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Utilities and Energy

This chapter reviews 1999 legislation concerning utilities regulation and energy. In an otherwise low-profile year for utilities and energy legislation, the General Assembly refereed a pitched battle among competing business interests over an expansion of the authority of electric membership corporations into for-profit businesses. It also addressed a few routine matters involving electric service, energy, railroads, telecommunications, and the Utilities Commission.

Electricity

Future of Electric Service

S.L. 1999-122 (H 778) expands the Study Commission on the Future of Electric Service in North Carolina by six members, three Senators appointed by the President Pro Tempore of the Senate and three House members appointed by the Speaker of the House. As a result of this change, the twenty-nine members of the commission will include:

- nine Senators appointed by the President Pro Tempore;
- nine House members appointed by the Speaker;
- three other appointees (nonlegislators) each of the President Pro Tempore and the Speaker;
- one appointee (a member of the environmental community) of the Governor;
- the chief executive officers, respectively, of Duke Power Company, Carolina Power and Light Company, ElectriCities of North Carolina, and the North Carolina Electric Membership Corporation.

Electric Membership Corporations

Electric membership corporations (EMCs), commonly known as electric cooperatives or “co-ops,” provide electric service to many rural areas in North Carolina and throughout the United States. This session the EMCs were authorized, by S.L. 1999-180 (H 476), to expand their service

into various utility-related for-profit businesses, “ranging from appliance repair to propane sales to Internet service.”¹

H 476, as originally introduced, authorized the EMCs to form, operate, and own business entities engaged in any lawful activities, whether or not within their corporate purposes. In an effort to forestall political opposition, the original bill stipulated that these entities would not be financed by loans from the Rural Utilities Service of the U.S. Department of Agriculture and would be subject to all taxes levied against business entities. Nonetheless, opposition to the bill soon surfaced from a coalition of opponents that ranged from petroleum marketers, propane gas distributors, electrical contractors, convenience stores, and retail merchants to cable telecommunications businesses and other small businesses.

The sponsors of H 476 made a series of concessions that resulted in the addition of the following provisions:

- EMCs must be fully compensated for the use of personal services, equipment, and property in accordance with a prescribed methodology. These charges are subject to review upon complaint by the Utilities Commission.
- The business entities must be organized under either G.S. Chapter 55 or 57C and cannot receive from an EMC any investment, loan, guarantee, or pledge exceeding 10 percent of the EMC’s assets.
- An EMC may not organize business entities to engage in the oil distribution business (including liquefied petroleum gas) but may acquire businesses already engaged in these activities.
- No EMC director (or director’s spouse) may be employed in or have a financial interest in a business entity formed by an EMC.
- A regulatory fee will be imposed on the North Carolina Electric Membership Corporation beginning with the 1999–2000 fiscal year in order to fund the Utilities Commission’s review of transactions involving EMC subsidiaries.

Municipal Electric Service

S.L. 1999-111 (S 658) extends the sunset date when a 1997 statute concerning local electric service would have expired (July 31, 1999) to December 31, 2003. The 1997 statute, S.L. 1997-346, addressed the effect of municipal annexation and incorporation on electric service in areas that the Utilities Commission had assigned to specific suppliers before the annexation or incorporation. It provided that, with the city’s written consent, those “secondary” suppliers may be the exclusive providers of electric service in the previously assigned areas. It also allowed an electric membership corporation to vote by proxy on decisions to encumber corporate property or to dissolve the corporation.

S.L. 1999-224 (H 755) adds to the purposes for which municipal service districts may be created “lighting at interstate highway interchange ramps.” It applies only to towns with a population of 2,000 to 2,500 persons located in a county with a land area of more than 946 square miles.

Energy

Local Government Energy Savings Contracts

S.L. 1999-235 (S 56) eliminates the statutory sunset date of July 1, 1999, for local governments to enter into energy savings contracts with qualified providers. (This means that this authorization has been made permanent.) It also extends the allowable term of such contracts from eight to twelve years, beginning with the installation and acceptance of the energy conservation

¹ Raleigh *News and Observer*, April 21, 1999, Section 1, page 1.

measures. The law makes clarifying changes in the definitions of energy conservation measures and of energy savings.

Railroads

Crossings

S.L. 1999-274 (H 1054) amends the grade crossing statute to require that activity buses, as well as school buses, must stop at all railroad grade crossings—without exception—within fifteen to fifty feet from the nearest rail.

Railroad Study Commission

Section 27.25 of S.L. 1999-237 (H 168) establishes a study commission to report before May 1, 2000, on the future of the North Carolina Railroad. The Speaker of the House of Representatives and the President Pro Tempore of the Senate are to appoint eight House members and eight Senate members, respectively, to the commission. The study is not to delay ongoing contract negotiations with the Research Triangle Regional Public Transportation Authority or the Norfolk Southern Railway Company.

Telecommunications

Universal Telephone Service

S.L. 1999-112 (S 1008) allows the North Carolina Utilities Commission an additional two years to adopt final rules concerning universal local exchange telephone service by extending the deadline for adoption from July 1, 1999, to July 1, 2001. The rules are to address the provision of universal services in a certified area, the person who shall be the universal service provider, and whether the service shall be funded through interconnection rates or otherwise.

Telecommunications Relay Service for Vision Impaired

S.L. 1999-402 (S 547) directs the Utilities Commission to establish an equipment distribution program for hearing or speech impaired persons who also have vision impairment. The Department of Health and Human Services is to administer the program. (The previous statute required a program for hearing or speech impaired persons without reference to vision impairment.) The commission may allow the department to use up to four cents per access line per month of the current surcharge for this service. The commission and public staff will audit the program, and the department is to report to the Revenue Laws Study Committee on the relay service program.

Utilities Commission

Appointments

The General Assembly confirmed the appointment of Robert Koger to the Utilities Commission to fill the unexpired term of Allyson K. Duncan, ending June 30, 1999. Res. 1999-3 (SJR 32). It then confirmed the appointment of Samuel James Ervin IV for a full eight-year term beginning July 1, 1999, at the expiration of Koger's term, Res. 1999-8 (SJR 975).

Compensation

Section 28.21 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), allows each member of the Utilities Commission who lives at least fifty miles from Raleigh a weekly travel allowance at the state reimbursement rate for each week the member travels from home to Raleigh on commission business. This is in addition to standard reimbursement for travel and subsistence.

Regulatory Fee

G.S. 62-302(b) sets a regulatory fee on public utilities under the commission's jurisdiction to defray the cost of regulation. The amount of the fee is set by the General Assembly. S.L. 1999-413 (H 1289) establishes a rate of 0.09 percent of each public utility's jurisdictional revenues for the 1999-2000 fiscal year. The act also imposes an annual fee of \$200,000 for the 1999-2000 fiscal year on the Electric Membership Corporation under G.S. 62-302(b1) as enacted by S.L. 1999-180.

Local Acts

Water Bills; Underground Utilities

S.L. 1999-127 (H 462) adds the towns of Chadbourn and Mount Gilead, and Montgomery County, to the list of local governments authorized to collect water and sewer bills as if they were taxes. It also establishes an enabling framework to allow Dare County to create one or more special utility districts for underground electric utility lines and to levy taxes up to \$1 per month for residential customers and \$5 per month for commercial and industrial customers within the district. The taxes are to be collected by electric utilities as part of their monthly bills. Municipalities may "annex" themselves to the district with the county's approval.

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