified by Rule R13-3(c);
- (b) The PSP instrument is arranged or programmed to require a positive response from the called party indicating willingness to pay for the call before completing the call, and to terminate the call without charge in the absence of a positive response;
- (c) Except in the case of a call originated from a confinement facility, if the recipient of an automated collect call does not act to either accept or reject the call, the call must be terminated and a call must be initiated to an operator of a certified carrier, or instructions must be provided on how to complete the call using an operator of a certified carrier. In the case of a call originated from a confinement facility, the call must be terminated;
- (d) The PSP must use a local or certified interexchange carrier to transmit all communications involved in the call;
- (e) The PSP shall block or arrange for blocking of automated collect calls to 900, 976, 950, 700, 10xxx and 101xxxx codes;

- (f) The billing authority granted by this rule may be exercised only in connection with automated collect calls;
- (g) Authorization to employ automated collect capability must not be taken to allow restriction of the end user's ability to make other types of calls, such as customer-dialed credit card or sent paid coin caller (see Rules R13-5(i) and (j)); and
- (h) The PSP shall be considered the operator service provider for all automated collect calls, and automated collect service provided by PSPs shall be subject to all of the operator service provider disclosure requirements set forth in Rule R13-5(u).

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; NCUC Docket No. P-100, Sub 84a, 10/7/97; NCUC Docket No. P-100, Sub 72b, 01/02/04.)

### **R13-08 FACSIMILE SERVICE**

Providers of facsimile service:

- (a) May charge an unregulated rate for the facsimile portion of the service; and
- (b) Shall conspicuously display rates and charges for the facsimile portion of the service on or near the facsimile device.

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; NCUC Docket No. P-100, Sub 84a, 10/7/97.)

### **R13-09 CHARGES**

The PSP is responsible for ensuring that calls originated or terminated at his PSP access line or trunk are rated in accordance with the following:

- (a) *Local Sent-paid.* Pursuant to Federal Communications Commission preemption of state authority over local coin rates, PSPs are permitted to charge market-based rates for local coin calls.
- (b) *Directory Assistance.* Pursuant to Federal Communications Commission preemption of state authority over intrastate directory assistance charges, PSPs are permitted to charge market-based rates for intrastate directory assistance calls.
- (c) *0+ Other Than Automated Collect.* The end user of a PSP instrument may not be charged by the PSP for a 0+, 10xxx-0+, 101xxxx0+, or 950 local or toll call billed to a calling card, to a third number, or to the called party (collect).
- (d) *0+ Local Automated Collect Station-to-Station.* The recipient of a local automated collect station-to-station call may not be charged more for the call than would have been charged by Windstream Concord Telephone, Inc. for a local collect station-to-station call.
- (e) *0- Calls.* All PSP instruments outside of confinement facilities must allow access to the access line provider operator at no charge. The PSP may not impose a charge on the end user for completion of 0-local and toll calls billed to a calling card, a third number, or the called number (collect).
- (f) *8XX (Toll Free Number) Calls.* The end user of a PSP instrument may not be charged for the carriage and completion of any 8XX (toll free number) call.

(NCUC Docket No. P-100, Sub 84, 3/28/86; 11/17/87; 2/8/88; 2/11/88; 10/11/88; 6/14/89; 6/16/89; 8/31/89; 1/12/90; 3/29/90; 8/13/92; 7/2/96; NCUC Docket No. P-100, Sub 84a, 10/7/97; 5/28/98; NCUC Docket No. P-100, Sub 72b, 01/02/04; NCUC Docket No. P-100, Sub 84c, 05/01/08.)

### **R13-10 SEMIPUBLIC SERVICE**

- (a) Any semipublic service subscribed to from a LEC or LEC-affiliated PSP on or before October 7, 1997 must be allowed to continue until April 7, 1998. During this period, the semipublic service must be provided to the subscriber under the same monthly rates and conditions that applied immediately prior to detariffing of the service. On April 7, 1998, the monthly rates and conditions for service provided under this provision shall cease to be subject to Commission regulation.
  - (b) The monthly rates and conditions for semipublic service initially subscribed to after October 7, 1997 are not subject to Commission regulation.
  - (c) Rules R13-1 through R13-9 shall apply to the provision of any semipublic service.
- (NCUC Docket No. P-100, Sub 84a, 10/7/97.)

### **R14-01 APPLICATION**

This Chapter governs sharing and/or resale of telephone service as authorized by G.S. 62-110(d).

The relationship between sharers/resellers (providers) and the local exchange telephone company shall be governed by the filed tariff of the telephone company except as provided elsewhere in this Chapter.  
(NCUC Docket No. P-100, Sub 97, 2/26/88.)

#### **R14-02 DEFINITIONS**

(a) *Same contiguous premises.* Property under common ownership or management that is not separated by property owned or managed by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.

(b) *Shared use and resale of telephone service.* A telecommunication arrangement where two or more unrelated parties located on the same contiguous premises utilize a common telephone service. This arrangement is also referred to as "shared tenant services" or "STS."

(c) *Provider.* The subscriber to the local exchange telephone company offering shared and/or resold service to others.

(d) *End-user.* The party to whom resold or shared service is provided. End-users are persons or firms which are considered business subscribers under the regulations of the local exchange telephone company or are members of the exception group.

(e) *Exception group.* End-users who share service provided by a provider and who are patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions, or persons temporarily subleasing residential premises.

(NCUC Docket No. P-100, Sub 97, 2/26/88.)

#### **R14-03 CERTIFICATE**

Every provider whose end-users are not all within the exception group shall obtain a certificate from the Commission. Application shall be made on the form specified in the Appendix to this Chapter. One certificate is required for each same contiguous premises to be served. Upon approval of the application, the STS provider shall notify the local exchange company in writing of its certification and shall describe the proposed service.

(NCUC Docket No. P-100, Sub 97, 2/26/88.)

#### **R14-04 SERVICE WHICH CAN BE SHARED OR RESOLD**

The provider may share/resell local exchange telephone service, MTS and WATS provided by a public utility to end-users located on the same contiguous premises.

(NCUC Docket No. P-100, Sub 97, 2/26/88.)

#### **R14-05 CONTRACT**

A provider shall have a written contract with each end-user not within the exception group which shall contain the following provision:

- (a) A statement of the terms and conditions of service including current rates and termination charges, if any;
- (b) A statement that the user may obtain service directly from the local telephone company;
- (c) The name and telephone number of a representative of the provider to whom complaints should be addressed;
- (d) A statement that a user may submit unresolved complaints about quality of service to the Utilities Commission;
- (e) A statement that at least thirty days written notice will be given prior to any rate increase;
- (f) A statement that the contract shall be voidable at the option of the end-user and without further liability to the end-user if the contract is breached by the reseller or sharer;
- (g) A statement specifying when rates may be changed and the amount of increase that may be imposed during the contract period;
- (h) A statement that rates, charges, payment arrangements, rules on disconnection and deposit requirements are not regulated by the North Carolina Utilities Commission;
- (i) A statement specifying (a) the limitations of E911 emergency service regarding proper identification of the caller and the caller's location whenever a call is placed from a STS station and (b) the limitations on portability or reuse of the assigned telephone number upon a move or transfer of service and (c) the limitations regarding intercept service provided by the local exchange company for direct inward dial (DID) numbers; and
- (j) A copy of this Chapter of the Rules and Regulations.

(NCUC Docket No. P-100, Sub 97, 2/26/88.)

**R14-06 LOCAL EXCHANGE COMPANY ACCESS**

Providers shall allow the local exchange company reasonable access to end-users who desire service directly from the local exchange company. Such access shall be provided to the local exchange company free of charge.  
(NCUC Docket No. P-100, Sub 97, 2/26/88.)

**R14-07 PROVISION OF LOCAL ACCESS LINES**

The certificated local exchange telephone company shall be the only source of access lines or trunks connecting resold or shared service to the telephone network.  
(NCUC Docket No. P-100, Sub 97, 2/26/88.)

**R14-08 NETWORKING**

Interconnection of end-users of different providers or between end-users of the same provider not occupying the same contiguous premises must be through the local exchange company or certified long distance carrier.  
(NCUC Docket No. P-100, Sub 97, 2/26/88.)

**R14-09 QUALITY OF SERVICE**

Every provider is required to secure adequate local exchange trunks to ensure an adequate quality of service. The probability of blocking objective to be used in evaluating the adequacy of service is P.01.  
(NCUC Docket No. P-100, Sub 97, 2/26/88.)

**R14-10 INTERCOM CALLING**

Intercom calling among end-users shall be permitted without restriction.  
(NCUC Docket No. P-100, Sub 97, 2/26/88.)

**R14-11 EXCEPTION GROUP**

Providers may share local service and resell MTS and WATS to end-users within the exception group defined in Rule R14-2(e) subject to the following conditions:

- (a) All end-users must occupy the same contiguous premises; and
- (b) No separate charge is made for local service.

(NCUC Docket No. P-100, Sub 97, 2/26/88; NCUC Docket No. P-100, Sub 72b, 01/02/04.)

**CHAPTER 14 APPENDIX**

**APPLICATION FOR SPECIAL CERTIFICATE TO OFFER SHARED AND/OR RESOLD (STS) TELEPHONE SERVICE**

STS SPECIAL CERTIFICATE NO. \_\_\_\_\_

Note: To apply for Special Certification, Applicant must submit a filing fee of \$25.00 and the typed original and 8 copies of this document to the Commission at the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

DATE OF APPLICATION \_\_\_\_\_

APPLICANT

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(STREET)

\_\_\_\_\_  
(CITY, STATE, ZIP)

TELEPHONE ( ) \_\_\_\_\_

ADDRESS AND DESCRIPTION OF PREMISES TO BE SERVED AND SERVICES TO BE OFFERED: (A map may be attached)

REPRESENTATIVE TO WHOM COMPLAINTS SHOULD BE ADDRESSED

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(STREET)

\_\_\_\_\_  
(CITY, STATE, ZIP)

TELEPHONE ( ) \_\_\_\_\_

As the provider of resold and/or shared service, I certify that I have read and agree to abide by the Rules in Chapter 14 of the North Carolina Utilities Commission attached as Appendix A to this Application.

\_\_\_\_\_  
Date

Signature of Applicant \_\_\_\_\_

Title \_\_\_\_\_

**VERIFICATION**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The above-named \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**Chapter 14A.**

**Sharing and/or Resale of Telephone Service by Colleges and Universities Pursuant to G.S. 62-110(e).**

- Rule R14A-1. Application.
- Rule R14A-2. Definitions.
- Rule R14A-3. Certificate.
- Rule R14A-4. Service which can be shared or resold.
- Rule R14A-5. Contract.
- Rule R14A-6. Local exchange company access.
- Rule R14A-7. Provision of local access lines.
- Rule R14A-8. Networking.
- Rule R14A-9. Quality of service.
- Rule R14A-10. Rating of local service.
- Rule R14A-11. Charges to end-users.

**Rule R14A-1. Application.**

This Chapter governs sharing and/or resale of telephone service as authorized by G.S. 62-110(e).

The relationship between sharers/resellers (providers) and the local exchange telephone company shall be governed by the filed tariff of the telephone company except as provided in this Chapter. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-2. Definitions (for purposes of this Chapter only).**

(a) *Contiguous premises.* Property under common ownership or management that is not separated by property owned or managed by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.

(b) *Shared use and resale of telephone service.* A telecommunications arrangement where two or more unrelated parties utilize a common telephone service.

(c) *Provider.* Provider, for purposes of this Chapter, shall mean a nonprofit college or university, and its affiliated medical center(s), which is qualified under Sections 501 and 170 of the United States Internal Revenue Code of 1986 or which is a State-owned institution and which subscribes to the local exchange telephone company and offers shared and/or resold service to others.

(d) *End-user.* The party to whom resold or shared service is provided. End-users under this Chapter shall mean students or guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food, or other support services directly to or for the institution, its students, or guests. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-3. Certificate.**

Every provider desiring to provide shared/resold service pursuant to G.S. 62-110(e) shall obtain a certificate from the Commission. Application shall be made on the form specified in the Appendix to this Chapter. One certificate is required for each provider. Upon approval of the application, the provider shall notify the local exchange company in writing of its certification and shall describe the proposed service. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-4. Service which can be shared or resold.**

The provider may share/resell any telephone service provided to it by a public utility to end-users located on contiguous campus premises owned or leased by the institution and non-contiguous premises owned or leased exclusively by the institution. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-5. Contract.**

A provider shall file with the Commission a copy of its standard contract with residential end-users when it applies for a certificate. A provider shall have a written contract with each end-user which shall contain the following provisions:

- (a) A statement of the terms and conditions of service including current rates and termination charges, if any;
- (b) A statement that the user may obtain service directly from the local telephone company;
- (c) The name and telephone number of a representative of the provider to whom complaints should be addressed;
- (d) A statement that a user may submit unresolved complaints about quality of service to the Utilities Commission;
- (e) A statement that at least thirty days written notice will be given prior to any rate increase (except that if a provider receives less than thirty days' notice of a rate increase to the provider, it shall give notice of any resulting rate increase to its end-users as soon as practicable);
- (f) A statement that the contract shall be voidable at the option of the end-user and without further liability to the end-user if the contract is breached by the reseller or sharer;
- (g) A statement specifying when rates may be changed and the amount of increase that may be imposed during the contract period;
- (h) A statement that rates, charges, payment arrangements, rules on disconnection and deposit requirements are not regulated by the North Carolina Utilities Commission;

- (i) A statement specifying (1) the limitations of E911 emergency service regarding proper identification of the caller and the caller's location whenever a call is placed from a telephone station and (2) the limitations on portability or reuse of the assigned telephone number upon a move or transfer of service and (3) the limitations regarding intercept service provided by the local exchange company for direct inward dial (DID) numbers; and
- (j) A statement that a copy of this Chapter of the Rules and Regulations is available for inspection during business hours at the telephone offices of the provider and that a copy will be provided, free of charge, upon request of the end-user. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-6. Local exchange company access.**

Providers shall allow the local exchange company reasonable access to end-users who desire service directly from the local exchange company. Such access shall be provided to the local exchange company free of charge. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-7. Provision of local access lines.**

The certificated local exchange telephone company shall be the only source of access lines or trunks connecting resold or shared service to the telephone network. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-8. Networking.**

Interconnection of end-users of different providers or between end-users of the same provider not occupying the same contiguous premises must be through the local exchange company or a certified long-distance carrier. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-9. Quality of service.**

Every provider is required to secure adequate local exchange trunks to ensure an adequate quality of service. The probability of blocking objective to be used in evaluating the adequacy of service is P.01. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-10. Rating of local service.**

The services of the certified local exchange telephone company, when furnished to providers as defined in this Chapter and in accordance herewith, shall be rated in the same way as those provided for shared service offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions as provided for in G.S. 62-110(d) and Chapter 14 of the NCUC Rules. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**Rule R14A-11. Charges to end-users.**

Providers shall, for so long as they receive flat rate local service from the serving local exchange company, only charge flat monthly rates as opposed to measured or message rates for local exchange service, and shall not charge rates for long-distance service which exceed AT&T's MTS rates. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**CHAPTER 14A. APPENDIX**

APPLICATION FOR SPECIAL CERTIFICATE TO OFFER SHARED AND/OR RESOLD TELEPHONE SERVICE  
PURSUANT TO G.S. 62-110(e) CHAPTER 14A SPECIAL CERTIFICATE NO. \_\_\_\_

Note: To apply for special certification, Applicant must submit a filing fee of \$25.00 and the typed original and 8 copies of this document to the Commission at the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

DATE OF APPLICATION \_\_\_\_\_

APPLICANT

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(STREET)

\_\_\_\_\_  
(CITY, STATE, ZIP)

TELEPHONE (    ) \_\_\_\_\_

I certify that I have read and agree to abide by the Rules in Chapter 14A of the North Carolina Utilities Commission attached as Appendix A to this application.

ADDRESS AND DESCRIPTION OF PREMISES TO BE SERVED AND SERVICES TO BE OFFERED: (A map may be attached).

REPRESENTATIVE TO WHOM COMPLAINTS SHOULD BE ADDRESSED:

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(STREET)

\_\_\_\_\_  
(CITY, STATE, ZIP)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Title

VERIFICATION

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The above-named \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_ 1998.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**R14A-01 APPLICATION**

This Chapter governs sharing and/or resale of telephone service as authorized by G.S. 62-110(e). The relationship between sharers/resellers (providers) and the local exchange telephone company shall be governed by the filed tariff of the telephone company except as provided in this Chapter. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-02 DEFINITIONS (FOR PURPOSES OF THIS CHAPTER ONLY)**

(a) Contiguous premises. Property under common ownership or management that is not separated by property owned or managed by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.

(b) Shared use and resale of telephone service. A telecommunications arrangement where two or more unrelated parties utilize a common telephone service.

(c) Provider. Provider, for purposes of this Chapter, shall mean a nonprofit college or university, and its affiliated medical center(s), which is qualified under Sections 501 and 170 of the United States Internal Revenue Code of 1986 or which is a State-owned institution and which subscribes to the local exchange telephone company and offers shared and/or resold service to others.

(d) End-user. The party to whom resold or shared service is provided. End-users under this Chapter shall mean students or guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food, or other support services directly to or for the institution, its students, or guests.

(NCUC Docket No. P-100, Sub 97, 11/14/89.)

### **R14A-03            CERTIFICATE**

Every provider desiring to provide shared/resold service pursuant to G.S. 62-110(e) shall obtain a certificate from the Commission. Application shall be made on the form specified in the Appendix to this Chapter. One certificate is required for each provider. Upon approval of the application, the provider shall notify the local exchange company in writing of its certification and shall describe the proposed service.

(NCUC Docket No. P-100, Sub 97, 11/14/89.)

### **R14A-04            SERVICE WHICH CAN BE SHARED OR RESOLD**

The provider may share/resell any telephone service provided to it by a public utility to end-users located on contiguous campus premises owned or leased by the institution and non-contiguous premises owned or leased exclusively by the institution.

(NCUC Docket No. P-100, Sub 97, 11/14/89.)

### **R14A-05            CONTRACT**

A provider shall file with the Commission a copy of its standard contract with residential end-users when it applies for a certificate. A provider shall have a written contract with each end-user which shall contain the following provisions:

- (a) A statement of the terms and conditions of service including current rates and termination charges, if any;
- (b) A statement that the user may obtain service directly from the local telephone company;
- (c) The name and telephone number of a representative of the provider to whom complaints should be addressed;
- (d) A statement that a user may submit unresolved complaints about quality of service to the Utilities Commission;
- (e) A statement that at least thirty days written notice will be given prior to any rate increase (except that if a provider receives less than thirty days' notice of a rate increase to the provider, it shall give notice of any resulting rate increase to its end-users as soon as practicable);
- (f) A statement that the contract shall be voidable at the option of the end-user and without further liability to the end-user if the contract is breached by the reseller or sharer;
- (g) A statement specifying when rates may be changed and the amount of increase that may be imposed during the contract period;
- (h) A statement that rates, charges, payment arrangements, rules on disconnection and deposit requirements are not regulated by the North Carolina Utilities Commission;
- (i) A statement specifying (1) the limitations of E911 emergency service regarding proper identification of the caller and the caller's location whenever a call is placed from a telephone station and (2) the limitations on portability or reuse of the assigned telephone number upon a move or transfer of service and (3) the limitations regarding intercept service provided by the local exchange company for direct inward dial (DID) numbers; and
- (j) A statement that a copy of this Chapter of the Rules and Regulations is available for inspection during business hours at the telephone offices of the provider and that a copy will be provided, free of charge, upon request of the end-user.

(NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-06 LOCAL EXCHANGE COMPANY ACCESS**

Providers shall allow the local exchange company reasonable access to end-users who desire service directly from the local exchange company. Such access shall be provided to the local exchange company free of charge. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-07 PROVISION OF LOCAL ACCESS LINES**

The certificated local exchange telephone company shall be the only source of access lines or trunks connecting resold or shared service to the telephone network. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-08 NETWORKING**

Interconnection of end-users of different providers or between end-users of the same provider not occupying the same contiguous premises must be through the local exchange company or a certified long-distance carrier. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-09 QUALITY OF SERVICE**

Every provider is required to secure adequate local exchange trunks to ensure an adequate quality of service. The probability of blocking objective to be used in evaluating the adequacy of service is P.01. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-10 RATING OF LOCAL SERVICE**

The services of the certified local exchange telephone company, when furnished to providers as defined in this Chapter and in accordance herewith, shall be rated in the same way as those provided for shared service offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions as provided for in G.S. 62-110(d) and Chapter 14 of the NCUC Rules. (NCUC Docket No. P-100, Sub 97, 11/14/89.)

**R14A-11 CHARGES TO END-USERS**

Providers shall, for so long as they receive flat rate local service from the serving local exchange company, only charge flat monthly rates as opposed to measured or message rates for local exchange service.

(NCUC Docket No. P-100, Sub 97, 11/14/89; NCUC Docket No. P-100, Sub 72b, 01/02/04.)

**CHAPTER 14A APPENDIX**

**APPLICATION FOR SPECIAL CERTIFICATE TO OFFER SHARED AND/OR RESOLD TELEPHONE SERVICE  
PURSUANT TO G.S. 62-110(e) CHAPTER 14A SPECIAL CERTIFICATE NO. \_\_\_\_\_**

Note: To apply for special certification, Applicant must submit a filing fee of \$25.00 and the typed original and 8 copies of this document to the Commission at the following address:

Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

DATE OF APPLICATION \_\_\_\_\_

APPLICANT

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(STREET)

\_\_\_\_\_  
(CITY, STATE, ZIP)

TELEPHONE ( ) \_\_\_\_\_

I certify that I have read and agree to abide by the Rules in Chapter 14A of the North Carolina Utilities Commission attached as Appendix A to this application.

ADDRESS AND DESCRIPTION OF PREMISES TO BE SERVED AND SERVICES TO BE OFFERED: (A map may be attached).

REPRESENTATIVE TO WHOM COMPLAINTS SHOULD BE ADDRESSED:

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(STREET)

\_\_\_\_\_  
(CITY, STATE, ZIP)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Title

VERIFICATION

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The above-named \_\_\_\_\_, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_ 1998.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**R15-01 REGULATORY FEE**

(a) Fee Imposed. G.S. 62-302 requires each public utility regulated by the North Carolina Utilities Commission to pay a quarterly regulatory fee to the Commission, which shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public and to maintain a reasonable margin for a reserve fund. The electric membership corporation regulatory fee for each fiscal year is two hundred thousand dollars (\$200,000).

(b) Procedure for Setting the Regulatory Fee Rate. In the first half of each calendar year, the Commission shall review the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including a reasonable margin for the reserve fund allowed under G.S. 62-302, and shall, if there is a change in the regulatory fee rate or other reason, enter an order setting the regulatory fee rate effective for the next fiscal year. In making this determination, the Commission shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated change in competitive and noncompetitive jurisdictional revenues.

If the estimated receipts provided for under this section are less than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission may issue an order in Docket No. M-100, Sub 142 increasing the public utility regulatory fee rate on noncompetitive jurisdictional revenues effective for the next fiscal year. In no event may the percentage rate of the public utility regulatory fee on noncompetitive jurisdictional revenues exceed seventeen and one-half hundredths of one percent (0.175%).

If the estimated receipts provided for under this section are more than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission shall issue an order in Docket No. M-100, Sub 142 decreasing the public utility regulatory fee rate on noncompetitive jurisdictional revenues effective for the next fiscal year.

(c) Definitions. As used in this rule:

- (1) "Noncompetitive jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from access charges are to be included as noncompetitive jurisdictional revenues.
- (2) "Subsection (h) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(h), including all revenues and other receipts derived from yellow pages advertising.
- (3) "Subsection (m) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(m), including all revenues and other receipts derived from yellow pages advertising.

(d) When Due. The regulatory fee imposed by G.S. 62-302 is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Each public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and file a report, either electronically on the Commission's website or by hard copy, on the form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter. Receipts shall be reported on an accrual basis. The form of the report shall be posted on the Commission's website at <http://www.ncuc.net/regfeereporting.html>.

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of six dollars and twenty-five cents (\$6.25) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars (\$25.00)(\$6.25 x 4). The estimated fee of \$25.00 is on a per company basis. If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars (\$25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

(e) Use of Proceeds. A special fund in the Office of the State Treasurer, the "Utilities Commission and Public Staff Fund," shall be created. The fees collected pursuant to G.S. 62-302 and all other funds received by the Commission and the Public Staff shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by Chapter 62 of the North Carolina General Statutes.

(f) Supporting Data. Upon request of the Commission or the Public Staff, a utility shall supply supporting data and workpapers substantiating its Public Utility Regulatory Fee Report (NCUC FORM RF).

Utilities now filing quarterly reports with the Commission in compliance with the Commission's ongoing surveillance program (NCUC FORMS E.S.-1 and G.S.-1) shall include as part of those quarterly reports a schedule setting forth a detailed reconciliation of the noncompetitive jurisdictional revenues reflected in those reports to the level of noncompetitive jurisdictional revenues reflected in the Public Utility Regulatory Fee Report (NCUC FORM RF) for the same quarterly reporting period.

Utilities not now filing quarterly reports shall include as part of their annual reports to be filed with the Commission a schedule setting forth a detailed reconciliation of the total noncompetitive jurisdictional revenues reflected in those annual reports to the level of noncompetitive jurisdictional revenues reflected in the four quarterly Public Utility Regulatory Fee Reports encompassed by the 12-month period on which the annual report is based.

(g) Failure to File. Failure to complete and file the Public Utility Regulatory Fee Report (NCUC FORM RF) and pay the regulatory fee as prescribed may result in the imposition of a penalty, a fine, and/or cancellation of certificate.

(h) Procedure to Reflect Regulatory Fee Change. Effective July 1, 2015, if the rates of a utility include the regulatory fee, upon any change in the regulatory fee, rates shall be adjusted to reflect the change in the regulatory fee as follows:

- a. If a utility requests authority to adjust its base rates for a change in the regulatory fee obligation, the Commission shall issue an order authorizing the change in base rates. The Public Staff shall make a

determination on the accuracy of the utility's requested change to its base rates and shall file with the Commission the results of the Public Staff's review within 15 days of the utility's request.

- b. If a utility does not file a request under subdivision (a), rates shall be adjusted in the next proceeding changing the utility's base rates or rider rates. A utility shall defer in a regulatory asset or regulatory liability account the difference between the regulatory fee included in base rates or rider rates and the new regulatory fee. The disposition of any deferral shall be addressed in the utility's next general rate case.

(NCUC Docket No. M-100, Sub 118, 9/15/89; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. M-100, Sub 142, 8/15/2016; NCUC Docket No. M-100, Sub 142, 9/12/2016; NCUC Docket No. M-100, Sub 142, 7/26/2017.)

**R16-01** Rescinded by NCUC Docket No. P-100, Subs 114 and 124, 12/3/97.

## **CHAPTER 17 – PROVISION OF LOCAL EXCHANGE AND EXCHANGE ACCESS COMPETITION**

### **R17-01 DEFINITIONS**

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

- (a) Basic Local Exchange Service. -- The telephone service comprised of an access line, dialtone, the availability of touchtone, and usage provided to the premises of residential customers or business customers within a local exchange area.
- (b) Certificate. -- A certificate of public convenience and necessity to provide local exchange and/or exchange access service as a public utility as defined in G.S. 62-3(23)a.6.
- (c) Commission. -- The North Carolina Utilities Commission.
- (d) Competing Local Provider or CLP. -- Any person applying for or granted a certificate to provide local exchange or exchange access services in competition with a local exchange company.
- (e) Exchange Access Service. -- Switched or special access service provided by a LEC or CLP to a customer which facilitates a connection between an end-user and an interexchange carrier.
- (f) FCC – The Federal Communications Commission.
- (g) Local Exchange Service Area. -- The geographic area within which a CLP or LEC is authorized to provide local exchange or exchange access service.
- (h) Local Exchange Company or LEC. -- Any person, holding on January 1, 1995, a certificate to provide local exchange services or exchange access services, excluding telephone membership corporations.
- (i) Local Exchange Service. -- Switched service offered by a CLP or LEC, without the payment of long distance charges; or dedicated service connecting two or more points within an exchange as defined on an exchange service area map of a LEC or CLP.
- (j) Notice -- A document filed with the Commission pursuant to Rule R17-8 which includes the following: (1) The name, address of the principal headquarters, and telephone and facsimile numbers for each of the parties to the Section 214 License Transfer or Pro forma Transaction and any changes in the Name and Contacts information provided in the non-dominant CLP's original Competing Local Provider Application; (2) A statement setting forth a description of the Section 214 License Transfer or Pro forma Transaction; (3) A copy of the application for a domestic Section 214 License Transfer, or in the case of a Pro forma Transaction the notification letter, filed with the FCC; and (4) A copy of the FCC's Public Notice of the Section 214 License Transfer or Pro forma Transaction.
- (k) Number Portability. -- The technical capability to allow customers to retain their telephone numbers when they change providers of local exchange service but do not change locations.
- (l) Prepaid local exchange service. -- Local exchange service for which payment is typically required in advance. Prepaid service usually does not allow the customer to dial or use local or long distance directory assistance or operator services, to place long distance calls through standard dialing patterns (including 1+ and 0+ calls), or to place calls to the expanded local calling areas using standard dialing patterns.
- (m) Pro forma Transaction – Any corporate restructuring, reorganization or liquidation of internal business operations that does not result in a change in ultimate ownership or control of the carrier's lines or authorization to operate.
- (n) Section 214 License Transfer – A transfer of control of lines or authorization to operate pursuant to section 214 of the Communications Act of 1934 subject to the streamlining procedures for domestic transfer of control applications in 47 C.F.R. § 63.03.
- (o) Universal Service. -- The provision of affordable basic local exchange service, part of which may be subsidized through a universal service fund.
- (p) USDOJ – The United States Department of Justice.

(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 3/5/96; 9/21/00; NCUC Docket No. P-100, Sub 163, 8/24/06; 8/28/06.)

## **R17-02 REQUIREMENTS AND LIMITATIONS REGARDING CERTIFICATION OF COMPETING LOCAL PROVIDERS**

(a) Any entity other than an existing CLP certificate holder applying for a certificate or for authority to acquire an existing certificate shall complete a CLP application form and make a satisfactory showing to the Commission:

- (1) That it is fit, capable and financially able to render such service;
- (2) That the service to be provided will reasonably meet the service standards set out in Rule R9-8;
- (3) That the provision of the service will not adversely impact the availability of reasonably affordable local exchange service;
- (4) That it will participate to the extent it may be required to do so by the Commission in the support of universally available telephone services at affordable rates; and
- (5) That the provision of the services will not otherwise adversely impact the public interest.

(b) Any CLP applying for a certificate to provide competing local exchange or exchange access services shall include in its application the following:

- (1) The name of the CLP, the address of the principal headquarters, the telephone and facsimile numbers, and the names and addresses of the CLP's principal officers;
- (2) Names, addresses, and telephone and facsimile numbers of the CLP's employees for the Commission to contact regarding various regulatory matters and for customers to contact regarding service;
- (3) If pay telephone service will be provided, the address to be used by the serving LEC in billing for payphone service provider (PSP) lines or trunks and by the CLP in meeting PSP notice requirements;
- (4) Information about the structure of the business organization and, where applicable, a copy of any articles of incorporation, partnership agreement, articles of organization, or by-laws of the CLP, and a copy of a certificate of authority to do business in North Carolina; if an office is not maintained in North Carolina, the name and address of agent for service of process in North Carolina;
- (5) A list of other states where the CLP or any of its affiliates is authorized to operate and a list of those states which have denied any requested authority and an indication of the nature of such denial;
- (6) A showing as to the CLP's financial, managerial and technical ability to render local exchange or local exchange access services:
  - (a) As a minimum requirement, a showing of financial ability shall be made by attaching the CLP's most recent stockholders' annual report, its most recent SEC 10K or audited financial statements for the most recent twelve months or, if the company is not publicly traded, its most recent balance sheet and income statement. If a balance sheet and income statement are not available, then the CLP shall provide a current 5-year business plan and all supporting workpapers and schedules as provided on the CLP application form. Additional support for the Applicant's financial ability may also be included as provided on the CLP application form. The Applicant must also provide an explanation for any conditions which may affect its ability to continue as a going concern as set forth in the CLP application form;
  - (b) To demonstrate managerial and technical fitness and ability, the CLP shall attach a brief description of its history of providing local exchange or exchange access or other telecommunications services and shall list the geographic areas in which it has been and is currently providing such services. A newly created company shall list the experience of each principal officer and may also provide other documentation in order to show its managerial and technical ability to provide services.
  - (c) Rescinded.
- (7) Confirmation that the application has been served on each of the LECs in North Carolina;
- (8) A statement setting forth with particularity the proposed geographic areas to be served;
- (9) The types of local exchange and exchange access services to be provided; and
- (10) A statement that the CLP agrees to abide by all applicable statutes and all applicable Orders, rules, and regulations entered and adopted by the Commission.

(c) The application shall be verified. The CLP shall file the original and 11 copies of its application with the Chief Clerk of the Commission and shall submit a statutory filing fee of \$250 with the application. Applications are exempt from Commission Rule R1-5(d) which requires that pleadings filed on behalf of a corporation be filed by a member of the Bar of

the State of North Carolina. Should a public hearing be required, the requirements of G.S. 84-4 and G.S. 84-4.1 are still applicable.

(d) Falsification or failure to disclose any required information in the petition for certification may be grounds for denial or revocation of any certificate.

(e) All CLPs shall be willing as a condition to certification to provide support for universal service in a manner determined by the Commission. This requirement shall not be construed as prohibiting the granting of a certificate before the universal service issues are finally determined by the Commission.

(f) Except as provided in Commission Rule R17-6, a CLP shall, either directly or through arrangements with other carriers, provide as a part of its basic local exchange service(s) the following:

- (1) Access to emergency service and services for the hearing and speech impaired;
- (2) Access to local and long distance directory assistance and provision of local telephone directories to end-users;
- (3) Access to operator services;
- (4) Access to all standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA and intraLATA long distance calls;
- (5) Compliance with Commission basic services standards as defined in any applicable rules and decisions of the Commission;
- (6) Free blocking of 900 and 976-type services and other pay-per-call services, including but not limited to calls to 700 and 800 numbers, for which charges are made by the service provider and billed by the CLP;
- (7) Free per-call and per-line blocking in accordance with Orders of the Commission applicable to LECs; subscribers must be advised by bill insert or direct mailing of the availability of these free features at least once per year; and
- (8) Number portability where technically and economically reasonable.

(g) The provisions of Commission Rule R9-8 and R12-1 through R12-9 shall apply to CLPs.

(h) Rescinded.

(i) CLPs shall maintain their books of account in accordance with Generally Accepted Accounting Principles (GAAP).

(j) Financial reports are not required to be routinely filed by CLPs. However, the CLP shall submit specific financial information upon request of the Commission or the Public Staff.

(k) The number of access lines or other operating statistics are not required to be filed except upon specific request of the Commission or the Public Staff.

(l) CLPs shall be required to participate in the telecommunications relay service in accordance with G.S. 62-157 and applicable orders, rules and regulations entered and adopted by the Commission.

(m) CLPs shall be subject to the provisions of Chapter 62A of the General Statutes, the Public Safety Telephone Act, applicable to service providers.

(n) A CLP must abide by all applicable provisions adopted by the Commission for disconnection, partial payments, global toll denial, nonregulated charges, 900 and similar charges, treatment of stale debts, disconnect notices, periodic notification of disconnect policy and billing statements as set forth in Commission Rule R12-17.

(o) Rescinded.

(p) Billing services for intrastate long distance calls may be offered by a CLP only to long distance carriers certified by the Commission or to clearinghouses acting on behalf of certified long distance carriers. The name of the service provider shall be clearly stated on each page of the bill, and a contact telephone number for questions on the service shall appear on the bill. If billing is done through a clearinghouse, the name of the clearinghouse shall also appear on each page of the bill.

(q) A notice by bill insert or direct mailing shall be given by a CLP to all affected customers at least 14 days before any public utility rates are increased and before any public utility service offering is discontinued. Notice of a rate increase shall include at a minimum the effective date of the rate change, the existing rates and the new rates.

(r) A CLP must abide by the provisions adopted by the Commission for the handling of problems arising from billing of 900 calls; other pay-per-call services, including but not limited to calls to 976, 700 and 800 numbers, for which charges are made by the service provider and billed to the caller by the CLP, shall be subject to the same provisions as are applicable to 900 calls.

(s) Usage charges and per-call rates for switched local exchange services provided by a CLP shall not apply unless the call is answered. Timing of a call shall not begin until the call is answered and shall end when either the calling party or the answering party disconnects.

(t) The provisions of Commission Rule R13, with the exception of R13-3(a), (b) and (c) shall apply to the offering of pay telephone service by a CLP. A CLP has the authority by virtue of its CLP certificate to offer both non-automated collect and automated collect service under the provisions of R13. When the term PSP Certificate Number is referred to in Rule R13, the

docket number in which the CLP was certified shall be utilized, and when the term PSP certificate or certificate is referred to in Rule R13, the CLP certificate shall be used.

- (u) CLPs are responsible for payment of the regulatory fee in accordance with G.S. 62-302 and Commission Rule R15.
- (v) A CLP shall not knowingly offer or provide service for use in an unlawful manner.
- (w) A CLP shall not assess a charge or penalty for disconnection of any regulated service unless the charge or penalty is specifically provided for in a contract signed by the subscriber.

*(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; P-100, Sub 140, 4/3/00; NCUC Docket No. M-100, Sub 128, 04/10/00; NCUC Docket No. P-100, Sub 133; 9/21/00; NCUC Docket No. M-100, Sub 4, 6/30/11; NCUC Docket Nos. P-100, Sub 133, P-100A, Sub 133, & P-100, Sub 110; 11/22/2019.)*

### **R17-03 UNIVERSAL SERVICE REQUIREMENTS**

- (a) Each LEC shall be the universal services provider in the area in which it is certificated to operate on July 1, 1995, unless otherwise determined by the Commission in further interim or permanent rules.
- (b) The Commission will establish a Universal Service Fund, designate a permanent universal service provider for each service area, and determine applicable payment mechanisms in compliance with G.S. 62-110(f1). Any CLP offering telecommunications services in North Carolina will be required to participate in such fund.
- (c) To the extent required, the establishment of the Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone services and the calculation of the subsidy required to support those basic local exchange telephone services which the Commission may decide are appropriate.  
(NCUC Docket No. P-100, SUB 133, 7/19/95; 2/23/96; 9/21/00.)

### **R17-04 INTERCONNECTION**

- (a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.
- (b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs.
- (c) Interconnection arrangements must be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any LEC to another carrier will be allowed.
- (d) Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed for approval as soon as practicable but in no event later than 30 days from the date of conclusion of negotiations. Parties may operate on an interim basis under a negotiated interconnection agreement which has been filed with the Commission and which is publicly available as a public record pending Commission action on the filing. Interim operations under a negotiated interconnection agreement shall begin no earlier than the date upon which the agreement is filed with the Commission and shall be undertaken, at the risk of the parties, subject to the right of the Commission to approve or disapprove the agreement.
- (e) In the event the parties are unable to agree within 90 days of a bona fide request, either party may petition the Commission for a determination of the appropriate rates and terms for interconnection.
- (f) Unbundled functional elements of a LEC's network that are made available throughout interconnection agreements should also be made available on an individual tariffed basis.  
(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 6/18/96; 9/21/00.)

### **R17-05 NUMBER PORTABILITY AND NUMBER ASSIGNMENT**

- (a) End-users shall have number portability regardless of their chosen LEC or CLP.
- (b) True number portability shall be made available when technically and economically reasonable.
- (c) Interim number portability arrangements shall be utilized until true number portability is available. The LEC and CLP shall include interim number portability issues in interconnection negotiations.
- (d) To the extent feasible, the LEC shall provide the CLP with reservations for a reasonably sufficient block of numbers for their use.  
(NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 9/21/00.)

### **R17-06 PREPAID LOCAL EXCHANGE SERVICE**

- (a) Prepaid local exchange service(s) are exempt from portions of Commission Rule R17-2(f). No other basic local exchange service(s) offered by such CLP shall be exempt from any portion of Commission Rule R17-2(f). Those portions of Commission Rule R17-2(f) from which prepaid local exchange service may be exempt are:
  - (1) That part of Commission Rule R17-2(f2) requiring access to local and long distance directory assistance;

- (2) Commission Rule R17-2(f3) requiring access to operator services; and
  - (3) Commission Rule R17-2(f4) requiring access to all standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA and intraLATA long distance calls.
- (b) Prepaid local exchange service offered by a CLP is subject to the following terms and conditions:
- (1) The CLP shall provide the subscriber with a Customer Service Agreement which constitutes the contract between the subscriber and CLP. The Customer Service Agreement shall:
    - (i) describe with particularity the local exchange services offered, contain a concise list of the rates for all services offered, and fully disclose all terms and conditions with which the subscriber must comply;
    - (ii) fully disclose any limitations of the provided services as a result of the exemptions permitted in Commission Rule R17-6(a);
    - (iii) include a full description of the billing process and payment arrangements, which shall include, at a minimum, the billing date, the past due date and the date on which service may be discontinued for non-payment of regulated charges;
    - (iv) state that Lifeline and Link-Up Carolina programs are available for qualifying subscribers who contact their local social services agency; and
    - (v) contain a statement which establishes that the subscriber has read the Customer Service Agreement in its entirety, or has had the Customer Service Agreement read to him or her, and has fully understood the terms and conditions of service before signing the Customer Service Agreement.
  - (2) The CLP shall make appropriate changes to the Customer Service Agreement pursuant to all statutes and Commission orders, rules and regulations;
  - (3) If any portion of the Customer Service Agreement is in a language other than English, all portions of the Customer Service Agreement must be in that language. Every Customer Service Agreement must be in the same language as any promotional materials, oral descriptions, or instructions provided with the Customer Service Agreement;
  - (4) A copy of the Customer Service Agreement signed by the subscriber shall be received by the CLP or its independent agent before the CLP may provide local exchange services to the subscriber;
  - (5) The CLP may not offer a service in such a way that purchasing a period of service obligates the subscriber to purchase additional periods of the same service;
  - (6) The CLP may not impose any charge for the termination of basic local exchange service; and
  - (7) The CLP may not impose any punitive charges on its subscribers for the accumulation of intraLATA toll or interLATA long distance charges.
- (c) The Customer Service Agreement shall be subject to periodic review by the Commission and the Public Staff.  
(NCUC Docket No. P-100, Sub 133, 9/21/00.)

#### **R17-07 DIALING PARITY**

- (a) Any CLP offering basic local exchange service, other than prepaid local exchange service for which exemptions of Commission Rule R17-2(f) are allowed, shall offer interLATA and intraLATA toll dialing parity for such basic local exchange service as prescribed in 47 CFR 51.209.
- (b) Dialing parity means the implementation of the full 2-PIC (Primary Interexchange Carrier) selection methodology. The full 2-PIC method generally allows customers to presubscribe to a telecommunications carrier for all 0+ and 1+ interLATA toll calls and presubscribe to the same or another telecommunications carrier (including, but not limited to, the customer's local exchange carrier) for all 0+ and 1+ intraLATA toll calls.
- (c) Customers who do not select a carrier for one or both types of long distance calls (intraLATA and/or interLATA toll calls) will be designated as "no-PIC" by the CLP for the handling of those types of long distance calls for which no telecommunications carrier was selected. Customers with the "no-PIC" designation for either type of long distance call will be required to place those calls by accessing their choice of carrier through 101XXXX (dial-around) access codes.
- (d) If long distance carriers must arrange for connection to CLP's facilities in order to participate in the presubscription process, the carriers must be advised of that opportunity before orders for exchange service are taken.
- (e) Each new customer must be given the choice of carriers by the service representative in a competitively neutral manner when the order for the exchange service is placed.  
(NCUC Docket No. P-100, Sub 133, 9/21/00.)

### **R17-08 PROCEDURES FOR TRANSFERS OF CONTROL**

- (a) A CLP holding a Certificate is exempt from the provisions of G.S. 62-111(a) requiring approval of transfers of control transactions, except as set forth in this Rule.
- (b) A CLP holding a Certificate shall file a Notice with the Commission immediately upon filing an application for a domestic Section 214 License Transfer with the FCC pursuant to 47 C.F.R. § 63.03. Coincident with the filing with the NCUC, the CLP shall serve a copy of such Notice on any ILEC in North Carolina with which the CLP has entered into an interconnection agreement approved by this Commission.
- (c) Notwithstanding the provision of subsection (b), the Commission retains authority to make inquiries, initiate proceedings and impose conditions on a CLP's Certificate(s) including reporting requirements, to protect consumer interests.
- (d) Notwithstanding the close of a Section 214 License Transfer, any proceeding or investigation initiated by the Commission pursuant to subsection (c) shall continue in the Commission's discretion, and the Commission shall retain the authority to impose conditions on a CLP's Certificate(s) if necessary to protect consumer interests.
- (e) A CLP holding a Certificate shall file a Notice with the Commission no later than 30 days after control of the carrier is transferred pursuant to a *Pro forma* Transaction.
- (f) Nothing in this rule shall be deemed to exempt an entity from the requirements of Rule R17-2.

*(NCUC Docket No. P-100, Sub 163; 8/24/06.)*

## **CHAPTER 18 – PROVISION OF WATER AND SEWER SERVICE BY Lessors**

### **R18-01 APPLICATION**

This Chapter governs charging for the costs of providing water or sewer utility service by a lessor to a lessee as authorized by G.S. 62-110(g).

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

### **R18-02 DEFINITIONS**

- (a) Apartment. A building containing multiple residential dwelling units. For the purposes of these Rules, townhouses, row houses, and/or condominiums shall be considered apartments.
- (b) Apartment complex. Premises where one or more buildings under common ownership comprising 15 or more apartments are available for rental to lessees.
- (c) Contiguous dwelling units. An apartment complex or manufactured home park located on property that is not separated by property owned by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.
- (d) Dwelling unit. A house, mobile home, apartment, building, or other structure used for residential purposes.
- (e) Leased premises. A house, mobile home, apartment, building, or any combination thereof which are leased for residential purposes.
- (f) Lessee. A person who leases a dwelling unit from the lessor.
- (g) Lessor. A person, entity, corporation, or agency who owns 15 or more dwelling units which are available for lease. The lessor is also known as the landlord.
- (h) Manufactured home park. Premises where a combination of 15 or more manufactured homes, as defined in G.S. 143-145(7), or spaces for manufactured homes, are rented to or are available for rental to lessees.
- (i) Provider. The lessor purchasing water or sewer utility service from a supplier and charging for the costs of providing the service or services to lessees. The provider shall be the owner of the residential premises served.
- (j) Single-family dwelling. An individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the house known as a yard, which is rented or available for rental as a residence.
- (k) Supplier. A public utility or an agency or organization exempted from regulation from which a provider purchases water or sewer service.
- (l) Supplier's base charge. The fixed charge imposed by the supplier for providing water and sewer utility service to the provider. This charge may include charges related to the provision of utility service such as the cost of meter reading, billing, and collecting, but may not include charges not related to the provision of utility service, such as stormwater fees, trash collection, or property taxes.

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

### **R18-03 UTILITY STATUS; CERTIFICATE; BONDS**

Every provider is a public utility as defined by G.S. 62-3(23)a.2 and shall comply with all applicable provisions of the Public Utilities Act and all applicable rules and regulations of the Commission. No provider shall begin charging for the costs of providing water or sewer service prior to applying for and receiving a certificate of authority from the Commission. No provider shall be required to post a bond pursuant to G.S. 62-110.3.

Every application for authority to charge for the costs of providing water or sewer service by an applicant owning an apartment complex or manufactured home park shall be in such form and detail as the Commission may prescribe and shall include (a) a description of the applicant and the property to be served, (b) a description of the proposed billing method and billing statements, (c) a schedule of the rates charged to the applicant by the supplier(s), (d) the schedule of rates the applicant proposes to charge the applicant's lessees, (e) the administrative fee proposed to be charged by the applicant, (f) the name of and contact information for the applicant and its agents, (g) the name of and contact information for the supplying water or sewer system, and (h) any additional information that the Commission may require.

Every application for authority to charge for the costs of providing water or sewer service by an applicant owning a single-family dwelling shall be in such form and detail as the Commission may prescribe; shall allow the applicant to serve multiple dwellings in the State subject to an approval by the Commission; and shall include (a) a description of the applicant and a listing of the addresses of all properties to be served. An updated listing of addresses served by the applicant shall be provided to the Commission annually, (b) a description of the proposed billing method and billing statements, (c) the administrative fee proposed to be charged by the applicant, (d) the name of and contact information for the applicant and its agents, (e) the name of the water and/or sewer supplier, and (f) any additional information that the Commission may require.

The Commission shall approve or disapprove an application within 30 days of the filing of a completed application with the Commission. In the event an application is found to be incomplete as submitted, the applicant will be notified accordingly. If the Commission has not issued an Order disapproving a completed application within 30 days, the application shall be deemed approved.

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

### **R18-04 COMPLIANCE WITH RULES**

Every provider shall comply with any applicable rules of local governmental agencies regarding the provision of water or sewer service.

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. WR100, Sub 10, 04/04/2018.)*

### **R18-05 RECORDS, REPORTS AND FEES**

(a) All records shall be kept at the onsite management office or office(s) of the provider in North Carolina, or shall be made available at its onsite management office in North Carolina upon request, and shall be available during regular business hours for examination by the Commission or Public Staff or their duly authorized representatives. Within three business days after a written request to the provider, a lessee may examine the records pertaining to the lessee's account during regular business hours and may obtain a copy of those records at a reasonable cost, which shall not exceed 25¢ per page. However, if a provider does not have an onsite management office at the multi-unit complex or in close proximity to the leased single-family dwelling, then the provider shall in good faith, upon written request, establish with the lessee a mutually-acceptable arrangement for the lessee to examine the records pertaining to the water and/or sewer service for the leased dwelling unit occupied or previously occupied by the lessee. In the event that a provider and lessee are unable to reach agreement within 10 business days, the lessee may contact the Public Staff – North Carolina Utilities Commission, Consumer Service Division, at (866) 380-9816 (toll-free) or 919-733-9277 or may write to the Public Staff – North Carolina Utilities Commission, Consumer Services Division, at 4326 Mail Service Center, Raleigh, North Carolina 27699-4300 for assistance in resolving the dispute. If the Public Staff determines that it cannot reasonably resolve the disagreement, the matter shall be referred to the Commission.

(b) Providers shall not be required to file an annual report to the Commission as required by Chapter 1, Rule R1-32 of the Rules and Regulations of the North Carolina Utilities Commission except as required by Commission Rule R18-3. Providers shall pay a regulatory fee and file a regulatory fee report as required by Chapter 15, Rule R15-1. Special reports shall also be made concerning any particular matter upon request by the Commission.

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

## **R18-06 RATES**

(a) The rates shall equal the cost of purchased water or sewer service (The usage rate charged by the provider shall equal the usage rate charged by the supplier.). A Commission-approved administrative fee not to exceed \$3.75 may be added to the cost of purchased water and sewer service to compensate the provider for meter reading, billing, and collection. A provider whose schedule of rates and fees does not include a separate base charge to the lessee may request approval of a pass through of the base charge from the supplier to be included in the administrative fee resulting in a request for approval by the provider of a total monthly administrative fee greater than \$3.75. With the exception of base charges approved before August 1, 2004, all charges other than the administrative fee shall be based on lessees' metered consumption of water. All sewer service shall be measured based on the amount of water metered. Metered consumption of water shall be determined by metered measurement of all water consumed by the lessee, and not by any partial measurement of water consumption (i.e., ratio utility billing system (RUBS) and hot water capture, cold water allocation (HWCCWA) are not allowed), except as permitted in G.S. 62-110(g)(1a) and Commission Rule R18-8).

(b) A provider of water or sewer service may track increases in the unit consumption rate charged by the supplier of such service, and may (subject to limitations imposed by Commission Rules) change its administrative fee, by filing with the Commission a notification of revised schedule of rates and fees. Every notification of revised schedule of rates and fees shall be in such form and detail as the Commission may prescribe and shall include (1) the current schedule of the unit consumption rates charged by the provider, (2) the schedule of unit consumption rates charged by the supplier to the provider that the provider proposes to pass through to the provider's lessees, (3) the schedule of the unit consumption rates proposed to be charged by the provider, (4) the current administrative fee charged by the provider, and, if applicable, (5) the administrative fee proposed to be charged by the provider. Any such notification of revised schedule of rates and fees shall be presumed valid and shall be allowed to become effective simultaneously with the increase in the unit consumption rate of the supplier upon 14 days' notice to the Commission, unless otherwise suspended or disapproved by Commission Order issued within 14 days after filing.

(c) Every request for approval of a monthly fixed administrative fee in excess of \$3.75 shall include (1) the provider's current and proposed cost of meter reading, billing, and collection not to exceed the Commission-approved amount of \$3.75, (2) the current or proposed base charge from the supplier, if applicable, (3) the total proposed monthly fixed administrative fee, and (4) the number of lessees to whom water or sewer service is provided. Any such request shall be suspended for a period of 30 days after filing.

(d) The provider may impose a returned check charge, not to exceed the maximum authorized by G.S. 25-3-506, for a check on which payment has been refused by the payor bank because of insufficient funds or because the lessee did not have an account at that bank.

(e) No provider shall charge or collect any greater or lesser compensation for the costs of providing water or sewer service than the rates approved by the Commission.

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. WR-100, Sub 7, 01/10/12; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

## **R18-07 DISCONNECTION; BILLING PROCEDURE; METER READING**

(a) No charge for connection or disconnection, charge for late payment, or similar charge in addition to the rate specified in Rule R18-6 shall be allowed.

(b) A returned check charge as provided for in Rule R18-6(d) shall be allowed.

(c) No provider may disconnect water or sewer service for nonpayment.

(d) Bills shall be rendered at least monthly.

(e) The date after which a bill for water or sewer utility service is due, or the past due after date, shall be disclosed on the bill and shall not be less than 25 days after the billing date.

(f) A provider shall not bill for or attempt to collect for excess usage resulting from a plumbing malfunction or other condition which is not known to the lessee or which has been reported to the provider.

(g) Every provider shall provide to each lessee at the time the lease agreement is signed, and shall maintain in its business office, in public view, near the place where payments are received, the following:

- (1) A copy of the rates, rules and regulations of the provider applicable to the premises served from that office.
- (2) A copy of these rules and regulations.
- (3) A statement advising lessees that they should first contact the provider's office with any questions they may have regarding bills or complaints about service, and that in cases of dispute, they may contact the Commission either by calling the Public Staff - North Carolina Utilities Commission, Consumer Services Division, at (866) 380-9816 (toll-free) or 919-733-9277, or by appearing in person or writing the Public

Staff - North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300.

(h) Each provider shall adopt some means of informing its lessees as to the method of reading meters. Information on bills shall be governed by Chapter 7, Rule R7-23 and Chapter 10, Rule R10-19. Additionally, the bill shall contain a toll-free phone number for contacting the provider or the agent regarding service or billing matters. Adjustment of bills for meter error shall be governed by Chapter 7, Rule R7-25. Testing of water meters shall be governed by Chapter 7, Rules R7-28 through R7-33.

*(NCUC Docket No. WR-100, Sub 5, 08/01/04, 01/20/05; NCUC Docket No. M-100, Sub 140, 12/03/13; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

### **R18-08 HOT WATER CAPTURE, COLD WATER ALLOCATION**

(a) Pursuant to G.S. 62-110(g)(1a), if the leased premises are contiguous dwelling units built prior to 1989, and the provider determines that, due to the plumbing configuration of the building, measurement of the lessee's total water usage is impractical or is not economical, the provider may estimate each lessee's total water usage based upon the hot water usage of each lessee as a percentage of all of the lessees' hot water usage.

(b) The provider must file the appropriate application (Application for Certificate of Authority to Charge for Water and/or Sewer Service Utilizing the Hot Water Capture, Cold Water Allocation Method and for Approval of Rates for Apartment Complexes and Manufactured Home Parks) and receive Commission authorization prior to commencing utilization of the hot water capture, cold water allocation method of estimating water usage.

(c) The provider shall not include in a lessee's bill the cost of water and sewer service used in common areas or water loss due to leaks in the provider's water mains. A provider shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the lessee or that has been reported to the provider. The provider may choose to satisfy the common area water usage exclusion utilizing one of the following methods (the default method is method 1.):

- (1) The provider shall reduce the total water amount of water purchased by 20%;
- (2) Where all common areas are separately metered, the provider shall subtract the actual common area usage from the total amount of water purchased. The provider shall provide the Commission and the Public Staff with a quarterly report (filed 45 days after the end of each quarter) documenting the common area metered usage, the total amount of water purchased, and the computation of the lessees' bills;
- (3) Where no common areas are separately metered, the provider shall subtract 15% from the total amount of water purchased where there is an installed landscape irrigation system and subtract 5% from the total amount of water purchased for each swimming pool or laundry room. The provider shall provide the Commission and the Public Staff with a quarterly report (filed 45 days after the end of each quarter) documenting the common area allocated usage, the total amount of water purchased, and the computation of the lessees' bills; and
- (4) Where some common areas are separately metered and some are not metered, the provider shall subtract the actual common area usage from the total amount of water purchased and shall subtract 15% from the total amount of water purchased where there is an unmetered installed landscape irrigation system and subtract 5% from the total amount of water purchased for each unmetered swimming pool or laundry room. The provider shall provide the Commission and the Public Staff with a quarterly report (filed 45 days after the end of each quarter) documenting the common area metered usage, common area allocated usage, the total amount of water purchased, and the computation of the lessees' bills.

(d) The provider shall furnish a water/sewer utility bill to the lessees which clearly states that the hot water capture, cold water allocation method of estimating the bill has been utilized and contains the following information for each monthly billing period:

- (1) Total amount of water purchased by the provider;
- (2) Total amount of water purchased less the metered and/or allocated common area usage (utilizing one of the methods above (1-4));
- (3) Total amount of hot water measured for all lessees;
- (4) Amount of hot water measured for the individual lessee;
- (5) Amount of water the individual lessee is being billed;
- (6) Amount owed for the current billing period;
- (7) Beginning and ending dates for the billing period;
- (8) Past due date; and

- (9) A local or toll-free telephone number and address that the lessee can use to obtain more information about the bill.
- (e) The provider shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer usage.

*(NCUC Docket WR-100, Sub 7, 01/10/12; NCUC Docket No. WR-100, Sub 10, 04/04/2018.)*

**R18-09 RESERVED**

**R18-10 RESERVED**

**R18-11 APPLICATION** – RESCINDED AUGUST 1, 2004

**R18-12 DEFINITIONS** – RESCINDED AUGUST 1, 2004

**R18-13 UTILITY STATUS; CERTIFICATE** – RESCINDED AUGUST 1, 2004

**R18-14 COMPLIANCE WITH RULES** – RESCINDED AUGUST 1, 2004

**R18-15 RECORDS, REPORTS AND FEES** – RESCINDED AUGUST 1, 2004

**R18-16 VARIABLE RENT COMPONENT** – RESCINDED AUGUST 1, 2004

**R18-17 LEASES; CUSTOMER DEPOSITS; DISCONNECTION; BILLING PROCEDURE; METER READING** – RESCINDED AUGUST 1, 2004

**R19-01 ELECTRIC MEMBERSHIP CORPORATION REPORTING REQUIREMENTS**

(a) General. G.S. 117-18.1 allows electric membership corporations (EMCs) to own and operate separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, subject to certain conditions. One of those conditions is that the separate business entity fully compensate the EMC for the use of personnel, services, equipment, or tangible and intangible property of the EMC at the greater of a competitive price or the EMC's fully distributed costs. The Utilities Commission is empowered, upon complaint, to direct the EMC to adjust charges that do not comply with this condition and, if the EMC does not comply, to direct the EMC to divest its interest in the other business entity. To enforce G.S. 117-18.1(a)(3), the Commission, the Commission Staff, and the Public Staff are authorized to inspect the books and records of such other business entities and the EMCs, and the Commission is authorized to adopt rules and reporting requirements. G.S. 62-53 provides that in addition to any other authority granted in this Chapter, the Commission has the authority to regulate EMCs as provided in G.S. 117-18.1.

(b) Applicability. This rule is applicable to each EMC providing electric service in North Carolina.

(c) Reporting Requirements by Electric Membership Corporations. Each EMC that conducts activities pursuant to G.S. 117-18.1 shall file with the Commission the following:

- (1) a copy of its audited financial statements, on an annual basis;
- (2) a cost allocation manual, updated within 30 days of any significant change in cost allocation methodologies;
- (3) a code of conduct adopted by the board of directors of the EMC, updated not later than 30 days prior to the effective date of any change;
- (4) an annual report of investments in reportable separate business entity activities on a form prescribed by the Commission. "Reportable separate business entities" include all separate business entities that provide energy services and products, telecommunications services and products, water, or wastewater collection and treatment. For purposes of the required form, an "active" role is one in which the EMC has an ownership interest in a reportable separate business entity and provides personnel, services, equipment, tangible property, or intangible property to the reportable separate business entity. A "passive" role is defined as one in which the EMC has an ownership interest in a reportable separate business entity and does not provide personnel, services, equipment, tangible property, or intangible property to the reportable separate business entity. Participation by personnel of the EMC in the reportable separate business entity solely in an advisory or oversight role as a member of that entity's board of directors is not considered an "active" role for purposes of this section; and
- (5) an annual report on transactions between the EMC and reportable separate business entities by which the EMC is an active participant in the conduct of activities permitted by G.S. 117-18.1, on a form prescribed by the Commission and available through the Chief Clerk of the Commission. The financial statements and annual reports on investments and affiliated transactions shall each cover an annual reporting period of January 1st to December 31st and shall be filed as soon as possible after the

close of the calendar year but in no event later than May 1st of the year following the calendar year covered by financial statements and annual reports. The initial cost allocation manual and code of conduct shall be filed no later than 90 days after an EMC conducts its first activity permitted by G.S. 117-18.1. The financial statements and annual reports shall be verified by the oath of the chief executive officer of the EMC in accordance with the requirements of G.S. 62-53.

(d) Confidentiality of Information Submitted Pursuant to Rule. Any claim of confidentiality with regard to information submitted pursuant to this Rule shall be made with specificity by the EMC and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act. Consistent with G.S. 132-1.2, any claim of confidentiality made by an EMC shall relate to "trade secrets" as defined in G.S. 66-152(3) and shall be explicit; i.e., every page for which such a claim is asserted shall be clearly stamped "CONFIDENTIAL" at the time of the filing. In the event an interested person shall desire access to information claimed by the affected EMC to constitute a trade secret, the person desiring such access shall file a letter with the Chief Clerk of the Commission, with a copy to the affected EMC, requesting a determination as to the extent to which the information in question is actually protected from public disclosure under the Public Records Act.

(e) Electric Membership Corporations That Do Not Conduct Activities Permitted by G.S. 117-18.1. An EMC that does not conduct activities permitted by G.S. 117-18.1 during a calendar year shall only be required to file an annual statement to that effect, no later than May 1st of the following calendar year.

(NCUC Docket No. E-100, Sub 89, 05/16/01; NCUC Docket No. E-100, Sub 89, 11/09/10.)

#### **R20-01 SLAMMING, CRAMMING AND RELATED ABUSES IN THE MARKETING OF TELECOMMUNICATIONS SERVICES**

(a) No telecommunications provider shall submit, or cause to be submitted, a change order for preferred intraLATA interexchange carrier, interLATA interexchange carrier or local exchange carrier to any telecommunications company except in accordance with the procedures required by the current regulations of the Federal Communications Commission.

(b) If the Commission determines that a telecommunications provider has submitted, or caused to be submitted, a change order and cannot demonstrate that it has complied with subsection (a), the Commission shall make available to the customer the remedies authorized by the current regulations of the Federal Communications Commission, with respect to both interstate and intrastate service, and for this purpose the customer's authorized carrier may be made a party to the proceeding.

(c) (Reserved for future use.)

(d) No telecommunications provider shall provide any service to any customer for compensation, or submit or authorize any billing, unless and until the customer or the customer's representative has clearly, expressly and affirmatively agreed to purchase the service; provided, however, with respect to dial-around charges or per-use charges associated with vertical feature offerings of local providers and subject to forgiveness policies relating to the billing of charges, use of such services by an employee of the customer or by a member or guest of the customer's household shall be deemed to have been made under the authority of the customer. For purposes of this subsection, each day the provider continues to make the service available to the customer for compensation constitutes a separate violation, even if the customer does not actively make use of the service.

(e) Any telecommunications provider's telemarketing, direct mail or other forms of solicitation to change a customer's preferred local exchange carrier, intraLATA interexchange carrier, or interLATA interexchange carrier shall comply with the current regulations of the Federal Communications Commission regarding separate letters of authorization.

(f) As used in this section:

(1) "Express authorization" means an express, affirmative act by the customer or the customer's representative clearly agreeing to the change in preferred intraLATA interexchange carrier, interLATA interexchange carrier or local exchange carrier, in a manner consistent with this section and the regulations of the Federal Communications Commission.

(2) "Customer" means the party in whose name the telecommunications service is provided.

(3) "Customer's representative" means any adult person authorized by the customer to change telecommunications services, or contractually or otherwise lawfully authorized to represent the customer.

(4) "Telecommunications provider" means any public utility that provides telecommunications service.

(NCUC Docket No. P-100, Sub 148, 07/12/01; NCUC Docket No. P-100, Sub 165, 08/5/10.)

#### **R20-02 FAIR COMPETITION AMONG LOCAL TELECOMMUNICATIONS SERVICE PROVIDERS**

(a) For purposes of this rule, the following definitions shall apply:

(1) "Development" means a residential subdivision, office park, shopping center or other area with clearly defined boundaries being developed as a unified entity by one or more landlords or developers.

- (2) "Electing provider" means a preferred provider that has chosen to make subloops available to competitors pursuant to subsections (f) and (h) of this rule.
- (3) "Exclusive access provisions" are provisions of a preferred provider contract that prohibit the developer, manager, owner or other party controlling access to a development from allowing competitors of the preferred provider to enter upon the development premises or easements and rights-of-way appurtenant thereto, or provisions of a preferred provider contract that require the developer, manager, owner or other party controlling access to a development to impose restrictions or requirements on such third party access which are not imposed on the preferred provider and which are anticompetitive in nature.
- (4) "Exclusive provisioning provisions" are provisions of a preferred provider contract that prohibit the developer, manager, owner or other party controlling access to a development from allowing competitors of the preferred provider to provide services in a development or provisions of a preferred provider contract that require the developer, manager, owner or other party controlling access to a development to impose restrictions or requirements on the provisioning of such third party service which are not imposed on the preferred provider and which are anticompetitive in nature.
- (5) "Exempted provider" means a preferred provider that is a local exchange company and is not required under federal law to make subloops available to its competitors, or a preferred provider that is a competing local provider and would not, if it were a local exchange company, be required to make subloops available to its competitors.
- (6) "Local service provider" includes any competing local provider, as defined in G.S. 62-3(7a), and any local exchange company, as defined in G.S. 62-3(16a).
- (7) "Preferred provider" means a local service provider that has entered into a preferred provider contract.
- (8) "Preferred provider contract" means a contract between a particular local service provider and the owner or developer of a development, giving the preferred provider special status or rights not available to other local service providers.
- (9) "Weighted commission provisions" are provisions of a preferred provider contract providing for the payment of commissions to an owner or developer that (A) are based on the number of customers in the development who purchase service from the preferred provider, or (B) are based on a percentage of the revenues received by the preferred provider from customers in the development, or (C) otherwise provide a financial incentive for the owner or developer to exclude competitors of the preferred provider from the development.

(b) Exclusive provisioning provisions in preferred provider contracts are anticompetitive and void.

(c) Exclusive access provisions in preferred provider contracts are anticompetitive and void.

(d) Weighted commission provisions in preferred provider contracts are contrary to public policy and void, except as provided in subsections (f) and (g) below.

(e) Every preferred provider shall file with the Commission a Preferred Provider Notice. There shall be a single notice for each preferred provider, rather than separate notices for each development where a preferred provider contract exists. The notice shall comply with the following requirements:

- (1) For each development where the provider has entered into, or will enter into, a preferred provider contract, the Preferred Provider Notice shall provide the following information:
  - (A) The name and location of the development.
  - (B) The identity of the parties to the contract.
  - (C) The identity of the local exchange company, if any, in whose franchise area the development is located.
  - (D) Whether the contract includes exclusive provisioning provisions.
  - (E) Whether the contract includes exclusive access provisions.
  - (F) Whether the contract includes weighted commission provisions, and if so, whether the provider is filing an Electing Provider Attachment under subsection (f) of this rule or an Exempted Provider Attachment under subsection (g) of this rule.
- (2) The Preferred Provider Notice shall be filed within 21 days after the effective date of this rule, if the provider is a party to any existing preferred provider contract. Before entering into any new preferred provider contract, a local service provider shall file an updated Preferred Provider Notice (or a new notice, if it has not filed such a notice previously) containing the information provided in subdivision (1) above with respect to the new preferred provider contract. Before amending any preferred provider contract in a manner that affects the information in the Preferred Provider Notice, a local service provider shall file an updated Preferred Provider Notice.

(f) A preferred provider may become an electing provider by filing with the Commission an Electing Provider Attachment that meets the requirements of subdivisions (1) through (3) below. An electing provider, within the developments specified in its Electing Provider Attachment, may enter into preferred provider contracts containing weighted commission provisions and may continue to enforce existing preferred provider contracts containing such provisions.

- (1) The Electing Provider Attachment shall be attached to the electing provider's Preferred Provider Notice. It shall identify the name and location of each development to which it is applicable.
- (2) The Electing Provider Attachment shall state that within the developments to which it applies, the electing provider will make unbundled subloops available to its competitors pursuant to this rule. It shall specify the basic terms under which subloops will be offered, and such terms shall be consistent with this rule and any applicable orders of the Commission.
- (3) The Electing Provider Attachment may be updated to specify additional developments to which it is applicable. Any such update shall be filed before the electing provider enters into any preferred provider contract with weighted commission provisions relating to any of the additional developments.

(g) A preferred provider may become an exempted provider by filing with the Commission an Exempted Provider Attachment that meets the requirements of subdivisions (1) through (3) below. An exempted provider, within the developments specified in its Exempted Provider Attachment, may enter into preferred provider contracts containing weighted commission provisions and may continue to enforce existing preferred provider contracts containing such provisions.

- (1) The Exempted Provider Attachment shall be attached to the exempted provider's Preferred Provider Notice. It shall identify the name and location of each development to which it is applicable.
- (2) The Exempted Provider Attachment shall state either (A) that the exempted provider is a local exchange company and is not required by federal law to make subloops available to competitors in any of the developments to which the attachment is applicable, or (B) that the exempted provider is a competing local provider, and if it were a local exchange company, it would not be required by federal law to make subloops available to competitors in any of the developments to which the attachment is applicable.
- (3) The Exempted Provider Attachment may be updated to specify additional developments to which it is applicable. Any such update shall be filed before the exempted provider enters into any preferred provider contract with weighted commission provisions relating to any of the additional developments. For each development for which exemption is asserted in an initial or updated Exempted Provider Attachment, the provider shall submit an affidavit, signed by an engineer with direct personal knowledge of the facilities serving the development, that specifies with particularity the provider's factual and legal basis for asserting the exemption.
- (4) A local service provider may challenge an Exempted Provider Attachment by filing a petition seeking review of such Attachment with the Commission. In the event of such a challenge, the Public Staff shall investigate such challenge and file its report and recommendations concerning the merits of such challenge within 30 days of the filing of the challenge. The party asserting exemption shall bear the burden of demonstrating entitlement to the exemption by clear and convincing evidence. Any such challenge shall, to the extent practicable, be given priority on the Commission's docket.

(h) No local service provider may maintain a preferred provider contract in effect in any development unless it has duly filed with the Commission a Preferred Provider Notice that makes reference to the development, together with any applicable Electing Provider Attachment or Exempted Provider Attachment.

(i) Preferred Provider Notices, Electing Provider Attachments and Exempted Provider Attachments shall be subject to the following filing requirements:

- (1) Each preferred provider shall file its Preferred Provider Notice, together with any Attachments, in a docket to be designated by the Commission.
- (2) The first Preferred Provider Notice filed by a particular preferred provider shall be labeled "Preferred Provider Notice – Version 1." The first updated Preferred Provider Notice filed by such provider shall be labeled "Preferred Provider Notice – Version 2," and subsequent updates shall be numbered sequentially.
- (3) Whenever an Electing Provider Attachment or Exempted Provider Attachment is updated, the provider shall file an update of the entire Preferred Provider Notice, including the Attachments, with a new version number, even if the only changes are in one of the Attachments.

(j) When a competing local provider that is an electing provider receives a request from a competitor for subloops in a given development, the parties shall negotiate in good faith. If they are not able to reach agreement, the following requirements shall apply:

- (1) The subloops shall be provisioned within the same time period that the local exchange company in whose franchise area the development is located makes subloops available. If no such period exists, such subloops shall be provisioned within seven days.
- (2) At any point 60 or more days after the receipt of a bona fide request for subloop interconnection, either party may request the Commission to set a subloop rate for the electing provider.
- (3) There is a rebuttable presumption that the appropriate rate for a subloop is the applicable subloop rate of the local exchange company in whose franchise area the development is located. If there is no such rate in existence, then the rebuttably presumptive subloop rate is BellSouth's Zone 1 subloop rate.
- (4) The party seeking a departure from the rebuttably presumptive subloop rate shall have the burden of proof to demonstrate that such rate is not just and reasonable.
- (5) The Commission will fix the subloop rates for a competing local provider that is an electing provider on a company-wide basis in an initial contested proceeding. If the rate fixed by the Commission is different from the rate previously being paid by the subloop purchaser in the contested proceeding, a true-up shall be performed.

(k) Every preferred provider, within the development to which its preferred provider contract applies, shall make its service available to competitors for resale. If the preferred provider is a competing local provider, the following requirements shall apply:

- (1) Unless the competing local provider and the reseller agree on a different rate, the wholesale discount percentage offered by the competing local provider shall be the same wholesale discount percentage offered by the local exchange company in whose franchise area the development is located. If no such wholesale discount percentage has been determined, the discount percentage established for BellSouth in Docket No. P-140, Sub 50 shall apply.
- (2) If either party contends that the discount percentage provided for in subdivision (1) above is inappropriate, it may request the Commission to calculate the discount based specifically on the circumstances of the competing local provider. If the discount percentage fixed by the Commission is different from the percentage previously being paid by the reseller in the contested proceeding, a true-up shall be performed.

(l) In every development where a local service provider has entered into a preferred provider contract containing provisions that are void under subsections (b), (c) or (d) of this rule, the local service provider shall, within 21 days after the effective date of this rule, mail to each of the parties to the preferred provider contract a letter advising such party that certain portions of the contract have been determined to be void. The following materials shall be attached to the letter: a copy of the preferred provider contract, with the void provisions conspicuously marked; a copy of this rule; and a copy of the Commission's order adopting this rule.

(NCUC Docket No. P-100, Sub 152, 01/12/06)

#### **R21-01 APPLICATION**

(a) This rule governs both the complete cessation of telephone operations and the discontinuance or reduction of telephone service by local exchange companies (LECs) and competing local providers (CLPs), as defined in Commission Rule R17-1. It does not apply to disconnection of service to an individual customer for nonpayment in accordance with Chapter 12 of the Commission's Rules.

(b) This rule is directed toward the discontinuance or reduction of service by, or termination of service to, carriers whose customers are end users. In the event of a request for discontinuance or reduction of service by, or termination of service to, a carrier that provides both wholesale and retail service, or exclusively wholesale service, the Commission shall address such request in such manner as may be just, and shall, to the greatest possible extent, ensure that all affected parties, including but not limited to wholesale customers and end users, are afforded at least as much advance notice of cessation of service as provided for in these rules. Rule R21-3 is applicable to all bankruptcy filings, regardless of whether the bankrupt carrier provides wholesale service, retail service, or both.

(NCUC Docket No. P-100, Sub 162, 08/30/06.)

#### **R21-02 DISCONTINUANCE OR REDUCTION OF TELECOMMUNICATIONS SERVICE BY LECS AND CLPS**

(a) A LEC or CLP intending to cease operations or to discontinue or reduce the provision of telecommunications service in North Carolina shall seek permission from this Commission to abandon or reduce service in accordance with G.S. 62-118. The LEC or CLP shall file a petition for authority to discontinue or reduce service with the Commission not less than forty-

five (45) days prior to the date of discontinuance or reduction of telecommunications service. The petition shall include, at a minimum:

- (1) For each service offering to be discontinued, a description of the service offering, the number of customers that will be affected by the discontinuance, identification of any customers affected by the discontinuance that are themselves telecommunications carriers, identification of the underlying carrier(s), if any, for the offering, and the proposed date of discontinuance;
- (2) A description of customer notification efforts and copies of the written notice(s) sent or proposed to be sent to customers. If the notice is not consistent with the requirements of R21-4(g), the petition shall state why the proposed notice is sufficient;
- (3) A full explanation of the reasons for the proposed service discontinuance or reduction;
- (4) Details of any plan to migrate customers to other carriers and identification of the carrier(s) to whom the service(s) are to be migrated. If no migration plan is provided, the petition shall state why a plan is not necessary; and
- (5) If all North Carolina service offerings are being discontinued, a request for cancellation of the certificate(s) of public convenience and necessity of the LEC or CLP upon the approval of discontinuance. If cancellation of the certificate(s) is not requested, the carrier shall provide a concise statement explaining why the Commission should not cancel the certificate(s).

(b) Existing customers of the service(s) to be discontinued must be provided written notice sufficiently in advance of service reduction or discontinuance to allow an alternate service to be established without the customer incurring a lapse in service, and, in any event, not less than fourteen (14) days prior to the proposed service reduction or disconnection.

(c) In the event of discontinuance or reduction of local exchange service, the LEC or CLP shall include in customer notices and on its website a toll-free number that customers may call with inquiries prior to such discontinuance or reduction of local exchange service. Knowledgeable service representatives shall be available at the toll-free number to answer customers' questions.

(d) The Commission shall determine if sufficient notice has been provided or is proposed to be provided to customers and shall prescribe any additional notice or other requirements, as it deems necessary in the public interest.

(e) No discontinuance or reduction of telecommunications service shall be implemented until the Commission has ruled on the petition, issued an order, and determined that adequate notice has been provided to end user customers.

(f) Within seven (7) days following Commission approval of the discontinuance or reduction, the LEC or CLP shall post on its website, for its customers and other carriers, information that will assist in the orderly migration of customers.

(g) Unless the LEC or CLP has already arranged for all of the services which it proposes to discontinue to be transferred to another carrier, the LEC or CLP shall file with the Commission, within seven (7) days of receiving Commission approval of the discontinuance or reduction, a spreadsheet containing a list of billing names, addresses, and telephone numbers (or circuit numbers for non-switched services) for all customers affected by the discontinuation, except those with non-published numbers. For customers with non-published listings, the LEC or CLP shall provide only their billing names, addresses, and the NPA-NXX of their telephone numbers. The list shall specifically identify those end user customers who are public utilities, governmental agencies, inmate facilities or hospitals. If the LEC or CLP is facilities-based, the list shall also include circuit IDs, cable pair identification and a statement that the LEC or CLP will fully cooperate in the transfer of numbers to other providers through the Number Portability database. This list shall only be used to facilitate the transfer of the end user customers to their new service providers.

(NCUC Docket No. P-100, Sub 162, 08/30/06.)

### **R21-03 BANKRUPTCY**

(a) A LEC or CLP that is the subject of a petition under any provision of the federal Bankruptcy Code shall immediately file with the Commission the following materials and shall keep them updated through further filings with the Commission throughout the duration of the bankruptcy proceeding:

- (1) A complete copy of the bankruptcy petition;
- (2) The name, address, and telephone number of any trustee in its bankruptcy proceeding; and
- (3) The names, addresses and telephone numbers of all attorneys representing the LEC or CLP in its bankruptcy proceeding.

(b) During the pendency of the bankruptcy proceeding, the LEC or CLP shall file with the Commission, immediately upon their being filed with or issued by the Bankruptcy Court, the following materials:

- (1) Copies of all orders or rulings of the Bankruptcy Court that have an impact on the provision of North Carolina telecommunications service by the LEC or CLP, or on the discontinuance or reduction of such service;
- (2) Copies of any plan under Chapter 11 or any other chapter of the Bankruptcy Code that is approved by the Bankruptcy Court or is formally submitted to creditors for their approval or disapproval; and
- (3) Copies of any other documents filed with or issued by the Bankruptcy Court that the Commission directs the LEC or CLP to file.

(c) Nothing contained in this Rule is intended to interfere with the jurisdiction or authority of the Bankruptcy Court under the Bankruptcy Code.

(NCUC Docket No. P-100, Sub 162, 08/30/06.)

#### **R21-04 TERMINATION OF SERVICE TO CLPS BY UNDERLYING CARRIERS**

(a) An underlying carrier shall not terminate service to a CLP except as authorized under its interconnection agreement with the CLP; provided, however, that an underlying carrier shall not under any circumstances terminate service to a CLP because of (i) a default by a third party not affiliated with the CLP or (ii) a default occurring outside North Carolina that does not constitute failure to pay for North Carolina services. For good cause shown, the Commission may authorize an underlying carrier to terminate service to a CLP for failure to pay for services provided in another state, if termination under such circumstances is expressly provided for in the parties' interconnection agreement.

(b) In the case of billing disputes between a CLP and an underlying carrier, the parties shall make a good faith effort to work with each other in determining what portion, if any, of the bill for resale, unbundled network elements, or other services provided by the underlying carrier to the CLP is disputed and which portion is undisputed. The underlying carrier shall work with the CLP to resolve the billing dispute and arrange for payment of the outstanding charges, pursuant to the interconnection agreement between the underlying carrier and the CLP.

(c) In the event that the underlying carrier intends to cease providing service to the CLP for nonpayment or any other reason, it shall send to the CLP a notice of intent to disconnect or deny services to the CLP pursuant to the current interconnection agreement between the carriers. A copy of the notice(s) shall be filed with the Commission.

(d) The underlying carrier shall state the following in the notice:

- (1) The name, address and account number of the CLP;
- (2) A plain statement of the grounds upon which the right to disconnect or deny is founded, including the total amount owed, the non-disputed amount owed, the disputed amount owed, and the amount required to be paid to avoid interruption of service. If the underlying carrier provides service to the CLP in North Carolina and also in one or more other states, the portions of these amounts applicable to North Carolina services shall be stated separately; and
- (3) The exact date and time or range of dates and times the underlying carrier seeks to have service discontinued.

(e) The underlying carrier shall not disconnect or deny service to the CLP prior to the date and time (or range of dates and times) given on the notice of intent to terminate. In no case shall disconnection be effected less than thirty (30) days from the later of the date of mailing of the notice of intent or the filing of the notice with the Commission. If the last day of the thirty (30) day period falls on a Saturday, Sunday or legal holiday, the notice period will expire at the close of the underlying carrier's next business day. In order to ensure that the interests of customers are adequately protected, the Commission may issue directives to underlying carriers and CLPs to effectuate the intent of this Rule.

(f) The underlying carrier shall make its best efforts through coordination and timely attention to change requests from end users and other carriers involved in the services subject to discontinuation to assist in the orderly migration of customers. The underlying carrier and the CLP being disconnected shall provide the Public Staff, upon request, with the status of the customer conversions, including, to the extent available to them, the Local Service Request dates, Firm Order Confirmation dates, and Actual Installation dates.

(g) Upon the filing of the underlying carrier's notice of intent with the Commission, the Public Staff shall forthwith investigate the proposed termination of service and shall file a recommendation with the Commission concerning whether adequate notice has been or is proposed to be given by the CLP.

(h) At least fourteen (14) days before the date specified for termination, if the notice of termination has not been withdrawn and the Commission has not found the proposed termination to be without good cause, the CLP shall:

- (1) Provide the Commission with a complete list of all customers being served by the carrier, including the specific customer information referenced in Commission Rule R21-2(g); and

- (2) Notify all its affected customers, by direct mailing, of the proposed termination. The CLP shall provide this notice even if it anticipates resolving its dispute with the underlying carrier and even if it contends that the proposed termination is without good cause. The notice to the CLP's customers shall contain the following information in easily legible type:
- (i) A clear explanation that service to the customer is being terminated by (name of carrier);
  - (ii) The date on which the service will be terminated;
  - (iii) A statement that the customer must make arrangements with an alternate carrier to continue receiving local service;
  - (iv) If basic local exchange service is to be discontinued, a statement clearly explaining that the customer must obtain a new local provider by the date of service termination in order to continue to make local calls, including 911 calls;
  - (v) A toll-free number that can be reached by customers for any questions concerning the service termination; and
  - (vi) A statement explaining that the CLP will no longer make changes to or reconnect any existing service, or accept any orders for new service.
- (i) If the Commission determines that good cause for the proposed termination exists, it may authorize the termination, subject, however, to the provision that the CLP shall have first given adequate notice to its end users.
- (j) If the CLP has not given adequate notice to its customers as required by subsection (h) above, or is unwilling to do so, then the underlying carrier shall provide at least fourteen (14) days' notice of the proposed termination to the CLP's customers either by U.S. Mail, recorded announcement, or direct contact. If direct contact is employed, the underlying carrier is required to make at least three (3) attempts over a period of not less than two (2) days to contact each of the CLP's customers. The CLP shall reimburse the underlying carrier for the cost of notifying the CLP's customers of the disconnection of service.
- (k) The Commission may extend the fourteen (14) day and thirty (30) day notice periods provided herein for good cause.
- (l) The CLP shall return all deposits to customers and apply all appropriate credits associated with the discontinued service within thirty (30) days of the discontinuation.

(NCUC Docket No. P-100, Sub 162, 08/30/06; NCUC Docket No. P-100, Sub 162, 08/31/06.)

## CHAPTER 22

### PROVISION OF ELECTRIC SERVICE BY LESSORS

#### **R22-01 APPLICATION.**

Pursuant to G.S. 62-110(h), this Chapter governs the resale of electricity by a lessor of a single-family dwelling, residential building, or multiunit apartment complex that has individually metered units for electric service in the lessor's name, where the lessor charges the actual costs of providing electric service to each lessee.

(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/2012; NCUC Docket No. ER-100, Sub 0, 03/31/14; NCUC Docket No. ER-100, Sub 4, 04/24/2018.)

#### **R22-02 DEFINITIONS**

- (a) Lessee. A person who purchases electric service from a provider.
- (b) Lessor. A person, entity, corporation, or agency who owns a residential building, single-family dwelling, or multiunit apartment complex which is available for lease.
- (c) Multiunit apartment complex. Premises where one or more buildings containing multiple residential dwelling units under common ownership are available for rent to lessees. One or more multiunit apartment complexes may be known as the leased premises.
- (d) Provider. A lessor who purchases electric service from a supplier and charges for the costs of providing the service to lessees. A provider must be the owner of the premises served.
- (e) Residential building. A townhouse, row house, condominium, mobile home, building, or other structure used for residential purposes. One or more residential buildings may be known as the leased premises.
- (f) Single-family dwelling. An individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the house known as a yard, which is rented or available for rental as a residence. One or more single-family dwellings may be known as the leased premises.

(g) Supplier. A public utility or an agency or organization exempted from regulation from which a provider purchases electric service.

(h) Supplier's Unit Electric Service Bill. The actual amount charged by the supplier for the unit as a whole less any amount charged by the supplier that is not recoverable from the lessees, such as connection or disconnection charges, provider late fees, or amounts attributed to excess usage as provided in Rule R22-7(f).

(i) Common Area. The parts of the rental property that are not otherwise leased to lessees and that are available to or otherwise accessible to all lessees.

(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/2012; NCUC Docket No. ER-100, Sub 0; 03/31/2014; NCUC Docket No. ER-100, Sub 4, 04/24/2018.)

### **R22-03 UTILITY STATUS; CERTIFICATE**

(a) Every provider is a public utility as defined by G.S. 62-3(23)a.1. and shall comply with and be subject to all applicable provisions of the Public Utilities Act and all applicable rules and regulations of the Commission, except as hereinafter provided.

(b) A provider who charges for electric service under this Rule:

- (1) is solely responsible for the prompt payment of all bills rendered by the supplier and is the retail customer of the supplier subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of residential electric service to retail customers of the supplier;
- (2) is not considered a wholesale customer of the supplier; and
- (3) is not subject to the requirements of G.S. 62-133.8, 62-133.9, or Rules R8-67 through R8-69.

(c) No provider shall begin charging for the costs of providing electric service prior to applying for and receiving a certificate of authority from the Commission.

(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/2012; NCUC Docket No. ER-100, Sub 0, 03/31/14; NCUC Docket No. ER-100, Sub 4, 04/24/18.)

### **R22-04 APPLICATION FOR AUTHORITY**

(a) Every application for authority to charge for the costs of providing electric service shall be in such form and detail as the Commission may prescribe and shall include:

- (1) a description of the lessor, who is the applicant, including legal name and type of business entity, and a description of the property to be served, including business or marketing name, if any, street address, and number of units;
- (2) a description of the proposed billing method and billing statements;
- (3) the proposed method of allocating the supplier's charges to the lessees;
- (4) the administrative fee per lessee, returned check charge, and late payment charge, if any, proposed to be charged by the applicant, and the number of days after the bill is mailed or otherwise delivered when the late payment fee would begin to be applied;
- (5) the applicant's plans for retention and availability of records;
- (6) the name of and contact information for the applicant and its agents, including mailing address, email address, and telephone number;
- (7) the name of and contact information for the supplier of electric service to the applicant's rental property;
- (8) the current schedule of charges from the supplier;
- (9) a copy of the lease forms to be used by the applicant for lessees who are billed for electric service pursuant to this Chapter;
- (10) a statement indicating the particular provisions of the lease forms pertaining to billing for electric service;
- (11) the verified signature of the applicant or applicant's authorized representative;
- (12) the required filing fee;
- (13) an original of the application; and
- (14) any additional information that the Commission may require.

(b) An applicant may submit for authority to charge for electric service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application. However, if any of the information required by the application differs for different properties, the differences must be clearly explained.

(c) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an Order disapproving a completed application within 60 days, the

application shall be deemed approved; provided, however, no person or entity may charge for electric service in a manner inconsistent with Chapter 62 of the North Carolina General Statutes.

(d) An approved certificate of authority from the Commission to charge for the costs of providing electric service under these rules shall be delivered to the supplier from which the provider purchases electric service and include information in Rule R22-4(a)(1) and (6).

*(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/2012; NCUC Docket No. ER-100, Sub 0, 03/31/14; NCUC Docket Nos. ER-100, Sub 0, ER-100, Sub 2, 07/20/2015 & 07/23/2015; NCUC Docket No. ER-100, Sub 4, 04/24/2018; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

## **R22-05 BILLS OF THE PROVIDER**

(a) Bills for electric service sent by the provider to the lessee shall contain all of the following information:

- (1) the Supplier's Unit Electric Service Bill for the unit as a whole and the amount of charges allocated to the lessee during the billing period;
- (2) the name of the supplier;
- (3) the beginning and ending dates for the usage period and, if provided by the supplier, the date the meter for the unit was read for that usage period;
- (4) the past-due date, which shall not be less than 25 days after the bill is mailed or otherwise delivered to the lessee;
- (5) the name of the provider and a local or toll-free telephone number and address of the provider that the lessees can use to obtain more information about the bill;
- (6) the amount of administrative fee, returned check charge, and the late payment charge approved by the Commission and included in the bill, if any; and
- (7) a statement of the lessee's right to address questions about the bill to the provider and the lessee's right to file a complaint with, or otherwise seek recourse from, the Commission if the lessee cannot resolve an electric service billing dispute with the provider.

(b) The provider or the provider's billing agent shall equally divide the actual amount of the Supplier's Unit Electric Service Bill for a unit among all the lessees in the unit and shall send one bill to each lessee.

(c) The amount charged shall be prorated when a lessee has not leased the unit for the same number of days as the other lessees in the unit during the billing period.

(d) Each bill may include an administrative fee no greater than the amount authorized in Rule R18-6 for water service and, when applicable, a late payment charge no greater than the amount authorized in Rule R12-9(d) and a returned check charge no greater than the amount authorized in G.S. 25-3-506.

(e) A late payment charge may be applied to the balance in arrears after the past-due date.

(f) The provider may impose a returned check charge, not to exceed the maximum authorized by G.S. 25-3-506, for a check on which payment has been refused by the payor bank because of insufficient funds or because the lessee did not have an account at that bank.

(g) The provider shall not charge the cost of electric from any other unit or common area in a lessee's bill.

(h) No provider shall charge or collect any greater compensation for the costs of providing electric service than the rates approved by the Commission.

(i) The provider may, at the provider's option, pay any portion of any bill sent to a lessee, in accordance with the provisions of the lease; provided, however, that (1) the provider must still send each lessee bills in accordance with the other provisions in Rule R22-5; (2) the provider must credit lessee bills or otherwise refund to lessees the amount, if any, by which the amount specified in the lease exceeds the amount actually owed by the lessee for electric usage in the immediately preceding month; and (3) the provider must comply with G.S. 62-140 regarding non-discrimination in billing for utility service.

*(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/2012; NCUC Docket No. ER-100, Sub 1, 09/04/13; NCUC Docket No. ER-100, Sub 0, 03/31/14; NCUC Docket No. ER-100, Sub 0, 08/27/14; NCUC Docket Nos. ER-100, Sub 0, ER-100, Sub 2, 07/20/2015 & 07/23/2015; NCUC Docket No. ER-100, Sub 4, 04/24/2018.)*

## **R22-06 RECORDS, REPORTS AND FEES**

(a) The provider shall maintain for a minimum of 36 months records that demonstrate how each lessee's allocated costs were calculated for electric service, as well as any other electric service-related fees charged to each lessee.

(b) All records required to be maintained by the provider pursuant to section (a) shall be kept at the onsite management office or office(s) of the provider in North Carolina, or shall be made available at its onsite management office in North Carolina

upon request, and shall be available during regular business hours for examination by the Commission or Public Staff or their duly authorized representatives. Within three business days after a written request to the provider, a lessee may examine the records pertaining to the lessee's account during regular business hours and may obtain a copy of those records at a reasonable cost, which shall not exceed 25¢ per page. However, if a provider does not have an onsite management office at the multi-unit complex or in close proximity to the leased single-family dwelling, then the provider shall in good faith, upon written request, establish with the lessee a mutually-acceptable arrangement for the lessee to examine the records pertaining to the electric service for the leased dwelling unit occupied or previously occupied by the lessee. In the event that a provider and lessee are unable to reach agreement within 10 business days, the lessee may contact the Public Staff – North Carolina Utilities Commission, Consumer Service Division, at (866) 380-9816 (toll-free) or (919) 733-9277, or may write to the Public Staff – North Carolina Utilities Commission, Consumer Services Division, at 4326 Mail Service Center, Raleigh, North Carolina 27699-4300 for assistance in resolving the dispute. If the Public Staff determines that it cannot reasonably resolve the disagreement, the matter shall be referred to the Commission.

(c) Providers shall not be required to file an annual report to the Commission as required by Rule R1-32.

(d) Providers shall pay a regulatory fee and file a regulatory fee report as required by Rule R15-1.

(e) Special reports shall also be made concerning any particular matter upon request by the Commission.

(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/12; NCUC Docket No. ER-100, Sub 0, 03/31/14; NCUC Docket No. ER-100, Sub 4; 04/24/2018.).

### **R22-07 DISCONNECTION; BILLING PROCEDURE**

(a) Any payment to the provider shall be applied first to the rent owed and then to charges for electric service, unless otherwise designated by the lessee.

(b) No charge for connection or disconnection or late fee or deposit paid by the provider to the supplier shall be allowed, and no provider may terminate a lease for nonpayment of electric service.

(c) No provider may disconnect or request the supplier to disconnect electric service for the lessee's nonpayment of a bill.

(d) Bills shall be rendered at least monthly.

(e) The date after which a bill for electric service is due (the past-due date) shall be disclosed on the bill and shall not be less than twenty-five (25) days after the bill is mailed or otherwise delivered to the lessee.

(f) A provider shall not bill for or attempt to collect for excess usage resulting from a meter malfunction or other electric condition in appliances such as water heaters, HVAC systems, or ranges furnished by the provider to the lessee, when the malfunction is not known to the lessee or when the malfunction has been reported to the provider.

(g) Every provider shall provide to each lessee at the time the lease agreement is signed, and shall maintain in its business office, in public view, near the place where payments are received, the following:

(1) A copy of the rates, rules, and regulations of the provider applicable to the premises served from that office, with respect to electric service;

(2) A copy of these rules and regulations (Chapter 22); and

(3) A statement advising lessees that they should first contact the provider's office with any questions they may have regarding bills or complaints about service, and that in cases of dispute, they may contact the Commission either by calling the Public Staff - North Carolina Utilities Commission, Consumer Services Division, at (866) 380-9816 (toll-free) or (919) 733-9277, or by appearing in person or writing to the Public Staff - North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300.

(h) Each provider shall adopt a means of informing its lessees initially and on an annual basis as to the provider's method of allocating bills to the individual lessees and its administrative fee, returned check charge, and late fee, if any. A copy of the supplier's current schedule of charges shall also be included in these disclosures.

(i) Every provider shall promptly notify the Commission in writing of any change in the information required in Rule R22-4(a), except for changes in the rates and charges of the supplier (Rule R22-4(a)(8)).

If a provider anticipates that it will not pay a supplier's bill on time, or if the provider receives notice from the supplier of pending disconnection, whichever comes first, the provider must within 24 hours provide written notice to the Commission and all of the provider's affected lessees of the anticipated nonpayment or disconnection notice. A provider may not abandon or cease providing electric service to its lessees without advance permission from the Commission.

(NCUC Docket No. ER-100, Sub 0, 08/17/11; NCUC Docket No. ER-100, Sub 0, 04/19/2012; NCUC Docket No. ER-100, Sub 0, 03/31/14; NCUC Docket Nos. ER-100, Sub 0, ER-100, Sub 2, 07/20/2015 & 07/23/2015; NCUC Docket No. ER-100, Sub 4, 04/24/2018.).

## **CHAPTER 22 APPENDIX**

*(Repealed by NCUC Docket "No. ER-100, Sub 4, 04/24/2018.)*

## **CHAPTER 23 - PROVISION OF COMMUNICATIONS SERVICES BY CITIES**

### **R23-01 APPLICATION**

This Chapter exists to implement certain aspects of Session Law 2011-84, codified in large part in G.S. 160A-340, et seq., relating to this Commission's authority. This Chapter governs any city or joint agency that seeks to provide communications service in North Carolina, except as specifically exempted in S.L. 2011-84.

(NCUC Docket No. P-100, Sub 169, 02/28/12.)

### **R23-02 DEFINITIONS**

(a) The term "city" shall be defined as provided in G.S. 160A-1(2).

(b) The following terms shall be defined as provided in G.S. 160A-340: "city-owned communications service provider"; "communications network"; "communications service"; "high-speed Internet access service"; "interlocal agreement"; and "joint agency".

(c) The terms "cable service", "telecommunications service", and "video programming service" have the same meanings as in G.S. 105-164.3.

(d) The term "unserved area" shall be defined as provided in G.S. 160A-340.2(b).

(NCUC Docket No. P-100, Sub 169, 02/28/12.)

### **R23-03 PETITION FOR DETERMINATION OF AN UNSERVED AREA, OBJECTIONS TO DETERMINATION**

(a) A city that proposes to provide communications service to an unserved area shall first file a petition with the Commission for a determination that the area is unserved.

(b) The petition shall comply with Commission Rule R1-5 and provide sufficient information to demonstrate to the Commission that the area in question meets the definition of "unserved area." In addition to the information required in Rule R1-5, the petition shall also include the following:

- (1) A description of each census block proposed to be included in the unserved area;
- (2) Information on the current availability of high-speed Internet access service at the household level in the proposed unserved area; and
- (3) A letter or resolution in support of the determination from the appropriate governing body that is filing the petition.

(c) The Commission or Public staff may request additional information as needed.

(d) Procedure upon receipt of Petition – Upon the filing of a petition that meets the requirements set forth above:

- (1) The Commission will issue a procedural order stating that a petition for a determination of an unserved area has been received and that parties who wish to file an objection to the petition must file the objection in writing and in compliance with the provisions of Rule R1-5 within 60 days of the date of the procedural order. The Commission shall also post the procedural order on its website;
- (2) Upon its own initiative, the Commission may schedule a hearing to determine whether a determination should be made and require notice of the hearing to be published by the petitioner in the newspaper in the county or counties where the proposed unserved area is located;
- (3) If an objection is filed within 60 days of the procedural order, the Commission will schedule a hearing to consider whether a determination should be made and will give reasonable notice to the petitioner and to each objecting party. Following the hearing, the Commission will enter an order making the determination whether an area is unserved; and
- (4) If no objection is filed within the time specified, the Commission shall enter an order making the determination whether an area is unserved.

(e) No city shall begin providing communications service in an unserved area prior to receiving a determination from the Commission that the area is unserved.

(NCUC Docket No. P-100, Sub 169, 02/28/12.)

### **R23-04 NOTICE OF PROPOSAL TO PROVIDE SERVICE**

(a) Upon filing of a notice by a city or joint agency that proposes to provide communications services pursuant to G.S. 160A-340.3, the Commission shall post the notice of the proposal on the Commission's website. The notice must be filed with the Commission at least 45 days prior to first hearing scheduled in the notice and shall remain available on the Commission's website through the duration of the public hearings scheduled in the notice.

(b) A city may file a petition for determination of an unserved area pursuant to Commission Rule R23-3 contemporaneously with the notice requirements of this Rule.

(NCUC Docket No. P-100, Sub 169, 02/28/12.)

#### **R23-05 PUBLIC UTILITY STATUS OF CITY-OWNED COMMUNICATIONS SERVICE PROVIDER**

Except as provided in Sections 5 and 6 of S.L. 2011-84, G.S. 160A-340.2, and G.S. 62-2(b1), a city or joint agency that provides service as defined in G.S. 62-3(23)a.6. is a public utility and shall comply with all applicable provisions of the Public Utilities Act and all applicable rules and regulations of the Commission.

(NCUC Docket No. P-100, Sub 169, 02/28/12.)

### **chapter 24 - PROVISION OF NATURAL GAS SERVICE BY LESSORS**

#### **R24-01 APPLICATION**

Pursuant to G.S. 62-110(i), this Chapter governs the resale of natural gas by a lessor of a single-family dwelling, residential building, or multiunit apartment complex that has individually metered units for natural gas service in the lessor's name, where the lessor charges the actual costs of providing natural gas service to each lessee.

(NCUC Docket No. GR-100, Sub 0, 04/06/18.)

#### **R24-02 DEFINITIONS**

(a) Lessee. A person who purchases natural gas service from a provider.

(b) Lessor. A person, entity, corporation, or agency who owns a residential building, single-family dwelling, or multiunit apartment complex which is available for lease.

(c) Multiunit apartment complex. Premises where one or more buildings containing multiple residential dwelling units under common ownership are available for rent to lessees. One or more multiunit apartment complexes may be known as the leased premises.

(d) Provider. A lessor who purchases natural gas service from a supplier and charges for the costs of providing the service to lessees. A provider must be the owner of the premises served.

(e) Residential building. A townhouse, row house, condominium, mobile home, building, or other structure used for residential purposes. One or more residential buildings may be known as the leased premises.

(f) Single-family dwelling. An individual, freestanding, unattached dwelling unit, typically built on a lot larger than the structure itself, resulting in an area surrounding the house known as a yard, which is rented or available for rental as a residence. One or more single-family dwellings may be known as the leased premises.

(g) Supplier. A public utility or an agency or organization exempted from regulation from which a provider purchases natural gas service.

(h) Supplier's Unit Natural Gas Service Bill. The actual amount charged by the supplier for the unit as a whole less any amount charged by the supplier that is not recoverable from the lessees, such as connection or disconnection charges, provider late fees, or amounts attributed to excess usage as provided in Rule R24-7(f).

(i) Common Area. The parts of the rental property that are not otherwise leased to tenants and that are available to or otherwise accessible to all tenants.

(NCUC Docket No. GR-100, Sub 0, 04/06/18.)

#### **R24-03 UTILITY STATUS; CERTIFICATE**

(a) Every provider is a public utility as defined by G.S. 62-3(23)a.1. and shall comply with and be subject to all applicable provisions of the Public Utilities Act and all applicable rules and regulations of the Commission, except as hereinafter provided.

(b) A provider who charges for natural gas service under this Rule:

- (1) is solely responsible for the prompt payment of all bills rendered by the supplier and is the retail customer of the supplier subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of residential natural gas service to retail customers of the supplier; and
  - (2) is not considered a wholesale customer of the supplier.
- (c) No provider shall begin charging for the costs of providing natural gas service prior to applying for and receiving a certificate of authority from the Commission.

*(NCUC Docket No. GR-100, Sub 0, 04/06/18.)*

#### **R24-04 APPLICATION FOR AUTHORITY**

(a) Every application for authority to charge for the costs of providing natural gas service shall be in such form and detail as the Commission may prescribe and shall include:

- (1) a description of the lessor, who is the applicant, including legal name and type of business entity, and a description of the property to be served, including business or marketing name, if any, street address, and number of units;
- (2) a description of the proposed billing method and billing statements;
- (3) the proposed method of allocating the supplier's charges to the lessees;
- (4) the administrative fee per lessee, returned check charge, and late payment charge, if any, proposed to be charged by the applicant, and the number of days after the bill is mailed or otherwise delivered when the late payment fee would begin to be applied;
- (5) the applicant's plans for retention and availability of records;
- (6) the name of and contact information for the applicant and its agents, including mailing address, email address, and telephone number;
- (7) the name of and contact information for the supplier of natural gas service to the applicant's rental property;
- (8) the current schedule of charges from the supplier;
- (9) a copy of the lease forms to be used by the applicant for lessees who are billed for natural gas service pursuant to this Chapter;
- (10) a statement indicating the particular provisions of the lease forms pertaining to billing for natural gas service;
- (11) the verified signature of the applicant or applicant's authorized representative;
- (12) the required filing fee;
- (13) an original of the application; and
- (14) any additional information that the Commission may require.

(b) An applicant may submit for authority to charge for natural gas service for more than one property in a single application. Information relating to all properties covered by the application need only be provided once in the application. However, if any of the information required by the application differs for different properties, the differences must be clearly explained.

(c) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an Order disapproving a completed application within 60 days, the application shall be deemed approved; provided, however, no person or entity may charge for natural gas service in a manner inconsistent with Chapter 62 of the North Carolina General Statutes.

(d) An approved certificate of authority from the Commission to charge for the costs of providing natural gas service under these rules shall be delivered to the supplier from which the provider purchases natural gas service and include information in Rule R24-4(a)(1) and (6).

*NCUC Docket No. GR-100, Sub 0, 04/06/18; NCUC Docket No. M-100, Sub 147, 9/15/2023.)*

#### **R24-05 BILLS OF THE PROVIDER**

(a) Bills for natural gas service sent by the provider to the lessee shall contain all of the following information:

- (1) the Supplier's Unit Natural Gas Service Bill for the unit as a whole and the amount of charges allocated to the lessee during the billing period;
- (2) the name of the supplier;
- (3) the beginning and ending dates for the usage period and, if provided by the supplier, the date the meter for the unit was read for that usage period;
- (4) the past-due date, which shall not be less than 25 days after the bill is mailed or otherwise delivered to the lessee;

- (5) the name of the provider and a local or toll-free telephone number and address of the provider that the lessees can use to obtain more information about the bill;
  - (6) the amount of administrative fee, returned check charge, and the late payment charge approved by the Commission and included in the bill, if any; and
  - (7) a statement of the lessee's right to address questions about the bill to the provider and the lessee's right to file a complaint with, or otherwise seek recourse from, the Commission if the lessee cannot resolve a natural gas service billing dispute with the provider.
- (b) The provider or the provider's billing agent shall equally divide the actual amount of the Supplier's Unit Natural Gas Service Bill for a unit among all the lessees in the unit and shall send one bill to each lessee.
- (c) The amount charged shall be prorated when a lessee has not leased the unit for the same number of days as the other lessees in the unit during the billing period.
- (d) Each bill may include an administrative fee no greater than the amount authorized in Rule R18-6 for water service and, when applicable, a late payment charge no greater than the amount authorized in Rule R12-9(d) and a returned check charge no greater than the amount authorized in G.S. 25-3-506.
- (e) A late payment charge may be applied to the balance in arrears after the past-due date.
- (f) The provider may impose a returned check charge, not to exceed the maximum authorized by G.S. 25-3-506, for a check on which payment has been refused by the payor bank because of insufficient funds or because the lessee did not have an account at that bank.
- (g) The provider shall not charge the cost of natural gas from any other unit or common area in a lessee's bill.
- (h) No provider shall charge or collect any greater compensation for the costs of providing natural gas service than the rates approved by the Commission.
- (i) The provider may, at the provider's option, pay any portion of any bill sent to a lessee, in accordance with the provisions of the lease; provided, however, that (1) the provider must still send each lessee bills in accordance with the other provisions in Rule R24-5; (2) the provider must credit lessee bills or otherwise refund to lessees the amount, if any, by which the amount specified in the lease exceeds the amount actually owed by the lessee for natural gas usage in the immediately preceding month; and (3) the provider must comply with G.S. 62-140 regarding non-discrimination in billing for utility service.

*(NCUC Docket No. GR-100, Sub 0, 04/06/18.)*

#### **R24-06 RECORDS, REPORTS AND FEES**

- (a) The provider shall maintain for a minimum of 36 months records that demonstrate how each lessee's allocated costs were calculated for natural gas service, as well as any other natural gas service-related fees charged to each lessee.
- (b) All records required to be maintained by the provider pursuant to section (a) shall be kept at the onsite management office or office(s) of the provider in North Carolina, or shall be made available at its onsite management office in North Carolina upon request, and shall be available during regular business hours for examination by the Commission or Public Staff or their duly authorized representatives. Within three business days after a written request to the provider, a lessee may examine the records pertaining to the lessee's account during regular business hours and may obtain a copy of those records at a reasonable cost, which shall not exceed 25¢ per page. However, if a provider does not have an onsite management office at the multi-unit complex or in close proximity to the leased single-family dwelling, then the provider shall in good faith, upon written request, establish with the lessee a mutually-acceptable arrangement for the lessee to examine the records pertaining to the natural gas service for the leased dwelling unit occupied or previously occupied by the lessee. In the event that a provider and lessee are unable to reach agreement within 10 business days, the lessee may contact the Public Staff – North Carolina Utilities Commission, Consumer Service Division, at (866) 380-9816 (toll-free) or (919) 733-9277, or may write to the Public Staff – North Carolina Utilities Commission, Consumer Services Division, at 4326 Mail Service Center, Raleigh, North Carolina 27699-4300 for assistance in resolving the dispute. If the Public Staff determines that it cannot reasonably resolve the disagreement, the matter shall be referred to the Commission.
- (c) Providers shall not be required to file an annual report to the Commission as required by Rule R1-32.
- (d) Providers shall pay a regulatory fee and file a regulatory fee report as required by Rule R15-1.
- (e) Special reports shall also be made concerning any particular matter upon request by the Commission.

*(NCUC Docket No. GR-100, Sub 0, 04/06/18.)*

#### **R24-07 DISCONNECTION; BILLING PROCEDURE**

- (a) Any payment to the provider shall be applied first to the rent owed and then to charges for natural gas service, unless otherwise designated by the lessee.

- (b) No charge for connection or disconnection or late fee or deposit paid by the provider to the supplier shall be allowed, and no provider may terminate a lease for nonpayment of natural gas service.
- (c) No provider may disconnect or request the supplier to disconnect natural gas service for the lessee's nonpayment of a bill.
- (d) Bills shall be rendered at least monthly.
- (e) The date after which a bill for natural gas service is due (the past-due date) shall be disclosed on the bill and shall not be less than twenty-five (25) days after the bill is mailed or otherwise delivered to the lessee.
- (f) A provider shall not bill for or attempt to collect for excess usage resulting from a meter malfunction or other natural gas condition in appliances such as water heaters, HVAC systems, or ranges furnished by the provider to the lessee, when the malfunction is not known to the lessee or when the malfunction has been reported to the provider.
- (g) Every provider shall provide to each lessee at the time the lease agreement is signed, and shall maintain in its business office, in public view, near the place where payments are received, the following:
- (1) A copy of the rates, rules, and regulations of the provider applicable to the premises served from that office, with respect to natural gas service;
  - (2) A copy of these rules and regulations (Chapter 24); and
  - (3) A statement advising lessees that they should first contact the provider's office with any questions they may have regarding bills or complaints about service, and that in cases of dispute, they may contact the Commission either by calling the Public Staff - North Carolina Utilities Commission, Consumer Services Division, at (866) 380-9816 (toll-free) or (919) 733-9277, or by appearing in person or writing to the Public Staff - North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, North Carolina 27699-4300.
- (h) Each provider shall adopt a means of informing its lessees initially and on an annual basis as to the provider's method of allocating bills to the individual lessees and its administrative fee, returned check charge, and late fee, if any. A copy of the supplier's current schedule of charges shall also be included in these disclosures.
- (i) Every provider shall promptly notify the Commission in writing of any change in the information required in Rule R24-4(a), except for changes in the rates and charges of the supplier (Rule R24-4(a)(8)).
- (j) If a provider anticipates that it will not pay a supplier's bill on time, or if the provider receives notice from the supplier of pending disconnection, whichever comes first, the provider must within 24 hours provide written notice to the Commission and all of the provider's affected lessees of the anticipated nonpayment or disconnection notice. A provider may not abandon or cease providing natural gas service to its lessees without advance permission from the Commission.

*(NCUC Docket No. GR-100, Sub 0, 04/06/18.)*

## **Chapter 25 - Hire North Carolina, Resident Contractor Utilization**

### **R25-1 PURPOSE; APPLICABILITY; DEFINITIONS.**

- (a) Purpose. - For the purpose of promoting economic development, creating jobs, and improving the communities served by the utilities, the Commission urges utilities to maximize, consistent with law, the use of resident contractors for utility projects undertaken in the State of North Carolina. This rule shall serve as a tool to encourage and measure utility utilization of North Carolina resident contractors, subcontractors, vendors and businesses, including women- and minority-owned businesses. This rule is created to foster utility engagement with potential North Carolina contractors, providing ways to inform North Carolina companies of business opportunities. However, this rule shall not be interpreted to supersede any state statute, and nothing in this rule shall be construed to prevent a utility from choosing the lowest or best bidder for any project, or interfere with the mandate to serve the ratepayers or adequately respond to emergencies or support outages.
- (b) Applicability. - All contracts for construction, extension and/or repair of facilities or other utility projects located in North Carolina in excess of \$700,000.00 solicited by or on the behalf of any utility on or after July 1, 2020, shall be governed by this rule; provided, however, this rule shall not apply to planned or unplanned outage work, and nothing contained herein shall prohibit any utility from performing services covered by this rule with its own regularly-employed workforce.
- (c) Definitions. - As used in this rule, the following definitions shall apply:
- (1) Nonresident contractor - A prime contractor or subcontractor, be they corporate, individual or partnership, domiciled or having its principal place of business in a location other than the State of North Carolina that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.
  - (2) Prime contractor - Any party or person (who is not an employee of the utility or its affiliated or associated companies) who directly enters into any agreement with a utility for the furnishing of services.

- (3) Resident contractor - A prime contractor or subcontractor, be they corporate, individual, or partnership, domiciled or having its principal place of business in the State of North Carolina that wishes to enter into any agreement with the utility or prime contractor for any purpose covered by this rule.
- (4) Subcontractor - Any party or person, who is not an employee of the prime contractor or the utility, who directly enters into any agreement with a prime contractor: (i) for the furnishing of services; or (ii) under which any portion of the prime contractor's obligation under any contracts with the utility is performed or undertaken.
- (5) Utility - The following public utilities providing electric and natural gas service in North Carolina: Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; Dominion Energy North Carolina; Public Service Company of North Carolina, Inc.; and Piedmont Natural Gas Company, Inc.

*(NCUC Docket No. M-100, Sub 154, 6/18/19.)*

#### **R25-2 RESIDENT CONTRACTOR OUTREACH AND ASSISTANCE**

Each utility shall actively seek out opportunities to identify and assist potential resident contractors, including women- and minority-owned businesses, in order to expand the utility's contracting source pool within the State of North Carolina. The utility shall help enable contracting relationships with resident contractors by exercising reasonable efforts to explain utility qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures. The utility shall make available on its website lists of contract categories to assist resident contractors in determining which contract categories best align with the resident contractor's stated qualifications. The utility shall develop marketing program literature to provide to resident contractors and the business community summarizing its efforts pursuant to this rule. Such summaries shall state that the resident contractor will be furnished a complete copy of this rule upon request. Such summaries shall encourage the participation of resident contractors as prime contractors and subcontractors. The utilities are encouraged to explore opportunities for outreach involving North Carolina's institutions of higher education, community colleges, and other trade and technical schools to raise awareness of career opportunities in fields utilized by the public utility sector, with special emphasis on explanation of the contract bidding process.

*(NCUC Docket No. M-100, Sub 154, 6/18/2019.)*

#### **R25-3 HIRE NORTH CAROLINA LIST**

Each utility shall maintain a Hire North Carolina list consisting of resident contractors, including women- and minority-owned businesses, determined by the utility to be qualified to perform contracts within the scope of proposed utility projects. The utility shall publish on its website a notice requesting names of qualified resident contractors. A contractor wishing to be included on the Hire North Carolina list may certify to the utility that the contractor is a resident contractor as defined in Rule R25-1 above by any means the utility deems reasonable. Upon such certification, the utility shall add said contractor to the Hire North Carolina list.

*(NCUC Docket No. M-100, Sub 154, 06/18/2019.)*

#### **R25-4 PUBLICATION OF COMPETITIVE BIDDING**

In addition to the publication requirements of Rule R25-3 above, each utility is encouraged to pursue any additional means of publication in trade journals, social media, or any other reasonable avenue available. No contract shall be awarded to any prime contractor without the utility first providing to the prime contractor the utility's Hire North Carolina list for consideration of awarding subcontracts arising out of the prime contract.

*(NCUC Docket No. M-100, Sub 154, 06/18/2019.)*

#### **R25-5 RESIDENT CONTRACTOR BID FEEDBACK**

In any case in which a resident contractor is unsuccessful in a bid on a contract which is awarded to a nonresident contractor, the utility shall, at the request of any unsuccessful resident contractor bidder, and only after the contract has been executed, provide general, non-confidential information concerning the overall evaluation process between the resident contractor's bid as contrasted with the successful bid.

*(NCUC Docket No. M-100, Sub 154, 06/18/2019.)*

**R25-6 ANNUAL REPORT**

On or before March 1 of each year, the utility shall file a report with the Commission addressing compliance with this rule during the preceding calendar year. The report shall include relevant and material information from the prior year, including a copy of the utility's most recent Hire North Carolina list, a listing of all student outreach event opportunities afforded by the utility, the total number of contracts subject to this rule awarded by the utility in the previous year, a breakdown of how many of those contracts were awarded to resident contractors, including women- and minority-owned businesses, and how many to nonresident contractors, and a brief description of the type of work performed.

The utilities shall also summarize any outreach efforts undertaken pursuant to Rule R25-2 above, including the response to and perceived impact of such efforts.

Upon request of the utility or by order of the Commission, a public hearing for discussion of the annual report may be held after it has been filed by the utility. The public hearing should protect confidential information including, but not limited to, the identity of the contractors and costs.

*(NCUC Docket No. M-100, Sub 154, 06/18/2019.)*

**R25-7 COST RECOVERY**

The utilities shall be allowed to recover all prudently incurred incremental costs associated with compliance with this rule.

*(NCUC Docket No. M-100, Sub 154, 06/18/2019.)*