

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1395
Committee Substitute Favorable 7/18/07

Short Title: Electric Suppliers/Electricities Assignment.

(Public)

Sponsors:

Referred to:

April 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE UTILITIES COMMISSION TO REASSIGN
TERRITORIES OF CERTAIN ELECTRIC SUPPLIERS TO MUNICIPAL
ELECTRIC SUPPLIERS IN THE ABSENCE OF APPROVED TERRITORIAL
AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-331.2 reads as rewritten:

"§ 160A-331.2. Agreements of electric suppliers.

(a) The General Assembly finds and determines that, in order to avoid the unnecessary duplication of electric facilities and to facilitate the settlement of disputes between cities that are primary suppliers and other electric suppliers, it is desirable for the State to authorize electric suppliers to enter into agreements pursuant to which the parties to the agreements allocate to each other the right to provide electric service to premises each would not have the right to serve under this Article but for the agreement, provided that no agreement between a city that is a primary supplier and another electric supplier shall be enforceable by or against an electric supplier that is subject to the territorial assignment jurisdiction of the North Carolina Utilities Commission until the agreement has been approved by the Commission. The Commission shall approve an agreement entered into pursuant to this section unless it finds that such agreement is not in the public interest. Such agreements may allocate the right to serve premises by reference to specific premises, geographical boundaries, or amounts of unspecified load to be served, but no agreement shall affect in any way the rights of other electric suppliers who are not parties to the relevant agreement. The provisions of this section apply to agreements relating to electric service inside and outside the corporate limits of a city.

(b) ~~During the period beginning June 1, 2005, and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of~~

1 June 1, 2005, and the development of agreements relating to the provision of electric
2 services, the location of lines, and the areas within which electric services may be
3 provided by such electric suppliers. To the extent such negotiations produce any
4 agreements between the affected electric suppliers, such agreements shall be submitted
5 to the North Carolina Utilities Commission for approval under this section. To the
6 extent such negotiations do not produce an agreement and disputes among the suppliers
7 remain as of May 31, 2007, such disputes shall be resolved pursuant to the provisions of
8 G.S. 7A-38.3C(i).

9 (c) Any electric supplier subject to the territorial assignment jurisdiction of the
10 North Carolina Utilities Commission pursuant to G.S. 62-110.2 that, as of January 1,
11 2008, has less than 150,000 retail customers within this State, or a city that owns and
12 maintains its own electric distribution lines, may petition the North Carolina Utilities
13 Commission under this subsection at any time with respect to the provision of electric
14 service within any area not covered by a service area agreement filed with and approved
15 by the Commission under this section. Upon the filing of a petition and the payment of
16 a filing fee of five hundred dollars (\$500.00) by a petitioner, the Commission shall
17 have and exercise the authority to reassign some or all of the affected portion of the
18 previously assigned territory of the involved electric supplier as territory to be served
19 solely by the involved electric supplier, territory to be served solely by the involved
20 city, or territory to be designated as unassigned territory and subject to customer choice
21 as between the involved electric supplier and the involved city. In making any such
22 assignments or reassignments, the Commission shall consider public convenience and
23 necessity, the geography of the affected area, the existing infrastructure to provide
24 service in or near that area, the investments previously made to provide service within
25 or near that area, the utilization of existing facilities already installed in or near the
26 affected area, the desires of consumers within the affected area, the engineering and
27 technical effects on the systems of the competing suppliers of providing service in or
28 near the affected area, and the potential adverse impact of loss of previously assigned
29 service territory by the involved electric supplier. The Commission shall not consider
30 rate differentials between the involved city and the involved electric supplier.

31 (d) Notwithstanding an assignment or reassignment pursuant to subsection (c) of
32 this section:

33 (1) Any electric supplier or city may furnish electric service to any
34 consumer who desires service from that electric supplier or city at any
35 premises being served by another electric supplier or city, or at
36 premises which another electric supplier or city has the right to serve
37 pursuant to subsection (c) of this section, upon agreement of the
38 affected electric supplier or city, subject to approval by the
39 Commission.

40 (2) The Commission shall have the authority and jurisdiction, after notice
41 to all affected electric suppliers and cities and after a hearing, if a
42 hearing is requested by any affected electric supplier or city, or any
43 other interested party, to order any electric supplier or city which may
44 reasonably do so to furnish electric service to any consumer who

1 desires service from that electric supplier or city at any premises being
2 served by another electric supplier or city pursuant to subsection (c) of
3 this section or subdivision (1) of this subsection, or which another
4 electric supplier or city has the right to serve pursuant to subsection (c)
5 of this section or subdivision (1) of this subsection, and to order the
6 other electric supplier or city to cease and desist from furnishing
7 electric service to such premises, upon finding that service to the
8 consumer by the electric supplier or city which is then furnishing
9 service, or which has the right to furnish service to those premises, is
10 or will be inadequate or undependable, or that the rates, conditions of
11 service or service regulations, applied to such consumer, are
12 unreasonably discriminatory.

13 (e) Assignments or reassignments made or approved by the Commission
14 pursuant to subsection (c) or (d) of this section shall be deemed to be service area
15 agreements approved pursuant to subsection (a) of this section and shall survive
16 annexation of all or any part of the affected territories assigned or reassigned in that
17 order or approval."

18 **SECTION 2.** G.S. 117-10.2 reads as rewritten:

19 **"§ 117-10.2. Restriction on municipal service.**

20 Except as otherwise provided in this section, no electric membership corporation
21 shall furnish electric service to, or within the limits of, any incorporated city or town,
22 except pursuant to a franchise that may be granted under the provisions of
23 G.S. 117-10.1, or as permitted under G.S. 160A-331, ~~160A-331.1~~, 160A-331.2,
24 160A-332, and 160A-333. In addition, an electric membership corporation may furnish
25 electric service to, or within the limits of, any incorporated city or town if the city or
26 town and all electric suppliers, including public utilities, other electric membership
27 corporations and other cities or towns, then furnishing electric service to or within such
28 city or town consent thereto in writing."

29 **SECTION 3.** G.S. 117-10.3 and G.S. 160A-331.1 are repealed. Agreements
30 previously entered into pursuant to G.S. 117-10.3 and G.S. 160A-331.1 shall not be
31 affected by this repeal.

32 **SECTION 4.** G.S. 7A-38.3C is repealed. Any territorial disputes submitted
33 to the Public Staff of the North Carolina Utilities Commission pursuant to
34 G.S. 7A-38.3C(i) are vacated without prejudice to any party to submit the same or
35 similar disputes to the North Carolina Utilities Commission pursuant to
36 G.S. 160A-331.2(c), as enacted by this act.

37 **SECTION 5.** G.S. 160A-331.2(c), (d), and (e), as enacted by this act,
38 become effective January 1, 2008. The remainder of this act is effective when it
39 becomes law.