

1999-2000

**HOUSE
PUBLIC UTILITIES
COMMITTEE**

MINUTES

**HOUSE PUBLIC UTILITIES COMMITTEE
1999-2000**

REP. RONNIE SMITH, CHAIR

REP. ZENO EDWARDS, VICE-CHAIR

REP. DREW SAUNDERS, VICE-CHAIR

RESEARCH STAFF:

Steve Rose

Esther Manheimer

COMMITTEE ASSISTANTS:

1999 – Jane Bass

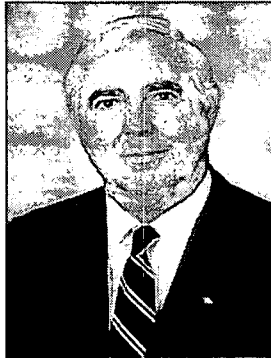
2000 – Ann Jordan

**HOUSE COMMITTEE ON PUBLIC UTILITIES
1999 SESSION**

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
SMITH, Ronnie, Chair	Jane Bass Committee Assistant	733-5773	2223	2
BRASWELL, Jerry	Blinda Edwards	715-3001	420	96
CREECH, Billy	Tina Covington	733-5609	1409	52
CULPEPPER, Bill	Dot Crocker	715-3028	404	36
DAUGHTRY, Leo	Bernice Bullard	733-5868	510	30
EARLE, Beverly	Ann Raeford	733-5747	535	95
EDWARDS, Zeno Vice-Chair	Jo Hinton	733-5906	637	91
GRADY, Robert	Peggy Murray	715-9644	616	42
HARDAWAY, Thomas	Rita Harris	715-2530	634	60
HOLMES, George	Glenda Jacobs	733-5771	2119	29
HURLEY, Bill	Melissa Riddle	733-5601	2215	23
McCOMAS, Danny	Jayne Walton	733-5786	606	111
McCOMBS, Gene	Suzanne Erskine	733-5881	514	75
MILLER, George	Betty Angell	733-5995	532	43
MITCHELL, Frank	Susan West	733-5931	513	77
ROGERS, Gene	Sally Gillis	715-3023	416A	35
SAUNDERS, Drew Vice-Chair	Ruth Fish	733-5776	1219	82
STARNES, Edgar	Pattie Fleming	715-9664	617	112
Committee Counsel				
Steve Rose		733-2578	545	
Esther Manheimer		733-2578	545	

HOUSE PUBLIC UTILITIES COMMITTEE

1999-2000



Rep. Smith,
Chair



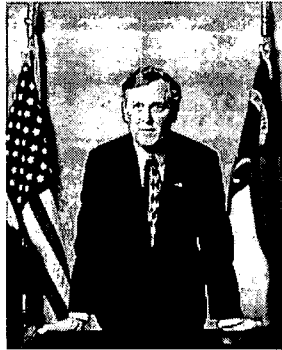
Rep. Edwards,
Vice Chair



Rep. Saunders,
Vice Chair



Rep. Braswell



Rep. Creech



Rep. Culpepper



Rep. Daughtry



Rep. Grady



Rep. Earle



Rep. Hardaway



Rep. Holmes



Rep. Hurley



Rep. McComas



Rep. McCombs



Rep. Miller



Rep. Mitchell



Rep. Rogers



Rep. Starnes

NORTH CAROLINA GENERAL ASSEMBLY
COMMITTEE SUMMARY REPORT
HOUSE: PUBLIC UTILITIES

1999-2000 Biennium

Valid Through 10-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 476=	TOLSON	EMC SUBSIDIARIES	*R -CH. SL 99-0180	03-17-99	04-26-99
H 777=	MCCOMAS	FUTURE OF ELECTRIC SERVICE/FUNDING	H -RE-REF COM ON APPROP	03-31-99	05-12-99
H1032=	CULPEPPER	UNDERGROUND UTILITY DAMAGE AMEND.	S -RE-REF COM ON RULES &	04-14-99	04-27-99
H1080=	ALLEN	TELEPHONE SOLICITATION	H -REF TO COM ON PUBUTIL	04-15-99	
H1136=	CULP	FREEDOM TO CHOOSE CLEAN ENERGY	H -REF TO COM ON PUBUTIL	04-15-99	
H1349=	MILLER G	CONFIRM SAMUEL J. ERVIN, IV	S -REF TO COM ON COMMERCE	04-27-99	04-28-99
S 32	SOLES	CONFIRM ROBERT KOGER	R -CH. RES 99-03	03-02-99	03-17-99
S 547	HOYLE	TELECOMMUNICATIONS RELAY SERVICE	*R -CH. SL 99-0402	07-01-99	07-08-99
S 658	DALTON	EXTEND SUNSET/MUN. ELECTRIC AMEND	*R -CH. SL 99-0111	04-20-99	05-12-99
S 975=	SOLES	CONFIRM ERVIN	R -CH. RES 99-08	04-27-99	05-06-99
S1008	HOYLE	EXTEND UNIV. SERVICE DEADLINE	R -CH. SL 99-0112	04-28-99	05-12-99

NOTES- = AFTER BILL NUMBER SHOWS THAT BILL IS IDENTICAL, AS INTRODUCED, TO ANOTHER BILL.

* AFTER NUMBERS INDICATES THAT TEXT OF BILL WAS ALTERED BY ACTION ON THE BILL.

BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

2008

2008

DATES		3/17	4/4	4/21	4/23	4/27	4/28	5/5	5/12	7/8	5/31	4/7				
SMITH, Ronnie	CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓				
Ford, Jimmy BRASWELL, Jerry		✓	✓	✓	✓		✓				✓	✓				
CREECH, Billy		✓	✓	✓	✓	✓				✓						
CULPEPPER, Bill				✓	✓	✓										
DAUGHTRY, Leo		✓	✓	✓	✓											
EARLE, Beverly		✓	✓	✓	✓		✓									
EDWARDS, Zeno	V-CHAIR	✓	✓	✓	✓	✓	✓	✓	✓		✓					
GRADY, Robert		✓		✓	✓				✓		✓	✓				
Hall, John HARDAWAY, Thomas		✓	✓	✓	✓		✓				✓	✓				
HOLMES, George		✓	✓	✓	✓	✓					✓					
HURLEY, Bill		✓	✓	✓	✓		✓		✓		✓	✓				
McCOMAS, Danny			✓	✓	✓				✓		✓	✓				
McCOMBS, Gene		✓	✓	✓	✓	✓				✓	✓					
MILLER, George		✓	✓	✓	✓	✓	✓	✓	✓		✓					
MITCHELL, Frank		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓				
ROGERS, Gene		✓	✓	✓	✓	✓	✓	✓			✓					
SAUNDERS, Drew	V-CHAIR	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓				
STARNES, Edgar				✓	✓				✓	✓	✓					
Ex Officio Members																
BADDOUR, Phil					✓		✓									
CUNNINGHAM, Pete							✓									
DEDMON, Andy					✓		✓			✓	✓					
HACKNEY, Joe							✓									
Research Staff																
Esther Manheimer		✓	✓	✓	✓				✓	✓						
Steve Rose		✓	✓	✓	✓	✓	✓	✓	✓	✓						

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

March 17, 1999

Room 544

10:00 AM

OPENING REMARKS

Rep. Ronnie Smith, Chair

PRESENTATION OF SJR 32 – Confirm Robert Koger to the NC Utilities Commission

ADJOURNMENT

Minutes
House Committee on Public Utilities
March 17, 1999

The House Committee on Public Utilities met Wednesday, March 17, 1999 in Room 544 of the Legislative Office Building at 10:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; and Representatives Braswell, Creech, Daughtry, Earle, Grady, Hardaway, Holmes, Hurley, McCombs, Miller, Mitchell and Rogers. Research Staff members Esther Manheimer and Steve Rose were present. A Visitor Registration list is attached (Attachment I) and made part of the minutes.

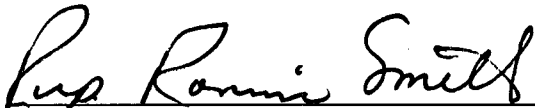
The Chair called the meeting to order and introduced staff members. Pages Valerie Gardiner and Latasha Trice from Wake County and Andrew Payouk from New Hanover County were introduced. The Committee members introduced themselves.

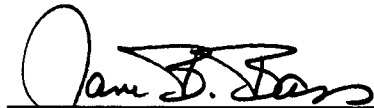
Senator R. C. Soles, Jr., bill sponsor, was recognized to speak for SJR 32 – A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT KOGER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION. Others speaking in support of Robert Koger were Jo Anne Sanford, Chair of the Utilities Commission; and Judy Hunt and Richard Conder, members of the Utilities Commission. Robert Koger was then introduced and he entertained questions from the Committee. Committee handouts concerning the SJR 32 and Robert Koger are attached (Attachments II and III) and made a part of the minutes.

Representative Drew Saunders moved for a favorable report and the motion carried.

The meeting was adjourned at 10:35 a. m.

Respectfully submitted,


Representative Ronnie Smith
Chair


Jane B. Bass
Committee Assistant

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES** .

☐ Committee Substitute for

S.J.R. 32 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
APPOINTMENT OF ROBERT KOGER MADE BY THE GOVERNOR TO
MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ .

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ .

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

MARCH 17, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Chris Heagerty	Electric Co-ops
Sharon Miller	C.U.C.A.
Jimmy Roberts	C.U.C.A.
Don Anthony	CP&L
Rob Schufeldt	NCJ CDC
Gary Walker	ALUTEL
Bob Wells	THE ALLIANCE
Becky Rae Henderson	CNG Transmission
Jeff VANDYKE	BellSouth
John Holmstrom	AT&T
Winston Kelley	Duke Energy
Don Morris	Sprint
Alice Garland	Electric Cities
W.H. Milled	AT&T
Robert Kaylor	Kaplan Power Corp
John McAlister	Duke Energy
Larry Giffin	Duke Energy
Patricia Rogers	NCACC
Gene Upchurch	CP&L
Kevin Howard	Govt. Affairs
WYMAN COOPER	CSX CORP
STUART DIXON	NCNB
KATH DAL WOODS	Observer
Brenda Dougherty	Sprint

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

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SENATE JOINT RESOLUTION 32

Sponsors: Senators Soles; Ballance, Kerr, Perdue, Plyler, Rand, Reeves, and Warren.

Referred to: Commerce.

February 4, 1999

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
2 APPOINTMENT OF ROBERT KOGER MADE BY THE GOVERNOR TO
3 MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

4 Whereas, under the provisions of G.S. 62-10, appointments made by the
5 Governor to membership on the North Carolina Utilities Commission are subject to
6 confirmation by the General Assembly by joint resolution; and

7 Whereas, a vacancy has occurred on the North Carolina Utilities
8 Commission because of the resignation of Allyson K. Duncan; and

9 Whereas, the Governor has submitted to the presiding officers of the
10 House of Representatives and the Senate, the name of his appointee to serve the
11 remainder of the unexpired term on the North Carolina Utilities Commission of
12 Allyson K. Duncan, which will expire June 30, 1999; Now, therefore,
13 Be it resolved by the Senate, the House of Representatives concurring:

14 Section 1. The appointment of Robert Koger to the North Carolina
15 Utilities Commission for a term to expire June 30, 1999, is confirmed.

16 Section 2. This resolution is effective upon ratification.



STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT JR.
GOVERNOR

November 20, 1998

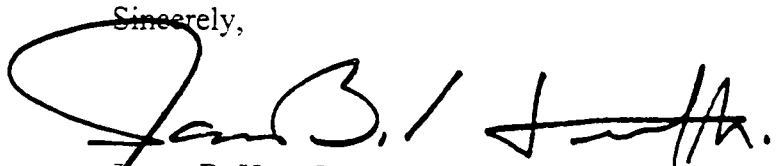
Ms. Janet Pruitt
Principal Clerk of the Senate
North Carolina General Assembly
Legislative Building
16 West Jones Street
Raleigh, NC 27603-5925

Dear Ms. Pruitt:

Pursuant to General Statute 62-10, I hereby appoint Mr. Robert Koger to serve as a member of the North Carolina Utilities Commission and submit his name for confirmation by the North Carolina General Assembly. Mr. Koger will complete the unexpired term of Commissioner Allyson K. Duncan. His term shall begin immediately upon taking the oath of office and he shall continue to serve on an interim basis pending legislative confirmation. His term shall expire June 30, 1999.

My warmest personal regards.

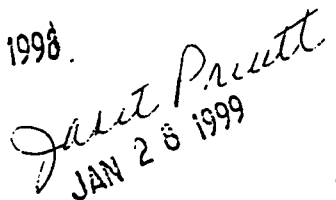
Sincerely,


James B. Hunt Jr.

JBH/jj/tmw

cc: The Honorable Dennis Wicker
The Honorable Marc Basnight
The Honorable Harold Brubaker
Ms. Denise Weeks

NOV 24 1998


JAN 28 1999





**North Carolina General Assembly
Legislative Services Office**

George R. Hall, Legislative Services Officer
(919) 733-7044

W. Robinson, Director
Administrative Division
Room 5, Legislative Building
16 W. Jones Street
Raleigh, NC 27603-5925
(919) 733-7500

Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6660

Thomas L. Covington, Director
Fiscal Research Division
Suite 619, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-4910

Tony C. Goldman, Director
Information Systems Division
Suite 400, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-6834

Terrence D. Sullivan, Director
Research Division
Suite 545, LOB
300 N. Salisbury St.
Raleigh, NC 27603-5925
(919) 733-2578

March 17, 1999

MEMORANDUM

TO: House Committee on Public Utilities

FROM: Steven Rose and Esther Manheimer, Committee Counsel

**RE: SJR 32; Confirmation of Dr. Robert K. Koger to Utilities
Commission Vacancy**

Senate Joint Resolution 32 confirms the appointment of Dr. Robert K. Koger to the North Carolina Utilities Commission. The resolution is effective upon ratification.

Dr. Koger has been appointed by the Governor to fill the unexpired term of Allyson K. Duncan, who resigned from the Utilities Commission. The term expires June 30, 1999. The Legislature was not in session at the time of Dr. Koger's appointment, and the Governor designated Dr. Koger to begin service at the time of appointment, November 20, 1998, pending confirmation by the General Assembly. This is permitted by G.S. 62-10(g).

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight-year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly.

Utilities Commissioners are currently paid \$97,389 per year. However, because Dr. Koger is drawing income from the State Retirement System, he is being paid a salary of \$38,500 for the period beginning January 4, 1999 and ending June 30, 1999.

Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the

Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is affected in some cases by federal law.

SJR32-SMRL-001

cert. denied, 336 N.C. 602, 447 S.E.2d 384 (1994).

Cited in *In re Lower Cape Fear Water & Sewer Auth.*, 329 N.C. 675, 407 S.E.2d 155 (1991); *State ex rel. Utils. Comm'n v.*

Mountain Elec. Coop., 108 N.C. App. 283, 423 S.E.2d 516 (1992); *State ex rel. Utils. Comm'n v. Empire Power Co.*, 112 N.C. App. 265, 435 S.E.2d 553 (1993).

OPINIONS OF ATTORNEY GENERAL

The Department of Correction, as a State agency, is not a public utility and is not subject to the fee requirements of § 62-302. See Opinion of Attor-

ney General to LaVee Hamer, General Counsel, North Carolina Department of Correction. — N.C.A.G. — (October 17, 1994).

ARTICLE 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act. In lieu of merit and other increment raises paid to regular State employees, each commissioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeachment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b); 1997-443, s. 33.5.)

Editor's Note. — Session Laws 1993 "This act shall be known as 'The Current
(Reg. Sess., 1994), c. 769, s. 2 provides: Operations and Capital Improvements

Appropriations Act of 1994."

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 358, s. 2, as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, s. 7.4, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1996, Second Extra Session, c. 16, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 16, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, pro-

vides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective September 1, 1996, substituted "shall be the same as that fixed from time to time for judges of the superior court except that the commissioner designated as the chairman shall receive one thousand dollars (\$1,000) additional per annum" for "and that of the commissioner designated as chairman shall be set by the General Assembly in the Current Operations Appropriations Act" in subsection (h).

The 1997 amendment, effective July 1, 1997, rewrote the first sentence of subsection (h).

§ 62-15. Office of executive director; public staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Utility Review Committee of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) There is established in the Commission a public staff. The public staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the public staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be appointed, supervised, and directed by the executive director. The public staff shall not be subject to the supervision, direction, or control of the Commission, the chairman, or members of the Commission.

(c) Except for the executive director, the salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.



State of North Carolina
Utilities Commission

Post Office Box 29510
Raleigh, NC 27626-0510

COMMISSIONERS
JO ANNE SANFORD, Chair
RALPH A. HUNT
JUDY HUNT

COMMISSIONERS
WILLIAM R. PITTMAN
J. RICHARD CONDER
ROBERT V. OWENS, JR.
DR. ROBERT K. KOGER



Dr. Robert K. Koger
President and Executive Director
Advanced Energy Corporation

Robert Koger assumed leadership of Advanced Energy as its President and Executive Director in 1988. He previously served on the North Carolina Utilities Commission for eleven years, including eight years as chairman. Earlier experiences include serving as Director of the Commission's Engineering and Economics Division and as an engineer with the Rural Electrification Administration.

Dr. Koger's wide-ranging energy experience also includes participation on several important committees including the Executive Committee of the National Association of Regulatory Commissioners (NARUC), President of the Southeastern Association of Regulatory Commissioners (SEARUC), and a ten-year membership on the Advisory Council of the Electric Power Research Institute (EPRI).

The International Association of Energy Engineers honored Koger as Energy Executive of the Year in 1991.

Among current governmental activities, Koger is presently serving terms on the North Carolina Energy Policy Council (appointed by the governor) and the U. S. Department of Energy's State Energy Advisory Board (appointment by the Secretary of Energy). For the past twenty years, Koger has been a resource for the Southern States Energy Board, serving on various committees examining issues such as natural gas utilization, electric industry restructuring, and more recently, clean coal technologies and their export potential.

Advanced Energy, with annual revenues of about \$4.5 million, is a non-profit corporation located on the N. C. State University's Centennial Campus in Raleigh, North Carolina, that helps industrial, commercial, and residential customers improve the return on their energy investment. With expertise in industrial process technologies, motors and drives, and applied building science, Advanced Energy provides solutions through consulting, testing, and training. The primary mission of Advanced Energy is to increase efficiency and productivity in industries, businesses, and homes as they transform energy into goods, services, and environmental conditioning. At its Industrial Energy Lab, Advanced Energy provides access to cutting-edge industrial process technologies and state-of-the-art motors and drives testing.

Koger graduated from the University of Tennessee with a degree in Electrical Engineering and earned a masters's degree in Economics and a doctorate in Industrial Engineering from North Carolina State University. He has also completed an Executive Leadership Program at the University of North Carolina.

Koger is married to Dr. Jeanne Burwell Koger, and they have three adult children.



RECEIVED
FEB 10 1999
RESEARCH DIVISION

NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET
RALEIGH NC 27603-8003
(919) 733-2780

GEORGE F. BASON
CHAIRMAN

December 3, 1998

The Honorable James B. Hunt, Jr.
Governor of North Carolina
Raleigh, North Carolina

Regarding: Evaluation of Statement of Economic Interest filed by
Dr. Robert K. Koger, Utilities Commission

Dear Governor Hunt:

In accordance with Section 4 of Executive Order Number 127, we have completed our evaluation of Dr. Koger's statement of economic interest.

We did not find an actual conflict of interest or the potential for conflict of interest when Dr. Koger recuses himself from any matters concerning the North Carolina Advanced Energy Corporation and he indicated he will do so.

Dr. Koger will be serving for an interim period of time not exceeding six or seven months. He plans to take a six months' leave of absence from the North Carolina Advanced Energy Corporation.

Dr. Koger indicated that the relationship between the North Carolina Advanced Energy Corporation and the North Carolina Utilities Commission is somewhat complex but not conflicting. He has furnished documentation supporting his statement. He indicated that he would recuse himself from any matters concerning the North Carolina Advanced Energy Corporation. We appreciate and support his position.

He serves on the boards of: (1) NC Energy Policy Council as a Gubernatorial appointee, and (2) US Department of Energy's State Energy Advisory Board as an appointee of the Secretary of Energy. Service on these boards does not appear to conflict with the official duties of the NC Utilities Commission.

Section 7 of Executive Order Number 127, addresses rules of conduct for public officials. We recommend that all members of boards, commissions, and councils refer to these rules while performing official duties.

We are sending a copy of this evaluation letter to the Chairman of the Commission so that our findings can be read into the Commission's minutes.

Sincerely,

George F. Bason /md

George F. Bason
Chairman

cc: Dr. Koger
Chairman of the Commission

December 1, 1998

Attachment to Page 1 of "Statement of Economic Interest" for Robert K. Koger
Response to last question on Page 1 follows:

Dear Members and Staff of the Ethics Board

Governor Hunt has asked me to return to the North Carolina Utilities Commission as soon as possible for an interim period of time not exceeding six or seven months. Because of a resignation of one of the Commissioners from a seat with a term ending June 30, 1999, the Governor needs someone to complete the term given the present workload of the Commission. Assuming your approval, I plan to take a six months' leave of absence from the North Carolina Advanced Energy Corporation in order to accede to the Governor's request.

The relationship between the North Carolina Advanced Energy Corporation and the North Carolina Utilities Commission is somewhat complex but not conflicting. The 7 members of the Commission are the "owners" (representing the public interest) of the non-profit Advanced Energy Corporation. Their responsibilities and duties are set out in the detailed articles of incorporation that I am enclosing. Basically, the Commissioners conduct an annual review to ensure that the Board of Directors is appropriately carrying out the provisions of the charter, which they set up.

The Commissioners are not involved in the management or operation of Advanced Energy. A 12-member Board comprised of 7 public members (appointed by the Governor for staggered 3-year terms), 4 electric utility representatives, and 1 rural electric co-op representative provide oversight and guidance to the corporation. The Chairman of the Board must be a public member. The Corporation has been in existence since 1980. Several States have followed North Carolina's lead and have established similar organizations.

Advanced Energy (formerly Alternative Energy Corp.) is complementary to the work of the Utilities Commission in regard to helping to keep energy costs to North Carolinians as reasonable as possible. Attached are some brochures that might help explain what the Corporation does.

Advanced Energy derives a majority of its funding from a surcharge on electric bills. For example, the surcharge for an average residential customer using 1000 kilowatt-hours per month would be about 3 cents. On a \$75 to \$85 electric bill, 3 cents is hardly significant but when totaled on all bills statewide, provides sufficient funds to carry out meaningful research activities and programs that bring widespread benefit to North Carolina ratepayers.

Each year, Advanced Energy makes a public report of its work to the Commission. While serving during this interim appointment, I would ~~refuse~~^{refuse} myself from participation in any decisions or actions affecting Advanced Energy Corp.

I have discussed this matter with lawyers on the Utilities Commission and with the Utilities Commission Public Staff. The Public Staff is a separate division of State Government charged with protecting the public interest in all matters coming before the Commission. The heads of both these agencies have indicated that they can see no conflict of interest with my serving on the Commission while on a leave of absence from Advanced Energy provided I ~~refuse~~^{refuse} myself in those situations as stated earlier.

Commission Chairperson Jo Anne Sanford can be reached at 733- 4249. The Executive Director of the Public Staff, Robert Gruber, is at 733- 2435. I believe Jack Jenkins, counsel to the Governor, has also looked into this issue. If I can be of further help in answering any of your questions about Advanced Energy, please let me know.

I am attaching a resume' that was recently submitted to Board of the National Electric Reliability Council (NERC). It may provide you with some additional information. If proposed Federal legislation passes, a new national reliability board will be established to oversee the electric transmission network of the U.S. It is to be composed of nine independent public members. Because of my training and background, I was asked to submit a resume'. I have a great interest in this area and would very much like to participate if given the opportunity. Please note that the resume' was prepared with that Board in mind.

Service on this Board would probably require quarterly meetings. However, I do not expect this matter to be decided during the next six months. If I should be nominated to serve on this board and it occurs while serving on the Commission, I will seek your ruling prior to accepting the position.

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-2780 FAX (919) 733-2785

12/2/9

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER 127 AS
AMENDED BY EXECUTIVE ORDER NUMBER 131 BY GOVERNOR JAMES B. HUNT JR.

MAIL FORM TO — BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603
OR INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q
COURIER 51-01-00 FOR ASSISTANCE, CALL MILLIE DONAVANT, 919-733-2780

Name of Person Filing

Robert K. Kocer

Name of Spouse

Jeanne B. Kocer

Home Address

1420 Kershaw Dr.

Raleigh, NC 27609

Home Telephone

919-787-3153

STATE GOVERNMENT EMPLOYEES

Agency, Division,
Position

Address (Include
Building & Courier)

Telephone Number

APPOINTEES TO BOARDS, COMMISSIONS, OR COUNCILS

Your Employer,

North Carolina Advanced Energy Corp.

Your Position Title,

President + Executive Director

Business Activity of
Your Employer

Primary activity is promoting energy efficiency
(For more details, please see enclosures)

Your Office Address

909 Capabilities Drive, Suite 2100

Raleigh, NC 27606-3870

Your Telephone Number

919-857-5000

Name of Board on which
you are serving

N.C. Utilities Commission

Are you, or your
employer, licensed or
regulated by the Board
on which you are serving,
or have business
relationships with the
same area of State
Government with which
you are associated?

☐ Yes ☐ No If so, please explain

to page 1.

See Attachment

USE ATTACHMENTS IF NEEDED

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel. Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

(1) 164 acre farm located at 8839 Old Switch Board Rd
Snow Camp, NC in Alamance County (Two married
homes on site).

(2) Residence at 1420 Kershaw Dr
Raleigh, NC 27609

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

N/A

3. List the name of each publicly-owned company in which the value of securities held by you or your spouse exceeds \$10,000. You may attach a list from your broker.

We only own mutual funds in tax deferred
Retirement Accounts.

Employment with Advanced Energy prevents me
from owning any utility stocks.

4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including, but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies, partnerships, and closely held corporations.

Winteshoren - own limited partnership in subsidized
HUD housing

With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

N/A

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

See Attachment to page 1

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

N/A

6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

N.C. Energy Policy Council

U.S. Dept. of Energy State Energy Advisory Board

7. Are you an elected official at the local government level? If so, please explain.

No

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

No

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

Covered previously

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Farm Related Loans:

North Central Farm Credit (1st Mortgage)
Eddie Murchison (previous owner) (2nd mortgage)
Doublewide Mobile Home - (1st mortgage with
Dyrex Mortgage Co.)

11. List sources of income for you and your spouse where \$10,000 or more was received from each as shown. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

Advanced Energy Corp.
State Retirement System
Carolina-Virginia Dairy Co-op
Mark Breckman Dairy (He leases own farm)
N.C. State University (Spouse's salary)

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Not related

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$10,000 from any of the following categories of legal representation:

- ☐ Admiralty ☐ Taxation ☐ Decedent's estates ☐ Corporation law ☐ Real property
☐ Negligence (representing plaintiffs) ☐ Negligence (representing defendants)
☐ Criminal law ☐ Labor law ☐ Insurance law ☐ Administrative law
☐ Utilities regulation or representation of regulated utilities ☐ Representation of local government

13. If the information has not been included in previous questions, list all non-publicly owned businesses you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of the business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

N/A

List your associations with civic organizations if the organizations receive grants or other funding from State Government. Include the type of funding and the name of the State Agency from which the funding is received.

N/A

14. List all gifts received with a value exceeding \$200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None

List all gifts received with a value exceeding \$100 from any source having business with or regulated by the State.

None

15. Within the preceding five years have you or your spouse filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceeding under the various laws of the various states of these United States? Within the preceding five years have you or your spouse owned 5% or more of any corporation that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? Within the preceding five years have you or spouse been a general partner in any partnership or owned 5% of any corporation which was a general partner in any partnership that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? If so, provide a brief summary of facts and circumstances regarding each listed bankruptcy.

N/A

16. Having read Executive Order Number 127, as amended by Executive Order 131, state any probable conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

As stated in attachment to page 1,

I will rescue myself from any matters
concerning Advanced Energy.

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments, and to the best knowledge and belief it is true, correct and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Education to that potential conflict.

12/2/98

Date

Robert K. Koger
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Granville

Subscribed and sworn to before me this the 2nd day of December, 1998.

My Commission Expires:

8/25/2000

Mildred M. Donavant
Notary Public

Dr. Robert K. Koger
President and Executive Director

Nationally recognized as a leader in the electric utility industry, Robert K. Koger brings an unbiased and serious-minded approach to the representation of the public interest in issues of utility regulation and energy.



Robert Koger's recent election by the south's electric power suppliers as a public member of the Board of Directors of the Southeastern Electric Reliability Council is the latest in the ongoing recognition of his ability to discern and interpret the emerging issues of the changes in the electric utility industry and to fairly represent all parties in any situation. Assuming leadership of Advanced Energy (formerly Alternative Energy Corporation) as its President and Executive Director in 1988, he previously served on the North Carolina Utilities Commission for eleven years, including eight years as chairman. Earlier experiences include serving as Director of the Commission's Engineering and Economics Division (ten years) and as an engineer with the Rural Electrification Administration.

Dr. Koger's wide-ranging energy experience also includes participation on several important committees including the Executive Committee of the National Association of Regulatory Commissioners (NARUC), President of the Southeastern Association of Regulatory Commissioners (SEARUC), and a 10-year membership on the Advisory Council of the Electric Power Research Institute (EPRI).

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Koger graduated from the University of Tennessee with a degree in Electrical Engineering and earned a master's degree in Economics and a doctorate in Industrial Engineering from North Carolina State University. He has also completed an Executive Leadership Program at the University of North Carolina.

////

ARTICLE 3

The purposes for which this is organized are: To the end of moderating the rate of growth in electric power demand and developing the more efficient uses of energy resources *in order to encourage energy efficient economic development in North Carolina*, this corporation will promote or fund, or assist in promoting or funding, or engage in, projects, programs, and applied research, development, and demonstration, designed and intended to accomplish, or to assist in accomplishing, any one or more of the following objectives:

- (1) The promotion, support, research, development, demonstration, or commercialization of alternatives to electric power as a source of energy which may be used within the State of North Carolina;
- (2) The promotion, support, research, demonstration, or development of methods by which electric power can be produced more economically;
- (3) The promotion of load management and conservation in a manner that improves system load factors and

the efficient use of energy;

(4) The education and informing of consumers in the use and benefits of alternative energy sources, *conservation, and load management, and energy efficiency;*

(5) The moderation of the future cost of electric utility service available or to be available to users of electricity within the State of North Carolina.

(6) *The promotion, support, research, demonstration, or development of efficient uses of electric power.*

ARTICLE 5

SECTION 1. Number of Directors: The three incorporators of this Corporation shall serve as its initial Board of Directors until the directors provided for hereinafter, or a majority of them, have been appointed in the manner hereinafter provided. The first meeting of the Board of Directors shall be held within 30 days after a majority of the Directors provided for herein have been appointed. There shall be a maximum of

Filed in Docket
E100-37A0-0104088
FILED10:27am
JUN 06 1997ARTICLES OF AMENDMENT
OF
NORTH CAROLINA ALTERNATIVE ENERGY CORPORATIONEFFECTIVE
ELAINE F. MARSHALL
SECRETARY OF STATE
NORTH CAROLINA

Pursuant to Section 55A-10-05 of the General Statutes of North Carolina, the undersigned corporation hereby submits these Articles of Amendment for the purpose of amending its Restated Articles of Incorporation.

1. The name of the corporation is North Carolina Alternative Energy Corporation.
2. The Restated Articles of Incorporation of the corporation are hereby amended as follows.

Article I of the Restated Articles of Incorporation is deleted and replaced with a restated Article I which shall read in its entirety as follows.

"The name of the corporation is North Carolina Advanced Energy Corporation."

3. The date of adoption of the foregoing amendment to the Restated Articles of Incorporation was May 8, 1997.
4. The amendment to the Restated Articles of Incorporation was approved by the members of the corporation in the manner prescribed by law.
5. These Articles of Amendment will be effective upon filing.

Dated this the 3 day of June 1997.

North Carolina Alternative Energy Corporation

By: Robert K. Koger

Name: Robert Koger

Title: President

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 14, 1999
Room 544
10:00 AM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

H 777 – Future of Electric Service/Funding
H 476 – EMC Subsidiaries

ADJOURNMENT

Minutes
House Committee on Public Utilities
April 14, 1999

The House Committee on Public Utilities met Wednesday, April 14, 1999 in Room 544 of the Legislative Office Building at 10:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; and Representatives Braswell, Creech, Daughtry, Earle, Hardaway, Holmes, Hurley, McComas, McCombs, Miller, Mitchell and Rogers. Committee counsel members Esther Manheimer and Steve Rose were present. A Visitor Registration list is attached (Attachment VII) and made a part of the minutes.

The Chair called the meeting to order. Representative McComas was recognized to present the first item on the agenda – HB 777 – Future of Electric Service/Funding. A copy of the bill and the summary are shown in Attachment I. After a few brief comments Representative McComas introduced Esther Manheimer, counsel to the committee, for comments and questions. She explained that the bill would allow the Deregulation Study Commission to continue to be reimbursed from funds in the Utility Commission budget. Representative Creech moved for a favorable report. Representative Miller requested information concerning expenses of the Commission so far. Counsel responded that \$100,000 and \$900,000 had been transferred so far with a balance of \$219,000. Representative Miller requested a complete written report of expenses. Representative Creech withdrew the motion and the Chair requested counsel to prepare a complete report for the next meeting.

The Chair introduced pages Kristina Washington from Wake County and Phillip Stewart from Guilford County.

Representative Tolson was recognized to discuss HB 476 – EMC Subsidiaries (Attachment II). He presented and distributed committee substitute H476-HCSRL-001. Representative Creech moved that the committee substitute (Attachment III) be adopted for discussion. The motion passed.

Representative Tolson explained that the bill would provide the opportunity for cooperatives (coops) to expand services to rural areas similar to the services larger utilities can provide as they expand through deregulation. Coops would not be able to use monies from government funds to expand their services as some have feared. Coops have improved the quality of life in rural areas. This bill would allow coops to continue to provide services and to remain competitive.

Committee counsel Steve Rose was recognized for comments and questions. He distributed a summary of House Bill 476 (Attachment IV) that outlines the powers and limitations of the proposed legislation. Representatives Braswell, McComas, McCombs and Miller posed specific questions which were handled by committee counsel. Details are recorded in the audio tapes of the meeting.

Ms. Delilah Blanks, County Commissioner from Bladen County since 1988, was recognized to speak on behalf of the proposed legislation. She discussed the history of the coops in her area and the many services and opportunities they had provided. A copy of her remarks is attached (Attachment V) as part of the minutes.

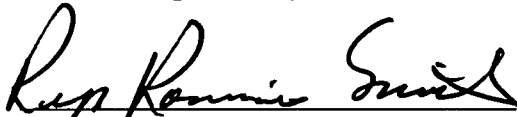
Ms. Perri Morgan, State Director of the National Federation of Independent Business, was recognized to speak in opposition to HB 476. The organization represents 15,000 small businesses in North Carolina. Their concern is that the coops have many advantages by virtue of their status as a regulated monopoly that are unavailable to small business. A copy of her remarks is attached (Attachment VI)

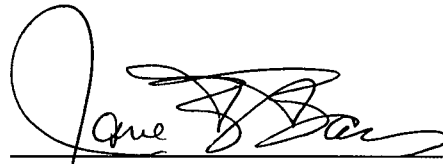
Mr. Bobby Smith of Smith Brothers Gas Co. was recognized to speak in opposition to HB 476. He represents a typical local propane gas business, family-owned since the 1950's. He recalled the way he and his family struggled to build the business and just when they see a light at the end of the tunnel, this legislation threatens to put them out of business altogether. While a local attorney who represents the propane dealers says it is illegal for the coops to sell propane, they are doing so and doing very well. This is unfair competition for small businesses that do not have the advantages of the coops.

The Chair announced that the bill would be debated further at the next meeting on Wednesday, April 21, 1999. At that time other groups will be given an opportunity to speak for or against HB 476.

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,


Representative Ronnie Smith
Chair


Jane B. Bass
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 777*

Short Title: Future of Electric Service/Funding.

(Public)

Sponsors: Representative McComas.

Referred to: Public Utilities.

March 31, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR REIMBURSEMENT OF ADDITIONAL EXPENSES
3 OF THE COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN
4 NORTH CAROLINA FROM THE UTILITIES COMMISSION AND PUBLIC
5 STAFF FUND.
6 The General Assembly of North Carolina enacts:
7 Section 1. Section 10.1 of S.L. 1997-483 reads as rewritten:
8 "Section 10.1. Notwithstanding G.S. 62-302(d), all expenses during the ~~1997-98~~
9 ~~and the 1998-99~~ 1997-98, 1998-99, and 1999-2000 fiscal years of the Study
10 Commission on the Future of Electric Service in North Carolina, established in S.L.
11 1997-40, shall be reimbursed from funds in the Utilities Commission and Public Staff
12 Fund. There is allocated initially one hundred thousand dollars (\$100,000) from the
13 Utilities Commission and Public Staff Fund to the General Assembly for the purpose
14 of enabling the Study Commission on the Future of Electric Service in North
15 Carolina to organize and begin its work. Upon the certification of the need for
16 additional funds by the cochairs of the Study Commission on the Future of Electric
17 Service in North Carolina for the work of the Commission, the Utilities Commission
18 shall transfer the additional funds from the Utilities Commission and Public Staff
19 Fund to the General Assembly for that purpose."
20 Section 2. This act becomes effective July 1, 1999.



HOUSE BILL 777: Future of Electric Service/Funding

BILL ANALYSIS

Committee: Public Utilities
Date: April 14, 1999
Version: First Edition

Introduced by: Representative McComas
Summary by: Esther Manheimer
Committee Counsel

BILL ANALYSIS: House Bill 777 would allow the Study Commission on the Future of Electric Service in North Carolina to continue to be reimbursed from the funds in the Utilities Commission and Public Staff Fund through the 1999-2000 fiscal year.

This act becomes effective July 1, 1999.

BACKGROUND: The Study Commission on the Future of Electric Service was established in 1997 by Senate Bill 38 and is funded by the Utilities Commission and Public Staff Fund. The Fund is in turn financed by regulatory fees paid by the regulated utilities. When the Study Commission cochairs certify the need for additional funds, the Chair of the Utilities Commission authorizes the Treasurer to make the transfer. The current authority to transfer funds expires on June 30, 1999. The Study Commission plans to meet during the 1999-2000 interim and make its final report to the 2000 session.

(b)
servi
insta

rs, and cost of
party at whose
e incurred.

(c) no application, petition, complaint, notice of appeal, notice of application for writ of certiorari, or other document or paper, the filing of which requires the payment of a fee under this Article, shall be deemed filed until the fees herein required shall have been paid to the Commission.

(d) The fees and charges as set forth in subdivisions (1), (7), (9) and (10) of subsection (a) of this section shall not apply to the State of North Carolina or to any board, department, commission, institution or other agency of the State; and all applications, petitions or complaints submitted by the State of North Carolina or any board, department, commission, institution or other agency of the State shall be filed without the payment of the fees required by this section. All transcripts, papers, orders, certificates, or other records necessary to perfect an appeal, or to determine whether an appeal is to be taken, shall be furnished without charge to the Attorney General upon his request in cases in which the Attorney General appears in the public interest or as representing any board, department, commission, institution or other agency of the State. (1953, c. 825, s. 1; 1955, c. 64; 1957, c. 1152, s. 15; 1961, c. 472, ss. 2-4; 1963, c. 1165, s. 1; 1967, c. 1039; c. 1190, s. 7; 1969, c. 721, s. 2; 1971, c. 736, s. 2; 1975, c. 447, s. 1; 1977, c. 1003; 1977, 2nd Sess., c. 129, s. 32; 1979, c. 792; 1985, c. 311, ss. 1-4; c. 454, ss. 18, 19; c. 676, s. 24; 1991, c. 189, s. 2; 1995, c. 523, ss. 29, 32; 1997-437, s. 3; 1998-128, s. 10.)

Editor's Note. — Session Laws 1991, c. 189, s. 2, which amended this section by adding subdivision (a)(13), became effective December 1, 1991, but was not applicable to any transmission line that the public utility or other person had begun to construct before that date.

Effect of Amendments. — The 1997

amendment, effective August 28, 1997, added subdivision (a)(15).

The 1998 amendment, effective September 4, 1998, deleted "and rail" preceding "carriers" throughout subdivisions (a)(2), (a)(3), and (a)(6), and repealed subdivision (a)(4a) concerning discontinuance of train service or facilities.

§ 62-301: Repealed by Session Laws 1989, c. 787, s. 2, effective July 1, 1989.

Editor's Note. —

Session Laws 1991, c. 451, s. 1, effective June 28, 1991, amends Session Laws 1989, c. 787, s. 5, as set out in the main volume under this section, so as to delete the provision that repeal of the section would expire June 30, 1991, and the provision for reversion of proceeds

and interest to the General Fund. As amended, Session Laws 1989, c. 787, s. 5, provides "This act shall become effective July 1, 1989 and shall apply to public utility North Carolina jurisdictional revenues earned on or after that date."

The section is set out above as repealed.

§ 62-302. Regulatory fee.

(a) Fee Imposed. — It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all

rs, and cost of party at whose e incurred.

at, notice of appeal, notice of her document or paper, the a fee under this Article, shall required shall have been paid

in subdivisions (1), (7), (9) shall not apply to the State department, commission, insti- all applications, petitions or North Carolina or any board, r other agency of the State f the fees required by this certificates, or other records ermine whether an appeal is out charge to the Attorney which the Attorney General esenting any board, depart- gency of the State. (1953, c. 5; 1961, c. 472, ss. 2-4; 1963, 969, c. 721, s. 2; 1971, c. 736, 1977, 2nd Sess., c. 129, s. 32; ss. 18, 19; c. 676, s. 24; 1991, 7-437, s. 3; 1998-128, s. 10.)

ime effective August 28, 1997, subdivision (a)(15).

1998 amendment, effective Sep- r 4, 1998, deleted "and rail" preced- arriers" throughout subdivisions (a)(3), and (a)(6), and repealed ision (a)(4a) concerning discon- ce of train service or facilities.

1989, c. 787, s. 2, effective

terest to the General Fund. As ed, Session Laws 1989, c. 787, s. 5, es "This act shall become effective , 1989 and shall apply to public North Carolina jurisdictional rev- earned on or after that date." : section is set out above as re-

he State of North Carolina ties in the interest of the cost of regulating public age of operating as a public aying the cost of regulating ct to the jurisdiction of the tory fee, in addition to all

other fees and taxes, as provided in this section. The fees collected 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.

(b) Rate. —

(1) For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i) twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents (\$6.25) each quarter.

(2) For fiscal years beginning on or after July 1, 1990, the regulatory fee shall be the greater of (i) a percentage rate, established by the General Assembly, of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents (\$6.25) each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the regulatory fee by law.

The percentage rate may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Carolina jurisdictional revenues.

(3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a temporary regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percentage rate of the regulatory fee plus any surcharge established by the Commission exceed twenty-five hundredths percent (0.25%).

(4) As used in this section, the term "North Carolina 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.

(c) When Due. — The regulatory fee imposed under this section is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Every public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total

North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Commission may by rule require. Receipts shall be reported on an accrual basis.

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 twenty-five dollars (\$25.00) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars (\$25.00). 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.

(d) Use of Proceeds. — A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), 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. Moneys 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 this Chapter.

The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1989, c. 787, s. 1; 1998-215, s. 126.)

Editor's Note. —

Session Laws 1989 (Reg. Sess., 1990), c. 937, s. 1, effective July 17, 1990, and applicable to public utility North Carolina jurisdictional revenues earned on or after July 1, 1990, provides: "For the 1990-91 fiscal year, the percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter."

Session Laws 1991, c. 451, s. 1 amends Session Laws 1989, c. 787, s. 5, as set out in the main volume under this section, so as to delete the June 30, 1991, expiration provision and the provision for reversion of proceeds and interest to the General

Fund. As amended, Session Laws 1989, c. 787, s. 5, provides "This act shall become effective July 1, 1989 and shall apply to public utility North Carolina jurisdictional revenues earned on or after that date."

Session Laws 1991, c. 689, s. 143, provides: "The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1991."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 476*

Short Title: EMC Subsidiaries.

(Public)

Sponsors: Representatives Tolson; Alexander, Allen, Barefoot, Bonner, Bridgeman, Brown, Buchanan, Clary, Cox, Culp, Culpepper, Cunningham, Davis, Dedmon, Dockham, Edwards, Fitch, Gillespie, Goodwin, Haire, Hill, Hunter, Hurley, Insko, Kinney, Luebke, McCrary, McLawhorn, Melton, Mitchell, Moore, Morris, Mosley, Owens, Preston, Ramsey, Redwine, Rogers, Russell, Saunders, Setzer, Sexton, Smith, Starnes, Sutton, Wainwright, Walend, Warren, Warwick, and G. Wilson.

Referred to: Public Utilities.

March 17, 1999

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC
3 MEMBERSHIP CORPORATIONS REGARDING SUBSIDIARY
4 ORGANIZATIONS.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 117-18 is amended by adding a new subdivision to read:
7 "(14) As to electric membership corporations, to form, organize, or
8 operate, or to acquire, hold, and dispose of, any interest up to and
9 including full controlling interest in business entities engaged in
10 any lawful activities, whether or not those activities are within the
11 corporate purposes set forth in this Chapter, so long as those other
12 business entities (i) are not financed with loans from the Rural
13 Utilities Service of the United States Department of Agriculture,
14 unless such loans are specifically authorized by federal statute, and
15 (ii) are subject to all taxes, specifically including federal and state
16 income taxes, levied against business entities of the same structure
17 and engaged in the same activities."
18 Section 2. G.S. 117-30(a) reads as rewritten:

1 "(a) In the event it is ascertained by the Rural Electrification Authority that the
2 community or communities referred to in the foregoing section [G.S. 117-29] are in
3 need of telephone service and that there is a sufficient number of persons to be
4 served to justify such services, and the telephone company serving in the area in
5 which the community or communities are located is unwilling to provide such
6 service, a telephone membership corporation may be organized by such community
7 or communities in the same manner that electric membership corporations may be
8 formed under Article 2 of this Chapter, and all of the provisions of said Article shall
9 be applicable to the formation of telephone membership corporations and such
10 corporations shall have all the authority, powers and duties of such a corporation
11 when formed under the provisions of said Article; except that the provisions of G.S.
12 117-8, 117-9, 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-19 and 117-24 shall not be
13 applicable to the organization of a telephone membership corporation, and except
14 that such corporations so formed for the express purpose of providing telephone
15 service necessary to serve the community or communities prescribed in the
16 application may also provide the community or communities prescribed in the
17 application with any communication service for the transmission of voice, sounds,
18 signals, pictures, writing or signs of all kinds through the use of electricity or the
19 electromagnetic spectrum between the transmitting and receiving apparatus, together
20 with any telecommunications service requiring band-width capacity, including, but
21 not limited to community antenna and cable television services, and including all
22 lines, wires, cables, radio, light, electromagnetic impulse and all facilities, systems or
23 other means used in the rendition of such services, but not including message
24 telegram service or radio broadcasting services or facilities within the meaning of
25 section 3(o) of the Federal Communications Act of 1934, as amended (47 USC §
26 153(o)) and except that such corporation so formed shall have no authority to engage
27 in any other business. Provided, that the references in Article 2 of this Chapter to
28 "power lines" or "energy" as to such telephone membership corporations shall be
29 construed to mean telephone lines, broadband cables and lines, telephone service and
30 broadband communications services. Provided further, that nothing herein shall be
31 construed to authorize any telephone membership corporation organized hereunder
32 to duplicate any line or lines, systems or other means by which adequate telephone
33 service is being furnished; or to build or to construct a telephone line, or telephone
34 lines, or telephone systems, or otherwise to provide facilities or means of furnishing
35 telephone service to any person, community, town or city then being adequately
36 served by a telephone company, corporation or system; or to provide telephone
37 service in an unserved area while any telephone company, corporation or system is
38 acting in good faith and with reasonable diligence in arranging to provide adequate
39 telephone service to such person, community, town or city."

40 Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

H476-HCSRL-001
PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 476*

Short Title: EMC Subsidiaries.

(Public)

Sponsors:

Referred to: Public Utilities

March 23, 1999

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC MEMBERSHIP
3 CORPORATIONS REGARDING SUBSIDIARY ORGANIZATIONS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 117-18 is amended by adding a new
6 subdivision to read:
7 "(14) As to electric membership corporations, to
8 form, organize, or operate, or to acquire,
9 hold, and dispose of, any interest up to and
10 including full controlling interest in
11 business entities engaged in any lawful
12 activities, whether or not those activities
13 are within the corporate purposes set forth in
14 this Chapter, so long as those other business
15 entities meet all of the following conditions:
16 a. They are not financed with loans from the
17 Rural Utilities Service (RUS) of the
18 United States Department of Agriculture
19 (USDA) or the USDA or with similar
20 financing from any successor agency.
21 This limitation shall not apply to RUS or
22 USDA loans, or loans from successor

1 agencies, for water, sewer, or waste
2 water projects.

3 b. They are subject to all taxes,
4 specifically including federal and state
5 income taxes, levied against business
6 entities of the same structure and
7 engaged in the same activities.

8 c. They pay fair market value to the
9 electric membership corporation for the
10 use of personnel, equipment, or
11 property."

12 Section 2. G.S. 117-30(a) reads as rewritten:

13 "(a) In the event it is ascertained by the Rural
14 Electrification Authority that the community or communities
15 referred to in the foregoing section [G.S. 117-29] are in need of
16 telephone service and that there is a sufficient number of
17 persons to be served to justify such services, and the telephone
18 company serving in the area in which the community or communities
19 are located is unwilling to provide such service, a telephone
20 membership corporation may be organized by such community or
21 communities in the same manner that electric membership
22 corporations may be formed under Article 2 of this Chapter, and
23 all of the provisions of said Article shall be applicable to the
24 formation of telephone membership corporations and such
25 corporations shall have all the authority, powers and duties of
26 such a corporation when formed under the provisions of said
27 Article; except that the provisions of G.S. 117-8, 117-9,
28 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-19 and 117-24 shall
29 not be applicable to the organization of a telephone membership
30 corporation, and except that such corporations so formed for the
31 express purpose of providing telephone service necessary to serve
32 the community or communities prescribed in the application may
33 also provide the community or communities prescribed in the
34 application with any communication service for the transmission
35 of voice, sounds, signals, pictures, writing or signs of all
36 kinds through the use of electricity or the electromagnetic
37 spectrum between the transmitting and receiving apparatus,
38 together with any telecommunications service requiring band-width
39 capacity, including, but not limited to community antenna and
40 cable television services, and including all lines, wires,
41 cables, radio, light, electromagnetic impulse and all facilities,
42 systems or other means used in the rendition of such services,
43 but not including message telegram service or radio broadcasting
44 services or facilities within the meaning of section 3(o) of the

1 Federal Communications Act of 1934, as amended (47 USC § 153(o))
2 and except that such corporation so formed shall have no
3 authority to engage in any other business. Provided, that the
4 references in Article 2 of this Chapter to "power lines" or
5 "energy" as to such telephone membership corporations shall be
6 construed to mean telephone lines, broadband cables and lines,
7 telephone service and broadband communications services. Provided
8 further, that nothing herein shall be construed to authorize any
9 telephone membership corporation organized hereunder to duplicate
10 any line or lines, systems or other means by which adequate
11 telephone service is being furnished; or to build or to construct
12 a telephone line, or telephone lines, or telephone systems, or
13 otherwise to provide facilities or means of furnishing telephone
14 service to any person, community, town or city then being
15 adequately served by a telephone company, corporation or system;
16 or to provide telephone service in an unserved area while any
17 telephone company, corporation or system is acting in good faith
18 and with reasonable diligence in arranging to provide adequate
19 telephone service to such person, community, town or city."

20 Section 3. This act is effective when it becomes law.



HOUSE BILL 476 (PCS): Electric Membership Corporation Subsidiaries

BILL ANALYSIS

Committee: House Public Utilities Committee
Date: April 14, 1999
Version: 1

Introduced by: Representative Tolson
Summary by: Steven Rose
 Committee Counsel

The Proposed Committee Substitute for House Bill 476 expands the enumerated powers of electric membership corporations to allow them to engage in other business activities in addition to supplying electricity. The authorization contains the limitations described below.

Article 2 of Chapter 117 authorizes the formation of electric membership corporations and sets out the powers of those entities. Although there is some disagreement on whether or not electric membership corporations may engage in businesses other than the provision of electricity, when read as a whole, Article 2 of Chapter 117 does appear to create such a limitation. The Attorney General has issued two unpublished opinions that take this position. Two North Carolina electric membership corporations have entered into businesses in which they supply propane. The authority for one of them to do so has been challenged in the Superior Court for New Hanover County. That case is pending.

Under the authority conferred in House Bill 476, any entry of an electric membership corporation into a business other than supplying electricity would be subject to the following limitations:

1. The business must not be financed with loans from the Rural Utilities Service of the U.S. Department of Agriculture, or from the U.S. Department of Agriculture. This limitation would not apply to loans for water, sewer, or waste water projects.
2. The business would be subject to all taxes, including income taxes, that a similar business would pay.
3. If the business makes use of electric membership corporation personnel, equipment, or property, it must reimburse the electric membership corporation for the fair market value of such items.

This authority would not extend to telephone membership corporations.

The act is effective when it becomes law.

H476-SMRL-001

to limit any such grant to a power or powers of the same class as those so enumerated. (1935, c. 291, s. 12.)

CASE NOTES

Cited in Duke Power Co. v. Blue Ridge Elec. Membership Corp., 253 N.C. 596, 117 S.E.2d 812 (1961).

§ 117-18. Specific grant of powers.

Subject only to the Constitution of the State, a corporation created under the provisions of this Article shall have power to do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including, but not limited to:

- (1) To sue and be sued.
- (2) To have a seal and alter the same at pleasure.
- (3) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein, and to pay therefor in cash or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
- (4) To render service and to acquire, own, operate, maintain and improve a system or systems.
- (5) To pledge all or any part of its revenue or mortgage or otherwise encumber all or any part of its property for the purpose of securing the payment of the principal of and interest on any of its obligations.
- (6) The right to apply to the North Carolina Rural Electrification Authority for permission to construct or place any parts of its system or lines in and along any State highway or over any lands which are now, or may be, the property of this State, or any political subdivision thereof. In all questions involving the right-of-way, or the right of eminent domain, the rulings of the North Carolina Electrification Authority shall be final. Notwithstanding the foregoing sentence and notwithstanding subdivision (7) of G.S. 117-2, electric membership corporations are hereby empowered, without necessity of the Authority's rulings or participation, to exercise the right of eminent domain for the purposes of constructing, operating and maintaining electric generating, transmission, distribution and related facilities, individually and solely in their own names, pursuant to the provisions of Chapter 40 of the General Statutes; provided, that notwithstanding G.S. 117-30, the foregoing grant of the power of eminent domain to electric membership corporations shall not apply to telephone membership corporations; and, provided further, that such grant of power shall be supplementary to the power of eminent domain already devolved upon the Authority.
- (7) To accept gifts or grants of money, property, real or personal, from any person or federal agency, and to accept voluntary and uncompensated services.
- (8) To make any and all contracts necessary or convenient for the full exercise of the powers in this Article granted, including, but not limited to, contracts with any person or

Chapters
120 through 121

Chapters
122 through 124

- federal agency, for the purchase or sale of energy; for the management and conduct of the business of the corporation, including the regulation of the rates, fees or charges for service rendered by the corporation.
- (9) To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.
 - (10) To contract debts, borrow money, and to issue or assume the payment of bonds.
 - (11) To fix, maintain and collect fees, rents, tolls and other charges for service rendered.
 - (12) To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person or federal agency.
 - (13) To extend, construct, operate and maintain power lines into adjacent states. (1935, c. 291, s. 13; 1941, c. 335; 1975, c. 141.)

Editor's Note. — Chapter 40, referred to in this section, was repealed by Session Laws 1981, c. 919, s. 1. See now Chapter 40A.

CASE NOTES

Legislative Purpose. — The legislature, by this section, made certain that when necessary to create membership corporations to provide citizens of rural areas with electricity, the corporations so created would not be hampered by having to obtain permission to function from some other agency. *Duke Power Co. v. Blue Ridge Elec. Membership Corp.*, 253 N.C. 596, 117 S.E.2d 812 (1961).

An electric membership corporation and a public utility corporation are free to compete in rural areas, unless restricted by the provisions of a contract between them. *Pitt & Greene Elec. Membership Corp. v. Carolina Power & Light Co.*, 255 N.C. 258, 120 S.E.2d 749 (1961).

§ 117-19. Taxes and assessments.

(a) From and after April 20, 1965, no electric membership corporation heretofore or hereafter organized, reorganized, or domesticated under the provisions of this Chapter shall be a public agency; nor shall any such corporation be, or have the rights of, a political subdivision of the State.

(b) With respect to its properties owned and revenues received on and after January 1, 1967, each electric membership corporation operating within the State shall be subject to, and shall pay taxes and assessments under, all laws relative to State, county, municipal and other local taxes and assessments applicable to the electric light and power companies in this State, except income tax.

(c) Each electric membership corporation operating in this State shall, on all of its properties located within any incorporated city or town, pay in lieu of taxes to such cities and towns and to the counties in which such cities and towns are located, amounts equal for 1965 to fifty percent (50%), and equal for 1966 to one hundred percent (100%), of the ad valorem property taxes that would be paid on such properties if such properties were owned by persons fully subject to such taxes.

(d) For the privilege of engaging in business in one or more incorporated cities or towns for the period beginning May 1, 1965, and

Attachment V

*1369 Bowen-Blanks Drive
Riegelwood, North Carolina 28456
April 19, 1999*

*Representative Ronnie Smith
North Carolina House of Representatives
4th District
Raleigh, North Carolina 27601-1096*

Dear Representative Smith:

At the request of a lady on your staff, I am sending a copy of the comments I made April 14, 1999 on House Bill #476.

Thank you so very much for providing me this rare opportunity. Once again, please accept my appreciation for any support that you might be able to provide in the passage of this very important piece of legislation. It means so very, very much to our rural communities.

Sincerely,

Delilah B. Blanks
Delilah B. Blanks

Enclosure

Contd - #5
(V)Comments

To the Honorable Representative Ronnie Smith, Chairman, to the other Honorable Legislators, and members of this House Utilities Committee:

My name is Delilah Blanks. I have served as a County Commissioner for the County of Bladen since 1988. During my tenure on the board, I served as Vice Chairman and then Chairman of the Board.

It is a pleasure and opportunity for me to speak to you in regard to House Bill #476. This bill has a profound meaning and deep impact on the lives of thousands of rural North Carolinians.

My first experience with Four County Electric Membership Cooperation came during my high school years. We lived in a remote, poverty stricken area where our most valuable assets were woods and people. We survived through a strong work ethic, belief in God, family and self, knowing we lived in poverty, but not believing in it. We believed that we were masters of fate and could bring about change in our environment and circumstances. Four County Electric has been there bringing light to a dark area, improving the lives of individuals and communities. This EMC has an impressive tract record of providing low cost and affordable services to its customers. It has demonstrated a willingness to serve all individuals and families, those that are profitable and non-profitable.

I admire its community involvement and reinvestment. It encourages individual participation. It has become an integral part of the neighborhoods and counties that it serves. Several activities and programs are sponsored in order to help individuals with critical needs. The Round-Up Programs help to fund housing repairs, fire departments, senior citizen centers, youth activities and buy medication, to name a few. The Bright Ideas Program promotes academic initiatives by students and teachers in our public schools.

Passage of House Bill #476 is needed now as we approach a new century. Our Electric Co-ops need this legislation as statutory authority in order to engage in subsidiary business activities that will allow them to diversify and enhance their ability to compete in a global, changing market place. By doing this, our rural communities will become more livable and sustainable.

The EMC's are in no manner seeking this legislation to put others out of business. When that happens, we all loose. This legislation is needed in order that the EMC's might continue their impressive history of valuable low cost service, customer sensitivity, consumer involvement, community enhancement and at the same time, maintaining a high level of accountability and compliance with all applicable laws, rules, and regulations.

Thanks for this time provided me. I encourage you to please pass House Bill #476.

House Public Utilities Committee Meeting

Comments by Ms. Perri Morgan, State Director
National Federation of Independent Businesses
April 14, 1999

I represent 15,000 small businesses in North Carolina. We strongly oppose HB 476. EMC's have many advantages by virtue of their status as a regulated monopoly that are unavailable to small business.

We are not here to suggest that EMC's should not have the ability to set up subsidiary organizations that compete with private enterprise. We are only here to say that if they are going to compete with us, it needs to be an even playing field. We are suggesting rules for fair competition.

On behalf of the members of NFIB, I ask you to vote NO on HB 476.

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

Name of Committee

April 14

, 1999

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
A.Q. Smith, Jr.	B & R GAS CO. 3701 River Rd W.L.N.C.
Ashley D. Gainey	Sandhill 2 Gas Ltd, 1165 US 135 Goldsboro NC 27530
Joseph W. Chenevess	Mt. Olive Gas Co. 131 N. Center St. Mt. Olive N.C.
DAN BRINKMAN	MAILLARD GAS & OIL P.O. Box 1208 Kinston N.C.
SEAN BURICE	MAILLARD GAS & OIL 5459 Hwy 24 Newport, N.C.
Jerry McLeod	Synergy Gas Co. 604 Mercury St. Raleigh N.C.
Michael Lewis	Mackelfield LP Gas Co. P.O. Box 127 Monroe NC 28050
Wayne McElaugh	McElaugh LP Gas, 3469 NC 242 S. Benson, NC 27504
Mike Deanning	Dixie-Deanning LP Gas P.O. Box 517 Benson NC 27504
Lane Walter	Walter Gas Co. P.O. Box 549 Bladenboro NC 28320
Brian D. Campbell	Campbell Oil & Gas Co. P.O. Box 637 Elizabethtown NC 28337
Lynell K. Forsworthy	Super Flame Gas P.O. Box 947 Spring Lake NC 28392
Eddie Sullivan	Efford Gas Co. 404 W. Main St Albemarle N.C. 28001
JOHN HAGERTY	Exxon Co., U.S.A. 6220 WINTHROP DR. Raleigh NC 27612
Gary Breen Smith	New Hope Gas Inc. 1798 N. Boston Rd LA Grange NC 27851
Bobby Breen Smith	New Hope Gas Co. - 1798 N. Boston Rd LA Grange NC 27851
J. MARVIN SHEARIN, II	SHEARIN COMPANIES, INC. 105 Whitfield St. ENFIELD NC 27823
Audrey Locke Shearin	Eastern Petroleum Corp P.O. Box 398 Enfield, NC 27823
John W. H. H.	Danforth Gas Co. P.O. Box 43 Rocky Mount NC 27802
Ed Connelton	Stokes Gas Co. P.O. Box 98 Stokes, N.C. 27884
Charlotte Locke	Super Flame Gas Co. P.O. Box 398 Enfield, NC 27823
Franklin E. Ballard	Hancock Gas, 822 Main St. SPOTLAND NECK N.C.
C. RAY BRINN	SUPER FLAME GAS CO. 315 W. RING ST. Rocky Mt. NC 27804
Alan Smith	Lumber River EMC P.O. Box 330 Red Springs NC 28377
W BRAD BOBBITT	SUPER FLAME GAS Co 315 W RING ST ROCKY MOUNT, NC 27804
Hugh Shearin	Super Flame Gas Co, Rocky Mount NC 27804
Brian Mason	Union Services P.O. Box 127 Monroe, NC 28110
Hal Sedser	Union EMC P.O. Box 5014 Monroe, NC 28110

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

April 14, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Julia Griffin	Union EMC PO Box 5014 Monroe, NC 28111
Elaine Cunningham	Union EMC, PO Box 5014, Monroe, NC 28111
David Williams	Wake EMC, Box 1229, Wake Forest 27588
Bert Esworthy	Fayetteville, NC.
DAREN HARRIS	NC PROPANE GAS ASSOC.
Jennifer Young	D+S Propane, PO Box 401 Bakersville, NC 28705
Thom Styron	Carteret-Provan EC Morehead City, NC 28557
Elvany	Carteret EMC
Ron McElhany	Jones Ouslow EMC Jacksonville, NC.
Ken Jones	Jones Ouslow EMC 259 W. 8th St. Jacksonville
R.G. Brecheisen	Piedmont EMC, Hillsborough N.C 17278
R.T. MORRIS	NCPGA
Gomaring Holt	NC Propane Gas Assn. Raleigh 27612
SAM KAWLS	Jenkins Gas Co. - Polkville, NC
R B SLOAN	ENERGYUNITED
ALTON OVERBY	N.C. PROPANE GAS
Branda Dougrest	Sprint
James Rohite	C.U.C.A.
George M. Upchurch	NCPGA/Rolesville Gas + Oil Co.
Narda Van Dorn	P.O. Box 26 Rolesville NC 27571
	Van Dorn Gas Co Inc. Bixby NC 27209
Bill Weatherston	NC Petroleum Council
Elton Brand	Bye Bye
Dave Smith	CATC
Jason W. Moore	Bone & Associates
Robert Schwenker	North Carolina EMC
Shirley D. Pan	NCEB
Michael J. Bagg	NC Propane Gas Association

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

April 14, 1999

Name of Committee

Date _____

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VISITOR REGISTRATION SHEET

Public Utilities
Name of Committee

4/14/99
Date

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NAME

FIRM OR AGENCY AND ADDRESS

DAVID MEACHAM	ENERGY UNITED STATESVILLE, NC
RICHARD FAY	" " " "
LYNN TEW	SOUTH RIVER EMC - DUNN, N.C.
WAYNE WILKINS	ENERGY UNITED, STATESVILLE
CAROLYN RICE	N.C. Electric Membership Corp.
MIKE FINNEY	HAIFEM EMC
LARRY ARMSTRONG	" "
WAVERLY BOND	TIDELAND EMC
ELVIN L HOOPER	CAPE HATTERAS EMC
JOE SLATER	Tideland EMC
JEFF EDWARDS	Albemarle EMC
RICHARD WATTS	Energy United EMC
N. Mark Shof	Energy United EMC
Mark M. Hedrick	Energy United EMC
DORIS S. BROWN	Energy United EMC

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<u>Larry W. Payne</u>	<u>Energysunited E.M.C.</u>
<u>Amy Horton</u>	<u>Energy United E.M.C.</u>
<u>Adrian Dobson</u>	<u>Energy United</u>
<u>Jack B. Wooten</u>	<u>Energy United</u>
<u>Bill Stacy</u>	<u>Energy United, Statesville N.C.</u>
<u>Tom B. Woodruff</u>	<u>"</u>
<u>Edgar Carter</u>	<u>"</u>
<u>Lara Mallard</u>	<u>Energysunited, Statesville</u>
<u>JEFF VANDYKE</u>	<u>BELLSOUTH</u>
<u>Lee Delbriger</u>	<u>Energy United, Statesville</u>
<u>S.L. Johnson</u>	<u>121 E. 1st, E. 1st St. Statesville</u>
<u>B. Glenn Smith</u>	<u>ENERGY UNITED, STATESVILLE, NC</u>
<u>T.L. BROTHERTON</u>	<u>ENERGY UNITED STATESVILLE, NC</u>
<u>Eugene Chaybourn</u>	<u>Content-Corpus Electric Cooperative</u>
<u>Henry Davis</u>	<u>Morhous City</u>

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Joyce A. Davis	P.O. Box 709, RAL NC 27602
Jim Kinghorn	404 Barrington Dr., Tarboro NC 27886
PM Proctor	Energy United - Statesville NC
Delilah B. Blanks	1369 Bowen-Blanks Dr. R. egglewood, N.C.
Dods Johnson	Blue Ridge EMC CS 112 Lenoir NC 28645
Charles Terrill	NCEMC - Raleigh NC
Gness Stabler	DAVIDSON WATER P.O. Box 969 Welcome NC 27374
Andy Barker	Mayor Low Valley NC
Jerry Durmise	President P.O. Box 168 Energy United Water Corp. Stony Point, N.C. 28678
Eusthene Davis	Electricities of NC
Della P. Hotchkiss	NC. Assoc. of Electric Co-ops
Chris Heagarty	Electric Co-ops
Jimmy Smith	Four County Electric Membership Corporation P.O. Box 667 Burgaw NC 28425
DAN ALLEN	Four County EMC POB 667 Burgaw NC
Carolyn Herr Watts	NCEMC Raleigh NC

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NAME	FIRM OR AGENCY AND ADDRESS
PERRI MORGAN	NAT'L FEDERATION OF INDEPENDENT BUSINESS
Trin Reist	Circle Electric
P.T. Jones	P.T. Jones Elec.
Michael C. Polovitch	Mike Polovitch A/E + A/C
NORMAN SLOAN	HAYWOOD EMC
ROD WATTS	Energy United Water Corp.
Bonnie Robbette	Town of Taylorsville
Ray Sarnes	Haywood EMC
John Pson	UNC
PAT EVANS	Southport Electrical Service, Inc.
Low Brooks	DIAMOND ELECT CO. PO BOX 4157 EMERALD 190 W.P. 28594
Doug Fletcher	Fletcher Electric 28557 1815 Country Club Rd, M.H.C. NC
Frank Rospa	NCRMA
Alie Garland	Electricists
Doug Hoenig	NCPMI

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NAME**FIRM OR AGENCY AND ADDRESS**[illegible]

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 21, 1999
Room 544
10:00 AM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

H 777 – Future of Electric Service/Funding

H 476 – EMC Subsidiaries

H476-HCSRLO-001 – Proposed HC Substitute for HB 476

Presentations to be heard by:

NC Association of Electric Cooperatives
NC Petroleum Marketers Association
NC Propane Gas Association
NC Association of Electric Contractors
NC Small Business Association
NC Convenience Stores Association

ADJOURNMENT

Minutes
House Committee on Public Utilities
April 21, 1999

The House Committee on Public Utilities met Wednesday, April 21, 1999 in Room 544 of the Legislative Office Building at 10:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; and Representatives Braswell, Creech, Culpepper, Daughtry, Earle, Grady, Hardaway, Holmes, Hurley, McComas, McCombs, Miller, Mitchell, Rogers, and Starnes. A Visitor Registration list is attached (Attachment V) and made part of the minutes.

The Chair called the meeting to order and introduced pages Emily Cook from Rowan County and Tyler McLawhorn from Pitt County.

Representative Tolson was recognized to discuss H 476 – EMC Subsidiaries. He introduced and distributed copies of committee substitute H476-PHCSRL-007. Representative Saunders moved that the committee substitute (Attachment I) be adopted for discussion. The motion passed.

Representative Tolson, with the assistance of committee counsel Steve Rose, explained the changes in the committee substitute. Under Section 1., Items d. and e. have been added to insure that the concerns of small business owners have been addressed. A booklet was distributed (Attachment II) to show what coops have done in rural communities to promote economic development.

Representative Creech posed some questions about the loans to coops (as shown in Attachment II) and requested that by the next meeting a detailed list of loans be made available to the committee.

Representatives McComas, Grady and Starnes questioned specific wording in the bill concerning the buyout of existing businesses, the concept of partnering and additional language to limit the scope of the coops in this process. Mr. Chuck Terrell, EMC-CEO, assured the committee that he and others had tried and were willing to continue trying to reach compromise on the controversial issues in the bill. The Chair requested that Representatives Tolson and Starnes work on a compromise to limit the scope of the coops by the next meeting.

The Chair proceeded with presentations by the various organizations shown on the agenda. Ms. Perri Morgan, State Director of the National Federation of Independent Business, spoke against HB 476. She told the committee how her group had not been encouraged to participate in the drafting of the legislation; rather, they had been misled and misinformed whenever they asked what was going on. This has led to the concerns that the process has not been fair.

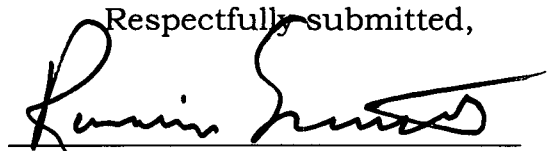
Mr. Bill Daughtridge was recognized to speak on behalf of the NC Petroleum Marketers Association against HB 476. His written comments are attached (Attachment III) and made part of the minutes.

Mrs. Audrey L. Shearin was then recognized to speak on behalf of the NC Propane Gas Association against HB 476. Her written comments with attachments (Attachment IV) are made part of the minutes.

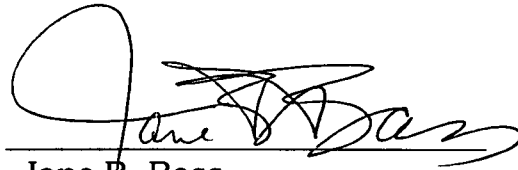
The Chair announced that the organizations would continue to be heard on the following Friday, April 23, 1999 at 12 p.m. in Room 544.

The meeting was adjourned at 10:57 a.m.

Respectfully submitted,



Representative Ronnie Smith
Chair



Jane B. Bass
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

H476-PHCSRL-007
PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 476*

Short Title: EMC Subsidiaries.

(Public)

Sponsors:

Referred to: Public Utilities

March 23, 1999

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC MEMBERSHIP
3 CORPORATIONS REGARDING SUBSIDIARY ORGANIZATIONS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 117-18 is amended by adding a new
6 subdivision to read:
7 "(14) As to electric membership corporations, to
8 form, organize, acquire, hold, and dispose of,
9 and operate, any interest up to and including
10 full controlling interest in separate business
11 entities engaged in any lawful activities,
12 whether or not those activities are within the
13 corporate purposes set forth in this Chapter,
14 so long as those other business entities meet
15 all of the following conditions:
16 a. They are not financed with loans or
17 grants from the Rural Utilities Service
18 (RUS) of the United States Department of
19 Agriculture (USDA) or the USDA or with
20 similar financing from any successor
21 agency. This limitation shall not apply
22 to RUS or USDA loans or grants, or loans

- 1 or grants from successor agencies, for
2 water, sewer, or waste water projects.
3 b. They are subject to all taxes,
4 specifically including federal and state
5 income taxes, levied against business
6 entities of the same structure and
7 engaged in the same activities.
8 c. They pay fair market value to the
9 electric membership corporation for the
10 use of personnel, equipment, or property.
11 d. They are organized and operated pursuant
12 to Chapter 55 or Chapter 57C of the
13 General Statutes.
14 e. They do not encumber or expose to
15 liability, in the aggregate, in excess of
16 15 percent (15%) of the assets of the
17 electric membership corporation.

18 An electric membership corporation may not
19 form or organize a separate business entity to
20 engage in activities involving the
21 distribution, storage, or sale of oil, as
22 defined in G.S. 143-215.77(8), specifically
23 including liquefied petroleum gases, but may
24 acquire, hold, or dispose of, and operate, any
25 interest in an existing business entity
26 already engaged in these activities, subject
27 to the other provisions of this subdivision."

28 Section 2. G.S. 117-30(a) reads as rewritten:
29 "(a) In the event it is ascertained by the Rural
30 Electrification Authority that the community or communities
31 referred to in the foregoing section [G.S. 117-29] are in need of
32 telephone service and that there is a sufficient number of
33 persons to be served to justify such services, and the telephone
34 company serving in the area in which the community or communities
35 are located is unwilling to provide such service, a telephone
36 membership corporation may be organized by such community or
37 communities in the same manner that electric membership
38 corporations may be formed under Article 2 of this Chapter, and
39 all of the provisions of said Article shall be applicable to the
40 formation of telephone membership corporations and such
41 corporations shall have all the authority, powers and duties of
42 such a corporation when formed under the provisions of said
43 Article; except that the provisions of G.S. 117-8, 117-9,
44 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-19 and 117-24 shall

1 not be applicable to the organization of a telephone membership
2 corporation, and except that such corporations so formed for the
3 express purpose of providing telephone service necessary to serve
4 the community or communities prescribed in the application may
5 also provide the community or communities prescribed in the
6 application with any communication service for the transmission
7 of voice, sounds, signals, pictures, writing or signs of all
8 kinds through the use of electricity or the electromagnetic
9 spectrum between the transmitting and receiving apparatus,
10 together with any telecommunications service requiring band-width
11 capacity, including, but not limited to community antenna and
12 cable television services, and including all lines, wires,
13 cables, radio, light, electromagnetic impulse and all facilities,
14 systems or other means used in the rendition of such services,
15 but not including message telegram service or radio broadcasting
16 services or facilities within the meaning of section 3(o) of the
17 Federal Communications Act of 1934, as amended (47 USC § 153(o))
18 and except that such corporation so formed shall have no
19 authority to engage in any other business. Provided, that the
20 references in Article 2 of this Chapter to "power lines" or
21 "energy" as to such telephone membership corporations shall be
22 construed to mean telephone lines, broadband cables and lines,
23 telephone service and broadband communications services. Provided
24 further, that nothing herein shall be construed to authorize any
25 telephone membership corporation organized hereunder to duplicate
26 any line or lines, systems or other means by which adequate
27 telephone service is being furnished; or to build or to construct
28 a telephone line, or telephone lines, or telephone systems, or
29 otherwise to provide facilities or means of furnishing telephone
30 service to any person, community, town or city then being
31 adequately served by a telephone company, corporation or system;
32 or to provide telephone service in an unserved area while any
33 telephone company, corporation or system is acting in good faith
34 and with reasonable diligence in arranging to provide adequate
35 telephone service to such person, community, town or city."

36 Section 3. This act is effective when it becomes law.

House Bill 476 - EMC Subsidiaries



Building a Better Future for North Carolina

Presented by: Chris Heagarty
NC Association of Electric Cooperatives
April 21, 1999

House Bill 476: What does it do?

This bill would clarify the power of electric cooperatives to form, operate, acquire, or otherwise invest in business entities beyond the scope of their original corporate purposes. Such business ventures would be separate entities from the EMCs, and governed by the same laws regarding taxation, regulation, and financing as apply to non-electric cooperatives.

Is this consistent with the purpose of the EMCs?

Yes. We believe that making prudent investments to financially strengthen the EMCs are within the corporate purpose according to G.S. § 117-10.

"[organizers of the EMC may] form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural section of the State by making electric energy available to inhabitants of the State at the lowest cost consistent with sound economy and prudent management of the business of such corporations." G.S. § 117-10. EMCs have two directives: to provide electric energy at low cost, and to manage the business prudently. Based on the actions taken by all other industry participants, it is clear that the EMCs' proposal is necessary to meet these directives.

What it does not do...

The bill does not allow any of these new business activities to be undertaken by the electric cooperatives themselves using any special powers or advantages given to Chapter 117 companies. The bill does not allow any RUS or USDA subsidized businesses to compete with private enterprise. The bill does not seek any outstanding or new powers not already afforded in most other states. Based on results in other states, this bill does not have an adverse impact on other businesses.

EMCs can already....

G.S. § 117-18 (3) already grants EMCs the power to hold and dispose of property, real and personal, tangible and intangible. Thus, EMCs may already make outside investments. This legislation ensures that they may own a controlling interest in a non-electric enterprise.

The Changing Electric Industry

The electric industry is changing at a break-neck pace. This can be witnessed through the actions of other electric utilities, both located in and outside of North Carolina.

Attached are some of the activities within our state by other energy companies. Additional information is included in the appendix.

CP&L : Acquisition of NC Natural Gas
 Acquisition of Interpath internet company
 Investment in PCS-Mobility telephone network

Duke Energy: Merger with Houston-based Pan Energy
 Crescent Resources, a real estate & development co.
 Duke Water Operations
 DukeNet Communications

SCANA: Acquired Public Service Company of North Carolina
 (SCANA is also known as SC Gas & Electric)

Entergy: Acquired network of NC home and commercial security
 and monitoring companies
 (Entergy is a multi-state power company based in LA)

Enron: Houston-based Gas and Electric company engaged in multiple diverse
 operations, see attachment

All-Star Gas: NC propane gas company soliciting members about future sale
 of electricity.

Diversification of assets makes good business sense and helps respond to the members' needs. EMCs have an obligation to manage their utility prudently and competitively. EMCs want to diversify for three main reasons:

- By providing additional services, the EMCs will be in a position to enhance economic development and quality of life in rural communities, benefiting their members.
- Revenue from subsidiary enterprises will be used to keep the EMC financially secure or will flow back to EMC member-consumers.
- The electric industry is becoming more competitive and potential competitors are already diversifying their assets, and moving into the state. Out of state power companies, even out of state electric cooperatives, can currently provide non-electric services to NC customers.

Surveys indicate customer demand

According to an April 1 survey from the Edison Electric Institute, an association representing the nation's investor-owned electric companies, consumers favored electric utility diversification:

75%: Favor electric companies providing **one-stop shopping for electricity and other utility services.**

81%: Favor electric company affiliates (subsidiaries) providing **energy management services.**

71%: Favor electric company affiliates (subsidiaries) providing **electrician services.**

67%: Favor electric company affiliates (subsidiaries) providing **appliance services.**

63%: Favor electric company affiliates (subsidiaries) providing **security services.**

60%: Favor electric company affiliates (subsidiaries) providing **cable services.**

54%: Favor electric company affiliates (subsidiaries) providing **internet services.**

However, while consumers believe that electric company affiliates **should** provide these services, research data does not mean they would necessary switch from existing providers, merely that they would like the option.

As other electric utilities and EMCs are entering these businesses at a steady rate, our state's EMCs need passage of HB 476. Rather than unfairly restrict the options available to one electric provider, it is important to let North Carolina's EMCs have the same rights in creating subsidiaries as other power companies and cooperatives in other states.

Not a new idea...

EMCs exist in 45 other states. EMCs have been providing a menu of diverse services for years in some states, or have recently enacted such changes in others. In other states it is **NOT** mandated that these services be offered only through non-EMC subsidiaries. Thus, even after enacting HB 476, NC's EMC laws will be more restrictive than most states.

States where EMCs may engage in any legal activity....

Arizona	Arkansas	California	Colorado	Delaware
Idaho	Illinois	Iowa	Kansas	
Maryland	Michigan	Minnesota	Nevada	
New Mexico	New Jersey	Ohio	Oregon	
South Dakota	<i>Tennessee</i>	Utah	Washington	
West Virginia	Wisconsin	Wyoming		

States where EMCs may provide additional services beyond electricity...

Alabama	Alaska	Indiana	Kentucky
Maine	Montana	<i>South Carolina</i>	Vermont
<i>Virginia</i>			

States where EMCs may provide services limited to electrical contracting, electrical repair, appliance sales and plumbing ...

Louisiana	Missouri	New York	North Dakota
Oklahoma (wiring, plumbing, & repair service only)			Pennsylvania

States where legislation to expand EMC activities is pending...

Louisiana	New York	<i>North Carolina</i>	Pennsylvania
<i>Tennessee</i>	Vermont		

Again, when HB 476 passes, NC will still have a more restrictive EMC law than most other states.

Italics indicate states which boarder North Carolina

Why this is a good idea....

You will here many good reasons why this bill is a good idea and how it will benefit North Carolina. Some of them are contained in news articles attached to this document.

Basically, this bill will allow EMCs to provide needed services in rural and distressed communities, both economic development services and quality of life services.

This bill will help keep EMCs healthy and competitive. It will always cost more to provide power to rural areas than to urban areas due to the lower population density and terrain covered. Even with the possibility of deregulation lowering generation prices, rural distribution costs will be an issue. Diversification of assets helps EMCs to prudently manage their money and operate their business at the lowest possible costs.

As the electric utility changes and new competitors enter the state trying to establish a niche in our markets, many times local businesses fall prey to speculative companies. HB 476 will facilitate the partnering of local businesses and local EMCs and help keep taxes in the states, business dollars in the community, and ultimately returned those dollars to the citizens through their electric rate or through a membership dividend, rather than flowing to some out of state entity.

But what kind of services are we talking about?

Services provided by EMC subsidiaries would be determined by the needs of each EMC's community and what makes good business sense. For example, in some areas, an EMC may see benefits by partnering with a propane company. In other areas, though, the EMC may have no interest in the propane market, but does see a demand for internet service. The pricing and the availability of a service would influence an EMC's decision to invest in a business providing that service.

The decision to invest in a business will depend upon the specific situation in each EMC's market. Some EMCs may not wish to provide any additional services at this time, but want to retain the right to form or acquire subsidiaries in the future.

North Carolina EMCs have expressed potential interest in services such as:

- sewer, water, wastewater services
- retail internet service and/or internet infrastructure,
- education, training & business services
- wiring, electrical repair, & appliances
- propane & natural gas distribution;

but each EMC will determine its services based on community need and business climate.

So how could anyone disagree?

Beats us, given the many advantages of the bill, based on what other states allow, and based on all the protections guaranteed in the bill. We assume it must be because of certain misunderstandings. We can address each of these in great detail and will respond in full after hearing specific testimony, yet hopefully some of these problems can be resolved now.

Misunderstanding the tax & regulation issue?

Some seem to think that the subsidiaries will benefit from special tax or regulatory treatment. The bill ensures that this is not so.

Subsidiaries will be non-Chapter 117 companies. That is, they cannot be organized as EMCs and will be subject to all laws applying to companies of the same business structure engaged in the same activities.

Therefore, EMC subsidiaries will:

- will be regulated and licensed as all other similar companies;
- will pay all appropriate taxes, local, state, and federal.

Further, EMCs pay taxes on non-related business income, therefore any profits from for-profit subsidiaries that would be go to the EMC would be subject to the federal Unrelated Business Income Tax. (All EMCs are currently subject to this tax, but since they have minimal non-electric related sales, they generate minimal unrelated business income, and therefore currently pay little or any of this tax)

EMCs themselves paid over \$67 million dollars in state and local taxes to North Carolina in 1997. A breakdown of those taxes is enclosed with this document.

So how could anyone disagree?

Misunderstanding issues of government money and cross-subsidization?

A few points:

No RUS or USDA money can be used by or for any subsidiary. This included RUS electric loans and also includes the many economic development loans available not to EMCs, but to non-EMC private businesses. The only exception to this that federal funds are to remain available for sewer, water, and wastewater projects.

Despite what may have occurred nationally, there has been no debt forgiveness for, or loan defaults by, NC's EMCs to RUS. In fact, a number of EMCs have completely bought out their RUS debt and rely solely on private financing.

As far as issues of cross subsidization, it is prohibited, both by the bill and by standard tax and accounting practices. We have another speaker who will discuss this in more detail. EMC accountants auditing the books for the membership, the RUS audits that ensure proper use of government money, and the IRS would all prohibit such actions.

Any use of land, facilities, employees, etc, must be accounted for and compensated at fair market value. Other intangible benefits that some may cite, such as "goodwill" or consumer data is currently available to any business that starts another subsidiary. Other companies can survey their customers about buying preferences, use their own name or logo for affiliated services, etc

But didn't the EMCs get started using government-loaned capital? Is that fair?

It sure is easy to say that because someone received government money that they should be ineligible to compete with "private enterprise", yet when you examine our state you find throughout our economy examples of businesses that have received some form of government assistance. It can be argued that taxpayers have always contributed to one competitor over another, if the greater public good is served. The state and federal governments even today invest millions of dollars to spur growth and economic development in rural areas. Rather than seek additional government investment, the EMCs are asking for clarification that they can own and operate subsidiary businesses for the benefit of these local communities, just like their competitors in urban areas are already doing.

More on the issue of "subsidies"...

Examining the issue more closely, we can see plenty of examples of the state's policy of investment or "subsidization" of private enterprises. A short list would include:

- The NC Industrial Development Fund - new building and infrastructure funds
- The NC Industrial Development Fund - existing facility, repair, & renovation fund
- The NC Industrial Development Fund - utility account fund
- The Business Energy Improvement Fund
- The NC Natural Gas Expansion Bond Fund
- Tax Exempt Industrial Revenue Bonds
- Taxable Industrial Revenue Bonds (exempt from NC taxes, subject to federal taxes)
- Exempt Facility/Solid Waste Disposal Revenue Bonds

William S. Lee Act - Investment Tax Credits

William S. Lee Act - Job Creation Tax Credits

William S. Lee Act - Worker Training Tax Credit

William S. Lee Act - Research and Development Tax Credit

William S. Lee Act - Central Administrative Tax Credit

William S. Lee Act - Development Zone Enhancements (Additional credit added to existing William S. Lee Act tax credits awarded for development in Tier I counties)

William S. Lee Act - Business Property Tax Credit

Most of these programs serve the very noble purpose of helping to foster much-needed economic development in the poorest areas of our state. If the state can appropriate funds and grant tax incentives for profitable, out-of-state, companies to spur growth in these areas, why not simply allow the hometown, not-for-profit, EMCs to create jobs and expand services in these same areas?

Yet, the depth of government subsidization goes far beyond state incentives. For example, private businesses in the state receive millions of dollars in aid and assistance from the Small Business Administration (SBA). In addition to the subsidized training, counseling and informational services provided by SBA, many direct low-interest loans were made to help start-up businesses compete in the free-market. In fact, a comparison of SBA loans made in North Carolina to RUS loans shows that many people complaining about subsidization may in fact be direct recipients of such aid.

FY 97 SBA Loans in NC: \$148.93 million

FY 97 RUS Loans in NC: \$ 24.48 million

FY 98 SBA Loans in NC: \$117.75 million

FY 98 RUS Loans in NC: \$ 42.73 million

Note: EMCs are ineligible for SBA loans.

Misunderstanding EMCs "Public Investment"

Some would represent EMCs as a sponge, soaking up government-financed capital and using the advantages for their own good. Quite to the contrary, EMCs have been giving back to their local communities in jobs, taxes, and in community and economic development programs.

EMCs serve the Tier I, II, and III counties identified by the state as being most in need of economic development. For example, EMCs have headquarters in Tier I and II counties such as Edgecombe, Halifax, Anson, Northampton, Onslow, Robeson, Perquimans, and Beaufort counties.

North Carolina EMCs have:

- since 1996, provided over \$ 15.5 million through a revolving loan fund to build shell buildings to attract new business or to assist existing business with expansion, resulting in a total economic expansion of over \$ 154 million in North Carolina;
- assisted private enterprise to obtain over \$ 5 million in loans or grants from the United States Department of Agriculture since 1989;
- assisted in the creation of over 4,600 jobs through their economic development efforts since 1989;
- contributed over \$ 1.4 million to local schools statewide through our Bright Ideas grant program since the program's creation in 1994;
- with their consumers, contributed hundreds of thousands of dollars for fuel assistance for low-income residents through Operation Round-Up;
- contributed over \$100,000 in scholarships for high school students to attend special events and to community college students for tuition assistance over the last several years;
- contributed over \$ 100,000 to the North Carolina 4-H Program since 1996;
- provided time and resources for many local economic development and civic organizations to promote rural development and improve the quality of life for its membership;
- assisted local government with water, wastewater and sewer projects by assisting with funding, providing technical and staffing assistance;
- and contributed over \$65,000 in three years to local rural hospitals.

Examples of EMC Economic Development Projects through USDA Rural Economic Development Loan and Grant Program

EMC	County	Project	Loan Amount	Jobs
Albemarle EMC	Hertford	Watermark Artisans	\$100,000	16
Halifax EMC	Enfield	4-H Youth Camp	\$100,000	1
EnergyUnited	Iredell	Eclipse Packaging	\$600,000	27
EnergyUnited	Alexander	Taylor Toggs	\$400,000	175

Examples of EMC Economic Development Projects Funded by North Carolina Electric Membership Corporation Revolving Loan Fund through Local EMCs

EMC	County	Project	Loan Amount	Jobs
Blue Ridge EMC	Caldwell	L.W. Taylor Shell Bldg.	\$500,000	N/A
Carteret-Craven EC	Carteret	Jarrett Bay Boatworks	\$500,000	306
Carteret-Craven EC	Carteret	Jones Brothers	\$500,000	20
Edge.-Martin EMC	Edgecombe	Kingsboro Industrial Park	\$500,000	N/A
Wake EMC	Franklin	Apogee Medical	\$500,000	N/A
Wake EMC	Franklin	Youngsville Comm. Center	\$500,000	N/A
Tideland EMC	Hyde	Hyde County Cotton Gin	\$500,000	25
South River EMC	Johnston	Benson Industrial Park	\$500,000	50
South River EMC	Johnson	PWC (Water Ext.)	\$330,000	**
Edge.-Martin EMC	Martin	Martin Co. Industrial Park	\$500,000	100
Jones-Onslow EMC	Onslow	Jacksonville Industrial Park	\$500,000	N/A
Albemarle EMC	Perquimans	Perquimans Commerce Center	\$400,000	N/A
PittGreene EMC	Pitt	Farmville Industrial Park	\$500,000	N/A
South River EMC	Sampson	Arrow-Stevens	\$500,000	31

*N/A means the building is either under construction or has not been sold

** Pending USDA Approval

So how is this an "unlevel playing field"?

We have done everything we can to ensure that any EMC subsidiaries will be operating under the same rules, regulations, and tax restrictions as our competitors to ensure a level playing field. In fact, in doing so, we have produced a proposal that is far more restrictive than what other states currently allow, based on the requirement that the activities in question must be provided through a subsidiary rather than through the cooperative.

Further, our proposal is far more restrictive than what other competitors must abide by. That is, a propane dealer could decide to enter into the electric contracting business, and provide a full menu of diverse services through one company, which shares employees, financing, equipment, etc.

Our proposal also denies EMC subsidiaries funds available to the subsidiaries' competitors through the USDA. That is, many non-EMC affiliated organizations are currently eligible to receive economic development loans from these federal agencies, but our proposal prohibits EMC subsidiaries from having any access to these funds, except for financing sewer, water, and wastewater projects.

Admittedly, our bill does not address issues such as size, volume discounts, and efficiency of scale, that some may claim are unfair. We do not believe that these issues constitute an unfair practice. Such advantages and disadvantages currently exist in the current business climate. While some may believe that EMCs have a market-advantage, the market advantages enjoyed by other electric utilities is far greater, and they compete in the current environment. Further, companies like Entergy and Enron have far more available capital and resources than your hometown cooperative and they are allowed to compete in the current environment.

We do not feel our bill should attempt to legislate equal wealth among companies, but that it should and does guarantee equal rules for all competitors.

So who does support bill?

Support for our proposal is widespread throughout the state. A sampling of that support is included within this document, and you will hear from others at this hearing expressing their commitment to this legislation. In summary, supporters include:

- the 27 electric membership cooperatives serving North Carolina
- the North Carolina Co-op Council
- the North Carolina Credit Union Network
- many Carolina County Commissioners
- many municipal officials
- many chambers of commerce and civic organizations
- community water systems
- neighborhood & citizen associations
- rural economic development organizations and partnerships
- numerous small businessmen and women
- EMC member consumers

So in conclusion...

This bill is about the future of NC, it is about economic development, and fairness. Opposition to the bill stems from a fear of competition, but in fact the bill guarantees a level playing field. In states that have enacted far more reaching legislation, these other businesses continue to thrive. The EMCs can provide vital services, create jobs and generate revenue in areas of the state where the legislature already spends millions of dollars trying to foster growth.

Other players in the electric industry are looking to move into NC and siphon dollars out of our state. This race has already begun, and our state's EMCs are being held back. Everyday that goes by leaves us further and further behind. This is a good proposal and we have many good answers to many good questions. We will continue to provide you with more information and more answers as the debate on this issue unfolds.

For More Information Please Contact:

Chris Heagarty - NC Association of Electric Cooperative, (919) 875-3074



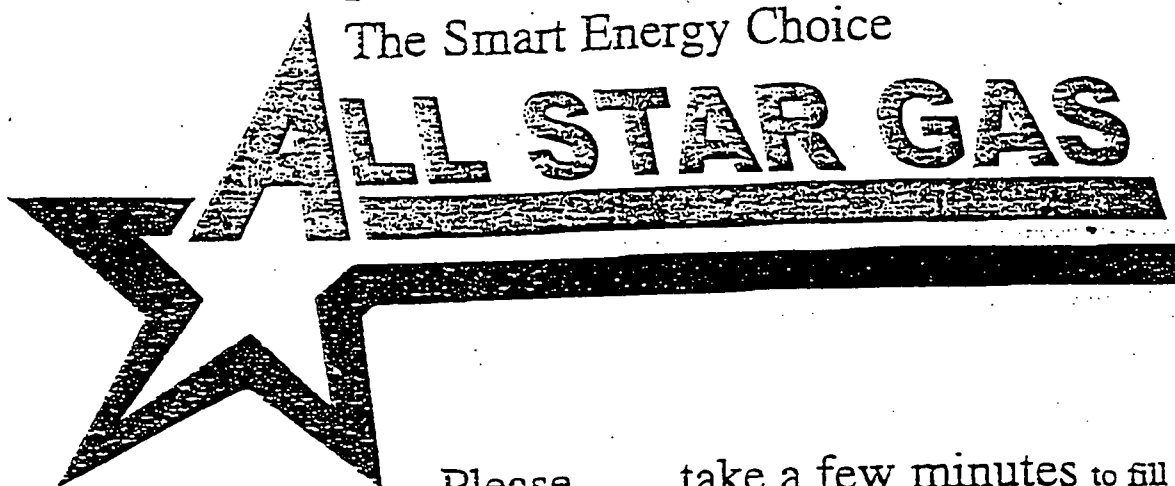
In-State and Out-of-State Utility Activity

Propane Gas

You can rest assured when you count on propane... an energy choice that delivers performance at a cost you can afford.
Get a good night's rest ...

Propane

The Smart Energy Choice



Please take a few minutes to fill out this survey and return it to us postage paid. We'll send you a small token of our appreciation.

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PINETOWN NC 27665-9350



There are three steps in getting electricity to you, the consumer: generation, transmission and distribution. Soon you may have a choice in purchasing the generation portion of your electricity from a service provider other than your current utility. Competition is expected to lower prices.

If All Star were an electric service provider, at a competitive cost, would you consider switching to our electric service?

Yes ... ☐

No ☐

Do you have an electric water heater?

Yes ... ☐

No ☐

Do you have a gas barbecue grill?

Yes ... ☐

No ☐

To provide steady all season pricing, during 1998 All Star offered a Pre-Buy Pricing Plan to our customers. Basically, you purchased propane in the summer and we delivered all year long. The price for your winter supply was guaranteed on the day you purchased it.

Did you take advantage of our Pre-Buy Plan this summer?

Yes ... ☐

No ☐

If no, why not _____

When you call or visit our office, are our customer service representatives courteous and friendly?

Yes ... ☐

No ☐

Can they answer your questions about our service and your account?

Yes ... ☐

No ☐

Are you satisfied with the results of your conversation?

Yes ... ☐

No ☐

Any other comments _____

That's it! Thanks for your time.

SCANA deal raises stakes for CP&L

It's long been assumed that the deregulation of North Carolina's electric industry would eventually pit the state's two giant utilities, Carolina Power & Light Co. and Duke Energy Co., against each other.

But on Feb. 17, before deregulation even began, CP&L discovered that its most formidable foe may be from Columbia, S.C.

Meet SCANA Corp. — supplier of electricity to 517,000 South Carolinians, and the new provider of natural gas in the Triangle, thanks to its \$900 million purchase of Public Service Co. of North Carolina.

So much for the image of an impregnable CP&L fortress in eastern North Carolina, supposedly born from the pending acquisition of N.C. Natural Gas of Fayetteville. In the next decade, CP&L will have to fight to hang onto its customers because SCANA may soon hold a natural entry point to offer electricity to every CP&L customer in the Triangle.

SCANA is "one of the lowest-cost power producers in the country," said Charles Zeigler, Public Service's CEO. "The opportunities that may come in the future ... that's got to be a plus for everybody in this combination."

CP&L and SCANA are likely to be at each other's throats when competition begins. Each company will soon own one of the largest natural gas suppliers in the state. Each will now have service territories bordering or overlapping each other in both Carolinas.

The CP&L of the past would have been in serious trouble. Today's CP&L stands a much better chance of holding its ground.

In 1997, CP&L's residential customers paid an average rate of 7.9 cents per kilowatt-hour of electricity. SCANA charges 7.88 cents.

But the potential savings for business-

es are huge. SCANA's average commercial electric rates are now 6.3 percent below CP&L's average, and 24 percent below its industrial rates. CP&L's business customers, who have been CP&L's harshest critics in the past, will demand the right to receive those lower rates.

CP&L's efforts to slash rates must now take on a greater sense of urgency, with SCANA in its back yard.

But competition consistently makes companies better, not worse. The Triangle's residents and businesses deserve the right to choose — the right to select CP&L or SCANA.

— David Strou

Letter to Shareholders

BUILDING ON EXISTING STRENGTH

We are pleased to report that Carolina Power & Light is well positioned for continued growth and fully capable of meeting the challenges and changes unfolding in our industry. That shouldn't be a surprise to anyone. For many years, CP&L has been attending to fundamentals and building a rock-solid foundation for growth.

Hard work got us to our current position. The ratio of our market price to book value is one of the highest in the industry. We've hit the \$6 billion mark in terms of market value. In terms of sheer size, that puts CP&L in the top 20% of the utility industry. We have a track record of providing solid service to the community and creating value for our shareholders. With 1997 revenues exceeding \$3 billion, we're poised to take our business to the next level.

As a matter of fact, Carolina Power & Light is entering the most exciting period in its history. We continue to emphasize our core business: generation, transmission and distribution of electricity. Reliability and operational excellence in both nuclear and fossil generation remain ongoing priorities. But we're also adding to existing strengths, creating within the Company a world-class marketing group to help extend our greatest asset: the ability to put technology to work for customers.

Through all the changes and a renewed vision of our business, we haven't lost sight of our bonds to the communities we serve. CP&L's commitments to education, economic development and environmental stewardship have each been recognized throughout North and South Carolina. And as we grow, we'll refocus and enhance these programs to meet future needs.

Our strategic plan has been carefully conceived to leverage several key strengths. For example, we are fortunate to be located in the Carolinas, a region with a solid history of political and regulatory practices that attract and nurture businesses. It is also one of the fastest growing markets in America. Today, we reach customers in over 200 communities all around this area. But we have the technology and infrastructure to become "super-regional" tomorrow by expanding our range of services, our product offerings and, ultimately, our customer base. Most important, we have the right people in place, and throughout the organization we enjoy a sense of energetic optimism.

A cornerstone of our strategy is the ongoing effort to lower costs aggressively. We're proud of our people and the progress they've made on that commitment. In fact, few other utilities have reduced costs to the extent we have. Since 1994, we have lowered operating costs by \$100 million - a 13% reduction.

The significance of these cost-cutting measures was never more evident than in 1997. We added 32,000 new customers and grew total energy sales by 2.8%. But unusually mild weather had the potential to severely impact results. Instead, the combination of cost reduction programs and overall growth kept earnings level with 1996 figures. The strategy worked. Despite the challenges from Mother Nature, CP&L recorded solid results for the year.

As our customer base grows, so does demand on our system. CP&L will be prepared to meet that growth in sales through a combination of added generating capacity, economical power purchases and improvements to an already reliable generating system.

In 1997, we added 240 megawatts of peaking generation, and modifications to our Brunswick nuclear plant added another 110 megawatts of power. At the same time, our fossil units set a new record for dependability, achieving the lowest forced outage rate in 16 years and placing CP&L in the top quartile for reliability in the industry.

High operating standards and continual improvement are the norm at CP&L. Our nuclear plants have become benchmarks for the industry, achieving levels of excellence in operations, cost, reliability and safety that few others can match. In fact, 1997 marked the fourth consecutive year of record-breaking nuclear generation in the Company, highlighted by the Brunswick Plant setting a new world standard for continuous dual-unit operations of a boiling water reactor.

Clearly, the lines and infrastructure to serve new customers are in place. Yet we also maintain a vigilant commitment to customer service. Over the past few years, our investment of \$100 million in computer system upgrades and facilities improvements has been targeted to serve and satisfy our customers better. Ongoing improvements in this area are vital, and will remain a central operational priority.

Success in the days ahead is based on a bold new course targeting ambitious goals for the new century. By the end of 2001, we will substantially grow our earnings and increase the size of the Company. And we'll do this while continuing to focus on plans that will dramatically enhance shareholder value.

How? By expanding our existing business through increased sales and new product offerings. We'll also develop new alliances and acquire new businesses. Natural gas marketing will be in our future as we build an organization with the potential to be a one-stop-shopping service for our customers.

Acquisitions are bound to happen, but the criteria for such purchases will center on creation of shareholder value. We see growth, certainly, but we must achieve growth by acquiring only those companies that offer profitable synergies with our own.

Our technology-based energy services company, Strategic Resource Solutions Corp. (SRS), is an excellent example of a strategic competitive advantage gained through acquisition. In 1997, we finalized the acquisition of its predecessor, Knowledge Builders, Inc., and renamed the business. Reborn on the Fourth of July as SRS, the new company has grown exponentially. At the heart of that growth was the recent acquisition of Parke Industries, the fourth largest lighting company in the United States. Now, SRS is engaged in a host of energy services efforts providing technology and information to customers in 49 states. SRS is also involved in a range of dynamic joint research and development projects and, on the government front, has earned a contract for services with the U.S. military.

There were also changes at CaroNet, our telecommunications subsidiary. In 1997, we renamed the company Interpath Communications and allocated \$200 million over the next three years for expansion of its data-focused communications network. Carolina Power & Light has one of the largest fiber-optic network systems owned by an electric utility in the United States. With low operational costs and a staff of highly qualified professionals, we believe there is a substantial niche for this business to meet the explosive growth of electronic commerce on the Internet.

Clearly, our culture is evolving, becoming more creative, entrepreneurial and strategically focused. To emphasize the shift from a traditional utility company to a responsive marketing and services company, we've reorganized into the following business units:

- Energy Supply produces electricity for retail and wholesale markets.
- Energy Delivery delivers electricity and other services to customers.
- Retail Sales & Services provides products and services for customers in targeted market segments.

We're focusing on results. Yet we're building from a fundamentally strong employee base - a workforce that has embraced an environment that values and rewards high performance. Our business units are developing their own distinct cultures to successfully compete in the future. And to further transform and energize these business units, we're bringing more talent into the Company.



WILLIAM CAVANAUGH III
President and Chief Executive Officer

Over the past year, we have fundamentally changed the way we do business. That's essential given the evolving nature of the market we serve. Carolina Power & Light is actively involved in working to ensure that any transition to a deregulated utility market will be as fair and as smooth as possible. To minimize the effect of future deregulation on today's investments, we are working hard to accelerate depreciation and implement careful capital spending plans. Ultimately, we're working to ensure that electric power remains affordable and reliable into the next millennium.



SHERWOOD H. SMITH, JR.
Chairman

We've set high goals, believing that Carolina Power & Light will be successful no matter what the future holds . . . no matter who our competitors are . . . no matter what the regulatory environment. On behalf of the entire Company, we want to express our gratitude for your continued support and confidence. The future is bright.

WEEK OF MARCH 19, 1999

TRIANGLE BUSINESS JOURNAL

Interpath to start offering telephone service

By DAVID STROW

MORRISVILLE

After years of speculation, Interpath Communications will launch local and long-distance telephone service next month to business customers throughout North and South Carolina.

Interpath, a subsidiary of Carolina Power & Light Co., has already installed a Nortel switch capable of handling 500,000 calls at its Morrisville headquarters, and is now offering phone service for a few test customers.

Interpath plans to target customers in the major metropolitan areas in the two states.

"We are not counting on network access as a major source of revenues. Application (development and monitoring) will be the revenue," said Frank Taylor, vice president of strategic planning for Interpath. "But we need to be able to provide it."

Interpath is selling Internet and computing services and high-speed data access to more than 1,400 business customers. Last year, it took in

\$43.3 million in revenue.

CP&L merged its CaroNet subsidiary with Interpath last year after acquiring the latter company from Capitol Broadcasting Co. of Raleigh. Interpath then was mainly an Internet service provider.

Interpath is growing rapidly. The company intends to lease a 66,000-square-foot building near its headquarters in Perimeter Park West to house its consulting operations. Employment will increase from 470 to 650 by year's end, Taylor said.

Telephone service will mark yet another huge diversification for the Raleigh-based utility. By the end of 1999, CP&L and its subsidiaries will be able to offer customers electricity, natural gas and telephone service. However, Interpath does not intend to target anyone but business customers.

The move could create a powerful competitor to incumbent carrier BellSouth in the Carolinas. Ironically, Interpath is a minority stakeholder with BellSouth in BellSouth Mobility DCS, a digital wireless telephone service.

"It's just another connection to the whole, whether it's a (gas) pipe, or an electric wire, or the telephone," said Michael Worms, who covers CP&L for New York-based Gerard Klauer

Mattison. "There are some that think that's one way to position yourself for (electric deregulation)."

Although phone service will be a big milestone, Interpath views voice service as one piece of a grand telecommunications puzzle.

The "virtual private network" that Interpath markets spans voice communications, data transmissions and companywide software applications. Eventually, these services will be converted to pure data and transmitted over the digital network.

But for now, Interpath's telephone service won't be shuttled around over the Internet.

"Voice over IP (Internet protocol) isn't quite yet the quality of traditional voice services," Taylor said.

There are no current plans to directly tie Interpath telecom services with CP&L's energy users. Instead, Interpath plans to make the resale of its services a key part of its marketing strategy. Companies that would resell Interpath services include software developers, consultants and computer sellers.

"We've gotten a decent amount of funding from CP&L to build this network," Taylor said. "CP&L has really given us a lot of latitude. We operate largely as an independent (company)."

DukeNet
Communications
Contacts

Select Another
Business Unit

Providing fiber optic and wireless digital networks for industrial, commercial and residential customers and, in the future, enabling networks for energy services applications.

Duke Energy Business Units **DukeNet Communications**

DukeNet Communications, Inc. meets the communication needs of industrial, commercial and residential customers in the Southeast by developing and managing communications systems, including fiber optic and wireless digital network services. DukeNet is the telecommunications arm of Duke Energy Corporation, a global energy company with unparalleled technical and operating expertise.

Here's what we have to offer:

- A 3,300-mile fiber optic communications network centered in the Carolinas, with interconnecting networks extending from Washington, D.C. throughout the Southeast to Texas. We develop, manage and lease capacity on this system.
- Digital, wireless Personal Communications Services (PCS) in the Charlotte Major Trading Area (encompassing most of the Carolinas and part of northern Georgia).
- Access to other Duke Energy companies - DukeSolutions, Duke Electric Transmission and Duke Power - and their related infrastructures, electric transmission lines and rights of way.

Meeting customer needs:

DukeNet and its partners, through participation in the CFN (Carolinas FiberNet), L.L.C. consortium, provide a 3,300-mile fiber network which covers all major North Carolina and South Carolina cities and many secondary communities in the Carolinas and Virginia. Through interconnections with Interstate FiberNet, a Georgia-based company with a 4,500-mile fiber network, DukeNet offers service extending throughout much of Georgia, Florida, Alabama, Mississippi, Arkansas and Texas.

DukeNet's communication cables are embedded in the overhead ground wire of Duke Electric Transmission's system. As a result, the network is highly reliable and enjoys the highest "in service" ratings from the various long distance carriers.

DukeNet, through a 20 percent interest in BellSouth Carolinas PCS, L.P., provides digital, wireless communications to the Charlotte Major Trading Area (MTA). Covering most of North Carolina, South Carolina and a portion of northern Georgia, the Charlotte MTA is the sixth largest major trading area in the country. BellSouth Mobility DCS customer service is currently available in all major cities and associated highways within the Charlotte MTA and as construction continues, additional cities are being added to expand the metropolitan areas and improve coverage.

During 1996, the partnership sited, constructed and activated more than 700 of its planned 1,000 antennas. Commercial service began on July 19, 1996, coincident with the start of the 1996 Summer Olympics in Atlanta. BellSouth Mobility DCS was the second MTA to offer commercial PCS service. As of December 1997, the partnership has enlisted more than 150,000 subscribers. The partnership includes BellSouth PCS; CaroNet, a subsidiary company of Carolina Power & Light; and 31 independent telephone companies in the Carolinas.

Capitalizing on the passage of the Telecommunications Act of 1996, which eliminated the barriers to competition among long distance, local exchange and cable service providers, the company is deploying "Local Access" fiber optic networks in Charlotte and Greensboro/Winston-Salem. These networks will be used by telecommunications companies competing for local telephone customers in this newly deregulated market. DukeNet's commitment to reliable service, strategic partnerships and increased

shareholder value will successfully position the company for the 21st century.

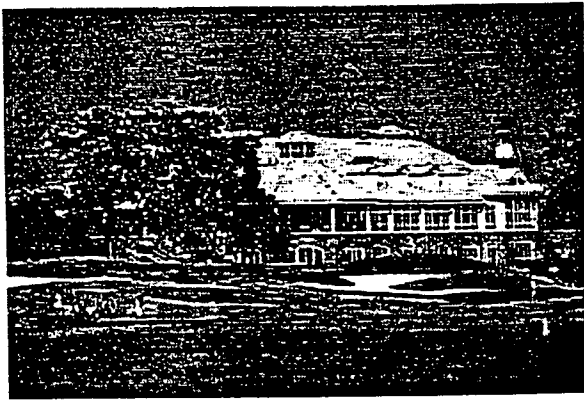
Select Another
Business Unit

Duke Energy Business Units Duke Water Operations

We provide franchised water services to customers in parts of North Carolina and South Carolina.

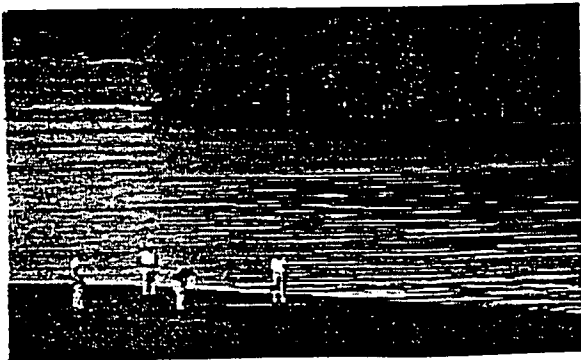
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P.O. Box 158
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Anderson, South Carolina 29622
(864) 260-5406

Crescent Resources, Inc. is a real estate development, land management and commercial forestry company. Praised as a "meticulous developer" by The Charlotte Observer, the award-winning corporation has projects spanning a five-state region in the southeastern United States. Crescent was formed more than 25 years ago by Duke Energy, one of the nation's largest utility companies.



Headquartered in Charlotte, NC, Crescent Resources currently has projects throughout North Carolina, South Carolina, Georgia, Tennessee and Florida. The company is an active developer of residential and commercial projects, including country club communities, office buildings, business and industrial parks, shopping centers and hotels. Crescent is also involved in land management and commercial forestry, supplying timber for the furniture, home-building and paper industries.

Crescent is widely recognized as a developer of fine country club communities. *Sugarloaf Country Club* in Atlanta, is the site of world-renowned golfer Greg Norman's first course in the United States. He had previously designed courses in Asia and Australia.



Set along the shores of the largest lake in North Carolina, *The Peninsula* on Lake Norman is just minutes from Charlotte. The outstanding Rees Jones-designed course is the site of the LPGA Fieldcrest Cannon Classic.

Ballantyne Country Club, in southeast Charlotte, has been designed with the entire family in mind. Here, you'll find bike trails through community common areas; a heralded championship golf course; a Swim and Tennis Center complete with a Teen Center and Kids' Club; an elegant Clubhouse styled after a mountain hunting lodge; and a year-round activities program planned by a full-time Activities Director.



Currently, Crescent offers neighborhoods on *Lake Norman* and *Mountain Island Lake* near Charlotte, North Carolina; *Lake Keowee* near Clemson, South Carolina; *Lake James* in the mountains of North Carolina; and in *Raleigh*, North Carolina.



A Crescent Communities Regional Map
is enclosed for viewing.

Contact Crescent Resources	Ballantyne Country Club	The Peninsula	Lakefront Communities
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Duke Energy Business Units DukeSolutions

DukeSolutions provides an integrated package of energy solutions that help organizations improve their competitiveness, productivity and profitability.

Total, integrated solutions

Offering the most comprehensive range of energy services on the market today, DukeSolutions creates custom solutions that can fundamentally improve an organization's processes, operations, products and services. While significant effort is dedicated to cutting costs and reducing consumption, the larger objective is to help customers use energy more intelligently throughout the organization.

We accomplish this goal by examining the multitude of ways customers use energy, including the source, volume, timing, price, efficiency and the task the energy is directed to accomplish. This macro view is translated into a series of integrated strategies and solutions - each working in tandem with the others - to create the long-term savings and operational efficiencies that lead to enhancements in our customer's competitive posture.

Full Scope of Energy Services

Supply Services

Electric & gas
Risk management
Pricing
Transitional electric

Efficiency & Productivity Services

Energy audits
Facility modernization
Equipment retrofits/replacement
Engineering

Financial Services

Asset monetization
Performance contracting
Shared savings

Related Energy Services

Outsourced utilities
Distributed generation
Cogeneration

Information Management Services

Metering
Billing & administration
End-use analysis

Creating a customized approach to each customer's needs not only creates significant energy savings, it also results in revenue and cash flow enhancements; facility modernizations; productivity improvements; improved product quality; better management of essential information; and perhaps most importantly, customers' ability to devote more time and resources to their core businesses.

By employing this integrated package of solutions - as opposed to any single solution - customers can achieve these broad transformations that lead to a leaner, more efficient and substantially more competitive organization.

The DukeSolutions Difference

DukeSolutions is driven by the expertise of technical and financial professionals who are considered to be the brightest in the industry. Our experts are relentless in the pursuit of new and innovative solutions to the most complex and entrenched energy-related problems. Rooted in our objective to create true partnerships with our customers, our approach is highly analytical and focused on both the short and long term.

DukeSolutions remains invigorated by the dynamic deregulating marketplace and is dedicated to ensuring our customers benefit in full from this new environment. We have in place the resources to stay abreast of the changes and the product applications to insure our clients benefit first.

Duke Energy Buys South Texas Natural Gas Gathering Systems

FROM PR NEWswire CHARLOTTE 704-338-9366/

STK] DUK

IN] UTI OIL

SU] TNM

TO BUSINESS EDITOR:

Duke Energy Buys South Texas Natural Gas Gathering Systems

DENVER, March 22 /PRNewswire/ -- Duke Energy Field Services, Inc., in a restructuring of a previously announced deal, has agreed to buy the South Texas natural gas gathering, treating and processing systems of Koch Midstream Gathering and Processing Company, for an undisclosed amount. This transaction is expected to close March 31.

Duke Energy and Koch announced in July an asset exchange between the two companies which involved a swap of natural gas gathering and processing systems located in Texas, Mississippi, New Mexico, Alabama and Oklahoma.

Changing market conditions and Federal Trade Commission divestiture requirements resulted in this change of the original agreement.

Duke Energy will acquire Koch's gas gathering, treating and processing assets in South Texas which include over 1,000 miles of pipe spanning 10 counties and two cryogenic processing plants named Three Rivers and Pettus as well as a small treating facility in Dewitt County.

"These assets are located in the prolific South Texas area and are an excellent extension of our existing system," said Jim Mogg, president. "The company is finalizing the pipeline tie-ins to our new 200 million cubic feet per day cryogenic Wilcox plant, and we will utilize this new plant to process some of the existing gas on these newly acquired pipeline assets."

Koch Midstream Gathering and Processing is a subsidiary of Wichita, Kansas-based Koch Industries, Inc. Koch Industries and its subsidiaries employ 35,000 people worldwide and are involved in virtually all phases of the oil and gas industry, as well as in agriculture, chemicals, environmental technology products, energy services, asphalt products, metals and minerals services, real estate and financial investments. For more information on Koch, refer to Koch's home page at www.kochind.com on the Internet.

Duke Energy Field Services, Inc. gathers and processes natural gas and is the nation's fourth largest producer and a leading marketer of natural gas liquids. The company also provides intrastate natural gas transportation and storage, and financial services for producers.

Duke Energy (NYSE: DUK) is a global energy company with more than \$26 billion in assets. Headquartered in Charlotte, N.C., the company reaches into more than 50 countries, producing energy, transporting energy, marketing energy and providing energy services. In the United States, Duke Energy companies provide electric service to approximately two million customers in North Carolina and South Carolina; operate interstate pipelines that deliver natural gas to various regions of the country; and are leading marketers of electricity, natural gas and natural gas liquids. Additional information about the company is available on the Internet at: www.duke-energy.com.

SOURCE Duke Energy Corporation

-0-

03/22/99

CONTACT: John P. Barnett or Duke Energy Corporation, 704-373-6668, or



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Weekly Sections

Dominion Resources to buy Consolidated Natural Gas

Monday, February 22, 1999

RICHMOND, Va. (AP) -- Dominion Resources Inc. has purchased Consolidated Natural Gas in a \$6.3 billion stock transaction, plus the assumption of debt, both companies announced today.

The transaction makes the combined company the nation's fourth-largest electric and natural gas utility, serving nearly 4 million retail customers in five states, the companies said in a news release. Until now, Dominion has derived nearly all its earnings from its Virginia Power unit.

Under terms of the deal approved Sunday, Dominion Resources will acquire all the shares of CNG, one of the nation's largest producers, transporters, distributors and retail marketers of natural gas. CNG stockholders will own about 43 percent of the combined company.

"It unites two of the most respected names in electricity and natural gas and provides us the critical mass needed for today's dynamic energy sector," said Thomas E. Capps, Dominion Resources' chairman, president and chief executive.

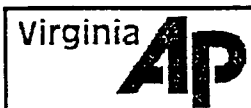
Such a combination would give Dominion more size to remain competitive in a deregulated energy market. Many states, including Virginia, are abandoning the state-regulated monopoly system of utilities and are opening the sale of energy to competition to promote lower prices.

The acquisition also would move Dominion further into oil and gas exploration and production. "Strategically, it's great," said Thomas Hamlin, an analyst with First Union Capital in Richmond. "It's a very good move, a necessary move."

He added that the merger is consistent with Dominion Resources' previously stated goals and reflects a growing national trend that unites electric generating companies with pipeline companies. The union with CNG also gives Dominion more retail customers and puts the Richmond-based company in more markets, Hamlin said.

Pittsburgh-based Consolidated owns four local gas distribution companies -- East Ohio Gas Co., People's Natural Gas Co., Hope Gas Co. and Virginia Natural Gas -- that supply 1.9 million people in Ohio, Pennsylvania, Virginia and West Virginia. It also owns 7,600 miles of gas pipelines in New York, Pennsylvania, Ohio, Virginia, West Virginia and Maryland.

"It's a natural fit for our shareholders, customers and employees," said George A. Davidson Jr., chairman and chief executive officer of CNG.



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George A. Davidson Jr., chairman and chief executive officer of CNG. "It's also important to note that DRI and CNG have similar corporate cultures, strategies and management styles."

Capps will serve as president and chief executive officer of the combined company, and Davidson will serve as chairman until his previously announced retirement in August 2000. The company will be called Dominion Resources and the headquarters will be in Richmond.

Consolidated shares jumped \$3.50 to \$56.25 Friday in New York Stock Exchange trading on rumors of a deal. Dominion Resources shares fell \$1.5625 to \$42.25.

[Virginia AP Wire](#) | [Richmond Times-Dispatch](#) | [Feedback](#) | [Classified](#) | [Gateway Virginia](#)

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Market Highlights

Enron Corporation recently forged deals with two large property management firms to provide a host of energy and other management services to commercial building properties across the country. Besides retrofitting old chillers and putting in more efficient lighting, Enron can provide a gamut of related services, ranging from financing to design and engineering, and operations and maintenance. "We can even wash the windows and take out the garbage," said Alan Butcher, general manager of Enron Energy Service in Costa Mesa, CA.

Public Service Company of Colorado has several commitments from downtown Denver commercial building complexes to purchase chilled water from their 20,000-ton chilled water plant, now under construction. The construction manager from a participating large downtown complex noted, "the timing is perfect."

AT&T, which has numerous office buildings in California, recently outsourced their energy billing—dropping their bill processing costs from \$25 to \$4 per bill.

**1997 North Carolina Taxes Paid by
Electric Cooperatives**

1997 NORTH CAROLINA TAXES BY ELECTRIC COOPERATIVES

SUMMARY

FROM 1997 FORMS 7

ESTIMATED TAXES

Cooperative	Operating Revenue	Calculated Sales Tax (Operating Rev x 3%)	Calculated Gross Receipts (Operating Rev x 3.22%)	"Backed out" Property Tax	Property & Gross Receipts Tax	Tax Expense "Other"	Total Taxes Paid per Form 7	Property Tax	Gross Receipts Franchise Tax	Sales Tax
Albemarle	9,361,101.00	280,833.03	301,427.45	77,933.55	379,361.00	41,487.00	420,848.00	77,933.55	301,427.45	280,833.03
Blue Ridge	70,868,563.00	2,126,056.89	2,281,897.73	227,738.27	2,509,706.00	622,733.00	3,132,439.00	642,587.00	1,967,119.08	1,840,273.00
Brunswick	55,482,416.00	1,993,872.48	2,140,089.80	540,058.20	2,680,148.00	377,496.00	3,057,644.00	640,058.20	2,140,089.80	1,993,872.48
Cape Hatteras	6,747,295.00	262,418.85	Exempt	0.00	Exempt	44,403.00	44,403.00	Exempt	Exempt	282,418.85
Carroll-Craven	33,615,924.00	1,008,477.72	1,082,432.75	(800,833.75)	181,599.00	1,228,692.00	1,410,291.00	181,599.00	1,051,345.30	958,109.00
Central	18,933,164.00	567,994.92	609,647.88	(434,577.88)	175,070.00	743,037.00	918,107.00	175,039.54	602,130.76	564,574.41
Crescent	87,572,528.00	2,027,175.84	2,175,835.40	480,229.60	2,656,065.00	448,289.00	3,114,354.00	480,229.60	2,175,835.40	2,027,175.84
Davidson	42,844,444.00	1,278,333.32	1,373,151.10	(870,797.10)	402,354.00	1,583,305.00	1,985,659.00	402,354.00	1,361,020.00	1,268,061.00
Edgecombe-Martin	14,830,189.00	444,905.87	477,632.09	160,113.91	627,646.00	105,316.00	732,962.00	160,113.91	477,632.08	444,905.87
Four County	43,209,834.00	1,296,285.02	1,391,358.05	340,278.35	1,731,635.00	160,731.00	1,892,366.00	340,278.35	1,391,358.05	1,296,285.02
French Broad	33,283,903.00	998,817.09	1,072,063.68	(34,010.85)	N/A	N/A	0.00	342,669.34	1,038,052.83	955,711.27
Hallifax	11,316,705.00	339,471.15	364,385.70	(3,092.70)	361,273.00	221,241.00	582,514.00	124,605.84	361,273.00	332,707.32
Hartsville	1,221,967.00	36,659.01	39,347.34	5,508.68	44,856.00	12,008.00	56,864.00	5,508.68	39,347.34	36,659.01
Hixwood	17,928,378.00	537,791.34	577,229.37	178,992.83	756,222.00	842.00	757,064.00	178,992.83	577,229.37	537,791.34
Jones-Onslow	57,000,000.00	1,710,000.00	1,835,400.00	(1,835,400.00)	N/A	N/A	0.00	439,000.00	1,800,000.00	1,710,000.00
Lumbee River	52,722,348.00	1,581,870.44	1,697,859.81	487,778.39	2,185,438.00	219,835.00	2,405,273.00	487,778.39	1,697,859.81	1,581,870.44
Pee Dee	22,993,842.00	689,818.28	740,404.93	177,673.07	917,978.00	150,719.00	1,068,697.00	177,673.07	740,404.93	689,818.28
Piedmont	30,172,880.00	905,186.40	971,568.74	(533,429.74)	438,137.00	847,784.00	1,385,901.00	438,137.00	947,784.00	844,000.00
Pitt & Greene	13,181,246.00	365,440.38	392,239.34	(283,059.34)	109,180.00	482,083.00	591,213.00	109,180.00	398,054.00	358,958.00
Randolph	34,223,687.00	1,086,710.01	1,168,402.08	281,283.82	1,447,686.00	217,162.00	1,664,848.00	281,283.82	1,168,402.08	1,086,710.01
Renoise	16,127,414.00	483,823.42	519,302.73	(339,287.73)	180,015.00	858,457.00	1,038,472.00	180,015.00	811,400.23	437,889.79
Rutherford	69,098,512.00	2,072,955.39	2,224,872.08	898,257.81	2,923,230.00	620,384.00	3,443,614.00	698,257.81	2,224,872.09	2,072,955.38
South River	48,288,741.00	1,388,802.23	1,480,433.08	414,564.94	1,904,998.00	209,345.00	2,114,343.00	457,776.28	1,447,222.71	1,348,370.50
Surry-Yadkin	23,785,538.00	712,868.14	765,250.32	172,856.68	938,107.00	138,897.00	1,076,004.00	172,856.68	765,250.32	712,868.14
Tideland	23,910,677.00	717,320.31	769,923.80	(555,413.80)	214,510.00	841,884.00	1,056,394.00	214,510.00	701,344.00	686,047.00
Tri-County	30,049,630.00	902,686.90	988,886.09	181,680.81	1,160,567.00	103,236.00	1,263,803.00	181,680.81	988,886.09	902,686.90
Union	45,624,869.00	1,368,749.07	1,469,124.00	(1,112,581.00)	356,543.00	1,592,354.00	2,048,917.00	358,863.00	1,462,144.41	1,342,712.52
Wake	27,612,416.00	828,872.48	889,783.80	330,032.20	1,219,796.80	178,289.00	1,398,085.00	330,032.20	889,783.80	828,872.48
NCEMC								307,837.99	116,177.00	14,779.87
NCAEC								2,138.38	Exempt	1,022.13
TEMA								16,350.70	14,035.00	2,434,325.21
Totals:	833,833,491.00	26,015,004.73	29,787,776.61	(2,237,572.89)	26,612,150.00	11,931,376.00	31,446,525.00	9,411,878.98	29,326,279.24	29,901,073.85

1997 Property Tax
paid to York Co., SC:
\$10,781,531.60

2024 04/17/2024 09:18:07 07/28/2024



North Carolina Department of Commerce

James B. Hunt Jr., Governor

Rick Carlisle, Secretary

April 13, 1999

Representative Joe Tolson
402 Legislative Office Bldg.
Raleigh, N. C. 27601-1096

Dear Representative Tolson:

This letter refers to questions you have raised with Mr. Chris Heagarty regarding Chapter 117 of the General Statutes as it relates to Rural Utilities Service (RUS) loans to electric cooperatives and the role of the N. C. Rural Electrification Authority (NCREA) in approving these loans.

Chapter 117-2(10) requires that the N. C. Rural Electrification Authority act as agent for any electric membership cooperations formed under its authority in securing loans or grants from any agency of the United States Government. The NCREA Board reviews and approves all loans made to RUS and certifies to RUS that such loans are approved for payment. After the loans are certified to RUS, no monitoring is done by the NCREA.

Chapter 117 was enacted in 1935 by the N. C. General Assembly. Since its inception, there have been no default on any loan by an electric cooperation in N. C.

Should you have further questions on this matter, please call our office at (919) 733-7513.

Sincerely,

Gary Strickland
Gary Strickland
Administrator



**Resolutions and Letters of Support for
H. B. 476**

**Widespread Support for HB 476 and SB 480,
EMC Subsidiaries**

Partial Listing of Letters and Resolutions of Support:

**North Carolina Credit Union League
Cooperative Council of North Carolina
The Rural Center
East Carolina Bank, Engelhard, NC
InterStar Communications, Inc., Clinton, NC
Whitley's Communications Service, Inc., Asheville, NC
North Carolina Association of Black County Officials
Gates Custom Milling, Inc. Gatesville, NC
Essex Electrical Contractors, Clyde, NC
Blue Ridge Energies, Lenior, NC
TECHNOLEDGE Advanced Flooring Systems, Raleigh, NC
ElecTel Cooperative Credit Union, Raleigh, NC
Weldon City Schools
Northeastern Beaufort County Economic Development Committee
Ted Parker Home Sales, Inc., Lumberton, NC
Ashe County Chamber of Commerce, West Jefferson, NC
John Hall, Halifax County Commissioner
The Engelhard Rotary Club
Caldwell County Board of Commissioners
Lumberton Area Chamber of Commerce
Choanoke Area Development Association
Lumbee Regional Development Association, Pembroke, NC
Rose Whitaker, Tillery, NC
Center for Economic, Community and Professional Development, Pembroke, NC
Caldwell County Economic Development Commission
Robeson County Economic Development Commission
Margaret Clevenger, Deep Gap, NC
F & S Electrical Contractors, Waynesville, NC
Washington County Chamber of Commerce
Alexander County Board of Commissioners
Virginia Hines, Roanoke Rapids, NC
Alleghany County Board of Commissioners
Burton Osborne, Piney Creek, NC
Davidson County Board of Commissioners
Davie County Economic Development Council
Stokes County Board of Commissioners
Town of Love Valley, NC
Edith Mills, Gaston, NC
Mocksville Town Council
Town of Taylorsville
Clementine Sledge, Enfield, NC**



NORTH CAROLINA CREDIT UNION NETWORK

NORTH CAROLINA CREDIT UNION LEAGUE • CREDIT UNION SERVICE CORPORATION • FIRST CAROLINA CORPORATE CREDIT UNION

April 19, 1999

4160 Piedmont Parkway/27410-8109
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Greensboro, NC 27419-1379
Telephone 336-299-6286
1-800-822-8859

Senator Frank W. Ballance, Jr.
Room 523
Legislative Office Building
Raleigh, NC 27601-2808

Dear Senator Ballance:

I am writing on behalf of the over 2 million credit union members that belong to the 182 credit unions affiliated with the North Carolina Credit Union League.

This letter is to ask you to support the EMC subsidiary legislation (HB 426 and SB 480) sponsored by Representative Joe Tolson and Senators Tony Rand and Steve Metcalf. Legislation to clarify the electric cooperatives right to create, hold, invest in, acquire or operate subsidiaries is essential for their future viability and is in the best interest of North Carolina consumers.

The EMCs have partnered with local leaders to grow their communities through the last 60 years. To deny them the opportunity for future growth, leaving business opportunities open to all but the EMC, would be unfair and place these communities at risk. Consumer choice or the ability of North Carolina citizens to determine what is best for them is an important attribute of cooperatives.

HB 426 and SB 480 will:

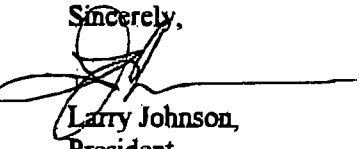
- Place EMCs on a level playing field with other companies (offer consumers choices)
- Competing business will not be done by the EMC but through a stand alone private subsidiary.
- The subsidiary will pay all taxes according to the corporate structure.
- The subsidiary will not have access to US Department of Agriculture loans (except for water, sewer and wastewater).
- Any shared services with the EMC will be reimbursed at fair market value.

EMC legislation has remained virtually unchanged since 1935. Now is the time to act and ensure North Carolina EMCs have the ability to respond to a changing industry. Parking this needed legislation in a Study Committee prevents local cooperatives from making decisions in their best interest and steering their own destiny.

Cooperatives have contributed greatly to the growth and progress of North Carolina for over 80 years. We ask for your help in seeing that the EMCs are able to continue their role.

Thank you for your consideration and support of this legislation.

Sincerely,



Larry Johnson,
President

C: President Pro Tempore Marc Basnight

Cooperative Council of North Carolina

Co-ops

Carlyle Teague
President

April 12, 1999

Dear Members of the North Carolina General Assembly:

RE: Senate Bill 480/House Bill 476

The Cooperative Council of North Carolina is an umbrella organization supporting the more than one-half million North Carolinians who are members of one or more cooperative.

In this leadership role, the Council would like to ask you to support Senate Bill 480 and House Bill 476. These bills would permit electric membership corporations (electric cooperatives) to "form, organize, or operate, or to acquire, hold and dispose of any interest up to and including full controlling interest in business entities engaged in any lawful activities..."

I know many of you are co-sponsors of the bills, and we appreciate that. The bills are now beginning the committee process and we hope you will continue to help secure passage of these measures.

We all know of the pending changes in the delivery system of electric service. The investor-owned utilities are already taking advantage of diversification which is not clearly permitted by rural electric cooperatives. The state's utility co-ops simply need the same latitude enjoyed by the IOUs to participate in other types of energy businesses.

Concern has been expressed that the co-ops would benefit from the USDA-RUS funds which are not available to other types of utilities. This is addressed in the legislation. Provisions have been written to guarantee that these ventures will not be financed with RUS electric loan funds and that such ventures will be liable for taxes under the laws governing such ventures.

The rural utility cooperatives have contributed immeasurably to the progress enjoyed by this state for more than 50 years. This simple change in Chapter 117 of the General Statutes of North Carolina is little to ask for them to be able to continue that role.

Thank you for your consideration of this legislation.

Sincerely,


F. Carlyle Teague
President

FCT/bh

Phone 919.834.5544 · Fax 919.828.9322

PO Box 10426 · Raleigh, North Carolina 27605

1306 Annapolis Drive · Raleigh, North Carolina 27608



Kelly S. King
Chairman

Billy Ray Hall
President

March 22, 1999

North Carolina General Assembly
Legislative Office Building
Raleigh, North Carolina

Dear Member of the North Carolina General Assembly:

The purpose of this letter is to voice The Rural Center's support of the EMC subsidiary legislation sponsored by Representative Joe Tolson and Senators Tony Rand and Steve Metcalf. The purpose of the legislation is to clarify the electric cooperatives' right to create, hold, invest in, acquire or operate subsidiaries that provide value-added products and services to consumers.

The legislation presents an issue of fairness for rural business. Other North Carolina companies have the clear ability to make prudent business decisions, EMC's deserve the same right. Electric cooperatives have long supported rural economic development and assisted in improving rural infrastructure in their communities. Now they request the legislative clarification that they can further their involvement by providing additional products and services through similarly-situated business entities as other companies do today. These activities are paramount to North Carolina's efforts to attract business, maintain existing businesses, advance living standards and promote a competitive business environment. Lastly, this legislation supports the ability of cooperatives and their local officials to make their own decisions and steer their own destinies.

The Rural Center considers the provisions of this legislation and the services which EMC subsidiaries can provide as a tool for rural development and we ask for your enthusiastic support.

Sincerely,

Billy Ray Hall

North Carolina

Rural Economic

Development Center, Inc.

4021 Cary Drive

Raleigh, NC 27610

Phone: (919) 250-4314

FAX: (919) 250-4325



Excellence in Community Banking

Arthur H. Keeney, III
President/CEO

April 20, 1999

President Pro Tempore Marc Basnight
Room 2007
Legislative Building
Raleigh, NC 27601

Dear Senator ^{Marc} Basnight:

As CEO of The East Carolina Bank I would like to ask that you support the EMC Subsidiaries Bill, HB476/SB480. The bill would clarify once and for all the right of North Carolina's electric cooperatives to compete on a level playing field by engaging in subsidiary businesses that could include non-electric activities.

The issues of deregulation faced by virtually all utilities remind me of many "financial modernization" issues faced particularly by smaller community banks as insurance companies, brokerage houses and banks ultimately will be in each other's "back yard" with similar product arrays for the consuming public. Financial institution playing fields are also being rapidly leveled.

I am informed that Electric co-ops, through subsidiary corporations, provide competitive services that rural communities both want but particularly need including water, wastewater services, appliance sales and service and internet access. Electric cooperative boards and their members should not be denied the right to make prudent business decisions. Consumer rates could be higher than necessary if North Carolina's EMCs are unable to diversify in order to enhance revenues and offset expenses which is what investor-owned utilities and hundreds of co-ops are currently doing nationwide.

My friends in the business community also tell me that wholly-owned subsidiaries of electric cooperatives will compete on a level playing field. They will not have access to government subsidies or loans, will have to reimburse the cooperative for any services provided at fair market rates and will be subject to all state and federal taxes. Furthermore, I understand that the financial earnings of co-op owned subsidiaries will be returned to the co-op to help reduce electric rates and make co-ops more competitive in the face of deregulation.

The East Carolina Bank has a proud and successful history of serving the banking needs of customers in rural eastern North Carolina. Clearly we want continued success for all the consumers and small businesses throughout the state of North Carolina but most particularly we desire this in the communities we directly serve on a daily basis.

I urge your support of the EMC Subsidiaries Bill HB476/SB480. Your positive vote in no small way would assist in maximizing the economic well being of the various constituents you serve. Free competition and open markets are hallmarks of a democracy. Protected interests and tilted playing fields increase costs to the taxpaying public. Thank you for listening and your consideration in this matter.

Respectfully yours,

Arthur H. Keeney, III
President & CEO

InterStar Communications, Inc.

PO Box 1088, 102 Sampson Street
Clinton, NC 28328
(910) 592-INET or 1-800-840-1113

North Carolina General Assembly
Legislative Office Building
Raleigh, North Carolina

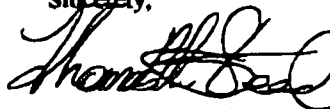
Dear Member of the North Carolina General Assembly,

The purpose of this letter is to voice InterStar Communications, Inc. support of the EMC subsidiary legislation sponsored by Representative Joe Telson and Senators Tony Rand and Steve Metcalf. The purpose of the legislation is to clarify the electric cooperatives right to create, bold, invest in, acquire or operate subsidiaries that provide value-added products and services to consumers.

The legislation presents an issue of fairness for rural business. Other North Carolina companies have the clear ability to make prudent business decisions, EMC's deserve the same right. Electric cooperatives have long supported rural economic development and assisted in improving rural infrastructure in their communities. Now they request the legislative clarification that they can further their involvement by providing additional products and services through similarly-situated business entities as other companies do today. These activities are paramount to North Carolina's efforts to attract business, maintain existing business, advance living standards and promote a competitive business environment. Lastly, this legislation supports the ability of cooperatives and their local officials to make their own decisions and steer the own destinies.

Interstar Communication, Inc. considers the provisions of this legislation and the services, which EMC subsidiaries can provide as a tool for rural development and we ask for your enthusiastic support.

Sincerely,



Thomas M. Steed

Name *John A. Kelly*
John A. Kelly
 Phillips General Service Inc.
 37 N Market ST
 Asheville, N.C. 28801

STATE OF NORTH CAROLINA)
COUNTY OF BERTIE)

RESOLUTION OF
THE NORTH CAROLINA ASSOCIATION
OF BLACK COUNTY OFFICIALS

RESOLUTION TO SUPPORT LEGISLATION (S. B. 480 / H. B. 476) IN THE N. C.
GENERAL ASSEMBLY CLARIFYING THE ABILITY OF ELECTRIC
COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN,
PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE
ADDED SERVICES.

WHEREAS, the citizens and businesses of North Carolina deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state; and

WHEREAS, member-owned electric cooperatives are willing and able to provide many of these services to our citizens; and

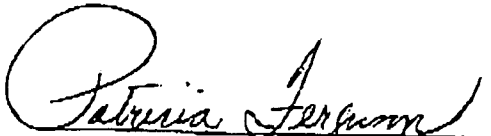
WHEREAS, electric cooperatives are locally owned and controlled businesses which actively promote economic development and job creation in our communities; and

WHEREAS, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenged either geographically or economically to serve; and

WHEREAS, electric cooperatives should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future.

NOW, THEREFORE, BE IT RESOLVED that the North Carolina Association of Black County Officials support the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

This the 19th day of April, 1999.


Patricia Ferguson, President



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GATESVILLE, NC 27938
TEL: 800-682-9663
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COPY

April 20, 1999

Representative Thomas C. Hardaway
Room #634
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Hardaway,

I strongly support HB 476. I am a member of the NPLB. Roanoke Electric Cooperatives have provided us with very dependable service upon our recently established relationship. Changes in the electrical business are coming soon and they are preparing for those changes.

If electric deregulation comes to North Carolina, as it is going to many other states, out of town electric Companies will be allowed to come and prey on the few commercial customers that cooperative now serve. This will only leave us undesirable small customers to pay for the lines and equipment that were built to serve them. They see this coming and are wisely preparing themselves to keep competitive rates in the future.

To keep their rates competitive, they want to broaden their services by creating private subsidiaries that can strengthen them in the future. These private businesses that they create should not be created with government loans and they should have to pay taxes like any other private business. HB476 dictates that do just that.

I urge you to support this bill because it is fair and very important for our communities.

Sincerely,

Nancy M. Tuck
Vice President-Finance

STATEMENT IN SUPPORT OF CLARIFICATION OF NORTH CAROLINA GENERAL STATUTES, CHAPTER 117-18

The undersigned is a HVAC contractor or an electrical contractor working in the western part of North Carolina, specifically within or near the service territory of Haywood Electric Membership Corporation.

I am aware of an effort currently underway to clarify the language contained in Chapter 117-18 of the North Carolina General Statutes such that EMCs in North Carolina can engage in any lawful business activity through a subsidiary or separate business. I further understand, under the proposed legislation, the electric cooperatives can not use Rural Utilities Service (RUS) loan funds for purposes other than rural electrification and development.

I have worked with Haywood EMC on several occasions in the past where I have engaged in either whole home wiring or HVAC contracting or I have installed electric generators or heat pumps. I want to state that Haywood EMC has been very generous in recommending work for me and in referring members/consumers of Haywood EMC to me for work in my specialty.

I urge the North Carolina General Assembly to act favorably in regard to the proposed clarification of Chapter 117 such that EMCs' subsidiaries in North Carolina can engage in any lawful business activity. I believe that the EMCs will continue to benefit small contractors like myself and that the increased business activity that the EMC generates will open up additional work for me.

I understand that the proposed legislation will allow EMCs to operate, acquire, create, invest in or hold a subsidiary or separate business that engages in any lawful business activity. These ventures can not be financed using RUS loan funds for any purpose other than rural electrification and development. These ventures are subject to all taxes levied against business entities with the same business structure. I urge the General Assembly to vote in favor of the legislation.

Date 04/12/99

Name

Donald L. Essex

Donald L. Essex



April 16, 1999

Honorable Ronald Lynwood Smith
Room 2223
Legislative Building
Raleigh, NC 27601-1096

Dear Chairman Smith:

I'm writing to express my support for HB 476—the EMC subsidiaries bill. Having worked in the oil and propane businesses for 30 years, I believe I have a unique perspective on the issue of EMC diversification.

Last October, Beall Oil and Propane was purchased by three other investors to create Blue Ridge Energies, LLC. We've been operating for over six months as a limited liability company owned by Blue Ridge EMC (40%), North Carolina EMC (20%) and the National Cooperative Services Corp. (40%).

I serve as Executive Vice President and General Manager of the new company. The sale has benefited employees and customers of my former company. Additionally, combined strengths of the investors have made a successful company even more successful as we expand and provide a greater level of service and value for our customers.

The sale will ensure that Blue Ridge Energies remains a thriving business in northwestern North Carolina. We contribute to the local economy and support our local community in many ways. In fact the Caldwell County Economic Development Commission has passed a resolution in support of this bill (enclosed).

While I'm pleased to be associated with a company like Blue Ridge Electric that's well known for its customer service, Blue Ridge Energies operates as a separate company from the cooperative. Blue Ridge Energies is a for-profit company and subject to the taxes involved with that status.

We receive no subsidization from the cooperative. In fact, Blue Ridge Energies is legally required to pay for any services or materials purchased from the

Chairman Smith
April 16, 1999
Page 2

cooperative under a renewable service agreement between Blue Ridge Energies and Blue Ridge Electric. In my opinion, we are receiving no "special privileges" from our ownership structure that gives us any significant ability to unfairly threaten any other competitor in our field—small or large.

Blue Ridge Energies is a growing company today because people want to do business with us. In my viewpoint, we have competed fairly and achieved success because of our commitment to great customer service, integrity, and competitive pricing.

The energy business is changing dramatically. Large commercial and industrial customers want to purchase a variety of energy products from a single provider. That's why it made sense for Blue Ridge Energies to acquire my companies. It's also why EMCs should be investor-owners in businesses that are critical to their strategic success.

Other energy companies are investing in new ventures and expanding into new markets. For competitive reasons EMCs should have the same opportunity to prepare for the future. EMCs have the same duty as any other company to invest wisely and to operate a financially sound company for their customers.

The present state law allows EMCs to do all things necessary to provide affordable and reliable electricity. While we believe the law allows us to do what we are doing at Blue Ridge Energies, LLC, there are competitors who feel otherwise. We need for you to clarify the law for us so that we can spend our time preparing for a new business environment in the energy industry.

Thank you for your time and support. Passing this bill will make a significant and positive contribution to North Carolina's rural energy consumers.

Sincerely,

John Beall
Executive Vice President and General Manager

Enclosure

TECHNOLEDGE

ADVANCED FLOORING SYSTEMS

April 13, 1999

North Carolina General Assembly
Legislative Office Building
Raleigh, North Carolina

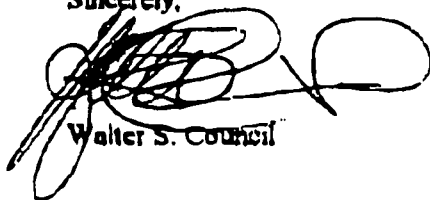
Dear Member of the North Carolina General Assembly,

The purpose of this letter is to voice Technoledge, Inc.'s support of the EMC subsidiary legislation sponsored by Representative Joe Tolson and Senators Tony Rand and Steve Metcalf. The purpose of the legislation is to clarify the electric cooperatives' right to create, hold, invest in, acquire, or operate subsidiaries that provide value-added products and services to consumers.

The legislation presents an issue of fairness for rural business. Other North Carolina companies have the clear ability to make prudent business decisions, EMC's deserve the same right. Electric cooperatives have long supported rural economic development and assisted in improving rural infrastructure in their communities. Now they request the legislative clarification that they can further their involvement by providing additional products and services through similarly situated business entities as other companies do today. These activities are paramount to North Carolina's efforts to attract business, maintain existing businesses, advance living standards and promote a competitive business environment. Lastly, this legislation supports the ability of cooperatives and their local officials to make their own decisions and steer their own destinies.

Technoledge, Inc. considers the provisions of this legislation and the services which EMC subsidiaries can provide as a tool for rural development and we ask for your enthusiastic support.

Sincerely,



Walter S. Council

EXCALIBUR
FLOORING SYSTEMS

CHAMELEON
FLOORING SYSTEMS

3325 CLEARFIELD DR., RALEIGH, NC. 27616
1-800-849-8478 • 919-877-0994

ElecTel

Cooperative Credit Union

April 20, 1999

The Honorable Brad Miller
State Legislative Building, Room 621
Raleigh, NC 27601

Dear Senator Miller:


I wish to express my support of SB 480, the EMC Subsidiaries bill. As General Manager of ElecTel Cooperative Credit Union, the credit union that serves the employees of the electric cooperatives in North Carolina, I am very supportive of any legislation that allows EMCs the ability to grow and thrive. The EMC Subsidiaries bill will allow the electric cooperatives to provide value added services through private business subsidiaries.

The legislation is very important to North Carolina. The EMCs serve the rural areas of North Carolina by providing electricity. This bill will allow the EMCs to offer other services (through stand alone private subsidiaries) to rural citizens who might otherwise not have access to such services.

EMCs are known to give back to their communities through Bright Ideas, economic development loans, and new jobs. Please allow them to do more for the communities by giving them the opportunity to develop the subsidiaries.

Please do all you can to support the EMCs. Please support this vital piece of legislation. Thank you for your consideration and thank you for all you do for North Carolina.

Sincerely,
ELECTEL COOPERATIVE CREDIT UNION



Kay Vause
General Manager

Dr. Jerry V. Congleton
Superintendent

Weldon City Schools

"Achieving to Succeed"

Emmett Kimbrough
Assistant Superintendent

April 19, 1999

Honorable Thomas Hardaway
Room 634 Legislative Office Building
Raleigh, North Carolina 27601-1096

Dear Representative Hardaway:

I am contacting you to request your leadership and assistance in getting some pending legislation passed as expediently as possible. The EMC Subsidiaries Bill, HB476 (Rep. Tolson) & SB 480 (Sens. Rand & Metcalf), is one of the most significant issues in both houses of the N.C. General Assembly. I would like to see the enactment of this bill to allow electric cooperatives to venture into other businesses.

This legislation would allow rural electric cooperatives like Roanoke Electric Cooperative to provide needed services above and beyond electricity. Roanoke Electric Cooperative has partnered with other local leaders to grow their communities through the last 60 years. To deny them the opportunity to grow their business, leaving business opportunities open to all others, would be unfair and place their communities at-risk. Electric cooperatives in neighboring states are allowed to venture in businesses such as propane gas, natural gas, satellite television, telecommunications, home security, Internet connections, and many others. Even right here in North Carolina utilities such as North Carolina Power are afforded the opportunity to diversify into these businesses. North Carolina Power has just consummated a deal to purchase a natural gas company in Pennsylvania.

In a deregulated electric utility industry these types of privileges put rural electric cooperatives at somewhat of a disadvantage because they would be limited in what they could offer their customers. This in turn would make it cumbersome for rural citizens who would have to shoulder the burden of increased electricity rates. This point has already been proven in other states that have opened all sectors of the electricity market due to electricity marketers shunning away from homeowners and seeking lucrative industrial loads. Residential customers make up 95% of the Roanoke Electric Cooperative's system load. In addition to this point, needed services would still not be provided.

301 Mulberry Street - Weldon, North Carolina 27890
Phone: 252-539-4821 - Fax: 252-536-3062

Equal Opportunity/Affirmative Action Employer

Honorable Thomas Hardaway

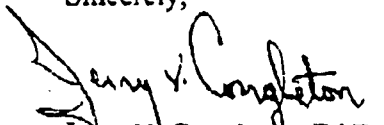
Page 2

April 19, 1999

Rural electric cooperatives were founded back in the 1930's to provide electricity to rural americans. Their frugal business practices have been an economic catalyst for rural america. These companies' ability to venture into other businesses will not be managed by the cooperative, but by a separate entity serving as a subsidiary to the cooperative. These subsidiaries would be established as a normal corporation of North Carolina and will pay taxes according to that corporate structure. Rural electric cooperatives receive low interest loans from the federal government for capital expenditures, but by federal statute a separate subsidiary would have to get financial backing by private financial institutions.

Thank you for any assistance you can provide in having this legislation enacted.

Sincerely,


Jerry V. Congleton, Ed.D.
Superintendent

JVC:dhb

cc: Honorable Jim Black
Honorable Marc Basnight

**RESOLUTION OF
THE BOARD OF DIRECTORS
NORTHEASTERN BEAUFORT COUNTY
ECONOMIC DEVELOPMENT COMMITTEE**

RESOLUTION TO SUPPORT LEGISLATION (S.B. 480/H.B. 476) IN THE N.C. GENERAL ASSEMBLY CLARIFYING THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

WHEREAS, the citizens and businesses of northeastern Beaufort County deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state; and

WHEREAS, member-owned electric cooperatives including Tideland Electric Membership Corporation are willing and able to provide many of these services to our citizens; and


WHEREAS, electric cooperatives are locally owned and controlled businesses which actively promote economic development and job creation in our community; and

WHEREAS, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenged either geographically or economically to serve; and

WHEREAS, electric cooperative should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

This the 8th day of April 1999.


Charles O. Boyette, Chairman

TED PARKER HOME SALES, INC
P. O. Box 1046
Lumberton, North Carolina

April 12, 1999

North Carolina General Assembly
Legislative Office Building
Raleigh, North Carolina

Dear Member of the North Carolina General Assembly:

The purpose of this letter is to indorse the EMC subsidiary legislation sponsored by Representative Joe Tolson and Senors Tony Rand and Steve Metcalf. The purpose of the legislation is to allow electric cooperatives to create, hold, invest in, or operate subsidiaries that provide value-added products and services to its customers.

Electric cooperatives have always supported rural economic development in Robeson County, and this will enable them to expand the services that they can provide to the community. These activities will help North Carolina in its efforts to attract new businesses to our state, therefore creating attritional tax base and new jobs, which Robeson County need desperately.

Your support in this legislation will be greatly appreciated.

Sincerely yours,


Henry G. Lewis, CEO



Ashe County Chamber of Commerce
6 North Jefferson Avenue - PO Box 31
West Jefferson NC 28694
336-246-9550 Fax: 336-246-8671

**Chamber of Commerce
Ashe County
State of North Carolina**

**Resolution Supporting Legislation Regarding EMC Subsidiaries
(H476/S480)**

WHEREAS Blue Ridge Electric Membership Corporation, an electric cooperative owned by its members in northwestern North Carolina, is one of 27 electric cooperatives providing electric service to the rural areas across the State of North Carolina, and

WHEREAS Blue Ridge Electric, like other electric cooperatives in this State, has not only provided electric service but has been actively involved in economic development, supported public education and health care, and served as a strong corporate citizen through donations and volunteer leadership in the rural communities in their service area, and

WHEREAS through their service and commitment these rural electric cooperatives have been and must continue to be an important asset of the rural people of this County and the State, leveraging benefits that might not otherwise be afforded to the rural areas, and

WHEREAS we believe it is in the best interest of the people of Ashe County and other rural counties that electric cooperatives such as Blue Ridge Electric have the opportunity to prepare for a competitive future, strengthen their financial position, and provide needed services to rural people, and

WHEREAS the passage of legislation clarifying General Statute 117-18 which governs cooperatives and their purpose will better ensure the continued growth and success of these vital local rural businesses owned by and for the benefit of their rural members,

NOW THEREFORE BE IT RESOLVED, that the Chamber of Commerce of Ashe County supports the passage of the bill entitled An Act Concerning the Grant of Powers to Electric Membership Corporations Regarding Subsidiary Organizations (short title EMC Subsidiaries and numbered H476 and S480) and encourages the General Assembly to vote in favor of this legislation on behalf of all the members of rural electric cooperatives of the State of North Carolina.

Signed this _____ day of April, 1999 by _____

Larry Phipps
President, Ashe County Chamber of Commerce

Ashe County... "The Natural Choice"

John Hall
1213 North Greenwood Street
Scotland Neck, North Carolina 27874
(252) 826-3114

April 19, 1999

Honorable Thomas C. Hardaway
Room 634
Legislative Office Building
Raleigh, North Carolina 27601-1096

Dear Representative Hardaway:

This letter is to solicit your support on some pending legislation that could have a major impact on northeastern North Carolina. To the best of my knowledge the EMC Subsidiaries Bill, HB 476 (Rep. Tolson) & SB 480 (Sens. Rand & Metcalf), is one of the most significant issues in both houses of the N.C. General Assembly. Upon your perusal and briefings about the bill I hope you and your colleagues find it favorable to allow electric cooperatives like Roanoke Electric Cooperative in Rich Square, North Carolina to venture into other needed businesses for this area.

Roanoke Electric Cooperative has been in business for 60 years providing reliable electricity to consumers in seven counties. Rural Americans are usually an underserved class of citizens when it comes to receiving quality services at reasonable costs. I am a firm believer that competition drives quality service at fair market prices. This is one of the reasons why rural electric cooperatives were born in the 1930s. Electricity was a luxury that remote areas did not receive and the formation of electric cooperatives brought that convenience to those areas. Electric cooperative's ability to venture into other businesses should be advantageous to northeastern North Carolinians as well as other rural citizens abroad. These businesses will not be managed by the cooperative, but by a stand-alone subsidiary. These subsidiaries would be established as a normal corporation of North Carolina and will pay taxes according to that corporate structure. I realize that electric cooperatives receive low interest loans from the federal government in order to construct power lines, but by federal statute a separate subsidiary could not have access to those monies. This means financing these businesses will have to be underwritten by a private enterprise.

Electric cooperatives' prudent business practices have funneled many resources into their local communities. Roanoke Electric Cooperative and other organizations in the state's network of electric cooperatives have impacted that the state's rural communities by contributing over \$1 million to local schools. Economic development loans have resulted in over \$150 million in business expansion creating 4,600 jobs statewide. Roanoke Electric Cooperative's Operation Round-Up® program has contributed nearly \$200,000 to rural northeastern North Carolina.

Here again, this is a very important issue to the 1.7 million customers that the electric cooperatives represent statewide. I appreciate any assistance and leadership you can provide in getting this legislation passed.

Thank you in advance for your attention to this letter and any help you can provide.

Sincerely,

John Hall/sc

John Hall
Halifax County Commissioner

cc: Honorable Jim Black
Honorable Marc Basnight

**RESOLUTION OF
THE MEMBERSHIP OF
THE ENGELHARD ROTARY CLUB**

RESOLUTION TO SUPPORT LEGISLATION (S.B. 480/H.B. 476) IN THE N.C. GENERAL ASSEMBLY CLARIFYING THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

WHEREAS, the citizens and businesses of the Hyde County area deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state; and

WHEREAS, member-owned electric cooperatives including Tideland Electric Membership Corporation are willing and able to provide many of these services to our citizens; and


WHEREAS, electric cooperatives are locally owned and controlled businesses which actively promote economic development and job creation in our community; and

WHEREAS, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenged either geographically or economically to serve; and

WHEREAS, electric cooperatives should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future.

NOW, THEREFORE, BE IT RESOLVED that the members support the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

This the 15th day of April 1999.


Arthur H. Keeney, III, President

**Board of Commissioners
Caldwell County
State of North Carolina**

***Resolution Supporting Legislation Regarding EMC Subsidiaries
(H476/S480)***

WHEREAS Blue Ridge Electric Membership Corporation, an electric cooperative owned by its members in northwestern North Carolina, is one of 27 electric cooperatives providing electric service to the rural areas across the State of North Carolina, and

WHEREAS Blue Ridge Electric, like other electric cooperatives in this State, has not only provided electric service but has been actively involved in economic development, supported public education and health care, and served as a strong corporate citizen through donations and volunteer leadership in the rural communities in their service area, and

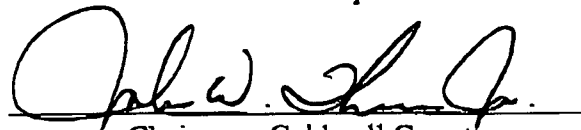
WHEREAS through their service and commitment these rural electric cooperatives have been and must continue to be an important asset of the rural people of this County and the State, leveraging benefits that might not otherwise be afforded to the rural areas, and

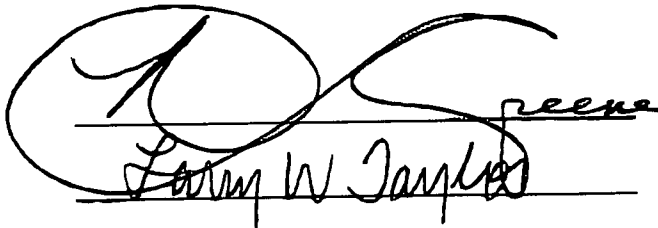
WHEREAS we believe it is in the best interest of the people of Caldwell County and other rural counties that electric cooperatives such as Blue Ridge Electric have the opportunity to prepare for a competitive future, strengthen their financial position, and provide needed services to rural people, and

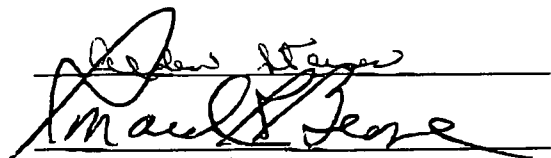
WHEREAS the passage of legislation clarifying General Statute 117-18 which governs cooperatives and their purpose will better ensure the continued growth and success of these vital local rural businesses owned by and for the benefit of their rural members.

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners of Caldwell County supports the passage of the bill entitled An Act Concerning the Grant of Powers to Electric Membership Corporations Regarding Subsidiary Organizations (short title EMC Subsidiaries and numbered H476 and S480) and encourages the General Assembly to vote in favor of this legislation on behalf of all the members of rural electric cooperatives of the State of North Carolina.

Signed this 19th day of April, 1999 by


Chairman, Caldwell County
Board of Commissioners


Larry W. Taylor


Mark D. Jones

LUMBERTON

NORTH CAROLINA

April 13, 1999

North Carolina General Assembly
Legislative Office Building
Raleigh, N. C.

Dear Members of the General Assembly,

The purpose of this letter is to voice The Lumberton Area Chamber of Commerce's support of House Bill 476, referred to as the EMC Subsidiary Legislation sponsored by Representative Joe Tolson and Senators Tony Rand and Steve Metcalf. This legislation gives clear vision to EMCs and opens up the possibilities of reacting to the changing business climate through the expansion of their business holdings. It allows them to create, hold, invest in, acquire or operate subsidiaries that provide value-added products and services to consumers.

Our member, Lumber River Electric Membership Corporation, and the many rural customers and businesses that it serves throughout our county deserve this consideration of fairness and the clear ability of LREMC to make prudent business decisions, just like all businesses. The rural nature of our area demands additional electrical infrastructure in order to attract businesses, maintain existing businesses, advance living standards, and promote a competitive business environment. This legislation also supports the ability of cooperatives and their local officials to make their own decisions and steer their own destinies.

The Lumberton Area Chamber asks for your enthusiastic support for House Bill 476. It will allow for greater opportunities in economic development as well as quality of life for all our citizens in rural sections of North Carolina.

Sincerely yours,

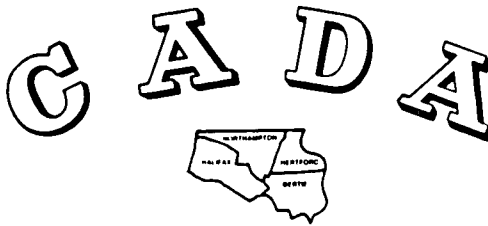


W. Morris Bullock
Chairman of the Board

Cc: Randal Jones, LREMC

LUMBERTON AREA CHAMBER OF COMMERCE

500 North Chestnut Street • P.O. Box 1008 • Lumberton, North Carolina 28358-1008 • Tel: (810) 738-4750 • Fax: (810) 671-9722



CHOANOKE AREA DEVELOPMENT ASSOCIATION, INC.

P.O. Box 530
RICH SQUARE, NORTH CAROLINA 27869
TELEPHONE: 252-539-4155
FAX: 252-539-2048

April 19, 1999

The Honorable Marc Basnight
President Pro Tempore
Room # 2007
Legislative Building
Raleigh, NC 27601-2808

Dear President Pro Tem Basnight:

Choanoke Area Development Association of North Carolina, Inc. (CADA) supports HB476 and SB480, EMC Subsidiaries Bill. The rural electric membership cooperatives have historically provided a service and played an important role in the development of rural areas when others have ignored rural needs.

As the electric utility service industry faces changes and deregulation, the North Carolina EMCs are being asked to continue to provide good, economical services on an unlevel playing field. Our EMCs must be allowed to participate in subsidiaries in order to continue to provide economical service to rural North Carolinians, many of whom are low-income and elderly. To not allow EMCs to participate, invest, or partner through a subsidiary is to doom EMCs and the rural customers they serve to higher utility bills, to diminish service, and to curtail economic development.

The EMCs are not asking to be given a privileged position in a competitive environment. They are asking only to be given equal opportunity to compete. This competition will benefit rural residents. The subsidiaries will operate just like other private businesses, pay taxes, and will not receive government funds. Subsidiary services will be reimbursed at fair market value.

Referring this issue to a study committee will serve only to intensify the "unlevel playing field" that already exists. There is no guarantee that new players will be committed to the development of rural North Carolina. From the view of an agency that serves low-income rural residents, House Bill 476 and Senate Bill 480 are necessary so that our rural residents, especially the low-income, have options that open competition can bring.

I hope you will support the EMC Subsidiaries Bill. Thank you in advance for your consideration.

Sincerely,


Sallie P. Surface
Executive Director

SPS/db

TRIBAL ENROLLMENT
(910) 521-8482

ENERGY OFFICE
(910) 735-7906

DAY CARE OFFICE
(910) 521-8585

JTPA OFFICE
(910) 521-9781

Lumbee Tribe of North Carolina

East Main Street • Post Office Box 68 • Pembroke, North Carolina 28372-0068

ADMINISTRATIVE OFFICES

Revels Plaza
(910) 521-8602

Fax Number
(910) 521-8625

Home Page
of the Lumbee Tribe
www.lumbee-tribe.org



April 14, 1999

TRIBAL BOARD

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WILLIAM LOWRY
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LEON JACOBS
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ODELL LOWRY
MARTY BLANKS

JAMES HARDIN
Tribal Manager/
Executive Director

North Carolina General Assembly
Legislative Office Building
Raleigh, North Carolina

Dear Member of the North Carolina General Assembly:

The purpose of this letter is to voice Lumbee Regional Development Association's support of the EMC subsidiary legislation sponsored by Representative Joe Toison, and Senators Tony Rand and Steve Metcalf. The purpose of the legislation is to clarify the electric cooperatives right to create, hold, invest in, acquire or operate subsidiaries that provide value-added products and services to consumers.

The legislation presents an issue of fairness for rural business. Other North Carolina companies have the clear ability to make prudent business decisions, EMC's deserve the same right. Electric cooperatives have long supported rural economic development and assisted in improving rural infrastructure in their communities. Now they request the legislative clarification that they can further their involvement by providing additional products and services through similarly-situated business entities as other companies do today. These activities are paramount to North Carolina's efforts to attract business, maintain existing businesses, advance living standards and promote a competitive business environment. Lastly, this legislation supports the ability of cooperatives and their local officials to make their own decisions and steer their own destinies.

"Land of the Lumbee"

STATE RECOGNIZED SINCE 1885

dba/ Lumbee Regional Development Association (LRDA) since 1988

The Lumbee Regional Development Association considers the provisions of this legislation and the services which EMC subsidiaries can provide as a tool for rural development and we ask for your enthusiastic support.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Hardin', with a long horizontal flourish extending to the right.

James Hardin,
Executive Director

Rose Whitaker
Post Office Box 133
Tillery, North Carolina 27887

April 19, 1999

Representative Thomas C. Hardaway
Room #634
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Hardaway,

I am a member of Roanoke Electric Cooperative and also live in your district. I strongly support HB 476. This bill will ensure that cooperatives are able to continue to serve the people who live in rural areas of our county.

The cooperatives are asking that they be allowed to create private businesses to offer other services that we want and need. This would allow them to generate more revenue to help keep our electric rates as low as possible. They plan to create their private subsidiaries just like any other private business would; by borrowing money from the bank, not the government, and paying taxes on the profits that they make.

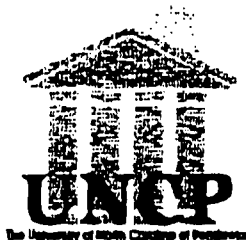
I hope that you will support this bill because it is very important to our communities.

Thank you,

Rose Whitaker

Rose Whitaker

Cc: James B. Black
Speaker of the House
Room #2304
Legislative Building
Raleigh, NC 27601



Regional Center for Economic,
Community, and Professional Development
One University Drive
P.O. Box 1510
Pembroke, NC 28372-1510
(910) 521-6198 FAX: 521-6550

April 12, 1999

Mr. Randall Jones
Lumbee River EMC
601 E. 4th Street
Red Springs, NC 28377

Dear Randall:

The purpose of this letter is to voice our support for the EMC subsidiary legislation sponsored by Representative Joe Tolson and Senators Tony Rand and Steve Metcalf. This legislation will clarify the electric cooperatives' right to create, hold, invest in, acquire or operate subsidiaries that provide value-added products and services to consumers.

The legislation presents an issue of fairness for rural business. Other North Carolina companies have the clear ability to make prudent business decisions, and EMC's deserve the same right. Electric cooperatives have long supported rural economic development and assisted in improving rural infrastructure in their communities. EMC's are requesting legislative clarification so that they can further their involvement by providing additional products and services through similarly situated business entities as other companies do today. These activities are paramount to North Carolina's efforts to attract business, maintain existing businesses, improve living standards and promote a competitive business environment. Lastly, this legislation supports the ability of cooperatives and their local officials to make their own decisions and steer their own destinies.

We consider the provisions of this legislation and the services which EMC subsidiaries could provide as a tools for rural development. You have our support.

Sincerely,

Joanne P. Zukowski
Joanne Zukowski

**Caldwell County
Economic Development
Commission**
www.caldwelledc.org



**Economic Development Commission
Caldwell County
State of North Carolina**

***Resolution Supporting Legislation Regarding EMC Subsidiaries
(H476/S480)***

WHEREAS, Blue Ridge Electric Membership Corporation, an electric cooperative owned by its members in northwestern North Carolina, is one of 27 electric cooperatives providing electric service to the rural areas across the State of North Carolina, and

WHEREAS, Blue Ridge Electric, like other electric cooperatives in this State, has not only provided electric service but has been actively involved in economic development, supported public education and health care, and served as a strong corporate citizen through donations and volunteer leadership in the rural communities in their service area, and

WHEREAS, through their service and commitment these rural electric cooperatives have been and must continue to be an important asset of the rural people of this County and the State, leveraging benefits that might not otherwise be afforded to the rural areas, and

WHEREAS, we believe it is in the best interest of the people of Caldwell County and other rural counties that electric cooperatives such as Blue Ridge Electric have the opportunity to prepare for a competitive future, strengthen their financial position, and provide needed services to rural people, and

WHEREAS, the passage of legislation clarifying General Statute 117-8 which governs cooperatives and their purpose will better ensure the continued growth and success of these vital local rural businesses owned by and for the benefit of their rural members.

NOW THEREFORE BE IT RESOLVED, that the Caldwell County Economic Development Commission supports the passage of the bill entitled An Act Concerning the Grant of Powers to Electric Membership Corporations Regarding Subsidiary Organizations (short title EMC Subsidiaries and numbered H476 and S480) and encourages the General Assembly to vote in favor of this legislation on behalf of all the members of rural electric cooperatives of the State of North Carolina.

Signed this 13 day of April 1999 by Ann E. Smith
**Chairman, Caldwell County
Economic Development Commission**

Robeson County

***** NORTH CAROLINA

Office of Economic Development
900 Airport Boulevard
Lumberton, NC 28358

April 13, 1999

North Carolina General Assembly
Legislative Office Building
Raleigh, NC

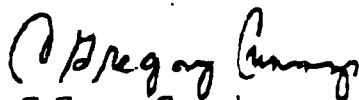
Dear Member of the North Carolina General Assembly:

The purpose of this letter is to voice Robeson County's Economic Development Commission's support of the EMC subsidiary legislation sponsored by Representative Joe Tolson and Senators Tony Rand and Steve Metcalf. The purpose of the legislation is to clarify the electric cooperatives' right to create, hold, invest in, acquire or operate subsidiaries that provide value-added products and services to consumers.

The legislation presents an issue of fairness for rural business. Other North Carolina companies have the clear ability to make prudent business decisions, EMC's deserve the same right. Electric cooperatives have long supported rural economic development and assisted in improving rural infrastructure in their communities. Now they request the legislative clarification that they can further their involvement by providing additional products and services through similarly related business activities as other companies do today. These activities are paramount to North Carolina's efforts to attract business, maintain existing businesses, advance living standards and promote a competitive business environment. Lastly, this legislation supports the ability of cooperatives and their local officials to make their own decisions and steer their own destinies.

The Robeson County Economic Development Commission considers the provisions of this legislation and the services which EMC subsidiaries can provide as a tool for rural development and we ask for your enthusiastic support.

Sincerely,



C. Gregory Cummings
Economic Development Director

CGC:vmp

311 Memory Lane.
Deep Gap N.C. 28618
April 18, 1999

Dear Representative Hyatt:

I am a member of The
Blue Ridge Electric Membership Corp.
I am writing to ask you to
give your consideration and
support to Bill H. 476. It
would mean so much to the
members in our Coop.

Thank you.

Sincerely,
Margaret H. Clevenger

STATEMENT IN SUPPORT OF CLARIFICATION OF NORTH CAROLINA GENERAL STATUTES, CHAPTER 117-18

The undersigned is a HVAC contractor or an electrical contractor working in the western part of North Carolina, specifically within or near the service territory of Haywood Electric Membership Corporation.

I am aware of an effort currently underway to clarify the language contained in Chapter 117-18 of the North Carolina General Statutes such that EMCs in North Carolina can engage in any lawful business activity through a subsidiary or separate business. I further understand, under the proposed legislation, the electric cooperatives can not use Rural Utilities Service (RUS) loan funds for purposes other than rural electrification and development.

I have worked with Haywood EMC on several occasions in the past where I have engaged in either whole home wiring or HVAC contracting or I have installed electric generators or heat pumps. I want to state that Haywood EMC has been very generous in recommending work for me and in referring members/consumers of Haywood EMC to me for work in my specialty.

I urge the North Carolina General Assembly to act favorably in regard to the proposed clarification of Chapter 117 such that EMCs' subsidiaries in North Carolina can engage in any lawful business activity. I believe that the EMCs will continue to benefit small contractors like myself and that the increased business activity that the EMC generates will open up additional work for me.

I understand that the proposed legislation will allow EMCs to operate, acquire, create, invest in or hold a subsidiary or separate business that engages in any lawful business activity. These ventures can not be financed using RUS loan funds for any purpose other than rural electrification and development. These ventures are subject to all taxes levied against business entities with the same business structure. I urge the General Assembly to vote in favor of the legislation.

Date 04/12/99

Name

Jimmy R. Crocker
J.R. Electric



**WASHINGTON
BEAUFORT COUNTY
CHAMBER
OF COMMERCE**
Established 1904

**RESOLUTION OF
THE BOARD OF DIRECTORS
WASHINGTON, BEAUFORT COUNTY CHAMBER OF COMMERCE**

RESOLUTION TO SUPPORT LEGISLATION (S.B. 480/H.B. 476) IN THE N.C. GENERAL ASSEMBLY CLARIFYING THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

WHEREAS, the citizens and businesses of the Beaufort County area deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state; and

WHEREAS, member-owned electric cooperatives including Tideland Electric Membership Corporation are willing and able to provide many of these services to our citizens; and

WHEREAS, electric cooperatives are locally owned and controlled businesses which actively promote economic development and job creation in our community; and

WHEREAS, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenged either geographically or economically to serve; and

WHEREAS, electric cooperative should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

This the 14th day of April 1999.



Linley Gibbs, Chairman

Alexander County Board of Commissioners
ADOPTED THIS RESOLUTION ON 4/6/99

RESOLUTION TO SUPPORT THE LEGISLATIVE CLARIFICATION OF THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

Whereas, the citizens and businesses of Alexander County deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state,

Whereas, member-owned electric cooperatives are willing and able to provide many of these services to our citizens,

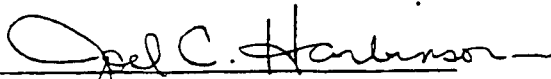
Whereas, electric cooperatives are locally owned and controlled businesses which promote economic development and job creation in our community,

Whereas, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenging either geographically or economically to serve,

Whereas, electric cooperative should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future,


Now, therefore, be it resolved that the Alexander County Board of Commissioners supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

Signed on this, the 6 day of April, 1999.



Joel C. Harbinson
Chairman

ATTEST:



Judy B. Feimster
Deputy Clerk to the Board

4/19/99

Representative Thomas C. Hardaway
Room #634
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Hardaway,

I am a member of Roanoke Electric Cooperative and also live in your district. I strongly support HB 476. This bill will ensure that cooperatives are able to continue to serve the people who live in rural areas of our county.

The cooperatives are asking that they be allowed to create private businesses to offer other services that we want and need. This would allow them to generate more revenue to help keep our electric rates as low as possible. They plan to create their private subsidiaries just like any other private business would; by borrowing money from the bank, not the government, and paying taxes on the profits that they make.

I hope that you will support this bill because it is very important to our communities.

Thank you,

Cc: James B. Black
Speaker of the House
Room #2304
Legislative Building
Raleigh, NC 27601

Virginia Hines
501-E. Littleton Rd #24
Roanoke Rapids, NC 27870

**Resolution Supporting Legislation Regarding EMC Subsidiaries
(H476/S480)**

WHEREAS Blue Ridge Electric Membership Corporation, an electric cooperative owned by its members in northwestern North Carolina, is one of 27 electric cooperatives providing electric service to the rural areas across the State of North Carolina, and

WHEREAS Blue Ridge Electric, like other electric cooperatives in this State, has not only provided electric service but has been actively involved in economic development, supported public education and health care, and served as a strong corporate citizen through donations and volunteer leadership in the rural communities in their service area, and

WHEREAS through their service and commitment these rural electric cooperatives have been and must continue to be an important asset of the rural people of this County and the State, leveraging benefits that might not otherwise be afforded to the rural areas, and

WHEREAS we believe it is in the best interest of the people of Alleghany County and other rural counties that electric cooperatives such as Blue Ridge Electric have the opportunity to prepare for a competitive future, strengthen their financial position, and provide needed services to rural people, and

WHEREAS the passage of legislation clarifying General Statute 117-18 which governs cooperatives and their purpose will better ensure the continued growth and success of these vital local rural businesses owned by and for the benefit of their rural members.

NOW THEREFORE BE IT RESOLVED, that the Board of Commissioners of Alleghany County supports the passage of the bill entitled An Act Concerning the Grant of Powers to Electric Membership Corporations Regarding Subsidiary Organizations (short title EMC Subsidiaries and numbered H476 and S480) and encourages the General Assembly to vote in favor of this legislation on behalf of all the members of rural electric cooperatives of the State of North Carolina.

Adopted this 5th day of April, 1999.

ATTEST:

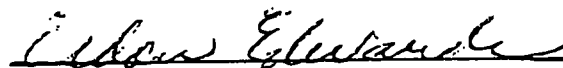


Karen Evans
Clerk to the Board

ALLEGHANY COMMISSIONERS



Ken Richardson, Chair



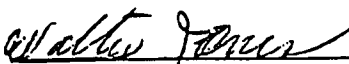
Eldon Edwards, Vice-Chair



Charity Gambill, Member



Robert Greene, Member



Walter Jones, Member



April 19, 1999

Representative Ronald Smith
Chairman, Public Utilities Committee
NC House of Representatives
16 West Jones Street
Raleigh, NC 27601-1096

Dear Representative Smith,

I am writing to you to express my support for House Bill 476 (SB480) and to ask you to please support this bill as it's considered in the Public Utilities Committee.

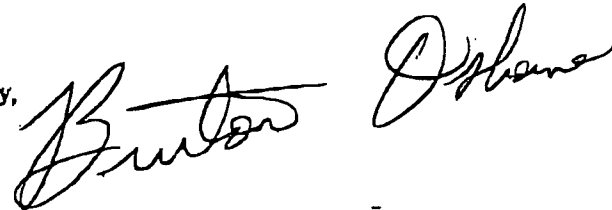
This bill is extremely important to the people living and working in northwestern North Carolina. It will ensure that we have access to affordable, reliable electric service from a provider who has demonstrated in many ways over the years that they care about us as a community. Indeed, Blue Ridge Electric has been much more to our community than a power provider. As a supporter of economic development, health care, education, and other vital services that are hard to obtain in rural areas, Blue Ridge Electric has been a real asset to Alleghany County. This bill will allow our cooperative to continue providing affordable, reliable power to members like myself. It will also enable the cooperative to continue serving as our area's partner for progress.

Blue Ridge Electric and other cooperatives are asking only for fairness and a level playing field by asking for clarification of the existing statute. The subsidiaries referred to in the new bill are to be set up as separate businesses. They would be subject to all the same taxes and regulations as a similar business. In addition, no federal monies would be used for the subsidiary. I consider that to be what free enterprise is all about. After all, other utilities and other businesses diversify all the time in order to strengthen their companies financially and best serve their customers. That's what the members of Blue Ridge Electric desire from their cooperative.

Please support the EMC Subsidiaries bill on behalf of members like myself who are served by cooperatives and want to continue being served by cooperatives. As a member-owner of Blue Ridge Electric, I would appreciate your help in clarifying the law so that our cooperative can spend their time preparing for the future just as other businesses are doing.

Thank you for your time.

Sincerely,



BURTON OSBORNE
150 BURTON LONG
PINEY CREEK, NC
28663

STATE OF NORTH CAROLINA)
COUNTY OF DAVIDSON)

RESOLUTION OF
THE BOARD OF COMMISSIONERS

RESOLUTION TO SUPPORT THE LEGISLATIVE CLARIFICATION OF THE ABILITY OF
ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH,
OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

WHEREAS, the citizens and businesses of Davidson County deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state; and

WHEREAS, member-owned electric cooperatives are willing and able to provide many of these services to our citizens; and

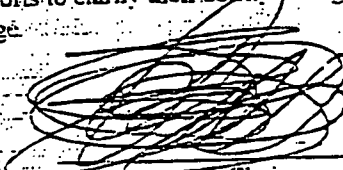
WHEREAS, electric cooperatives are locally owned and controlled businesses which promote economic development and job creation in our community; and

WHEREAS, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenging either geographically or economically to serve; and

WHEREAS, electric cooperative should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future;

NOW, THEREFORE, BE IT RESOLVED that the Davidson County Board of Commissioners supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

This the 23rd day of March, 1999.



Larry W. Potts, Chairman
Davidson County Board of Commissioners

Joe E. Biesecker, Clerk to the Board
Davidson County Board of Commissioners



Terry L. Bralley
Council Chairman

April 16, 1999

The Honorable Ronnie Smith
North Carolina House of Representatives
16 West Jones Street
Raleigh, NC 27601-1096

Dear Representative Smith:

I am writing in regard to House Bill 476, which amends Chapter 117, to enable legislation of the rural electric cooperatives.

I support this legislation for the rural electric cooperatives to broaden their scope of services in order to accommodate growing trends. This bill will allow them to remain competitive in the community and offer the highest quality services.

They have established a good track record by providing service to their customers and making prudent decisions while acting responsibly with member-owner finances.

The rural electric cooperative, Energy United, has developed a strong working relationship with business, industry, and residential customers in Davie County.

I encourage you, the Public Utilities Committee, and all of the legislators to pass House Bill 476 and Senate Bill 480.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Bralley'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Terry L. Bralley
Chairman of the Economic Development Council

171 Clement Street
Mocksville, North Carolina 27028-2335

PHONE 336-751-2259
FAX 336-751-9187
E-MAIL: bmulik@mocksville.com
WEB: mocksville.org

A PIEDMONT TRIAD COMMUNITY



STOKES COUNTY Administration

Craig Greer
County Manager

Darlene Bullins
Administration
P.O. Box 20
Danbury, NC 27016
(336) 583-2811
Fax (336) 593-2346

RESOLUTION

RESOLUTION TO SUPPORT THE LEGISLATIVE CLARIFICATION OF THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES

WHEREAS, the citizens and businesses of Stokes County deserve high quality, value-added services at a reasonable cost that are widely available in other areas of the state; and

WHEREAS, member-owned electric cooperatives are willing and able to provide many of these services to our citizens; and

WHEREAS, electric cooperatives are locally owned and controlled businesses which promote economic development and job creation in our community; and

WHEREAS, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenging either geographically or economically to serve; and

WHEREAS, electric cooperatives should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future;

BE IT THEREFORE RESOLVED, the Stokes County Board of Commissioners supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

Adopted this 6th day of April, 1999.

Handwritten signature of W. Craig Greer.

W. Craig Greer
Clerk to the Board

Handwritten signature of Robert J. "Buster" Robertson.

Robert J. "Buster" Robertson
Chairman
Stokes County Board of Commissioners

MAYOR FOR THE TOWN OF LOVE VALLEY

RESOLUTION TO SUPPORT THE LEGISLATIVE CLARIFICATION OF THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE IN VEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

Whereas, the citizens and businesses of the Town of Love Valley deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state,

Whereas, member-owned electric cooperatives are willing and able to provide many of these services to our citizens,

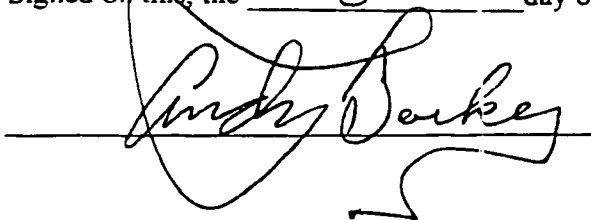
Whereas, electric cooperatives are locally owned and controlled businesses which promote economic development and job creation in our community,

Whereas, electric cooperatives serve a vital purpose in North Carolina by providing Electricity on a not-for-profit basis in many areas which are challenging either geographically or economically to serve,

Whereas, electric cooperatives should be able to prudent business decisions for the health of the utility to remain competitive and grow in the future,

Now, therefore, be it resolved that the Mayor for the Town of Love Valley supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision service without challenge.

Signed on this, the 8th day of April, 1999.



Handwritten signature of Andy Barker.

4/19/99

Representative Thomas C. Hardaway
Room #634
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Hardaway,

I am a member of Roanoke Electric Cooperative and I am in favor of HB476.

I think that the bill is fair to cooperative members and to other small businesses. No one should be allowed to decide who his or her competition would be. As long as the businesses that cooperatives create do not receive government funds and are forced to pay taxes, the playing field is level. How you treat your customers will determine a business' success or failure.

Please allow cooperatives to broaden their services by creating private subsidiaries. This will allow them to keep our rates reasonable in the future. This bill allows cooperatives to diversify and secure their futures. I am convinced that our future depends on their future. We need cooperatives and the support they have been providing our communities and schools. Limiting their ability to operate as other businesses puts them at a big disadvantage.

Please support this very important bill.

Yours truly,

Cc: James B. Black
Speaker of the House
Room #2304
Legislative Building
Raleigh, NC 27601

Edith S. Mills
P.O. Box 161
Gaston, N.C. 27832

MOCKSVILLE TOWN COUNCIL

RESOLUTION TO SUPPORT THE LEGISLATIVE CLARIFICATION OF THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

Whereas, the citizens and businesses of Mocksville deserve high quality value-added services, at a reasonable cost, that are widely available in other areas of the state,

Whereas, member-owned electric cooperatives are willing and able to provide many of these services to our citizens,

Whereas, electric cooperatives are locally owned and controlled businesses which promote economic development and job creation in our community,

Whereas, electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenging either geographically or economically to serve,

Whereas, electric cooperative should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future,

Now, therefore, be it resolved that the Mocksville Town Council supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

Signed on this, the 6th day of April, 1999.



Mayor



Clerk

MAYOR'S PROCLAMATION

RESOLUTION TO SUPPORT THE LEGISLATIVE CLARIFICATION OF THE ABILITY OF ELECTRIC COOPERATIVES IN NORTH CAROLINA TO OPERATE, INVEST IN, PARTNER WITH, OR OWN A SUBSIDIARY THAT OFFERS VALUE ADDED SERVICES.

WHEREAS, The citizens and businesses of the Town of Taylorsville deserve high quality value-added services, at reasonable cost, that are widely available in other areas of the state,

WHEREAS, Member-owned electric cooperatives are willing and able to provide many of these services to our citizens,

WHEREAS, Electric cooperatives are locally owned and controlled businesses which promote economic development and job creation in our community,

WHEREAS, Electric cooperatives serve a vital purpose in North Carolina by providing electricity on a not-for-profit basis in many areas which are challenging either geographically or economically to serve,

WHEREAS, Electric cooperatives should be able to make prudent business decisions for the health of the utility to remain competitive and grow in the future,

NOW, THEREFORE, Be it resolved that the Town of Taylorsville Town Council supports the electric cooperatives' legislative efforts to clarify their ability to engage in activities outside the provision of electric service without challenge.

Signed this, the 6th day of April, 1999.

ATTEST

Yolanda T. Prince
Yolanda T. Prince, Town Clerk

Glenn P. Deal
Glenn P. Deal, Mayor

4/20/99

Representative Thomas C. Hardaway
Room #634
Legislative Building
Raleigh, NC 27601-1096

Dear Representative Hardaway,

I am in favor of HB476. I am a citizen of Tillery, North Carolina.

When nobody else would, Roanoke Electric Cooperative brought us electricity. I appreciate what they have done for us and what they are still doing for us. I would hate for them to go out of business.

They need to be allowed to do whatever they can to stay in business. This bill will let them do other things so that they can stay in business. This bill will force them to do other things just like other private businesses have to do. This makes it fair for everybody.

Therefore, I ask that you support this bill.

Yours truly,

Clementine Sledge
769 Sorie Town Rd
Enfield NC 27823

Cc: James B. Black
Speaker of the House
Room #2304
Legislative Building
Raleigh, NC 27601



News Articles of Interest

Winston-Salem Journal

October 6, 1998

CONNECTED: Electric co-op joins Northwest fuel business

By Iln Sparks

JOURNAL NORTHWEST BUREAU

LENOIR

The rural electric cooperative that supplies power to several Northwest mountain counties announced yesterday that it is investing in a new business to provide for the region's fuel energy needs.

Blue Ridge Electric Membership Corp., or BREMCO, said that profits will be used to help keep its prices competitive if the state follows a nationwide trend and allows electric companies to compete with one another.

Doug Johnson, the chief executive of BREMCO, said that the utility is one of four principal investors in the new for-profit business,

Blue Ridge Energies, LLC. The company will provide propane gas, fuel oil, diesel fuel, kerosene and commercial gasoline to residential, business and commercial accounts in 13 counties from Northwest North Carolina to a portion of South Carolina, including Ashe, Watauga and Caldwell.

Also investing in the business are the National Cooperative Services Corp., a private national financing company affiliated with the National Rural Utilities Cooperative Finance Corp.; the N.C. Electric Membership Corp., a power generation and transmission utility serving 26 of the state's electric utilities; and Lenoir businessman

See RURAL ENERGY, Page D5

RURAL ENERGY

Continued From Page D1

John Beall, whose former companies, Beall Oil and Beall Propane, Inc., form the foundation of new company's operation.

Blue Ridge Energies will have its headquarters in Lenoir, with a branch office scheduled to open in Morganton later this month.

It will be governed by a five-member board of directors representing the investors. Johnson will serve as the president and CEO of Blue Ridge Energies, while remaining as the CEO of BREMCO. Beall will serve as the executive vice-president and run the daily operations.

Many states have laws allowing customers to choose which utility to buy their power from.

The intention is that the increased competition from deregulation will lower electric bills.

A commission appointed by the legislature is studying the issue and will report its findings to the General Assembly next year.

Renee Whitener, a spokesperson for BREMCO, said that although there is always risk associated with any for-profit business venture, the cooperative's executives believe that there is a greater risk to its members if it stands by and does nothing to prepare for deregulation.

Johnson reiterated that belief during remarks at a press conference yesterday morning, saying he thinks that the trend toward

deregulation is almost unstoppable. "Supporters of deregulation believe competition and customer choice will mean lower electric rates," he said.

"We believe the rigors of competition could be good for electric utilities and certain consumers, but we're concerned about the benefits reaching rural residential customers... and we believe that just saying no to deregulation will not stop this tremendous national movement toward competition.

"With this in mind, we at Blue Ridge Electric, have been strategically preparing ourselves to do everything we can to ensure that reliable, affordable electricity continues to be available to our rural customers when deregulation comes to our state."



David
Boraks

TECHNOLOGY

Power co-op offers Web hookup too

EnergyUnited wants its customers to be wired — in more ways than one.

The Statesville-based electricity cooperative, with 250,000 customers in 19 N.C. counties, has begun selling Internet access to homes and businesses.

An electric company in the Internet business? It's not as strange as it may sound.

A growing number of utilities are selling this new service to both their own customers and others in and near their service areas. Some are even building their own high-speed communications networks by stringing fiber-optic cable on power transmission towers.

They're entering the business for the same reasons telephone companies and start-up Internet companies do — in hopes of capitalizing on growing enthusiasm for the global computer network among both home and business users.

But EnergyUnited also sees itself filling a need, especially in rural areas that until now have been left out of the Internet revolution.

"In the 19 counties we serve, there's just not a lot of choice," said R.B. Sloan, chief executive officer of the customer-owned utility. "We feel there's a community obligation for us to provide the service."

As Internet use has exploded in recent years, densely populated metropolitan areas have seen rapid growth in the number of competing services. In the 704 area code alone, consumers now have a choice of more than 350 Internet service providers, or ISPs, up from just a half-dozen or so four years ago, according to The List, an online ISP directory (www.the-list.com).

But the same has not always been true in rural areas, where Internet users often have had to dial long-distance to the nearest big city just to log on to America Online or an Internet provider.

EnergyUnited, formed in October by the merger of Crescent and Davidson electric membership cooperatives, will offer its service through a new unit called EnergyUnited Internet Inc. (www.energyunited.net/).

The company initially is offering Internet access to homes and businesses in Iredell and Mecklenburg counties and plans to expand throughout its 19-county territory by year's end. The company already has local Internet access phone numbers in Cornelius and Statesville.

Unlimited Internet access will cost \$18.95 a month for EnergyUnited electric customers and \$19.95 for others. The fee includes free software and space for a World Wide Web page. Customers may charge the service to their electric bills.

Rural PUDs can plug you in — again

BY STEVE JOHNSON
Special to The Times

THE "Cascade Curtain" separating Eastern and Western Washington is not the state's only division: There is a huge and troubling gap between urban and rural areas. While Washington's cities are thriving, its rural economies lag far behind. Public utility districts — nonprofit, publicly owned utilities — serve much of rural Washington, and they want to help solve this problem.

Twenty-three rural counties in Washington are considered distressed because of their high unemployment rates. In some rural areas, unemployment rates are three times as high as they are in Spokane and Seattle. One recent study concluded that the urban-/rural economic disparity is worse in Washington than in any other state.

Gov. Locke has said, "I will not tolerate 'two Washingtons' — one that is prosperous and another that is struggling." The state Legislature also has made this issue a priority, establishing a bipartisan, joint task force on rural economic development.

As leaders search for solutions, our state's history may point the way. In the 1920s, as now, rural Washingtonians fared worse than their urban cousins. One reason was that private utilities refused to provide electricity to farms — or charged exorbitant prices to do so. Without power, economic progress was hindered.

That's why a farm organization, the Washington State Grange, filed Initiative No. 1, the Grange Power Bill. Its passage gave rural communities the ability to form nonprofit, community-operated public utility districts (PUDs). People in 28 Washington counties did just that. The PUDs succeeded in bringing electricity to farms and small towns throughout the state.

While electricity is readily available today to those living outside Washington's cities, telecommunication services are not. Services taken for granted in Seattle, such as high-speed Internet hook-ups and digital cable TV, are not available in many rural areas. Just as electricity was a key to economic development in the past, high-speed, high-capacity information-transmission services are vital to commerce, education, health care and other aspects of life today. The lack of such services is one reason why rural areas continue to fall behind economically.

Just as communities used PUDs to deliver modern technology in the past, they could do so today. Many PUDs are installing fiber-optic cable in order to remotely monitor and control utility substations, switchyards and pole-top installations. When extended to individual meters, these cables allow utilities to read meters remotely and offer new energy-conservation services. This telecommunication technology makes it possible for utilities to detect and repair outages that occur while a customer is sleeping and

unaware of them.

The fiber-optic lines used by electric utilities have the capacity to carry additional digital signals. By using this excess capacity, rural communities can create opportunities for telecommuting, distance learning, video conferencing, remote provision of health-care services and access to markets.

As nonprofit, public entities, PUDs might also be able to provide services, such as high-speed Internet access, that for-profit companies are failing to deliver in rural Washington. With their equipment know-how and years of utility experience, PUDs have the technical ability to do the job.

Rural communities see the possibilities and are asking their PUDs for help:

- People in Pacific County did not have local access to the Internet. The local economic development council asked the PUD to provide a solution.

- When no cable TV company would serve the tiny town of Republic, residents organized a cable association. The struggling association has asked the Ferry County PUD to operate the service.

- When a Douglas County bank needed a fiber optic connection between two branches, it turned to the local PUD for help.

- A hospital in Asotin County told the local PUD it wants high-speed telecommunications facilities so it can transmit MRI and CT scan data. Currently, transmission takes 7 hours; fiber optics would cut the time to 7 minutes.

If PUDs are in a position to help rural communities, what's

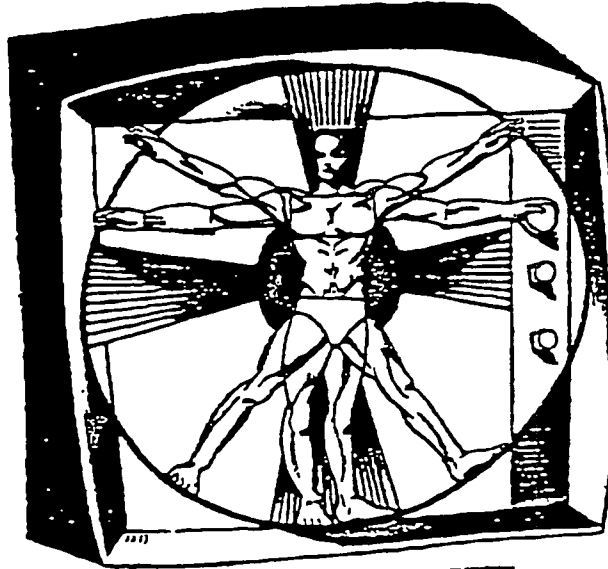
the hitch? Washington's PUD law was written in 1930, decades before the Internet was developed. The law simply didn't anticipate the tremendous technological advances that have taken place in the past seven decades. Neither did the law foresee the convergence of technologies that makes it sensible for a variety of utility services to be delivered by electric utilities. While the statute gives PUDs a broad purpose — "to provide public utility service" — the authorities outlined for PUDs contain some gray areas.

The law needs to be modernized to enable PUDs to provide the services their customers need.

The Legislature has an opportunity to address important rural needs without dipping into state revenues. Lawmakers can give communities the ability to use their local PUD to meet their modern infrastructure needs.

Washington's rural communities shouldn't have to wait for profit-oriented companies based hundreds — or thousands — of miles away to solve their vital infrastructure problems. Not when a better solution is just down the street in the PUD building.

Steve Johnson is executive director of the Washington Public Utility Districts Association. The association represents 28 PUDs that provide electricity and water to nearly a third of Washington's citizens.



D.B. JOHNSON/OPART

Rural town makes its own way to the Internet



Brett McDowell of the Massachusetts Museum of Contemporary Art and museum tenant Jeff Kleiser are concerned about the high cost of Internet service in their remote corner of Massachusetts.

Some of the places that could most use the Internet battle the biggest obstacles to getting online.

THE NEW YORK TIMES

NORTH ADAMS, Mass. — Even unimaginative futurists predict that some not-so-distant day, geography will barely matter. Humanity's web of electronic connections will trump it utterly. That will be particularly nice for isolated spots like this long-depressed former mill and factory town, cupped in the Berkshire Mountains in the remotest corner of Massachusetts.

But here is the transitional rub: Sometimes the places that most need to overcome geography have the hardest time doing it, because they are handicapped by their distance from the nearest trunk lines of the long-distance carriers that offer Internet connections.

In other words, words used by members of Berkshire Connect, an unusual task force formed by local civic and business leaders with state help to address the problem, high-speed Internet connections like T-1 lines are too expensive here. Connections often cost double, triple or more what a user would pay in Boston or even Springfield,

Mass., because of the high local telephone charges to reach the big carrier. Telephone companies say that with the region's sparse population, demand is not sufficient to justify laying new lines.

That gets in the way of the region's hopes, just beginning to be realized, to replace its dead mills with engines of the new information economy.

Two forces are driving the pursuit: a handful of tech startups, most of whom have come from Williams College and into Williamstown, down the road from here, in the past five years; and the high-tech Massachusetts Museum of Contemporary Art, a mammoth museum scheduled to open its first phase in May in North Adams.

The long-awaited institution called MASS MoCA will offer performing arts as well as exhibitions, and aims to be a "creative campus" with an emphasis on the intersection of art and technology. The museum already offers a technology center that allows people to use computers and take courses on them free; it also plans to devote some of its space in a 700,000-square-foot old mill complex to rent offices to technology companies.

It plans to offer prospective tenants as "smart" a building as pos-

sible, with video teleconferencing and more. But to put in a big-bore T-3 connection, said Brett McDowell, the museum's information and media technology director, would cost perhaps \$35,000 a month, compared with less than half that in Boston.

When a company reaches the point that it needs a T-1 line here, McDowell said, its manager often ends up protesting: "You're telling me that just to access the Internet at the rate I need is five times more expensive than my rent?" That, McDowell said, "is when the six-man new media company moves to Boston."

One MASS MoCA tenant, Kleiser-Walczak Construction, a film special-effects and animation company, knows the connection problem firsthand. Keeping in T-1 touch with the company's other offices in New York and Hollywood costs about \$7,000 a month, said its president, Jeff Kleiser.

"To be here, we have to pay the price," Kleiser said. Still, he added, the price brings admission to a "once-in-a-lifetime experience: watching the museum and economic changes help North Adams metamorphose from a post-industrial wasteland to a new high-tech, converted art community."

Cable rates raise unease

Cable television is about to be almost totally deregulated, but prices continue to climb. One congressman fears an 'unregulated monopoly.'

By STEPHEN LABATON
THE NEW YORK TIMES

WASHINGTON — Cable television, one of the last industries in which prices are controlled by the government, is about to become almost completely deregulated.

But while the prospect of competition was supposed to drive prices down, the opposite has happened. Cable rates continue to rise, with many companies announcing increases for this year averaging 5 percent, more than twice the projected inflation rate.

The nation's 65 million cable subscribers have already seen rates climb about 22 percent — more than four times the rate of inflation — since the passage of the Telecommunications Act of 1996, which set the end of this month as the deadline for removing nearly all government price controls. The limits were imposed by Congress in 1992, over President Bush's veto. It was his only veto to be overridden, following enormous public complaints about price gouging and poor service.

The 1996 repeal set a three-year waiting period on the assumption that by now the cable industry would be facing far more competition for home viewers from satellite broadcasters and telephone companies, according to many experts, regulators and lawmakers. But since that has not happened, the deregulation March 31 has raised deep con-

CABLE

CONTINUED FROM PAGE 1A

cerns, even among Republicans philosophically opposed to regulation. The fear is that cable companies unshackled from price controls and not threatened by competition will continue to impose rate increases that far outpace inflation.

"We may now be facing the worst of all worlds, which is an unregulated monopoly," said John McCain, R-Ariz., who heads the Senate Committee on Commerce, Science and Transportation.

Billy Tauzin, R-La., who is chairman of the House Subcommittee on Telecommunications, Trade and Consumer Protection, said, "It's a date that's arising somewhat prematurely in terms of competitive opportunities for consumers, and that's troublesome for a lot of folks, me included."

But cable operators and their Washington lobbyists say the higher prices, which now average \$30 monthly nationwide, have helped pay for better programming, more channels and expanded services. They also note their progress in making upgrades that will permit digital signals and significantly faster Internet service.

"It's a fact of life that programs are just getting a lot more expensive," said Joe Waz, a vice president at Comcast Corp., which has 4.4 million customers in 20 states, including Pennsylvania, New Jersey, California and Florida. Comcast expects to raise its rates this year 5 percent to 6 percent. "We've invested very aggressively in systems upgrades," Waz said.

Cablevision Systems Corp., which provides service to 2.7 million households in New York, New Jersey and Connecticut, has announced price increases for 1999 averaging about 5 percent. Charles Schueler, a vice president, said the company was spending more than \$1 billion to upgrade the system to offer new telephone, digital and Internet services.

"Cable rates were set last fall based on our costs to provide cable service as well as market conditions," Schueler said. He also said Cablevision had begun to feel strong competition from satellite broadcasters and others.

Consumer groups have disputed industry claims that there is significant competition, and that price increases, which have varied in different regions, are justified by better programming and more channels.

their arguments. "It's not as if it," said Gene Kimmelman, a co-director of the Washington office of Consumers Union. "In those few areas where there has been competition, cable companies charge

10 percent to 15 percent less than where there's a monopoly to provide the exact same quality programming. And government data show cable rates going up twice as fast as programming cost increases."

Some critics have complained that the price increases are being used to pay for new channels and programs that few consumers want and for advanced services that remain many years away.

For the cable companies, licensing fees and programming expenses each rose about 20 percent last year, according to a recent government study. The industry also spent an estimated \$4 billion on upgrades and improved technology.

Fearful of a possible political backlash if prices rise too much this year, Decker Anstrom, the cable industry's top lobbyist in Washington, has spent the last few months imploring companies not to take advantage of the new regulatory climate by spiking rates.

"I talk every day to companies in the industry to remind them that policy makers are and have been sensitive to cable prices," said Anstrom, the president of the National Cable Television Association. "If there's one message I hear from every member of Congress, it's that the industry has to be very careful about pricing and services."

He said the marketplace was highly competitive and was becoming more so every day, noting that the percentage of television viewers who subscribe to cable was steadily declining. Government figures show that 85 percent of all households with television now subscribe to cable, down from 87 percent a year earlier.

After March 31, the government will continue to regulate prices for only basic cable service, consisting primarily of stations that broadcast over the air. More than 90 percent of cable subscribers receive expanded service, and often premium channels as well, Anstrom said.

Comments given to
Public Utilities Committee - House

by:

Bill Daughtridge

April 21, 1999

Good morning. My name is Bill Daughtridge. I am President of Daughtridge Operating Company.

- 1. Today I want to speak to you as a consumer, customer, and member of Tideland EMC.**
 - A. Commend all EMC's on what they have done to electrify rural N.C.**
 - B. Legislation in 1936 was designed to electrify rural America - thereby helping rural citizens – this has become a reality.**
 - C. Grandmother's house or last road going east where the Pamlico meets the Pungo. The road dead ends into a swamp 1 mile past her house. Once they got to her house, they truly have gotten to most of eastern NC.**
 - D. EMCs were created solely as a vehicle to achieve this purpose. This is not a private business started by citizens, but created by legislation to achieve a goal. They have achieved their goal. Now the electrification of rural NC is complete.**
- 2. Review the current status of EMCs and their customers.**
 - A. Today, the world has changed. 50 years ago my grandparents were glad to have electricity on the Pamlico. But today, I and the rest of EMC customers are being charged exorbitant rates that average for all EMCs 34% higher than CPL, 48% higher than Duke Power. (See Exhibit A)**
 - B. The customers served by EMCs are captive customers. They have no choice but to buy from the EMCs, and pay their rate.**
 - C. No one in 1936 could have imagined full rural electrification so there were no sunset provisions built into the legislation.**
- 3. The EMCs would tell you that they represent 1.7 million customers - a large political force. I would purport that not only do they not represent the wishes of their members, but their members are not really**

members in the true sense of the word. Members of a group voluntarily join, may voluntarily pay dues, and have a choice of leaving.

The situation today is neither. I am a captive customer with no choice in service or rates. The EMCs no more represent my political view than CP&L where they provide me power, or VEPCO where they provide me power. If EMC's customer base understood the rate differential what you would see is a political uprising against the excessive rates of EMCs. As for the point made last week that EMCs donate back to the community, the money comes from the consumers high rate. Lower the rate. Let the consumer keep the money and decide to which charity to donate.

- 4. Now the EMCs have come to the legislative and asked for your help. Their suggestion is that by helping EMCs, who have in the past helped rural NC, your actions will continue to help rural NC. Now this is where you have to stop and examine the jump in logic they make. The assumption that the best thing for EMCs is the best for EMCs customers is flawed. Let me illustrate two examples of this how helping EMCs could actually hurt consumers.**
- 5. First, with deregulation coming soon, nothing would please me more than to have a larger electrical company competing for my business and offering lower rates.**
- 6. Secondly, the legislation the EMCs are promoting, puts the current, already high rate structure, at risk of going even higher. They are asking to be allowed to go into small business. Now how many small businesses do you know that do not lose money from start up costs for the first couple of years? Oh, I know they suggest that the start-ups will be kept separate, but a quote from an EMC General Manager is most telling. When making a presentation about going into small business to the Enfield Merchants Association, he was asked what would happen to the profits of the business if there were any. His response was that profits will be put back into the EMC to reduce rates. Well, if this is the case, by the same token, the losses would have to be put back in the EMCs and raise the already high rates. This is a definite disadvantage to the consumer.**

And if you really want to hurt rural N.C., destroy the small businesses which are the heart of their communities with unfair competition.

- 7. So now you are confronted with a dilemma which has been created by 60 years of progress and an environment of competition that could not have been imagined in 1936.**
- A. Do you stay true to the intent of the legislation and do what is best for the rural consumer? -or -**
 - B. Do you help the EMCs, who are nothing but a vehicle created by legislation, and risk harm to the consumers?**

8. If you determine that the mission is still to ultimately help the consumer, what is your best option?

- A. The first step is to allow deregulation to take effect, and thereby allow competitive electric rates come into rural N.C.**
- B. This can be accomplished by executing a sunset plan for EMCs. Their mission is complete and now they can be phased out.**
- C. As part of deregulation the EMCs assets and customer base can be put up for competitive bid. Of course the bidders would have to guarantee complete customer coverage.**
- D. The proceeds could first go to pay of all government low interest loans which would be beneficial to all taxpayers.**

Second, return the excess revenue to the "members" or customers to make up for the over-charging in recent years.

- E. How will all this help the consumer? First, the customer will with his refund, feel like he won the lottery. Second, the consumer will get rate a rate based on current competition of at least 30% cheaper than he is now getting from EMC. This is a win-win for consumer.**

9. What is the downside of this plan?

- A. There is no downside of this plan with the EMC members but only some of the EMC employees.**
- B. It does not really effect all employees. As the assets are purchased, all the operational employees will still be needed by the purchasing company. They would still need the employers in place to operate the line trucks and handle service calls.**
- C. The only people possibly hurt would be the administration hierarchy that may not be needed. This of course is how merging companies produce savings that will be passed to the consumers as lower electrical rates in a competitive bid process.**

10. So what can you do right now?

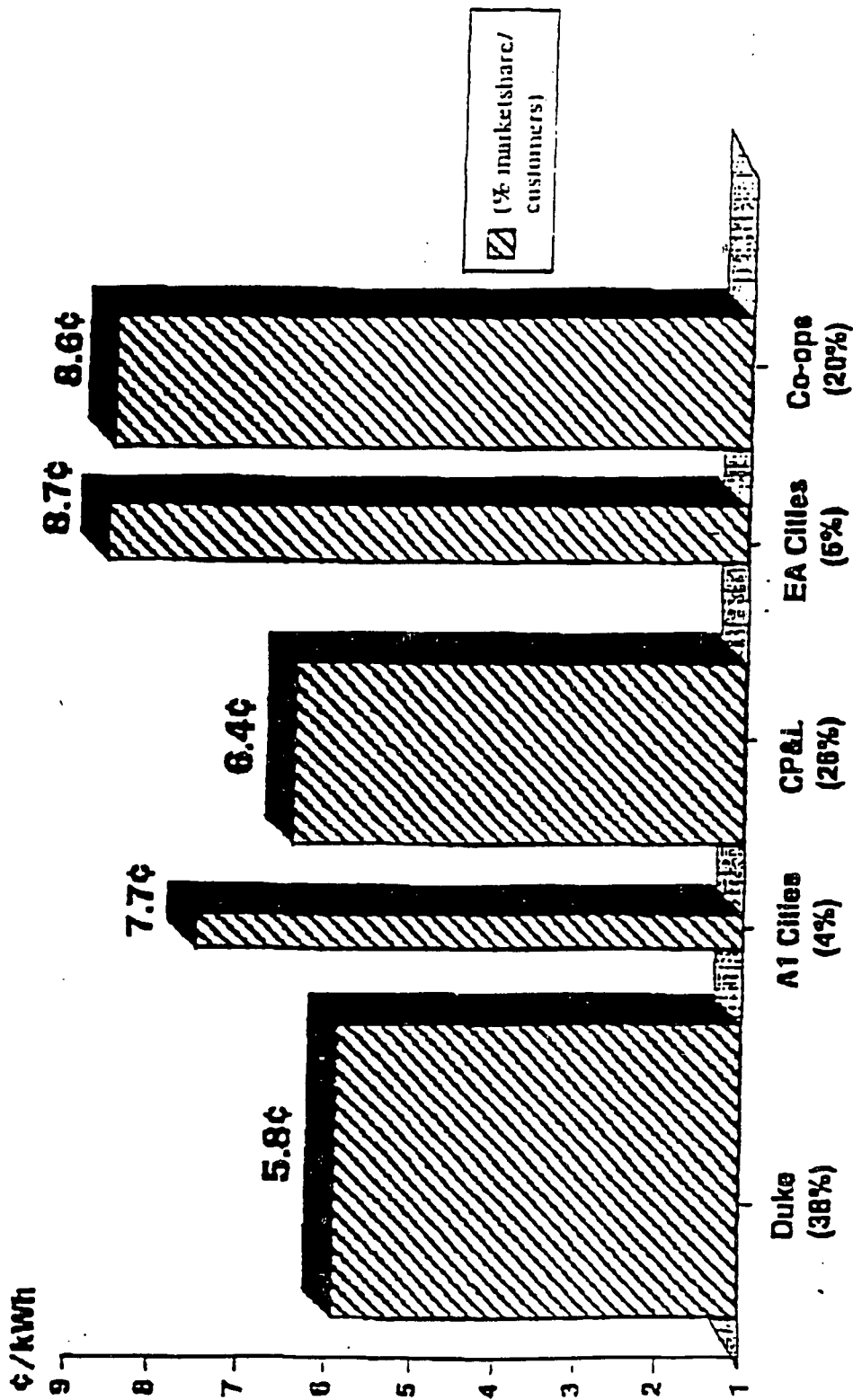
The most immediate thing to do in an effort to help the consumer, is to first kill this anti-consumer bill 476 so that potential and expected start up losses will not be passed on to consumers in continued higher than market rates while we are waiting for deregulation.

Second and more long range, is to develop a plan for the EMCs that will dove tail into deregulation. The process should assure complete coverage as well as competitive market rates so the consumers will benefit from this point on.

- 11. I realize I am here today as a consumer taking a position against the tremendous bureaucracy of the EMCs like David standing before Goliath, but just like David I stand firm because I truly believe right in on my side.**

Rate Disparity Problem Today

Al Cities' rates are 34% higher than Duke; EA Cities are 35% higher than CP&L.



Co-Ops are:
48% higher
than Duke
and
34% higher
than CP&L

Public Utilities Committee

Testimony of Audrey L. Shearin

Good Morning to each of you as a member of this Committee.

I want to thank you ahead of time for this opportunity to come before you.

It is with much sorrow that I make this presentation to you because normally my father L. W. Locke, a fellow member in the General Assembly with many of you, would have been making this testimony.

You will or have already heard many small businesses voice to you their concerns over **HB 476**. I want to give you some first hand experience that me and my family have had with our local EMC, Halifax Electric in Enfield, NC. In 1993 the EMC started their subsidiary called Primewatch selling alarm systems, satellite tv systems, electrical contracting, and closed circuit tv monitoring systems. As they were a large gasoline account customer for our company Eastern Petroleum, we felt obligated to get a quote from them on these types of equipment as the need arose. I have provided for each of you a copy of a letter to my father on July 29, 1996 from the General Manager of Halifax EMC, Mike Finney almost threatened my father into

feeling guilty about not doing business with a company owned by Halifax EMC. **AND I QOUTE:**

Recently it was announced --as many of you may know -- that Castle Housing was planning to build a manufacturing housing plant in Enfield. My husband, as an investor of the Manufacturer, worked for two years to bring Castle to our economically depressed area. **Let me read to you an excerpt from a letter from Halifax EMC to Castle Housing:**

In other words The EMC is saying "We'll help you get the low % interest RUS loan only if Our Subsidiary Halifax Resources (formerly Primewatch) gets the contract on all of their appliance, contract services, etc. This is an unlevelled playing field for all small businesses across the state.

The EMC'S want us to believe that they operate their subsidiaries as a separate entity. As we can see with by these **IMAGES** they are using the strength of the EMC logo in conjunction with the subsidiary logo. License

plates from Halifax Resources are seen on the EMC trucks and the EMC Logo is used on building identification signs along with the subsidiary to produce the goodwill image portrayed back to the 1930's. Monthly statements at the EMC are stuffed with **newsletters** with free advertisements on the services in which the subsidiary provides.

As a member of this Halifax EMC I would like to attend a board meeting. In order to attend I must read and fill out this 5 page document. **I have provided all of you with a copy but allow me to read this paragraph:**

If it is this difficult for a member to attend a board meeting, then who will the EMC or their subsidiary be accountable to? The Small Business owners of this state do not need the burden on our shoulders of having to police or prove whether or not the EMC'S are staying at an arms length away from their subsidiaries should you pass this bill.

In closing I thank you for your valuable time. If you would like any more information I would be glad to provide it for you. Have a good day.



**Halifax Electric
Membership Corporation**

208 West Whitfield Street • Post Office Box 667
Enfield, North Carolina 27823-0667
Telephone: (919) 445-5111

ATTN

July 29, 1996

Mr. L. W. Locke
President
Eastern Petroleum Corporation
P. O. Box 378
Enfield, NC 27823

Dear L.W.:

It is my understanding that an excellent business relationship has existed for an extended period of time between the Halifax Electric Membership Corporation and Eastern Petroleum. Certainly, during my tenure as Manager, although we have experienced some very minor disagreements as to the format of doing business, I think that the ultimate relationship itself has unquestionably been of mutual benefit and satisfactory to both of our firms.

Unfortunately, within the last several months, it appears that this relationship has deteriorated and has been somewhat tarnished by your firm's lack of acceptance of our subsidiary corporation, PrimeWatch, Inc. Although I would never ask any other firm to purposefully "steer" business to a company owned by Halifax EMC, I do not feel that it is unethical to suggest that PrimeWatch be given reasonable consideration, based on our existing business relationship, in regard to services which PrimeWatch may be able to provide to your company. I feel that this statement is particularly true especially when the service being offered is not only competitively priced, but also supplied by another local company.

Apparently, as I have been advised by the management of PrimeWatch, not only do they feel that the goods and services they provide are not being given fair consideration, but also, that there is at the very least what only could be described as questionable business practices taking place in regard to the selection of other

Mr. L. W. Locke

- 2 -

July 29, 1996

firm's proposals, over those which have been submitted by PrimeWatch, in response to requests by Eastern Petroleum.

Obviously, neither PrimeWatch, nor Halifax EMC, should claim or believe that they have any right to tell Eastern Petroleum how to conduct it's business. However, at the same time, I believe it only reasonable for Halifax EMC to assume that, based on its long-standing business relationship with Eastern Petroleum, PrimeWatch, as a directly owned subsidiary of Halifax EMC, should expect to receive at least fair and reasonable consideration of its good and services which it offers to provide Eastern Petroleum.

As it is our opinion that such an equal exchange of opportunities is simply not taking place, I would respectfully request to meet with you personally to discuss this matter further. Hopefully, a jointly expressed mutual concern over this situation will prohibit its future expansion to a point beyond our personal control.

Thank you for your consideration of this matter and I look forward to hearing from you, as to a possible date we can sit down together, at your earliest possible convenience.

Sincerely,



Michael E. Finney
General Manager

MEF/lbp

cc: Mr. Gerald W. Leser, General Manager, PrimeWatch, Inc.
Mr. Jeffrey C. Short, Assistant General Manager/Equipment Manager,
PrimeWatch, Inc.

Michael E. Finney

3

January 15, 1999

- Halifax EMC will require an exclusive electric service contract for a period of not less than ten years. The contract will require a minimal monthly usage by the project of 250 kw of demand and 30,000 kwhours. Other items which must be included in the contract and should be decided at our upcoming meeting are as follows:
 1. Number, size, shape and location of buildings.
 2. Number of delivery points required.
 3. Voltages and number of phases at delivery point(s).
 4. Overhead or underground secondary service.
 5. Single largest load (motor size) within the building(s).
 6. Location of sewage lift station, electrical service requirements (kw requirements and number of phases) and who operates.
 7. Applicable electric rate schedule. A decision must be made immediately whether we will utilize generation, time of use rates or normal industrial rates, as well as the associated requirements for equipment and/or metering.
- Halifax EMC, or its subsidiary, will offer a contract to Castle Housing for the supplying of electrical and plumbing services, satellite TV services, security system services, as well as the supplying of water heaters and heat pumps at no charge to units installed, on our system, if desired by Castle Housing. We must be advised immediately of Castle Housing's desire to participate in such a promotion as it would become a part of the electric rate contract.
- Halifax EMC would request consideration of its full time permanent employees being allowed to purchase a unit each from the manufacturing facility, for their own personal use, at the factory cost of that unit. It is anticipated that the total number of units would be minimal and, obvious consideration would be given to fitting the units production into the lowest point of the factory production schedule.

In summation, Halifax EMC is offering to provide, with reasonable considerations and security, a minimum of approximately 2.3 million dollars in zero interest loans and investments, not accounting for our participation in the \$800,000 of water and sewer grant funds obtained by the county, as well as the potential of a negotiable equity investment. We feel that this level of initial commitment should unquestionably demonstrate our interest in this project. Our long term commitment in the form of quality low priced electric service, as well as our interest in providing additional services and products to assist with the marketability of the project's product should help assure this projects' success.



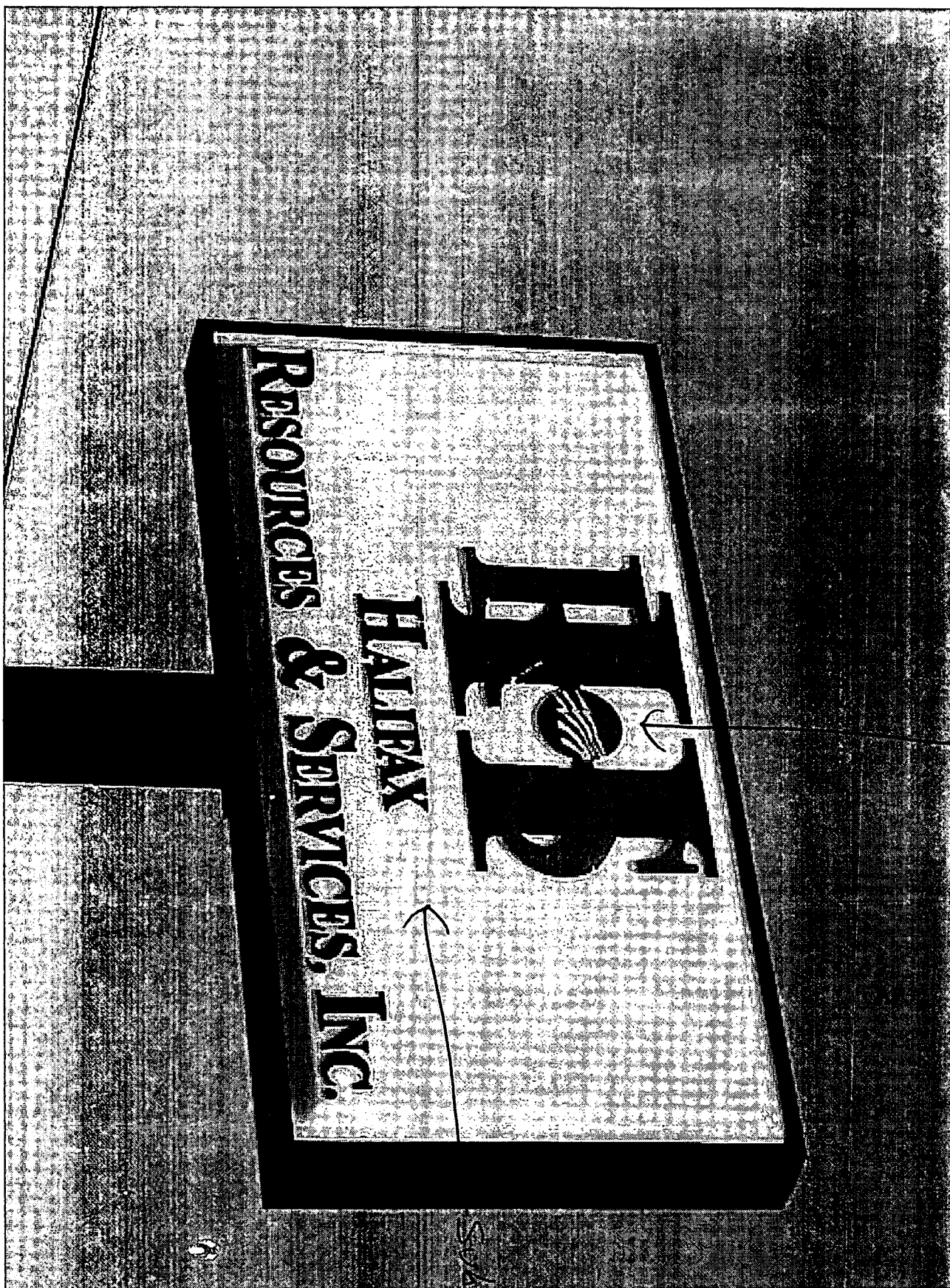
Emc
Logo

Subsidiary

EMC
Logo

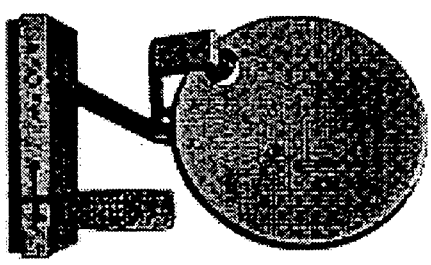
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Subsidiary



EMC
Logo

HRS Sells Satellites For Less

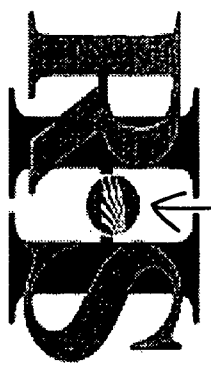


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12867 Hwy 481, Enfield**



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Resources & Services
"Your One-Stop Technology Shop"
445-4411 Enfield
1-800-775-0068**



EMC
Logo

HALIFAX RESOURCES & SERVICES, INC.

Rt. 2, Box 6D • Enfield, NC 27823
(252) 445-4411 • FAX (252) 445-5562 • 1-800-775-0068

SECURITY MAINTENANCE AGREEMENT

IN CONSIDERATION of the amount of sixty-five dollars (\$65.00) paid in advance annually, the undersigned Halifax Resources & Services, Inc., a North Carolina corporation, does hereby agree to maintain all security equipment sold to and installed in and on the premises of

Eastern Petroleum for a period of twelve (12) months from the date of this agreement.

This is an annual contract and may be renewed on a yearly basis subject to such terms and conditions as may be in effect at the time of renewal. This maintenance agreement shall cover all parts described. There are excluded from this agreement Acts of God and any damage caused by the intentional acts or negligence of any parties other than the undersigned corporation, its employees, representatives or duly authorized agents. This maintenance agreement shall include the following equipment:

DESCRIPTION

One (1) Caretaker Plus Security System with attachments

This the _____ day of _____, 199__.

Customer's Signature

Authorized Halifax Resources
& Services Representative



A Subsidiary of Halifax Electric Membership Corporation

Main

HALIFAX ELECTRIC MEMBERSHIP CORPORATION
ENFIELD, NORTH CAROLINA

BOARD POLICY NO. 304

SUBJECT: MEMBER REQUESTS FOR INFORMATION OR ATTENDANCE
AT BOARD MEETINGS

I. OBJECTIVE:

To provide guidelines for members of the Board of Directors and employees with regard to requests from Cooperative members for information concerning Halifax EMC, its members, personnel, trustees, agents, or operations or, a request from a Cooperative member to attend a meeting of the Board of Directors.

II. POLICY CONTENT:

It is the long-standing policy of the Board of Directors to insure that the member-owners of Halifax EMC are adequately informed about the manner of operation, plans, progress, and problems of their utility system. However, there are some types of information that are of a confidential nature, the release of which might subject the Corporation to unwarranted claims, litigation or might invade the privacy of a person.

Halifax EMC's responses to requests from its members for corporate information shall be governed by the following rules and procedures:

- A. Any such request (other than requests for such routine things as status of the inquiring member's account, rate schedules, rules and regulations, articles of incorporation, bylaws, published policies, operating statistics, newsletter, etc.) shall be denied until and unless the requesting member fills out and executes the Member Information Request Form which is attached hereto and made a part of this Policy No. 304.
- B. The request form, as executed, will be reviewed as soon as possible by the General Manager, who before acting thereon, will consult with the Corporation's attorney. If the two of them conclude (1) that the request is sincere, (2) that the information requested and the purpose for which it is requested are materially germane to the requesting person's status and interests as a member of the Corporation, and (3) that furnishing the requested information will not be adverse to the Corporation's best interests, they may provide for the time and manner for making such information available during normal business hours.

If either or both disagree as to the truth of any of the foregoing three factors, the matter will be referred to the Board of Directors for decision. In no event will the Corporation allow a member merely to research files in the hopes of discovering information upon which to oppose the Corporation.

Board Policy No. 304 (Continued)

- C. Board, board committee and staff committee meeting minutes will not be furnished as a whole to such a requesting member; rather, the Corporation will research and furnish such member copies of excerpts that contain or substantially relate to the information specifically identified as being sought. No portion of such minutes shall be thusly made available if it contains matter of a confidential nature, the release of which might subject the Corporation to unwarranted claims, litigation or might invade the privacy of any person.

Information concerning directors' compensation and expenses will be made available, as well as the record of their attendance at meetings--if the request cites a purpose for such information that is materially germane to the requesting person's status and interests as a member. Without regard to the action that is or may be taken in response thereto, the General Manager will report to each meeting of the Board of Directors with respect to any member information requests received since the last such report.

All expenses generated, as a result of research or the providing of copies required for the purpose of answering the member's questions, shall be borne by the member making the request.

- D. Information that will not be furnished except pursuant to a court order is set forth following:

1. "general access" to board minutes or the minutes of any board committee meeting or staff operating committee meeting; or
2. the name, addresses, telephone number, member number, or location number of the member, past and/or current, to other than that specific member and only in person; or
3. hourly wages or salaries and fringe benefits of specific employees; (however, if a wage and salary plan is in effect, such plan will be released as well as any related fringe benefit principles or percentages, but no employee's current standing in such plan will be revealed); or
4. any employee's personnel file or employment records, or any other person's file or records with regard to their association with the Cooperative.
5. any information which constitutes a trade secret, process program, trademark or other legally protectable confidential information or thing owned, or protected in confidentiality by contract, by the Corporation.

There also exists a need to define the parameters under which a member may attend a meeting of the Board of Directors in order to voice questions, comments or concerns with regard to the current or future operation of the Cooperative.

Board Policy No. 304 (Continued)

- E. Halifax EMC's responses to requests from members to meet with or address to the Board of Directors shall be governed by the following rules and procedures.
1. Any member wishing to meet with the Board of Directors shall first make such a request in writing, by letter, to either the current President of the Board of Directors, or the Executive Vice President/General Manager. The letter shall state the purpose for which the member wishes to meet with the Board of Directors, the number and names of persons (not to exceed three (3)) who will accompany the member to the meeting and, the individual who will be designated as spokesperson for the member or group accompanying the member.
 2. The Board President/General Manager will present the member's request at the next full meeting of the Board of Directors and the Board of Directors shall determine the validity and/or necessity of the member's desire to meet with the full Board.
 3. The General Manager shall then, at the conclusion of the board meeting, relay to the requesting member the decision of the Board. If the Board determines it is in the best interest of the Corporation to hear the member, then the General Manager will be authorized to specify to the member the date of the meeting at which the member will be heard and, the time limitation placed on the member's presentation.
 4. Questions concerning the member's presentation may be asked by the Board or exchanged between the Board and the member, or the member's spokesperson.
 5. Under normal circumstances, an answer will not be provided by the Board to a member during the course of a meeting. Instead, the General Manager will be authorized by the Board to provide a written response to the member as soon as feasible after the conclusion of the meeting.

Any employee who violates this policy will be subject to appropriate disciplinary action, including termination of employment.

III. RESPONSIBILITY:

- A. It shall be the responsibility of the General Manager to implement this policy, in coordination with the Corporation's attorney, and to make reports to the Board on such "non-routine" information released.
- B. It shall be the responsibility of the Board of Directors to implement this policy when member information requests are submitted to it for consideration and decision as provided for herein.

HALIFAX ELECTRIC MEMBERSHIP CORPORATION

Member Information Request

NOTE: No information concerning the Corporation, its member, personnel, trustees, agents, employees or operations shall be made available (except for routine information covered in the Corporation's Policy No. 304) unless the requesting member completely fills out and executes this information form.

REQUESTING MEMBER(S)' NAME(S), ADDRESS(ES) AND TELEPHONE NUMBER(S):

(Attach additional pages, if necessary).

STATE SPECIFICALLY WHAT INFORMATION IS BEING REQUESTED:

STATE SPECIFICALLY WHY YOU WANT SUCH INFORMATION AND TO WHAT USE YOU WILL OR MAY PUT IT:

IF THE REQUEST IS BEING MADE ON YOUR OWN BEHALF PLUS THAT OF OTHERS, PLEASE STATE THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF THE OTHERS. (State only names of persons who have authorized you to request this information on their behalf):

(Attach additional pages, if necessary).

Board Policy No. 304 (Continued)

Member Information Request (continued)

IF YOU ARE REPRESENTED BY AN ATTORNEY IN THIS REQUEST, PLEASE STATE SUCH ATTORNEY'S NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER:

IT IS UNDERSTOOD AND AGREED THAT, BY EXECUTING THIS REQUEST FOR INFORMATION, YOU AGREE THAT YOU WILL NOT YOURSELF PUT, OR PERMIT OTHERS TO PUT, SUCH INFORMATION TO A USE OTHER THAN THAT ABOVE STATED.

(SIGNATURES OF REQUESTING MEMBER(S))

Date: _____, 19 __	_____
	Member
Date: _____, 19 __	_____
	Member
Date: _____, 19 __	_____
	Member
Date: _____, 19 __	_____
	Member
Date: _____, 19 __	_____
	Member
Date: _____, 19 __	_____
	Member

* * * * *

ACTION TAKEN*

Date: _____, 19 __ SIGNED: _____

Title

*To be completed by Halifax EMC ONLY.

VISITOR REGISTRATION SHEETHOUSE PUBLIC UTILITIES

4/21

, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Henry Woodard	WAKO Transportation
Ruth Brown	Springer - Embank Rd
Jennifer R. Young	PO BOX 401, Bakersville, NC 28705 O+S Propane
A. Q. Smith Jr.	B+R GAS 2517 RIVER RD W.L.
O. Douglas Stalls	Sampson - Bladen Oil Co.
Kemp Johnson	KB Johnson Oil & Gas Fuquay - Varina, NC
Hal Johnson	K.B. Johnson Oil & Gas Fuquay - Varina, NC
JOHN HAGERTY	EXXON CO., USA. RALEIGH NC.
MICHAEL C. POLOVITCH	MIKE POLOVITCH HTG & A/C PANTEGO, N.C.
Joe Alligood	Alligood Appliance Sales & P
JAMES WILKINS	Southport Elec. Soc. Southport N.C.
CLYDE HALL	HALL OIL & PROPANE 1254 N Main Street
Randy T. Fathert	Crossroads Fuel Service Inc. Hartford N.C.
D. George Lipford	Condon Propane - Cary NC
Russell Warran	TEMC Blounts Creek, NC
Ernest H. Butler	TEMC Blounts Creek, N.C.
Edward H. Dwyer	TEMC New Bern N.C.
Cecil O. Smith Jr.	TEMC BELHAVEN, NC
J.M. Woodard	TEMC WASHINGTON, N.C.
Ray Hamilton	Tide Land EMC Pantego N.C.
Jeannette Overmyer	Energylimited EMC. Danbury, N.C.
Willa Overmyer	" " " "
Donald Brooks	Diamond Spent. P.O. Emerald 156, NC
Johnny H. H. H.	J.E. Hibbs Electric Newport NC
Douglas S. Zulcher	Fulcher Elec. 1815 Coasting Club Rd in New Road
James A. Off	James Off Elec. PO Box 1871 Newport NC
PT Jones	PT Jones Elec. PO Box 520 Beaufort NC
Johnny Hadlow	Economy Propane N.C. PO Box 1668

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

4/21, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John M. Ford	Synergy Gas Co. 604 Mercury St Raleigh, N.C.
Michael D. Quincy	Sandhill Farm 1165 US13 Holdersville NC
Rachel H. H. H.	Piedmont EMC - Hillsborough NC
Reginald T. Rickett	Piedmont EMC - Hillsborough NC
Yulmadye Spencer	Piedmont EMC - Raleigh NC
Blair Clayton	Piedmont EMC - Juntura NC
James Hilley	Piedmont EMC - Hillsborough, N.C.
Frank Murphy	" " " "
David Sambrall	Synergy Gas 4052ND ST LUMBERTON NC
Walter Littlejohn	Synergy Gas 2510 LEGION RD FAY, N.C.
David Barnes	Energy United PO Box 1831 Statesville, NC 28687
Doris S. Barnes	Energy United EMC - PO Box 1831 - Statesville 28687
Thom Styron	Carteret-Craven EC PO Box 1499, Marshfield, NC 28555
Bill RACE	" "
CURTIS CRAWFORD	CRAWFORD ELECTRIC & REPAIR SERVICES
William H Oglesby, MD	HAYWARD ELECTRIC MEMBERSHIP CORP -
John C. C. C.	N.C. State College
Wm. C. C. C.	CHIEF
Donald M. Chadwick	Contract Repair EMC
Jessie C. Garner	CC EMC
Sarah B. B.	CC EMC
WM F FULCHER	"
John Harrell	John Harrell Electric Co INC Dudley NC 28333
J Michael Davis	Tri County EMC Dudley, NC
Quinn K. Moore	Tri-County EMC, Dudley NC
Lucille J. Duetsch	Tidehand EMC, Pantagon N.C.
JACKIE BLACKBURN	5861 Idlewild Rd - Fleetwood NC 28626 BLUE RIDGE EMC
MARTHA MCKNIGHT	Alleghany Co, N.C. Blue Ridge EMC P.O. Box 177 Rowing Gap, NC

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

Name of Committee

4 / 21 , 1999
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Billy JARMAN	Jones Onslow EMC, Jacksonville, N.C.
Robert Lanier	Jones-Onslow EMC JAX. N.C.
Ricky Maready	Jones-Onslow EMC Jacksonville NC.
Curtis Wynn	Roanoke Electric Co-op, Rich Square, NC
Steve Goodson	Jones-Onslow EMC, Jacksonville, NC
Daniel Williams	Wake, Wake Forest
Ray Ed. Jones	Wake EMC Wake Forest
Allen F. Holt	Randolph EMC, Ashboro
RICHARD H. JOHNSON	PEE DEE EMC WADESBORO NC
GENE RUSSELL	PEE DEE EMC WADESBORO, NC
Carolyn Hill	N.C. Electric Manufacturing Corp.
Dale Lambert	Randolph EMC, Robbins, NC
Steve Cox	Randolph EMC Ashboro N.C.
Marshall K. Cherry	Roanoke Electric Co-op
Elbert Perrell	Piedmont TMC Lexington NC
Richard Broadway	ENERGY UNITED EMC
Ron McElhenny	Jones-Onslow EMC
LARABEE PADRICK	JONES-ONSLow EMC
Randy Buchanan	Piedmont EMC
Eddie Stach	Edenboro-Maiting Cntr. EMC
DAVE KOWE	RANDOLPH EMC
Bob Phillips	RANDOLPH EMC
Jimmy Durmisi	Energy United Water Corp. Story Point, N.C.
Jimmy Horton	Energy United TMC
Wayne Williams	" "
Jack B. Wooten	Energy United EMC
Mark Shoup	Energy United
Sam Mallard	Energy United, Statesville, NC

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

4 / 21 , 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Jimmy Bulbag	Tideland EMC
Charles Tolley	French Broad EMC PO Box 9 Marshall NC 28753
Phil L. Wally	Union EMC Monroe, N.C. 28111
Julia Griffin	" "
Bradley V Furr	Albemarle EMC P.O. Box 69, Hertford, N.C. 27944
Lucene Sherron	Union EMC, 731 Carly Scott, Monroe NC 28110
Jimmy Kutz	Albemarle EMC, P.O. Box 69 Hertford N.C. 27944
Jeff Edwards	Albemarle EMC, P.O. Box 69 Hertford NC 27944
Tom Swisher	Union EMC, PO Box 5014 Monroe NC 28111
Ed Brown, Jr.	Four County EMC, P.O. Box 667, Buggan, NC 28425
STEVE MORGAN	CENTRAL EMC PO Box 1107, SANFORD NC 27331-1107
Tim Holder	Central EMC, PO Box 1107, Sanford NC 27331
Jean Haynes	Central EMC PO Box 1107, Sanford NC 27331
Sabrina Johnson	Jones-Doslow EMC 259 Western Blvd Jacksonville NC 28546
Alexander	Jones-Doslow EMC 259 Western Blvd Jacksonville NC 28546
Lina Compton	Jones-Doslow EMC 259 Western Blvd Jax NC 28546
Elaine Cunningham	Union EMC, PO Box 5014, Monroe, NC 28111
Niel W. Haster	Union EMC PO Box 5014, Monroe, NC 28111
William R. Wilson	Union EMC 335 Richfield, NC
Wanda W. Hilton	Union EMC 4224 Smith Lane Rd Marshallville, NC 28103
B.R. Blaine	Union EMC 11805 Pleasantwood Rd. Wake Forest, NC 27878
Tony Herrin	Union EMC PO Box 5014 Monroe, NC 28111
Dalton Black	Union EMC P.O. Box 5014 Monroe, NC 28110
Hal Sotser	Union EMC P.O. Box 5014 Monroe, NC 28110
Jim Kinghorn	Edgecombe-Martin County EMC, Tarboro
Della Webb	Edgecombe-Martin County EMC Tarboro
Emmett S. Petterson	Pee Dee EMC Wadesboro NC 28170
Pam Ballew	Halifax EMC 208 W. Whitfield St. Enfield NC 27870

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

4/21, 1999
Date

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Joe Slater

Tideland EMC

David Meacham

ENERGY UNITED

Brian Mosier

Union One

Kenneth Harrison

Energy United

S. L. Johnson

1105

Cypripedium pubescens

Barbara dated

THE BROTHERHOOD



Richard Watts

Energy United

Walden in Kleinsiedlung

11

Edgar A. Johnson

Chris Heagarty

Electric Co-op.

Janice Bryan

Tej. Land & MC

7 What I followed

Tickland EMC

Version 2. Howell, A.

Adelard E. M. C.

VISITOR REGISTRATION SHEET

HOUSE PUBLIC UTILITIES

4/21, 1999
Date

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Marvin L. Poythress	Piedmont EMC. Hillsborough, N.C.
Max Walder	Energy United EMC
Roy Stamey	Waynesville (Haywood) EMC
Calvin Duncan	Brunswick EMC
Kenneth R. Greene	Blue Ridge EMC.
George M. Upchurch	Rockville, La. + CO/NCPGA
Doug Johnson	Blue Ridge EMC

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 23, 1999
Room 544
12:00 – 2:00 PM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

H 476 – EMC Subsidiaries

H 476 – PHCSRL – 007 – Proposed HC Substitute for HB 476

Presentations to be heard by the following as time permits:

- NC Association of Electric Cooperatives
- NC Petroleum Marketers Association
- NC Propane Gas Association
- NC Association of Electrical Contractors
- National Federation of Independent Business
- NC Association of Convenience Stores
- ElectriCities of NC, Inc.

ADJOURNMENT

Minutes
House Committee on Public Utilities
April 23, 1999

The House Committee on Public Utilities met Friday, April 23, 1999 in Room 544 of the Legislative Office Building at 12 p.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; Representatives Braswell, Creech, Culpepper, Daughtry, Earle, Grady, Hardaway, Holmes, Hurley, McComas, McCombs, Miller, Mitchell, Rogers, and Starnes; and ex-officio members Representatives Baddour, Dedmon and Cunningham. Committee counsel members Esther Manheimer and Steve Rose were present. A Visitor Registration list is attached (Attachment XII) and made part of the minutes.

The Chair called the meeting to order and introduced pages Ronald Rogers, Jr. from Wake County and Aaron Underwood from Durham County.

Representative Tolson was recognized to discuss committee substitute HB 476-PHCSRL-007 as carried over from the previous meeting. He introduced and distributed committee substitute HB 476-PHCSRL-010 (Attachment I). Representative Saunders moved to adopt the committee substitute for discussion. The motion passed.

Representative Tolson explained that the difference in the new committee substitute is to narrow the scope of the activities that the coops may be involved in. This was the direction given by the committee at the last meeting. Representatives Braswell, Starnes and Miller posed questions that were answered by committee counsel Steve Rose. Details of the discussion are available on the audio tapes of the committee meeting.

The Chair recognized the following people to debate the bill. Copies of their comments are shown as attachments and made part of the minutes.

Dave Denson, NC Association of Electrical Contractors, Inc.
(Attachment II)

Alice Garland, ElectriCities of NC, Inc. (Attachment III)

Chris Heagarty, NC Association of Electric Cooperatives
(Refer to Attachment II from August 21 meeting)

Perri Morgan, NC Director, National Federation of Independent Business (Attachment IV)

Larry Jordan, NC Petroleum Marketers Association (Attachment V)

Dave Simpson, Carolinas Associated General Contractors
(Attachment VI)
R. B. Sloan, CEO of EnergyUnited (Attachment VII)
Written comments from Jimmy Evans, NC Association of Electrical
Contractors (Attachment VIII)

Committee members questioned the presenters. Details of the questions and answers are available on the audio tapes of the meeting.

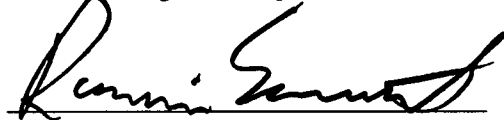
Representative Culpepper offered an amendment that would amend the substitute bill on page two by rewriting lines 8-10 to read,
"c. They do not use any personnel, equipment, or property of the Electric Membership Cooperative in the operation of the other business entity."
The amendment passed. Attachment IX is a copy of the amendment.

Representative Creech requested information that counsel was to have prepared following the April 21 meeting. The information (Attachment X) shows the amount of loans to EMCs compared to those of the private sector.

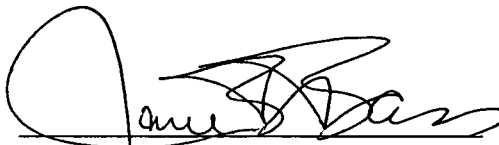
Representative Culpepper moved for a favorable report on committee substitute H 476-PHCSRL-010 as amended. Representatives Miller and Starnes raised several questions. The Chair called for a roll call vote. The vote was as follows: 12 members for and 5 members against the bill. A copy of the roll call vote is attached (Attachment XI) and made part of the minutes.

The meeting was adjourned at 1:40 p.m.

Respectfully submitted,



Representative Ronnie Smith
Chair



Jane B. Bass
Committee Assistant

~~1999~~ COMMITTEE REPORT
~~HOUSE OF REPRESENTATIVES~~

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES**.

- ☐ Committee Substitute for
H.B. 476 A BILL TO BE ENTITLED AN ACT CONCERNING THE GRANT OF
POWERS TO ELECTRIC MEMBERSHIP CORPORATIONS REGARDING
SUBSIDIARY ORGANIZATIONS.
- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☒ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to (original bill), (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

H476-PHCSRL-010
PROPOSED HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL 476*

Short Title: EMC Subsidiaries.

(Public)

Sponsors:

Referred to: Public Utilities

March 23, 1999

1 A BILL TO BE ENTITLED
2 AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC MEMBERSHIP
3 CORPORATIONS REGARDING SUBSIDIARY ORGANIZATIONS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 117-18 is amended by adding a new
6 subdivision to read:
7 "(14) As to electric membership corporations, to
8 form, organize, acquire, hold, and dispose of,
9 and operate, any interest up to and including
10 full controlling interest in separate business
11 entities that provide energy services and
12 products, telecommunications services and
13 products, water, and waste water collection
14 and treatment, so long as those other business
15 entities meet all of the following conditions:
16 a. They are not financed with loans or
17 grants from the Rural Utilities Service
18 (RUS) of the United States Department of
19 Agriculture (USDA) or the USDA or with
20 similar financing from any successor
21 agency. This limitation shall not apply
22 to RUS or USDA loans or grants, or loans
23 or grants from successor agencies, for

1 water or waste water collection and
2 treatment projects.

3 b. They are subject to all taxes,
4 specifically including federal and state
5 income taxes, levied against business
6 entities of the same structure and
7 engaged in the same activities.

8 c. They pay fair market value to the
9 electric membership corporation for the
10 use of personnel, equipment, or property.

11 d. They are organized and operated pursuant
12 to Chapter 55 or Chapter 57C of the
13 General Statutes.

14 e. They do not encumber or expose to
15 liability, in the aggregate, in excess of
16 15 percent (15%) of the assets of the
17 electric membership corporation.

18 An electric membership corporation may not
19 form or organize a separate business entity to
20 engage in activities involving the
21 distribution, storage, or sale of oil, as
22 defined in G.S. 143-215.77(8), specifically
23 including liquefied petroleum gases, but may
24 acquire, hold, or dispose of, and operate, any
25 interest in an existing business entity
26 already engaged in these activities, subject
27 to the other provisions of this subdivision."

28 Section 2. G.S. 117-30(a) reads as rewritten:

29 "(a) In the event it is ascertained by the Rural
30 Electrification Authority that the community or communities
31 referred to in the foregoing section [G.S. 117-29] are in need of
32 telephone service and that there is a sufficient number of
33 persons to be served to justify such services, and the telephone
34 company serving in the area in which the community or communities
35 are located is unwilling to provide such service, a telephone
36 membership corporation may be organized by such community or
37 communities in the same manner that electric membership
38 corporations may be formed under Article 2 of this Chapter, and
39 all of the provisions of said Article shall be applicable to the
40 formation of telephone membership corporations and such
41 corporations shall have all the authority, powers and duties of
42 such a corporation when formed under the provisions of said
43 Article; except that the provisions of G.S. 117-8, 117-9,
44 117-10.1, 117-10.2, 117-16.1, 117-18(14), 117-19 and 117-24 shall

1 not be applicable to the organization of a telephone membership
2 corporation, and except that such corporations so formed for the
3 express purpose of providing telephone service necessary to serve
4 the community or communities prescribed in the application may
5 also provide the community or communities prescribed in the
6 application with any communication service for the transmission
7 of voice, sounds, signals, pictures, writing or signs of all
8 kinds through the use of electricity or the electromagnetic
9 spectrum between the transmitting and receiving apparatus,
10 together with any telecommunications service requiring band-width
11 capacity, including, but not limited to community antenna and
12 cable television services, and including all lines, wires,
13 cables, radio, light, electromagnetic impulse and all facilities,
14 systems or other means used in the rendition of such services,
15 but not including message telegram service or radio broadcasting
16 services or facilities within the meaning of section 3(o) of the
17 Federal Communications Act of 1934, as amended (47 USC § 153(o))
18 and except that such corporation so formed shall have no
19 authority to engage in any other business. Provided, that the
20 references in Article 2 of this Chapter to "power lines" or
21 "energy" as to such telephone membership corporations shall be
22 construed to mean telephone lines, broadband cables and lines,
23 telephone service and broadband communications services. Provided
24 further, that nothing herein shall be construed to authorize any
25 telephone membership corporation organized hereunder to duplicate
26 any line or lines, systems or other means by which adequate
27 telephone service is being furnished; or to build or to construct
28 a telephone line, or telephone lines, or telephone systems, or
29 otherwise to provide facilities or means of furnishing telephone
30 service to any person, community, town or city then being
31 adequately served by a telephone company, corporation or system;
32 or to provide telephone service in an unserved area while any
33 telephone company, corporation or system is acting in good faith
34 and with reasonable diligence in arranging to provide adequate
35 telephone service to such person, community, town or city."

36 Section 3. This act is effective when it becomes law.

North Carolina Association of Electrical Contractors, Inc.



3707 Alliance Drive
Greensboro, NC 27407-2715
(336) 854-8354
fax (336) 854-7148



Independent Electrical
Contractors, Inc.

April 23, 1999

Representative Smith, members of the House Public Utilities Committee, thank you for the opportunity to speak against HB476. My name is Dave Denson and I am an electrical contractor from Wilmington representing the North Carolina Association of Electrical Contractors.

EMC's were formed as not-for-profit corporations. According to the General Statutes, they were formed "for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural areas of the state," and I feel that they are doing a credible job of rendering service to their members.

Amending G.S. 117-18 to allow EMC's, who are regulated monopolies, to form and operate subsidiary organizations to compete in the free market against the private sector, without rules and guidelines, would border on unfair business practice.

Most of our members are small businesses who are in daily competition with the 14,000 plus licensed electrical contractors in this state. We compete by the same rules, which makes for a level playing field. If we are to compete against EMC subsidiaries, rules and guidelines must be implemented to prevent cross subsidizing of capital, property, equipment, or personnel. Remember all assets of the EMC's have been procured with regulated ratepayers and tax dollars.

Let me give you some examples of what I consider unfair competition:

1. *Capital*—I have stated that most of us are small businesses and cannot come close to the capital that the EMC's have amassed over the years. This money should not be used to finance their subsidiaries.
2. *Marketing*—EMC's could send out flyers in their monthly billings promoting their subsidiaries at rate payers' expense.
3. *Referrals*—EMC's could trouble-shoot problems, find that the problem is on the customer's side of the meter, and recommend their subsidiary be called.
4. *Purchasing Power*—If I, as an individual contractor, purchase fifty area lights, and the EMC's purchase thousands of area lights, the EMC's will get a much better price per light. They should not be allowed to pass these savings to their subsidiary to compete against me.
5. *Equipment*—If I need a bucket-truck, line truck, backhoe, etc., I have to pay thousands of dollars for this equipment and utilize it as much as possible. When it is not being utilized, my payments are still due every month. EMC's have this equipment, which was purchased with regulated dollars, on hand. The EMC subsidiary will be able to use this equipment at a token rental. I wonder if the EMC would rent to me at the same price that they charge their subsidiary.

North Carolina Association of Electrical Contractors, Inc.



3707 Alliance Drive
Greensboro, NC 27407-2715
(336) 854-8354
fax (336) 854-7148



Independent Electrical
Contractors, Inc.

6. *Personnel*—I have on staff estimators, purchasing agents, clerical workers, and superintendents, which constitute a large portion of my fixed overhead costs. Just like equipment payments, these people receive a paycheck every week whether they are utilized 100% or not. These costs are factored into my bids. If the EMC subsidiary could borrow personnel from the EMC on an “as-needed” basis for short periods of time, it could greatly reduce their fixed overhead costs. This reduction would be factored into their bids resulting in a much lower price than mine.

Hopefully you can see by these examples that allowing an EMC to operate any organization, business, or company in the free market without implementing rules and guidelines for its operations, would clearly give their subsidiaries an unfair advantage.

Thank you for your consideration on this matter.

Dave Denson

North Carolina Association of Electrical Contractors, Inc.



3707 Alliance Drive
Greensboro, NC 27407-2715
(336) 854-8354
fax (336) 854-7148



Independent Electrical
Contractors, Inc.

POSITION STATEMENT ON HOUSE BILL 476 (EMC SUBSIDIARIES) April 21, 1999

The North Carolina Association of Electrical Contractors (NCAEC) represents electrical contractors throughout North Carolina. Most of our members are small businesses who are not able to attend legislative committee meetings, but they are hard at work competing with the other 14,482 electrical contractors licensed in North Carolina. These contractors are not large corporations that can use publicly regulated funds to pay lobbyists or salaried employees to represent them in the legislature.

NCAEC is opposed to House Bill 476, "EMC Subsidiaries" for a number of reasons.

1. EMC's were formed as not-for-profit corporations. According to GS117-10, they were formed "for the purpose of promoting and encouraging the fullest possible use of electric energy in the rural sections of the state". And further, in GS117-16 their corporate purpose is stated that EMC's "shall be to render service to its members only". Therefore, we believe that the proposal to new subdivision 14 is contrary to the original intent of the legislation to form EMC's.
2. The members of the EMC's are already afforded the right to form for-profit corporations for other corporate purposes not set forth in GS117. Why do they need this legislation unless they believe that there will be some specific advantage to their subsidiaries being affiliated with the publicly regulated EMC?
3. By their very nature, the fixed overhead costs of office buildings, office equipment, office staff, office professional staff, bucket trucks, line trucks, and other capital equipment has been paid for with regulated funds and public funds by virtue of grants and tax advantages. Therefore, these assets, subsidized by public funds, should not be used to compete in the private sector. In many cases, the reasons the utilities were not able to serve some of the rural areas was because these fixed overhead costs could not be justified by being spread among a small amount of customers, even though they are very necessary costs to do the work the EMC's perform. Many times this overhead is not being used at capacity, thus necessitating the subsidies, but again, that overhead should not be used to compete with private enterprises not subsidized by public funds.
4. Specifically, in our industry small contractors in the areas served by the EMC's may have a bucket truck or trencher that cost tens of thousands of dollars in capital investment. It would be very difficult for them to compete with an EMC offering to do similar work who has the same (or often superior) equipment and whose capital investment has been paid for by the public. Even though the subsidiary may pay the EMC the variable cost for use of the equipment, the subsidiary will still have a distinct advantage over the private contractor. If the contractor can't keep his equipment busy earning enough money to pay for itself, then he either has a drain on his operating capital or he may be required to sell the equipment and be forced out of the market in which he used the equipment. If the subsidiary of the EMC does not efficiently utilize the equipment owned by the EMC it won't matter because the EMC will still need to have that equipment in order to serve the customers.

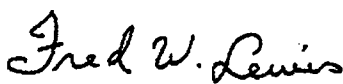
NCAEC POSITION STATEMENT ON HOUSE BILL 476 (EMC SUBSIDIARIES)

April 21, 1999

Page 2

5. EMC's have an unfair advantage in that they have a captive market for the one product that they sell. If they are allowed to engage in other businesses, they can simply market those other businesses in the billing envelopes sent out each month. In fact, the ratepayers and public will be funding the mailing for the marketing of their other businesses.
6. There is a tremendous potential for conflict of interest. If the EMC were also to own an electrical contracting company, they might employ either a) an engineer who does design work for the electrical contractor one day a week and design work for the EMC four days a week, or, b) a technician who works for the EMC on an as needed basis and the electrical contracting subsidiary on an as needed basis. He/she might go to a service call at a customer's residence as a technician for the EMC and determine that the problem is not on the utility side of the meter but is instead on the customer side of the meter. Will he be able to simply "change hats" and go to work on the unregulated side of the business as an electrician after already being paid to get there as a worker for the EMC?
7. The CEO salaries for EMC's would quite likely need to go up. These individuals would need to be able to run not only an EMC but also several other businesses. They would have to be capable of running a conglomerate rather than a narrowly focused organization. The extra cost of the CEO would naturally be born by the ratepayers.
8. If the EMC's have venture capital or other extra funds to invest in other businesses, should they not be lowering their rates to their customers? If they were originally set up as a not-for-profit organization, why should they be allowed "to form organize, or operate... business entities engaged in any lawful activities..."?
9. We have heard the argument that North Carolina's large utilities are already doing some of this, so why can't the EMC's? Our answer to that argument is that "two wrongs don't make a right." We believe that since regulated utilities have not been unbundled, they are already using capital equipment, personnel, and marketing paid for by publicly regulated ratepayer funds to unfairly compete with private businesses. Therefore, we believe that this bill should be defeated or postponed until the utility deregulation issues have all been resolved.
10. Due to excessive overhead capacity of EMC's, should they be able to start an internet service subsidiary, cable TV subsidiary, an engineering group, a tax preparation group, a bookkeeping group, an electrical contracting business, a plumbing business, a real estate development company or any other type of business?
11. There may be specific needs that the EMC's are uniquely qualified to fill in the rural areas of North Carolina that fall outside of the parameters of GS 117. They have proven themselves up to the task assigned by the statute. If they are to venture into other appropriate businesses, there needs to be specific legislation passed to authorize specific subsidiaries. However, we do not think that a corporation begun to electrify rural North Carolina should be allowed to participate in any business entity engaged in any lawful activities.

Respectfully submitted,



Fred W. Lewis
NCAEC Legislative Chair

North Carolina Association of Electrical Contractors, Inc.



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Independent Electrical
Contractors, Inc.

HELP PREVENT UNFAIR COMPETITION BY UTILITIES

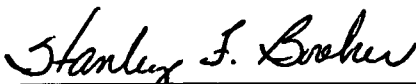
We believe that Federal and State legislation should insure that rate payers are protected and that competition in the contracting market must be fair and open with no hidden rate payer subsidies. Utilities should be banned from cross subsidizing their presence in the Electrical and HVAC industry because it is unfair to rate payers.

The United States Small Business Administration agrees that utilities often cross subsidize their unregulated businesses with rate payer money. Utilities that compete unfairly often use the following tactics (among others):

1. Provide subsidiaries with unregulated businesses, loans, and loan guarantees, thereby sharing the utilities' excellent credit rating.
2. Subsidize everything from office space and equipment to lawyers and accountants.
3. Allow subsidiaries to use utility logos and brand names, as well as providing access to their customer database.
4. Refer information on rate payer needs and requests to their subsidiaries.
5. Pass along reduced prices from equipment manufacturers.
6. Provide low cost, easy to obtain customer financing.
7. Provide installations with no upfront investment allowing the rate payer modified monthly utility charges.

Some stipulation that should be required of utility companies would be as follows:

1. The affiliate and the utility shall operate from physically separate locations.
2. The affiliate must maintain inventory and equipment separately from the utility parent's inventory, vehicles, and equipment.
3. The utility may submit a proposal on utility sponsored or state or federally mandated DSM or energy conservation programs; but will receive no preferential treatment evaluation and contracting terms as a non-affiliated bidder. The utility shall not purchase from the affiliate or provide the affiliate with any non tariff services.
4. The affiliate must provide all installations in total compliance with the NEC, SMACNA, and ASHRAE standards.


Stanley F. Booker, President-Elect

Dated: 4-21-99

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Independent Electrical
Contractors, Inc.

April 21, 1999

TO: NC House Public Utilities Committee

Response to EMC Subsidiaries NC House Bill 476:

Amending G.S. 117-18 to allow Electric Membership Corporations to form and operate subsidiary organizations (companies) would allow a regulated monopoly to compete in a free market, giving an unfair advantage to the EMC's. As of this date the EMC's, along with other electric utilities, operate within a regulated market, which offers them certain privileges and benefits. One of which is a return on investment.

I ask each of you: Where will the operating capital, equipment, and management for the EMC's subsidiary organization come from? The only logical place is from the EMC itself. This capital and equipment was acquired with regulated ratepayer and tax dollars. I wish I could have this luxury in operating my business. Even if there will be no transfer of regulated acquired equipment, the EMC subsidiary will be able to use the equipment at a token rental price. Who is going to establish the rental rate of the equipment that was purchased with regulated money? Will other private, free market contractors be able to rent the EMC's equipment at the same rate as the EMC's subsidiary? Are other private, free market entities going to be allowed to use the same purchasing power the EMC's have?

Allowing an EMC to operate any organization, business or company in the free market will lean heavily toward the side of unfair business practices.

If it is not possible for you to vote no on House Bill 476, please hear our concerns and postpone action until the Study Commission on the Future of Electric Service in North Carolina has completed their work and made recommendations.

Thank you for your consideration.

Respectfully submitted,

Julian R. Burns, Vice President
North Carolina Association of Electrical Contractors

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Independent Electrical
Contractors, Inc.

POSITION STATEMENT FOR HB 476, "EMC SUBSIDIARIES" April 21, 1999

The Study Commission on the Future of Electric Service in North Carolina was established in April 1997 by ratification of Senate Bill 38 (S.L. 1997-40). This commission was charged with recommending a smooth regulatory transition from the highly regulated, monopoly electric utility industry to a free market system in which customers can buy power from one of many suppliers. The review and evaluation of this commission has not been completed and no recommendations have been made. Two bills regarding this commission are in committee in this session of the General Assembly: House Bill 777, to provide for reimbursement of additional expenses of the Commission on the Future of Electric Service in North Carolina from the Utilities Commission and Public Staff Fund, and House Bill 778, to add four members to the Study Commission on the Future of Electric Service in North Carolina.

NCAEC has requested that the Commission consider the impact of unfair competition on small businesses, in our instance the independent electrical contractors. If regulated monopolies are allowed to use their rate base to subsidize their ventures, the small and medium sized electrical contractors will be put out of business.

House Bill 476, "EMC Subsidiaries" would give electric membership corporations the power to form, operate and own any type of business as long as no public money is used to create or support the new venture.

We realize that the power companies and electric membership corporations cannot be told they can not form and operate subsidiary companies. Our concern is that this current legislation would give the EMC's, as a regulated monopoly, an unfair advantage since no recommendations have been made from the Study Commission on the Future of Electric Service in North Carolina to **ensure that ratepayer and tax dollars will be not be used for operating capital, management and equipment for the subsidiary organizations.** And, if the subsidiary company, as a private enterprise, leases or rents equipment or materials from a regulated monopoly, other private enterprises (other electrical contractors) should be able to lease or rent equipment or materials from the EMC (and power companies) at the same rate and under the same terms.

We therefore, respectfully request that HB 476, "EMC Subsidiaries" be tabled and not considered until the Study Commission on the Future of Electric Service in NC presents its evaluations and recommendations.

Marcia L. Barney
Executive Director



**Rob Wilson Electric
9361 US 401 North
Fuquay-Varina, NC 27526**

"We Sell Quality"

DATE: April 22, 1999
TO: N.C. House Public Utilities Committee
FROM: Robert M. Wilson, Jr., President
Rob Wilson Electric
SUBJECT: Comments on N.C. House Bill 476

Dear Committee Members:

My company is a small electrical contracting firm located in Southern Wake County. We have been in business for 10 years and currently have 25 employees.

I personally view House Bill 476 as a direct threat to my company. We have worked hard to provide a stable, safe working environment with good pay and excellent benefits for our employees.

I believe it is inherently unfair to expect the private contracting sector to compete with subsidized EMC's and utilities. EMC's and utilities have accumulated equipment, material purchasing power, and highly trained personnel at the expense of the taxpayers. It would be highly unfair for them to be able to have access to the same market that we service. We must use local banks, lines of credit and personal guarantees to secure financing to operate our business. We do not have a wealthy "sugar daddy" to fall back on.

This bill basically undermines any concept of free enterprise and I urge all committee members to vote "No" on House Bill 476.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert M. Wilson, Jr.', is written over the typed name.

Robert M. Wilson, Jr., President
RWE, Inc.

RMW:lec

HOUSE BILL 476
EMC Subsidiaries

ElectriCities supports competition and choice for electric customers with a plan that recovers stranded cost without burdening any one group of customers. We support the work of the Study Commission on the Future of Electric Service which is taking a comprehensive look at the electric industry, deregulation, and its related impacts. We believe that this bill, H476, belongs in the study commission.

It is our impression that the rural cooperatives prefer a go slow approach to competition and choice and do not believe that their customers will receive any benefits from choice. Yet, one cooperative customer on Wednesday told you that he looked forward to having choice in electric so that he can change his electric provider. Their preference for going slow in electric deregulation appears inconsistent with their desire to compete in other businesses. Why utility statute changes to allow the cooperatives to compete in other businesses if others cannot compete to serve their electric customers?

The cooperatives have said that they need this legislation to prepare for competition and choice. ElectriCities has been a strong advocate of choice through comprehensive legislation that addresses the needs of all utility providers and customers. ElectriCities believes that expansion of existing authority for any of the electric providers to serve new customers is tied directly to the deregulation debate and therefore should be handled by the electric study commission.

If the cooperatives want to prepare for competition and choice in electric, then why are they not working for those markets to be open? At the same time that they are asking for authority to expand into other enterprises, it is our impression they are working to slow down the process of deregulation in electric. What's good in one enterprise ought to be good in all.

Testimony by
Alice Garland
4/23/99

STATEMENT – HB 476 – EMC SUBSIDIARIES
HOUSE PUBLIC UTILITIES COMMITTEE
APRIL 23, 1999

Thank you Mr. Chairman and members of the committee. I'm Perri Morgan and I represent the National Federation of Independent Business, with more than 15,000 members in North Carolina.

I can't begin to tell you in five minutes everything that is wrong with this bill, but the issue we are talking about today is *not* about deregulation and it's *not* about economic development. We're talking about free enterprise and fair competition.

We acknowledge the well-deserved goodwill that the EMC's have established. However, they were chartered to serve a very real need. Now they want to use this goodwill that they've built up over the past 60 years, along with the many other advantages available to them by virtue of their status as monopolies, to compete in the unregulated free market in ventures that will compete directly with many of their "members" – many of whom are standing in the back of the room today and who do *not* agree with what the EMC's are doing. Some of these advantages are:

- Equipment Sharing – By renting trucks and other equipment from the parent EMC on an as needed basis, subsidiaries can significantly lower their overhead
- Volume Discounts – Because of the sheer volume of the materials and equipment used by EMC's, discounts on the bulk purchase of materials can be passed along to the subsidiary business.
- Advertising – The monthly bill is be used as a vehicle to distribute advertising about the subsidiary company, giving EMC's access to customers that independent businesses do not have. Similarly, the use of the monthly bill to collect money owed is a powerful tool unavailable to us.
- Financing – Subsidiaries of the power companies can enjoy rates on financing that are considerably lower than those available for small private enterprises. EMC subsidiaries will use zero, or low-interest loans from the EMC itself or will borrow from the CFC, a

financing company owned by and for the EMC's for the express purpose of providing the EMC's with the capital they need.

- Labor – When the subsidiary doesn't have 40 hours of work available for its workers, those workers can be transferred between subsidiaries, or back to the parent EMC and put to work, and so forth. Private enterprise has to lay-off workers or pay for down-time when the work isn't there.
- Rate Base – The use of assets guaranteed by the rate base as a means of financing subsidiary companies constitutes unfair competition.

And why do they want to do it? Why, to make money, of course. That's why they don't want to stick to rural areas and that's why they want to go into other businesses. But the EMC's were chartered as a *non-profit* for a reason, and I don't believe that when the federal government formed the EMC's back in the 1930's, they ever intended for those EMC's to go into competition with private enterprise.

In spite of that, they EMC's want to do it and they say that they fully intend to play "on an even playing field" with private enterprise, but the language inserted in the bill with regard to "fair market value" means that the subsidiary will pay what they consider to be "fair" for equipment and so forth *only* for the specific use of that equipment during the time that they use it. In other words, if they determine that "fair market value" for a truck is \$20 per hour, the subsidiary can pay the EMC for the use of that truck just for the hours they need it, at \$20 per hour.

Members of the committee, as free enterprises, we don't have access to the assets of a monopoly. We have to pay for the *whole* truck, the *whole* copier, the *whole* office or retail space, and so forth. We have to pay our workers for 40 hours per week whether we need them or not. I was told on Wednesday that the equipment that would be rented at "fair market value" to the EMC subsidiaries was also available to anyone, so we called several EMC's to ask about truck rental. Citing liability issues, we were declined in every area. We didn't ask whether or not we could borrow employees at the going rate

per hour, but I'd be willing to bet that the answer to that question would have been no, as well.

Some say that an even playing field would be impossible to achieve, but I think it could be done if the EMC's agreed not to co-mingle the assets of the EMC's and the subsidiaries. So why don't the EMC's want to do this? Because they know that they can't make as much money, if any money at all, *without* using their unfair advantages. Free enterprise isn't easy, as many of you in this room can attest. I was just talking with a small business owner who is here today, and who, by the way, is an EMC member, who started his business with \$2000 and a bank loan on a truck and built it up with hard work over the years. That's how businesses begin in North Carolina. But the EMC's want to shortcut it to the top, using advantages that have been achieved through their taxpayer subsidized, captive rate-payer based business, that will allow them to undercut the prices of this small business owner and still make a handy profit. This alone proves the simple *wrongness* of this legislation – it flies in the face of what free enterprise is all about.

The EMC's say that they should be allowed to do this because CP&L and Duke Power can do it. Yet those are investor-owned utilities who are subject to the oversight of the Utilities Commission with regard to keeping the regulated portion of their business separate from the subsidiaries. Are the EMC's willing to give up their non-profit status, issue stock to their members, and come under the regulation of the Utilities Commission? In this bill, there is *no* provision for *any* oversight whatsoever. And obviously they need some oversight. Witness the EMC's offer in the letter that Audrey Shearin handed out on Wednesday that says "Halifax EMC is offering to provide a minimum of approximately 2.3 million dollars in zero interest loans and investments [to the subsidiary], not accounting for our participation in the \$800,000 of water and sewer grant funds obtained by the county, as well as the potential of a negotiable equity investment."

We believe that the EMC's plan to aggressively pursue many areas of business that will compete directly with private enterprise, and they won't limit it to rural areas. In my 11 years of experience with this issue, I have never seen an EMC subsidiary in a rural

area – they are all in the cities and towns across our state where competing services are readily available. We shouldn't be surprised at that – they are well aware that the profit is not in the rural areas. They are competing with us *now*, and two opinions by the Attorney General, both stating that they *cannot* engage in activities for which they were not chartered, haven't stopped them. They want *more*.

I am always willing, of course, to be proven wrong. If the EMC's do indeed plan to focus only on economic development in rural areas and operate on an even playing field, then they should have no problem with legislation that would specifically guide them in these kinds of activities.

I have seen some of the materials that the EMC's have given to you. They include a total of the taxes paid by the EMC's. Since I've just seen the information, I haven't had an opportunity to look into the total of the taxes paid by small business in North Carolina, but since 99% of the businesses in North Carolina have less than 100 employees, I feel very comfortable in telling you that what the EMC's have paid in taxes is peanuts compared to what small business has paid.

Additionally, this bill is unnecessary. There is nothing to stop any board member, staff person, or employee of an EMC from putting their own house up for collateral and taking out a loan to start a business, just as we have done.

Members of the committee, as you consider your vote on this critical bill, I am asking you to remember that small business is the economic engine that drives the state of North Carolina. I don't believe there is anyone in this room who will dispute that. How can a measure that places these businesses at an unfair disadvantage be good public policy? And make no mistake about it. . . a vote for HB 476 is a vote *AGAINST* small business!

Thank you for your consideration. Please allow me the opportunity to answer any additional questions you may have.

Larry Jordan Comments
Public Utilities Committee
Friday April 23, 1999

Thank you Mr. Chairman.

My name is Larry Jordan. I am president of L.G. Jordan Oil Co., Apex, a petroleum and LP Gas marketer. I am here today because I am really concerned about this potential threat to small business in NC. As you very well know, the Electric Membership Co-ops' original purpose was to bring electricity to rural American - a purpose they have served very well. Now they are attempting to compete directly with private sector businesses for customers in markets far removed from the provision of electric power.

They start out with marketing advantages which no independent enterprise would have; examples being: land and building, use of EMC employees, tools, equipment and vehicles, use of its captive members to promote its subsidiary and its services, transfer of customer site data being used as marketing information and the use of established logo to provide instant identity and recognition.

Mr. Chairman, I believe the sponsor or someone referred to this bill as being good for economic development. I am having trouble with this rational because I don't believe there is a town or county in North Carolina that doesn't have oil and ~~gas~~ ^{propane} available.

We have heard it stated that our opposition to the bill stems from a fear of competition. That is simply not true, if it is a fair competition. A lot of us in this room compete with each other daily but we all started out alike with the same risks and obligations.

I simply request that you oppose HB 476.



Workforce Development • Profit Management • Business Development • CompTrust AGC

Carolinan AGC's Position on House Bill 476 (EMC Subsidiaries)

Carolinan AGC (Associated General Contractors) opposes HB 476 (Electric Membership Corporations' Subsidiaries) because it would put the construction industry at a competitive disadvantage.

Simply put, the nonprofit co-ops were formed with the help of low interest-government loans, giving them an unfair advantage in starting new businesses, including possibly getting into the construction industry.

Supporters of the proposed legislation argue that the legislation would help fill a void in providing water lines and other non-electric services. If there is such a void, why have so many small business folks and other pro-business groups turned out against this bill? We would question if the void exists.

Carolinan AGC represents nearly 4,000 contractors, subcontractors, suppliers and others in the commercial, non-residential construction industry.

For more information, contact Berry Jenkins or Dave Simpson at 919/781-3270.

4/23/99

Public Utilities Committee Presentation

by R. B. Sloan, Jr.

April 23, 1999

Ladies and Gentlemen, I'm R. B. Sloan, CEO of **EnergyUnited**. We're an electric cooperative serving in all or part of 19 counties of western Piedmont. I'd first like to express my appreciation for the opportunity to represent my co-op before you today. I had come prepared to speak to you during your previous two meetings and am at a bit of a loss as to what to say today. I can tell you it has been awfully hard to stand in the back of the room and listen to what I've heard thus far. It seems from one who works with the co-op business on a day to day basis that whatever we do or say is not getting through. Let me give you a few examples.

We heard on the first day of testimony, an example cited of us providing loans for home improvement. It was implied that in some manner this was to the detriment of small business. **EnergyUnited** provides these small loans through a local bank. All we ask is to inspect the work to be sure it was actually performed. How can this hurt small business? To the contrary, looks to me like it provides work for contractors that might otherwise not be there.

We keep hearing the claim that we will use RUS loans to supply capital for subsidiary formation. We hear there is no way to keep the funds separated. I've been in this business for 25 years. If someone can find a way for us to use those loans in any other way or manner than in which they are initially proposed, please, please contact me because I am certainly don't know how. On top of not knowing of a way to move these funds around, the bill explicitly forbids this.

We hear that we will subsidize the new subsidiaries and transfer cost out of the new business to the electric side. That would be in absolute conflict with whole purpose of what we're trying to accomplish. On top of not wanting to do that, the bill again explicitly forbids it.

We hear this past Wednesday that we are so efficient and well organized that we would run small business out of our communities and in almost the same breathe it was pointed out that our rates are 30 to 40% higher than our competitors. I can't agree with either point but just trying to follow the argument that was made, how can we be that great of a competitor if we are that uncompetitive?

We've heard concerns that we might expose our existing customers to too much risk. Again, notwithstanding our absolute desire to not do that, the bill explicitly addresses this issue.

Virtually everything from subsidies to subsidiaries, from financial risk to unfair competition is covered in the concession and compromise we have made thus far. With all that said, the rhetoric ignores all our efforts. I'm was trained as an engineer and I was taught to view the facts and when facts are not available, I look for evidence of past or likely behavior. At that point, I feel I can make decisions on objective criteria. From where I've been standing, the facts most certainly are not being depicted in testimony previously heard.

Let's look at how the cooperatives view small business. How many instances can actually be identified where a co-op has harmed small business? In the mid-'80's, when the co-ops decided to get into the load management business, we could have developed our own installation crews. Instead, we contracted with local contractors for the installation of literally hundreds of thousands of these devices. This has put millions of dollars in the pockets of local electrical contractors. **EnergyUnited** has an appliance warranty program. We could have developed our own maintenance crews. Instead, we have contracted with well over 30 local appliance repair companies to do this work. Look nationally. In the 38 states where co-ops have the ability to enter virtually any business they desire, see what they have done to small business. **EnergyUnited** as well as many co-ops contracts our meter reading, the vast majority of our right-of-way clearing, our pole inspection, much of our new construction, etc. In virtually everything we have done, we have not taken work away from small business, we have created more business for them. Does this sound like a company attempting to run small business out of business? Folks, the facts and the evidence just does not support the premise that we wish to harm small business. Heck, before this all came about, I thought co-ops *were* small business.

Ladies and Gentlemen, I understand why people and partularly some of those here today, do not want competition. I do not like competing with others. It makes me work harder and harder. But, the competition we bring to the market is miniscule compared to what is coming. SCANA has opened a propane office in our town and Suburban Propane is already there. I don't believe our potential entry in the market would have any real impact.

The real issue today is the future of rural North Carolina. Next year, this body will consider a bill that proposes the restructuring of North Carolina's electric industry. Our current electric competitors in this state as well as out of state and even folks

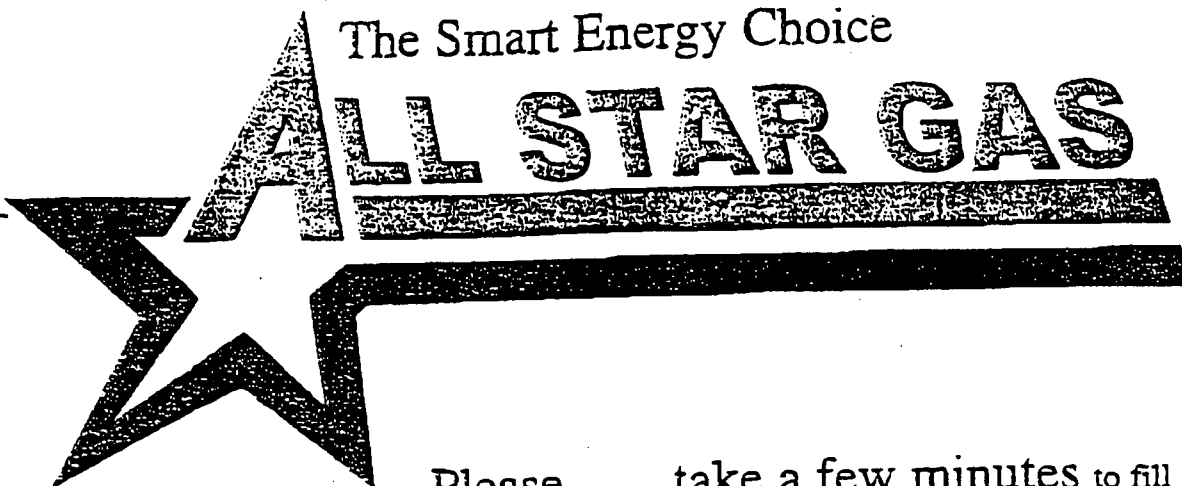
making arguments before you today, are preparing for this to occur. We are here asking you for that same right. We need that same right. Coalitions and strategic partnerships have and are being made. From Amway to Enron to All Star Propane, they are all committed to or considering entering the electric market. The defeat of this bill tells rural North Carolina that they are not a participant in preparing for this event. You're telling 93 of our 100 counties, you're telling 1.7 million rural North Carolinians, you're telling rural North Carolina in general that deregulation will happen TO them rather than WITH them and their electric supplier. Telling us no or asking us to wait is tantamount to asking us to consider the impact of Y2K on April Fool's day next year. I hope you can see why this is not in the best interest of this great state. Thank you.

Propane Gas

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Get a good night's rest ...

Propane

The Smart Energy Choice



Please take a few minutes to fill out this survey and return it to us postage paid. We'll send you a small token of our appreciation.

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There are three steps in getting electricity to you, the consumer: generation, transmission and distribution. Soon you may have a choice in purchasing the generation portion of your electricity from a service provider other than your current utility. Competition is expected to lower prices.

If All Star were an electric service provider, at a competitive cost, would you consider switching to our electric service?

Yes ... ☐ No ☐

Do you have an electric water heater?

Yes ... ☐ No ☐

Do you have a gas barbecue grill?

Yes ... ☐ No ☐

To provide steady all season pricing, during 1998 All Star offered a Pre-Buy Pricing Plan to our customers. Basically, you purchased propane in the summer and we delivered all year long. The price for your winter supply was guaranteed on the day you purchased it.

Did you take advantage of our Pre-Buy Plan this summer?

Yes ... ☐ No ☐

If no, why not _____

When you call or visit our office, are our customer service representatives courteous and friendly?

Yes ... ☐ No ☐

Can they answer your questions about our service and your account?

Yes ... ☐ No ☐

Are you satisfied with the results of your conversation?

Yes ... ☐ No ☐

Any other comments _____

That's it! Thanks for your time.

SUPPORT
HB 476



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fax (336) 854-7148



Independent Electrical
Contractors, Inc.

Representative Smith and members of the House Public Utilities Committee, thank you for the opportunity to speak against House Bill 476.

My name is Jimmy Evans. I represent the North Carolina Association of Electrical Contractors.

I own and operate a family-owned, electrical contracting business in Brunswick County. I am an EMC member. An EMC provides electricity to my business and my home. The majority of my employees are also EMC members.

My business began as a "one man, one truck" operation on borrowed money. Today, it is a 12-person operation with 15 service vehicles, which include a bucket truck, a line truck, and a trencher. The "American Dream" would not have been possible if we had been forced to compete with the regulated monopolies or their subsidiaries as House Bill 476 would allow.

The EMC's were created as "not for profit" corporations with taxpayer money for the purpose of rural electrification. The EMC's have done a commendable job. And yes, the EMC's have put a lot of money back into the community—money that came from the EMC consumers and indirectly from taxpayers everywhere.

Earlier this year, the EMC's in our area began to refund capital credits—"profits accrued through monthly payments after operating costs and expenses of the cooperative have been covered"—to their members. Members were not allowed to use these funds to pay outstanding bills, nor were we allowed to spend our "money" to purchase groceries. We were not allowed to purchase a gas appliance. Members were allowed to use these capital credits toward purchase of electrical appliances. This ensured the purchase of electricity from the EMC.

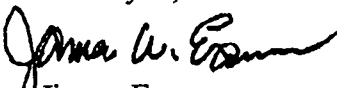
In 1988, we saw the EMC's aggressively trying to move into other businesses. We have been successful, to a point, in slowing this progression. However, with their concern about deregulation, their fear of competition, and because they are now making a profit, the EMC's want to embark into other business ventures on a much larger scale.

It seems to me that the EMC's profits would be better used by lowering the consumer electric rates and improving their services rather than toward expansion into business ventures that will threaten the businesses of North Carolina.

House Bill 476 should scare every business and anyone considering starting a business in North Carolina. It definitely scares me!

I urge you to vote "No" on this House Bill 476.

Thank you,


Jimmy Evans
NCAEC Past President

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Attachment IX

(Please type or use ballpoint pen)

EDITION No. H 476-PHC SRL-010H. B. No. 476DATE Roll into PCS

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE ☒(to be filled in by
Principal Clerk)Rep. Culpepper

Sen.)

1 moves to amend the bill on page 2, line 8-10

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4

5 " c. They do not use any personnel,6 equipment, or property of the electric7 membership corporation in the operation8 of the other business entity."

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SIGNED Bob Culpepper

ADOPTED _____ FAILED _____ TABLED _____

Rural Utilities Service Loans to EMCs – for ELECTRIC PROVISION ONLY

as compared to

Private Sector borrowing for all services

April 22, 1999

EMC borrowing – Electric Provision ONLY				Private Sector borrowing for all services		
Fiscal Year	# RUS loans approved for NC	\$ Amount	Ave. Interest Rate	Cost of 1 yr. interest	Ave. Prime + 1%	Cost of 1 yr. interest
FY 1998	4	\$ 42,737,000	5.1%	\$ 2,187,400	9.4%	\$ 4,017,300
FY 1997	3	\$ 24,480,000	5.5%	\$ 1,346,400	9.4%	\$ 2,301,100

Fiscal Year	Difference in Interest Cost -- by %	Difference in Interest Cost -- by \$
FY 1998	4.3%	\$ 1,829,900
FY 1997	3.9%	\$ 954,700

SUMMARY

EMCs' interest "subsidy" – FOR ELECTRIC SERVICE only

amounts to less than \$1 million/FY 97 and less than \$2 million/ FY 98.

10+

ROLL CALL VOTE

12 5 = 17 (TOTAL)
 YES NO

HB# 476
 SB# _____

HOUSE STANDING COMMITTEE ON PUBLIC UTILITIES

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
_____	_____	SMITH	_____	_____	
<u>✓</u>	_____	BRASWELL	_____	_____	
_____	<u>✓</u>	CREECH	_____	_____	
<u>✓</u>	_____	CULPEPPER	_____	_____	
_____	<u>✓</u>	DAUGHTRY	_____	_____	
_____	_____	EARLE	_____	_____	
<u>✓</u>	_____	EDWARDS	_____	_____	
<u>✓</u>	_____	GRADY	_____	_____	
<u>✓</u>	_____	HARDAWAY	_____	_____	
_____	<u>✓</u>	HOLMES	_____	_____	
<u>✓</u>	_____	HURLEY	_____	_____	
_____	<u>✓</u>	McCOMAS	_____	_____	
<u>✓</u>	_____	McCOMBS	_____	_____	
_____	<u>✓</u>	MILLER	_____	_____	
<u>✓</u>	_____	MITCHELL	_____	_____	
<u>✓</u>	_____	ROGERS	_____	_____	
<u>✓</u>	_____	SAUNDERS	_____	_____	
<u>✓</u>	_____	STARNES	_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	
_____	_____		_____	_____	

Ex officio Members

_____	_____	Speaker Pro Tem HACKNEY
_____	_____	Majority Leader BADDOUR
_____	_____	Majority Whip DEDMON
<u>✓</u>	_____	CUNNINGHAM

4/23/99

VISITOR REGISTRATION SHEETPUBLIC UTILITIES

APRIL 23, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
LARABEE, PADRICK	JONES ONSLOW EMC
Ken Jones	Jones Onslow EMC
Eddie Stecher	Edgewood - Martin County EMC
Nella Webb	Edgewood - Martin County EMC
Olivia E. Wilson	" " "
Jimmy Carter	Albemarle EMC Hertford N.C. P.O. Box 69
Steve Morgan	CENTRAL EMC, SANFORD NC 27744
Hal Setser	Union EMC, Monroe, NC 27330
Dalton Block	Union EMC Monroe, NC 28110
Sandra Bryant	Halifax EMC
Malina Cunningham	Union EMC, Monroe, NC 28111
Neil Hasty	Union EMC, Monroe NC 28111
Tom Slusher	Union EMC, Monroe NC 28111
Lucane Sherron	Union EMC, Monroe NC 28110
Julia Griffin	Union EMC, Monroe, NC 28111
Brian Mosier	Union EMC, Monroe, NC 28111
Brad Starn	Albemarle EMC, Hertford, NC 27944
Norman Sloan	Hamwood EMC, Weynesville, N.C.
ART HUBERL	ELECTRICIAN & NC - Raleigh
Dennis K. Mooring	Tri-County EMC, Dudley
Michael Davis	Tri County EMC, Dudley
B.L. S. Jones	Union EMC - Monroe, NC
Ed B. Wilson	Union EMC - Monroe, NC
Norman W. S. Jones	Union EMC, Monroe, N.C.
Phil Wall	Union EMC, Monroe, N.C.
N. Mack Shoyf	Energy United EMC, Statesville, NC
Doris S. Brown	Energy United EMC, Statesville, NC
Robert Conner	JONES- Onslow EMC

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

APRIL 23, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Henry Malin	Energy United
Richard Watts	Energy United
Thomas Brooks	" "
S. L. Johnson	" "
Gene Bellinger	" "
Ed Brown, Jr.	Four County EMC - Dayton
Jack Wooten	Energy United EMC
Donnie Harrison	Energy United EMC
Ron Atkins	GNANC
WAYNE WILKINS	Energy United EMC
R B SLOAN	ENERGY UNITED
Ken Mallan	Energy United
General Harrison	Edgecombe - Martin
Genow D. Daulton, Jr.	Midland EMC
Dale Daulton	Randolph EMC
JOHN MARSH	TIDELAND EMC
LYNN TEW	South RIVER EMC
James H. Lister	TIDELAND EMC
Robert McLean	Young Co. of Blount
Keith Winkler	Energy United
Charles M. Fitch	" "
Johnny Atkins	Energy United EMC
Larry W. Payne	Energy United EMC
Richard Broadbent	Energy United EMC
Allen F. Holt	Randolph EMC
Jim Kinchorn	Edgecombe - Martin Co. EMC
Dan Green	Four County EMC
Mike H. W. G.	MEMC
Robt McKeithen	June Owslow EMC

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

APRIL 23, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Dick Carlton	Securities Ind. Assn.
M. J. Kinley Price	D M Paint & Son, 7 Springs N.C.
Bobby R. Smith	Northern Gas Co. - La Barge NC 28551
Jaton W. Moore	Bone & Associates
WELLS HANKINS	WCLM
Ann Case	NCRMA
John Policastro	AT&T
Andy Ellen	NCRMA
Don Thompson	Pee Dee EMC
RICHARD H. JOHNSON	Pee Dee EMC
Charles D. Smith	Pee Dee EMC
Benjamin M. Clark Jr	Pee Dee EMC
Jim Smith	TMC
William Lamm	Energy / Commerce
Charles Tolley	French Broad EMC PO Box 9, MARSHALL, NC
CHARLES BECK	BLUE RIDGE EMC
Sally Smith	WLSR
Brian Cuthfield	Blue Ridge EMC
Mike Dunning	Dixie-Dunning L.P. Gas Benson, NC.
Wayne McComb	McComb LP Gas, Benson NC
Christopher Murphy	McComb LP Gas, Benson NC
Jimmy Wood	McComb LP Gas Benson
G. D. Dunning	Summit Hill Rd 1134 US 135 Goldsboro
Kerr Johnson	KB Johnson Oil & Gas Co. Fayetteville
DAREN PARKER	PARKER Gas Co., Canton, NC
Charles T. Tost	Tost Gas Co., Durham, NC
Raymond M. Lyber	Halifax Electric Enfield, N.C.
Marion R. Smith	Halifax EMC

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

APRIL 23, 1999

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
DAVE DENSON	Cape Fear Electric - Wilmington
P.T. Jones	P.T. Jones Elec
Mark Pearson	Capital Group
Anna Lee Egan	Southernnet Elec. Southport N.C.
Doug. Fulcher	Fulcher Electric Morehead
Maurel & Barney	NC Assoc of Electrical Contractors
JEFF VANDYKE	BELL SOUTH
Emerson Deese	NC Propane Gas Assn.
KAY BRINN	NC PROPANE GAS ASSO. Rocky Mt.
Eddie Johnson	NC Propane Gas Association. Albemarle N.C.
Bin Cooper, Jr.	Cooper Co., Inc.
C. Porter	B&H
Romaine Holt	NC Propane Gas Assn.
ED MEERS	Collier Gas Co. FNC.
Ruthie Brown	Spurgen - Eubank Co
Michael C. Polovitch	Mike Polovitch HVAC Protero N.C.
Joe Alligood	Alligood Appliance Warrington N.C.
Ron Brooks	Emerald 1st P, N.C.
Ralph Withers	Dan Hughes Co. Inc.
James Ott	PO Box 1871 Newport NC
DAVE ROWE	RANDOLPH EMC
Steve M. Ford	Synergy Gas Co. Raleigh N.C.
Walter L. Beach Jr	Coaststone Propane Raleigh NC
John Haddad	Economy Propane of NC. Durham N.C.
Bru Kirby	Starke Gas ASHEBORO, N.C.
Bobby Smith	Smith Bros Gas Magnolia, N.C.
Bruce Williamson	Williamson Gas Clinton N.C.

VISITOR REGISTRATION SHEET

PUBLIC UTILITIES

APRIL 23, 1999

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 27, 1999
Room 415
2:00 PM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

H 1032 – Underground Utility Damage Amend.

ADJOURNMENT

Minutes
House Committee on Public Utilities
April 27, 1999

The House Committee on Public Utilities met Tuesday, April 27, 1999 in Room 415 of the Legislative Office Building at 2:00 p.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; Representatives Creech, Culpepper, Holmes, McCombs, Miller, Mitchell, and Rogers. Staff Counsel Steve Rose was present. A Visitor Registration list is attached (Attachment V) and made part of the minutes.

The Chair called the meeting to order. Pages Benny Davenport from Johnston County and Mike Egerdahl from Wake County were introduced.

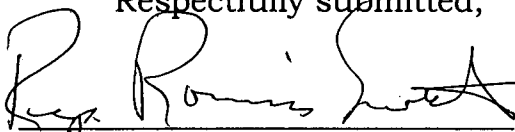
HB 1032 – AN ACT TO AMEND THE UNDERGROUND DAMAGE PREVENTION ACT (Attachment I) was on the agenda. The bill analysis of HB 1032 is shown in Attachment II. Representative Bill Culpepper distributed Proposed Committee Substitute – H1032-PCSRL-003 (Attachment III). Representative Drew Saunders moved to adopt the Committee Substitute for discussion. Representative Culpepper reviewed the changes in the bill. Attachment IV is a summary of his comments.

There was much discussion among members of the committee and representatives of the groups supporting and opposing the bill. Those speaking were Marvin Musselwhite with the NC One-Call Center, Barry Jenkins with Carolinas Association of General Contractors, and Henry Craig with the NC Utility Contractors Association. All groups had worked to reach consensus on the amount of space (18, 24 or 30 inches) on either side of the underground utility that would constitute the definition. Representative Culpepper stated that 24 inches was a fair compromise.

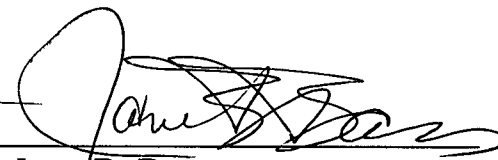
Representative Drew Saunders moved for a favorable report on the Proposed Committee Substitute. The motion carried.

The meeting was adjourned at 2:40 p.m.

Respectfully submitted,



Representative Ronnie Smith
Chair



Jane B. Bass
Committee Assistant

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 1032 A BILL TO BE ENTITLED AN ACT TO AMEND THE UNDERGROUND
DAMAGE PREVENTION ACT.

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill (~~#~~), ☐ which changes the title,
unfavorable as to (original bill) (~~Committee Substitute Bill #~~), (~~and recommendation~~
~~that the committee substitute bill #~~) ~~be re-referred to the Committee on~~).

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

H

1

HOUSE BILL 1032*

Short Title: Underground Utility Damage Amend.

(Public)

Sponsors: Representative Culpepper.

Referred to: Public Utilities.

April 14, 1999

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE UNDERGROUND DAMAGE PREVENTION ACT.
3 The General Assembly of North Carolina enacts:
4 Section 1. Article 8 of Chapter 87 of the General Statutes reads as
5 rewritten:
6 "ARTICLE 8.
7 "Underground Damage Prevention.
8 "§ 87-100. Short title.
9 This Article shall be known as the "Underground Damage Prevention Act".
10 "§ 87-101. Definitions.
11 As used in this Article:
12 (1) ~~"Association" means an association, sponsored by utility owners,~~
13 ~~that will provide for receipt of notification of excavation operations~~
14 ~~in a defined geographical area, and that will maintain the records~~
15 ~~of the notifications.~~
16 (2) "Damage" includes the substantial weakening of structural or
17 lateral support of an underground utility, penetration or
18 destruction of protective coating, housing, or other protective
19 device of an underground utility, and the partial or complete
20 severance of an underground utility.
21 (2a) "Emergency" means a sudden or unexpected occurrence involving
22 an imminent danger, demanding immediate action to prevent or
23 mitigate loss of, or damage to, life, health, property, or essential
24 service.

- (3) "Excavate" or "excavation" means an operation for the purpose of the movement or removal of earth, rock, or other materials in or on the ground by use of equipment operated by means of mechanical power and/or an operation by which a structure or mass of material is wrecked, razed, moved, or removed by means of any tools, equipment, or discharge of explosives. This term includes road construction but does not include road maintenance activities within rights-of-way of a highway, including those maintenance activities defined by the rules and regulations of the North Carolina Department of Transportation.
- (4) "Highway" has the meaning set out in G.S. 20-4.01 as the same shall be amended from time to time.
- (4a) "Inclement weather" means an act of God that creates a weather condition that prevents the placement of temporary markings as required by G.S. 87-102.
- (5) "Location of underground utilities" means a strip of land not wider than the width of the underground utility plus ~~two and one-half (2 1/2)~~ feet 18 inches on either side of the outside edge of the underground utility.
- (5a) "Member" means a utility owner who is a member of the notification center established in G.S. 87-101.1.
- (5b) "Notification center" means the notification center established in G.S. 87-101.1.
- (6) "Person" means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, any subdivision or instrumentality of the State, and includes any officer, agent, trustee, receiver, assignee, lessee, or personal representative of any of the above entities.
- (7) "Person financially responsible" means that person who ultimately receives the benefits of any completed excavation activities, including a person owning or leasing real property or holding an easement or interest in an easement.
- (8) "Public spaces" means any area owned by the State or any of its political subdivisions or dedicated for public use.
- (9) "Road construction" means the actual building of a new highway; or the paving, grading, widening, relocation, reconstruction, or other major improvement of a substantial portion of an existing highway.
- (10) "Road maintenance" means preservation, including repairs and resurfacing of a highway, not amounting to road construction.
- (11) "Street" has the meaning set out in G.S. 20-4.01 as the same shall be amended from time to time.
- (12) "Underground utility" means any underground line, system or facility used for producing, storing, conveying, transmitting, or

distributing communication or telecommunication, electricity, gas, petroleum and petroleum products, coal slurry, hazardous liquids, water under pressure, steam, or sanitary sewage, but not including traffic signal control cables and vehicle detection cables of the North Carolina Department of Transportation.

(13) "Utility owner" means any person who owns or operates an underground utility.

(14) "Work day" means every day except Saturday, Sunday, national legal holidays and State legal holidays.

"§ 87-101.1. Establishment of notification center.

(a) Utility owners shall establish a single notification center to provide for the receipt of notification of excavation operations throughout the State and to maintain a database, provided by its members, that includes the geographic areas in which its members desire transmissions of notices of proposed excavations, and which has the capability to transmit notices of proposed excavations to its members by teletype, telecopy, electronic mail, facsimile, or telephone.

(b) The notification center shall be operated as a nonprofit corporation, and each utility owner shall be a member of that corporation by using and participating in the notification system. The membership of the corporation shall elect a board of directors, through which the notification center shall perform its duties. At least ten percent (10%) of the seats on the board of directors shall be held by units of local government.

(c) In order to fund the operation of the notification system, the notification center, through its board of directors, may assess each member an amount reflecting the cost of that member's participation in the system.

(d) The board of directors of the notification center shall provide the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives with an annual progress report on the operation of the notification system provided for in this Article by March 1 of each year.

"§ 87-102. Notice required prior to excavation.

(a) Except as provided in G.S. 87-106, before commencing any excavations in highways, public spaces or in private easements of a utility owner, a person planning to excavate shall notify ~~each utility owner having underground utilities located in the proposed area to be excavated,~~ the notification center either orally or in writing, not less than two nor more than 10 working days prior to starting, of his intent to excavate.

(b) The written or oral notice required in subsection (a) shall contain:

- (1) The name, address, and telephone number of the person filing the notice;
- (2) The name, address, and telephone number of the person doing the excavating;
- (3) The anticipated starting date of the excavation;
- (4) The anticipated duration of the excavation;
- (5) The type of excavation to be conducted;

- 1 (6) The location of the proposed excavation; ~~and~~
2 (7) Whether or not explosives will be ~~used~~; used; ~~and~~
3 (8) Whether or not boring, drilling, tunneling, ramming, or punching
4 will take place.

5 (c) If the notice required by this section is made by telephone, an adequate record
6 shall be made ~~of the notification by the utility owners or the utility association and~~
7 ~~the person making the notification,~~ by the notification center to document
8 compliance with this section.

9 (d) A notice shall be valid for 10 working days from the time of notification. Two
10 working days before the end of the 10 working days, or at any time when the
11 underground utility location markings on the ground become illegible or are
12 destroyed, the excavator shall request a remarking of the underground utility
13 locations. The utility owner shall remark the locations as soon as possible after such
14 a request, but in any event the remarking shall be completed within 48 hours after
15 the request to remark is received, barring inclement weather.

16 **"§ 87-103. Effect of permit on liability.**

17 A permit authorizing excavation operations and issued pursuant to law or
18 ordinance shall not relieve a person of the responsibility of complying with this
19 Article.

20 **"§ 87-104. Requirements of person doing excavation.**

21 (a) Except as provided in G.S. 87-106, no person may excavate in a highway, a
22 public space, or a private easement of a utility owner without first having given the
23 notice required in G.S. 87-102 to the utility owners.

24 (b) In addition to the notification requirements, each person excavating shall:

- 25 (1) Plan the excavation to avoid damage and to minimize interference
26 with underground utilities in and near the construction area, to the
27 best of his abilities;
28 (2) Maintain a clearance between an underground utility and the
29 cutting edge or point of any mechanized equipment, taking into
30 account the known limit of control of that cutting edge or point, as
31 is reasonably required to avoid damage; ~~and~~

32 (2a) Take reasonable steps to protect any underground utility lines
33 when excavating within 18 inches of either side of the outside
34 edges of the marked location of a utility owner's underground
35 facilities, as defined in G.S. 87-101(5). This protection shall
36 include hand-digging, air-jetting, or vacuum excavation, or other
37 means of safe excavation designed to avoid damage to the facility
38 marked until that facility is exposed or is determined to be below
39 the proposed excavation. If a proposed excavation lies adjacent or
40 parallel to an existing facility and within or partially within the 18-
41 inch area, the existing facility shall be exposed prior to beginning
42 the excavation. Once the facility is exposed and the location
43 markings are found to be correct, the excavation may proceed with
44 mechanized equipment.

- 1 (3) Provide support for the underground utilities in or near the
2 construction area, including backfill, as may be reasonably required
3 by the utility owner for the protection of the underground utilities.

4 ~~"§ 87-105. Requirements of the person financially responsible for the excavation.~~

5 ~~The person financially responsible shall provide to the person responsible for~~
6 ~~doing the excavating, the names of all underground utility owners in the area of the~~
7 ~~proposed excavation. The names of the utility owners may be obtained from the~~
8 ~~County Register of Deeds or the Building Inspection Department of the political~~
9 ~~subdivision in which the excavating is taken place, if there is one.~~

10 "§ 87-105.1. Requirements of notification center.

11 (a) The notification center shall, upon receiving notice of the intent to excavate,
12 notify all members whose underground lines are located in the area of the proposed
13 excavation. The notification center shall also indicate the names of those utilities
14 being notified to the person intending to excavate.

15 (b) If the notification required by this act is made by telephone, a voice recording
16 of the notification shall be maintained by the notification center to document
17 compliance with the notification requirement and those records shall be maintained
18 for at least 48 months.

19 (c) The notification center shall provide statewide operations coverage and a
20 single, nationally accessible toll-free telephone number to receive and record the
21 information provided by excavators and to respond to information requests from
22 excavators.

23 "§ 87-106. Exceptions. Exemptions.

24 The following excavations are exempted from the notification requirements of this
25 Article:

- 26 (1) Tilling of soil for agricultural purposes;
27 (2) ~~Excavation by a utility owner, by the State or its subdivisions or~~
28 ~~agencies, or by anyone contracting with any of these entities to~~
29 ~~perform the excavation; owner or road maintenance activities by~~
30 ~~the Department of Transportation described in G.S. 87-101(3) on~~
31 ~~or within an easement, right-of-way, or property owned or~~
32 ~~controlled by any of these entities, where:~~
33 ~~a. Only the facilities of the utility owner doing the excavating~~
34 ~~are permitted; or~~
35 ~~b. All persons having an interest in the excavation and the~~
36 ~~underground utilities that may be damaged during the~~
37 ~~excavation have agreed in writing to provide the equivalent~~
38 ~~of the notification required by this Article among~~
39 ~~themselves; or~~
40 where only the facilities of the utility owner doing the excavating
41 are permitted;
42 (3) The replacement of a pole as long as the replacement pole is
43 within three feet of the original pole and within the line of existing
44 poles. This exception shall not apply to poles at highway

- 1 intersections or at the crossings of highways and permanently
2 marked transmission underground ~~utilities; utilities; and~~
3 (4) In the case of an ~~emergency emergency, involving danger to life,~~
4 ~~health, or property requiring immediate correction, or in order to~~
5 ~~continue the operation of a major industrial plant, or in order to~~
6 ~~assure the continuity of utility services;~~ excavations immediately
7 required to repair or maintain the needed service may be made,
8 without using explosives, if notice is given to the ~~utility owner or~~
9 ~~association~~ notification center as soon as is reasonably possible;
10 except that the prohibition against the use of explosives shall not
11 apply to the North Carolina Department of Transportation.
12 Performance of emergency excavation shall not relieve the
13 excavator of liability for damages.

14 **"§ 87-107. Duties of the utility owners.**

15 (a) Every utility owner having underground utility lines, including units of local
16 government, shall be a member of the notification center.

17 (b) Each utility owner, or his designated ~~representative including an association,~~
18 representative, notified of an intent to excavate shall, before the proposed start of
19 excavating (unless another period is agreed to by the person conducting the
20 excavation and the utility owner or their representatives), provide the following
21 information to the person excavating to the extent such information is reflected by
22 records in the possession of and reasonably available to the utility owner:

- 23 (1) The location ~~and description~~ of all of the underground utilities
24 which may be damaged as a result of the excavation; ~~and~~
25 (2) ~~The location and description of all utility markers indicating the~~
26 ~~location of the underground utilities; and~~
27 (3) Any other information that would assist in locating and avoiding
28 damage to the underground utilities, including providing
29 temporary markings when necessary indicating the location of the
30 underground utility in locations where permanent utility markers
31 do not exist.

32 **"§ 87-108. Absence of utility location.**

33 Should any utility owner who has been given notice pursuant to G.S. 87-102 fail to
34 respond to that notice as provided in G.S. 87-107, or fail to properly locate the
35 underground utility, then the person excavating is free to proceed with the
36 excavation. Neither the excavator nor the person financially responsible for the
37 excavation will be liable to the nonresponding or improperly responding utility owner
38 for damages to that utility owner's facilities if the person doing the excavating shall
39 exercise due care to protect existing underground utilities when there is evidence of
40 the existence of those underground utilities near the proposed excavation site.

41 **"§ 87-109. Recording requirements for ~~associations; the notification center.~~**

42 ~~An association~~ The notification center shall record with the Register of Deeds of
43 each county in which participating utility owners own or operate underground
44 utilities, a notarized document providing the telephone number and address of the

1 ~~association, notification center~~, a description of the geographical area served by the
2 ~~association, notification center~~, and a list of the names and addresses of the utility
3 owners receiving these services from the ~~association, notification center~~.

4 **"§ 87-110. Recording requirements for utility owners.**

5 (a) Each utility owner having underground utilities in North Carolina shall record
6 a notarized document containing the name of the utility owner and the title, address,
7 and telephone number of its representatives designated to receive the written or oral
8 notice of intent to excavate, with the Register of Deeds of each county in which the
9 utility owner owns or operates underground facilities. This document shall be
10 executed by an officer of the utility owner or in the case of a governmental entity, the
11 authorized official.

12 (b) Any change or modification of the information recorded by a utility owner,
13 pursuant to subsection (a) of this section, shall be made by recording the corrected
14 information with the Register of Deeds of each county to which the change or
15 modification applies, in the manner required by subsection (a) of this section within
16 five days of the change made to the utilities.

17 (c) For purposes of the recordings required by subsections (a) and (b) of this
18 section, recordings by ~~an association~~ the notification center pursuant to G.S. 87-109
19 shall satisfy the recording requirements for each utility owner who is a member of the
20 ~~association notification center~~ while that utility owner remains a member of the
21 ~~association, notification center~~.

22 (d) Upon receipt of the documents recorded pursuant to subsections (a), (b), or (c)
23 of this section, the Register of Deeds shall place the documents in the Grantor's
24 Index under the heading "Underground Utilities". The registration fee imposed by
25 Chapter 161 of the General Statutes shall apply to these documents.

26 ~~"§ 87-111. Recorded information filed with inspection departments.~~

27 ~~A copy of any document or modification or change in the information in that~~
28 ~~document recorded pursuant to G.S. 87-109 or G.S. 87-110 shall be filed with any~~
29 ~~county or municipal inspection department having jurisdiction over any area where~~
30 ~~the underground utilities are located. Such inspection departments shall maintain~~
31 ~~these filings in alphabetical order in an accessible form.~~

32 **"§ 87-112. Color-coding.**

33 When the location of an underground utility is marked with ~~stakes~~ stakes, flags, or
34 paint, or by other physical means, pursuant to this Article, the utility owner shall use
35 temporary colored ~~markers~~ markings following the American Public Works
36 Association Uniform Color Code for Utilities.

37 **"§ 87-113. Notification required when damage done.**

38 (a) The person doing an excavation that results in any known damage to an
39 underground utility shall, immediately after the discovery of the damage, notify the
40 utility owner of the location and nature of the damage and shall allow the utility
41 owner reasonable time to repair the damage before completing the excavation in the
42 immediate area of the damaged underground utility.

43 (b) The person responsible for conducting any excavation that results in damage to
44 an underground utility where the damage may endanger life, health, or property

1 shall, immediately after the discovery of the damage, take action to protect the public
2 and property, notify the utility owner, notify the police or fire departments, and take
3 any other actions to minimize the hazards until the arrival of the utility owner's
4 personnel, the police, or the fire department. The excavator shall delay any
5 backfilling in the immediate area of the damaged underground utility until authorized
6 by the utility owner unless it is necessary to prevent injury or property damage to
7 others. Repair of any damage shall be performed by the utility owner or by qualified
8 personnel authorized by the utility owner.

9 **"§ 87-114. Homeowners.**

10 This Article does not require utility notification before a property owner digs in
11 any area on his own property with nonmechanized equipment nor prior to tilling the
12 soil for agricultural, gardening or landscaping purposes. Mechanized equipment may
13 be used, without utility notification, in any area on the owner's property with the
14 exception of recorded underground utility easements which describes the location of
15 the easement with specificity.

16 **"§ 87-115. Requests for survey locates and design locates.**

17 The information required for requests for facility locates in conjunction with
18 survey or design activities shall be the same as specified in G.S. 87-102. The utility
19 owners receiving requests for survey locate or design locate work shall respond to the
20 request within 10 working days.

21 **"§ 87-116. Civil penalties.**

22 (a) A person who violates the provisions of G.S. 87-102(a), 87-104(b), or 87-107(a)
23 is subject to a civil penalty as follows:

- 24 (1) Upon the first violation by that person, two hundred fifty dollars
25 (\$250.00);
26 (2) Upon the second violation occurring within the same 12-month
27 period as the first violation, five hundred dollars (\$500.00); and
28 (3) Upon the third violation occurring within the same 12-month
29 period as the first violation, one thousand dollars (\$1,000).

30 (b) An action under this section may be initiated by any person making a
31 complaint in writing, verifying by oath and having reason to believe that a violation
32 has occurred.

33 (c) Prosecution of violations shall be brought by the district attorney for the
34 prosecutorial district in which the violation arose or in the county in which the
35 defendant resides or in which the defendant's principal place of business is located.

36 (d) All civil penalties recovered under this section shall be paid into the General
37 Fund.

38 (e) The civil penalties provided for in this section do not apply to the State of
39 North Carolina or to units of local government.

40 **"§ 87-117. High-speed locate.**

41 If the utilities in conflict with a proposed excavation have been located in
42 accordance with G.S. 87-102 and a change in plans is necessitated by unforeseen
43 conditions, a request for a "high-speed locate" to be made within four hours can be
44 made for the alternate contiguous location. The high-speed locate shall be paid for

1 by the person making the request at a price established by the notification center.
2 Persons desiring to obtain high-speed locates shall register with the notification center
3 in January of each year."

4 Section 2. This act becomes effective July 1, 2000.



HOUSE BILL 1032: Underground Utility Damage Amendments

BILL ANALYSIS

Committee: House Public Utilities Committee
Date: April 27, 1999
Version: PCS

Introduced by: Representative Culpepper
Summary by: Steven Rose
 Committee Counsel

The Proposed Committee Substitute for House Bill 1032 amends Article 8 of Chapter 87, the Underground Damage Prevention Act. The act was originally passed by the 1985 General Assembly. The amendments require utilities to belong to a notification center, with the exception of municipalities, which may handle their own notifications of excavations.

The bill makes several changes in G.S. 87-101, the definition section. It eliminates the definition of "association" because that term will no longer be used. It adds definitions for "emergency," "inclement weather," "member," and "notification center." It changes the definition of "location of underground utilities." This term presently means a strip of land not wider than the width of the underground utility plus 2 ½ feet on each side. It reduces the area on each side to 24 inches measured from the outside edge of the underground utility.

G.S. 87-101.1 is added to Article 8. It requires the establishment of a single notification center by utility owners. This center will receive all notifications of excavation operations so that they may be transmitted to the proper utility for location of its underground utilities. The center is operated as a nonprofit corporation, with a board of directors elected by its membership. The Board has the authority to assess each member an amount reflecting the cost of that member's participation in the system. The Board of Directors is required to provide the Governor, the President Pro Tempore, and the Speaker with an annual progress report on its operation. Units of local government will not be required to be members if they operate their own notification centers for utilities in their jurisdiction.

G.S. 87-102 is amended to reflect the single notification requirement by excavators. There is also an added requirement on the part of the person giving notice to inform the notification center or unit of local government whether or not boring, drilling, tunneling, ramming, or punching will take place. The notification is valid for 10 working days from the time of notification and, two working days before the end of the 10 days, or any time the location markings on the ground become illegible or are destroyed, the excavator must request a remarking of the underground utility locations. The remarking must be accomplished within 48 hours unless delayed by inclement weather.

G.S. 87-104 is amended to require that the excavator take steps to protect underground utility lines when excavating within 24 inches of either side of the outside edges of the marked location.

G.S. 87-105, which required the person financially responsible to provide to the excavator the names of all underground utility owners in the area, is repealed.

G.S. 87-105.1 is new. It requires the notification center or unit of local government electing to not be a member of the notification center, to notify utility owners when it receives notification of a proposed

HOUSE BILL 1032

Page 2

excavation. Requirements for commemorating the notification are set out. A nationwide toll-free telephone number must be maintained by the notification center or the unit of local government.

G.S. 87-106 is amended. Currently there is an exemption from the notification requirement for the State or its subdivisions or agencies, or anyone contracting with them. That exemption is changed to apply only to road maintenance activities by the Department of Transportation. The section presently states that performance of emergency excavation does not relieve the excavator from liability for damages. That provision is changed so that the person not relieved from financial responsibility is the person financially responsible.

G.S. 87-107 is amended to require every utility owner having underground utility lines, except units of local government electing not to belong to the notification center, to belong to the notification center.

G.S. 87-111 is repealed. It presently requires that the location information for underground utilities be filed with county and municipal inspection departments.

G.S. 87-115 is added. It deals with requests for marking utility locations for the purposes of surveys or design location work.

G.S. 87-116 is added. It provides for civil penalties for those who violate the notification of excavation requirement, the requirement to take reasonable steps to protect underground utility lines when excavating, and the requirement to be a member of the notification center or for a unit of local government to operate in lieu of the notification center. The first violation is a civil penalty of \$250; the second violation within 12 months carries a \$500 civil penalty; the third violation occurring within 12 months carries a \$1,000 civil penalty. Civil penalties are prosecuted by the District Attorney and the civil penalties recovered go to the Civil Penalty and Forfeiture Fund. The State of North Carolina and units of local government are not subject to the civil penalties.

G.S. 87-117 is added. It provides a method for "high speed location." This is paid for by the person making the request and, in order to be eligible, the person must register with the notification center in January of each year.

The act is effective July 1, 2000.

H1032-SMRL-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

H1032-PCSRL-003
PROPOSED COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1032*

Short Title: Underground Utility Damage Amend.

(Public)

Sponsors:

Referred to: Public Utilities.

April 14, 1999

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND THE UNDERGROUND DAMAGE PREVENTION ACT.

3 The General Assembly of North Carolina enacts:

4 Section 1. Article 8 of Chapter 87 of the General
5 Statutes reads as rewritten:

6 "ARTICLE 8.

7 "Underground Damage Prevention.

8 "§ 87-100. Short title.

9 This Article shall be known as the "Underground Damage
10 Prevention Act".

11 "§ 87-101. Definitions.

12 As used in this Article:

13 (1) ~~"Association" means an association, sponsored by~~
14 ~~utility owners, that will provide for receipt of~~
15 ~~notification of excavation operations in a defined~~
16 ~~geographical area, and that will maintain the~~
17 ~~records of the notifications.~~

18 (2) "Damage" includes the substantial weakening of
19 structural or lateral support of an underground
20 utility, penetration or destruction of protective
21 coating, housing, or other protective device of an
22 underground utility, and the partial or complete
23 severance of an underground utility.

- 1 (2a) "Emergency" means a sudden or unexpected occurrence
2 involving an imminent danger, demanding immediate
3 action to prevent or mitigate loss of, or damage
4 to, life, health, property, or essential service.
- 5 (3) "Excavate" or "excavation" means an operation for
6 the purpose of the movement or removal of earth,
7 rock, or other materials in or on the ground by use
8 of equipment operated by means of mechanical power
9 and/or an operation by which a structure or mass of
10 material is wrecked, razed, moved, or removed by
11 means of any tools, equipment, or discharge of
12 explosives. This term includes road construction
13 but does not include road maintenance activities
14 within rights-of-way of a highway, including those
15 maintenance activities defined by the rules and
16 regulations of the North Carolina Department of
17 Transportation.
- 18 (4) "Highway" has the meaning set out in G.S. 20-4.01
19 as the same shall be amended from time to time.
- 20 (4a) "Inclement weather" means an act of God that
21 creates a weather condition that prevents the
22 placement of temporary markings as required by G.S.
23 87-102.
- 24 (5) "Location of underground utilities" means a strip
25 of land not wider than the width of the underground
26 utility plus ~~two and one-half (2 1/2) feet~~ 24
27 inches on either side of the outside edge of the
28 underground utility.
- 29 (5a) "Member" means a utility owner who is a member of
30 the notification center established in G.S. 87-
31 101.1.
- 32 (5b) "Notification center" means the notification center
33 established in G.S. 87-101.1.
- 34 (6) "Person" means a corporation, individual,
35 copartnership, company, association, or any
36 combination of individuals or organizations doing
37 business as a unit, any subdivision or
38 instrumentality of the State, and includes any
39 officer, agent, trustee, receiver, assignee,
40 lessee, or personal representative of any of the
41 above entities.
- 42 (7) "Person financially responsible" means that person
43 who ultimately receives the benefits of any
44 completed excavation activities, including a person

- 1 owning or leasing real property or holding an
2 easement or interest in an easement.
- 3 (8) "Public spaces" means any area owned by the State
4 or any of its political subdivisions or dedicated
5 for public use.
- 6 (9) "Road construction" means the actual building of a
7 new highway; or the paving, grading, widening,
8 relocation, reconstruction, or other major
9 improvement of a substantial portion of an existing
10 highway.
- 11 (10) "Road maintenance" means preservation, including
12 repairs and resurfacing of a highway, not amounting
13 to road construction.
- 14 (11) "Street" has the meaning set out in G.S. 20-4.01 as
15 the same shall be amended from time to time.
- 16 (12) "Underground utility" means any underground line,
17 system or facility used for producing, storing,
18 conveying, transmitting, or distributing
19 communication or telecommunication, electricity,
20 gas, petroleum and petroleum products, coal slurry,
21 hazardous liquids, water under pressure, steam, or
22 sanitary sewage, but not including traffic signal
23 control cables and vehicle detection cables of the
24 North Carolina Department of Transportation.
- 25 (13) "Utility owner" means any person who owns or
26 operates an underground utility.
- 27 (14) "Work day" means every day except Saturday, Sunday,
28 national legal holidays and State legal holidays.

29 "§ 87-101.1. Establishment of notification center."

30 (a) Utility owners shall establish a single notification
31 center to provide for the receipt of notification of excavation
32 operations throughout the State and to maintain a database,
33 provided by its members, that includes the geographic areas in
34 which its members desire transmissions of notices of proposed
35 excavations, and which has the capability to transmit notices of
36 proposed excavations to its members by teletype, telecopy,
37 electronic mail, facsimile, or telephone.

38 (b) The notification center shall be operated as a nonprofit
39 corporation, and except as provided in G.S. 87-107(a), each
40 utility owner shall be a member of that corporation by using and
41 participating in the notification system. The membership of the
42 corporation shall elect a board of directors, through which the
43 notification center shall perform its duties.

1 (c) In order to fund the operation of the notification system,
2 the notification center, through its board of directors, may
3 assess each member an amount reflecting the cost of that member's
4 participation in the system.

5 (d) The board of directors of the notification center shall
6 provide the Governor, the President Pro Tempore of the Senate,
7 and the Speaker of the House of Representatives with an annual
8 progress report on the operation of the notification system
9 provided for in this Article by March 1 of each year.

10 "§ 87-102. Notice required prior to excavation.

11 (a) Except as provided in G.S. 87-106, before commencing any
12 excavations in highways, public spaces or in private easements of
13 a utility owner, a person planning to excavate shall notify each
14 utility owner having underground utilities located in the
15 proposed area to be excavated, the notification center or a unit
16 of local government that has elected not to be a member pursuant
17 to the provisions of G.S. 87-107(a) either orally or in writing,
18 not less than two nor more than 10 working days prior to
19 starting, of his intent to excavate.

20 (b) The written or oral notice required in subsection (a) shall
21 contain:

- 22 (1) The name, address, and telephone number of the
23 person filing the notice;
24 (2) The name, address, and telephone number of the
25 person doing the excavating;
26 (3) The anticipated starting date of the excavation;
27 (4) The anticipated duration of the excavation;
28 (5) The type of excavation to be conducted;
29 (6) The location of the proposed excavation; and
30 (7) Whether or not explosives will be used; and
31 (8) Whether or not boring, drilling, tunneling,
32 ramming, or punching will take place.

33 (c) If the notice required by this section is made by
34 telephone, an adequate record shall be made of the notification
35 by the utility owners or the utility association and the person
36 making the notification, by the notification center or the unit
37 of local government to document compliance with this section.

38 (d) A notice shall be valid for 10 working days from the time
39 of notification. Two working days before the end of the 10
40 working days, or at any time when the underground utility
41 location markings on the ground become illegible or are
42 destroyed, the excavator shall request a remarking of the
43 underground utility locations. The utility owner shall remark
44 the locations as soon as possible after such a request, but in

1 any event the remarking shall be completed within 48 hours after
2 the request to remark is received, barring inclement weather.

3 **"§ 87-103. Effect of permit on liability.**

4 A permit authorizing excavation operations and issued pursuant
5 to law or ordinance shall not relieve a person of the
6 responsibility of complying with this Article.

7 **"§ 87-104. Requirements of person doing excavation.**

8 (a) Except as provided in G.S. 87-106, no person may excavate
9 in a highway, a public space, or a private easement of a utility
10 owner without first having given the notice required in ~~G.S.~~
11 ~~87-102 to the utility owners.~~ G.S. 87-102.

12 (b) In addition to the notification requirements, each person
13 excavating shall:

14 (1) Plan the excavation to avoid damage and to minimize
15 interference with underground utilities in and near
16 the construction area, to the best of his
17 ~~abilities;~~ abilities.

18 (2) Maintain a clearance between an underground utility
19 and the cutting edge or point of any mechanized
20 equipment, taking into account the known limit of
21 control of that cutting edge or point, as is
22 reasonably required to avoid ~~damage; and~~ damage.

23 (2a) Take reasonable steps to protect any underground
24 utility lines when excavating within 24 inches of
25 either side of the outside edges of the marked
26 location of a utility owner's underground
27 facilities, as defined in G.S. 87-101(5). This
28 protection shall include hand-digging, air-jetting,
29 or vacuum excavation, or other means of safe
30 excavation designed to avoid damage to the facility
31 marked until that facility is exposed or is
32 determined to be below the proposed excavation. If
33 a proposed excavation lies adjacent or parallel to
34 an existing facility and within or partially within
35 the 24-inch area, the existing facility shall be
36 exposed prior to beginning the excavation. Once
37 the facility is exposed and the location markings
38 are found to be correct, the excavation may proceed
39 with mechanized equipment.

40 (3) Provide support for the underground utilities in or
41 near the construction area, including backfill, as
42 may be reasonably required by the utility owner for
43 the protection of the underground utilities.

1 ~~"§ 87-105. Requirements of the person financially responsible for~~
2 ~~the excavation.~~

3 ~~The person financially responsible shall provide to the person~~
4 ~~responsible for doing the excavating, the names of all~~
5 ~~underground utility owners in the area of the proposed~~
6 ~~excavation. The names of the utility owners may be obtained from~~
7 ~~the County Register of Deeds or the Building Inspection~~
8 ~~Department of the political subdivision in which the excavating~~
9 ~~is taken place, if there is one.~~

10 "§ 87-105.1. Requirements of notification center.

11 (a) The notification center or a unit of local government that
12 has elected not to be a member pursuant to the provisions of G.S.
13 87-107(a) shall, upon receiving notice of the intent to excavate,
14 notify all utility owners whose underground lines are located in
15 the area of the proposed excavation. The notification center or
16 the unit of local government shall also indicate the names of
17 those utilities being notified to the person intending to
18 excavate.

19 (b) If the notification required by this act is made by
20 telephone, a voice recording of the notification shall be
21 maintained by the notification center to document compliance with
22 the notification requirement and those records shall be
23 maintained for at least 48 months.

24 (c) The notification center shall provide statewide operations
25 coverage and a single, nationally accessible toll-free telephone
26 number to receive and record the information provided by
27 excavators and to respond to information requests from
28 excavators. A unit of local government that has elected not to
29 be a member pursuant to the provisions of G.S. 87-107(a) shall
30 provide operations coverage and a single, nationally accessible
31 toll-free telephone number to receive and record the information
32 provided by excavators and to respond to information requests
33 from excavators.

34 "§ 87-106. ~~Exceptions.~~ Exemptions.

35 The following excavations are exempted from the notification
36 requirements of this Article:

- 37 (1) Tilling of soil for agricultural purposes;
38 (2) Excavation by a utility owner, by the State or its
39 subdivisions or agencies, or by anyone contracting
40 with any of these entities to perform the
41 excavation, owner or road maintenance activities by
42 the Department of Transportation described in G.S.
43 87-101(3) on or within an easement, right-of-way,

- 1 or property owned or controlled by any of these
2 entities, where:
- 3 ~~a. Only the facilities of the utility owner doing~~
4 ~~the excavating are permitted; or~~
- 5 ~~b. All persons having an interest in the~~
6 ~~excavation and the underground utilities that~~
7 ~~may be damaged during the excavation have~~
8 ~~agreed in writing to provide the equivalent of~~
9 ~~the notification required by this Article~~
10 ~~among themselves; or~~
- 11 where only the facilities of the utility owner
12 doing the excavating are permitted;
- 13 (3) The replacement of a pole as long as the
14 replacement pole is within three feet of the
15 original pole and within the line of existing
16 poles. This exception shall not apply to poles at
17 highway intersections or at the crossings of
18 highways and permanently marked transmission
19 underground utilities. utilities; and
- 20 (4) In the case of an emergency ~~emergency~~, involving
21 ~~danger to life, health, or property requiring~~
22 ~~immediate correction, or in order to continue the~~
23 ~~operation of a major industrial plant, or in order~~
24 ~~to assure the continuity of utility services,~~
25 excavations immediately required to repair or
26 maintain the needed service may be made, without
27 using explosives, if notice is given to the utility
28 ~~owner or association~~ notification center as soon as
29 is reasonably possible; except that the prohibition
30 against the use of explosives shall not apply to
31 the North Carolina Department of Transportation.
32 Performance of emergency excavation shall not
33 relieve the ~~excavator~~ of person financially
34 responsible from liability for damages.
- 35 "§ 87-107. Duties of the utility owners.
- 36 (a) Every utility owner having underground utility lines,
37 including units of local government, shall be a member of the
38 notification center. A unit of local government may elect not to
39 be a member of the notification center if it agrees to receive
40 notice of the intent to excavate and agrees to notify utility
41 owners within its jurisdiction.
- 42 (b) Each utility owner, or his designated ~~representative~~
43 ~~including an association,~~ representative, notified of an intent
44 to excavate shall, before the proposed start of excavating

1 (unless another period is agreed to by the person conducting the
2 excavation and the utility owner or their representatives),
3 provide the following information to the person excavating to the
4 extent such information is reflected by records in the possession
5 of and reasonably available to the utility owner:

- 6 (1) The location ~~and description~~ of all of the
7 underground utilities which may be damaged as a
8 result of the excavation; and
9 ~~(2) The location and description of all utility markers~~
10 ~~indicating the location of the underground~~
11 ~~utilities; and~~
12 (3) Any other information that would assist in locating
13 and avoiding damage to the underground utilities,
14 including providing temporary markings when
15 necessary indicating the location of the
16 underground utility in locations where permanent
17 utility markers do not exist.

18 "§ 87-108. Absence of utility location.

19 Should any utility owner who has been given notice pursuant to
20 G.S. 87-102 fail to respond to that notice as provided in G.S.
21 87-107, or fail to properly locate the underground utility, then
22 the person excavating is free to proceed with the excavation.
23 Neither the excavator nor the person financially responsible for
24 the excavation will be liable to the nonresponding or improperly
25 responding utility owner for damages to that utility owner's
26 facilities if the person doing the excavating shall exercise due
27 care to protect existing underground utilities when there is
28 evidence of the existence of those underground utilities near the
29 proposed excavation site.

30 "§ 87-109. Recording requirements for ~~associations~~, the
31 notification center.

32 ~~An association~~ The notification center shall record with the
33 Register of Deeds of each county in which participating utility
34 owners own or operate underground utilities, a notarized document
35 providing the telephone number and address of the ~~association~~,
36 notification center, a description of the geographical area
37 served by the ~~association~~, notification center, and a list of the
38 names and addresses of the utility owners receiving these
39 services from the ~~association~~, notification center.

40 "§ 87-110. Recording requirements for utility owners.

41 (a) Each utility owner having underground utilities in North
42 Carolina shall record a notarized document containing the name of
43 the utility owner and the title, address, and telephone number of
44 its representatives designated to receive the written or oral

1 notice of intent to excavate, with the Register of Deeds of each
2 county in which the utility owner owns or operates underground
3 facilities. This document shall be executed by an officer of the
4 utility owner or in the case of a governmental entity, the
5 authorized official.

6 (b) Any change or modification of the information recorded by a
7 utility owner, pursuant to subsection (a) of this section, shall
8 be made by recording the corrected information with the Register
9 of Deeds of each county to which the change or modification
10 applies, in the manner required by subsection (a) of this section
11 within five days of the change made to the utilities.

12 (c) For purposes of the recordings required by subsections (a)
13 and (b) of this section, recordings by ~~an association~~ the
14 notification center pursuant to G.S. 87-109 shall satisfy the
15 recording requirements for each utility owner who is a member of
16 the ~~association~~ notification center while that utility owner
17 remains a member of the ~~association~~ notification center.

18 (d) Upon receipt of the documents recorded pursuant to
19 subsections (a), (b), or (c) of this section, the Register of
20 Deeds shall place the documents in the Grantor's Index under the
21 heading "Underground Utilities". The registration fee imposed by
22 Chapter 161 of the General Statutes shall apply to these
23 documents.

24 ~~"§ 87-111. Recorded information filed with inspection~~
25 ~~departments.~~

26 ~~A copy of any document or modification or change in the~~
27 ~~information in that document recorded pursuant to G.S. 87-109 or~~
28 ~~G.S. 87-110 shall be filed with any county or municipal~~
29 ~~inspection department having jurisdiction over any area where the~~
30 ~~underground utilities are located. Such inspection departments~~
31 ~~shall maintain these filings in alphabetical order in an~~
32 ~~accessible form.~~

33 ~~"§ 87-112. Color-coding.~~

34 When the location of an underground utility is marked with
35 ~~stakes~~ stakes, flags, or paint, or by other physical means,
36 pursuant to this Article, the utility owner shall use temporary
37 colored ~~markers~~ markings following the American Public Works
38 Association Uniform Color Code for Utilities.

39 ~~"§ 87-113. Notification required when damage done.~~

40 (a) The person doing an excavation that results in any known
41 damage to an underground utility shall, immediately after the
42 discovery of the damage, notify the utility owner of the location
43 and nature of the damage and shall allow the utility owner
44 reasonable time to repair the damage before completing the

1 excavation in the immediate area of the damaged underground
2 utility.

3 (b) The person responsible for conducting any excavation that
4 results in damage to an underground utility where the damage may
5 endanger life, health, or property shall, immediately after the
6 discovery of the damage, take action to protect the public and
7 property, notify the utility owner, notify the police or fire
8 departments, and take any other actions to minimize the hazards
9 until the arrival of the utility owner's personnel, the police,
10 or the fire department. The excavator shall delay any backfilling
11 in the immediate area of the damaged underground utility until
12 authorized by the utility owner unless it is necessary to prevent
13 injury or property damage to others. Repair of any damage shall
14 be performed by the utility owner or by qualified personnel
15 authorized by the utility owner.

16 **"§ 87-114. Homeowners.**

17 This Article does not require utility notification before a
18 property owner digs in any area on his own property with
19 nonmechanized equipment nor prior to tilling the soil for
20 agricultural, gardening or landscaping purposes. Mechanized
21 equipment may be used, without utility notification, in any area
22 on the owner's property with the exception of recorded
23 underground utility easements which describes the location of the
24 easement with specificity.

25 **"§ 87-115. Requests for survey locates and design locates.**

26 The information required for requests for facility locates in
27 conjunction with survey or design activities shall be the same as
28 specified in G.S. 87-102. The utility owners receiving requests
29 for survey locate or design locate work shall respond to the
30 request within 10 working days.

31 **"§ 87-116. Civil penalties.**

32 (a) A person who violates the provisions of G.S. 87-102(a),
33 87-104(b), or 87-107(a) is subject to a civil penalty as follows:

34 (1) Upon the first violation by that person, two
35 hundred fifty dollars (\$250.00);

36 (2) Upon the second violation occurring within the same
37 12-month period as the first violation, five
38 hundred dollars (\$500.00); and

39 (3) Upon the third violation occurring within the same
40 12-month period as the first violation, one
41 thousand dollars (\$1,000).

42 (b) An action under this section may be initiated by any
43 person making a complaint in writing, verifying by oath and
44 having reason to believe that a violation has occurred.

1 (c) Prosecution of violations shall be brought by the district
2 attorney for the prosecutorial district in which the violation
3 arose or in the county in which the defendant resides or in which
4 the defendant's principal place of business is located.

5 (d) All civil penalties recovered under this section shall be
6 remitted to the Civil Penalty and Forfeiture Fund in accordance
7 with G.S. 115C-457.2.

8 (e) The civil penalties provided for in this section do not
9 apply to the State of North Carolina or to units of local
10 government.

11 "§ 87-117. High-speed locate.

12 If the utilities in conflict with a proposed excavation have
13 been located in accordance with G.S. 87-102 and a change in plans
14 is necessitated by unforeseen conditions, a request for a "high-
15 speed locate" to be made within four hours can be made for the
16 alternate contiguous location. The high-speed locate shall be
17 paid for by the person making the request at a price established
18 by the notification center. Persons desiring to obtain high-
19 speed locates shall register with the notification center in
20 January of each year."

21 Section 2. This act becomes effective July 1, 2000.

HOUSE COMMITTEE ON PUBLIC UTILITIES

Comments by Representative Bill Culpepper

H1032-PC SRL-003 – House Committee Substitute for HB 1032

April 27, 1999

H1032 amends “Underground Damage Prevention Act.” The Bill establishes a single notification center to provide for receipt of notification of excavation operations throughout the State. All utility owners are required to be members except that local governments can elect not to be members under certain conditions. A single notification center is already established as The North Carolina One-Call Center which operates out of Greensboro. Most utilities and all major utilities are already members.

One change is in the definition of “location of underground utilities” which means a strip of land not wider than the width of the underground utility plus 24 inches on either side. Existing law is 30 inches and the original Bill reduced such to 18 inches. Twenty-four inches is my decision based one group wanting to retain 30 inches and the other, including the One-Call Center, wanting 18 inches.

The original Bill mandated local government membership and the committee substitute allows an “opt out” under certain conditions. Many cities are already members.

VISITOR REGISTRATION SHEET

Public utilities

Name of Committee

4-27-99

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

April 28, 1998
Members Conference Room
12:00 PM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

H 1349 – Confirm Samuel James Ervin, IV to the NC Utilities
Commission

ADJOURNMENT

Minutes
House Committee on Public Utilities
April 28, 1999

The House Committee on Public Utilities met Wednesday, April 28, 1999 in the Members Conference Room at 12:00 p.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; and Representatives Braswell, Earle, Hardaway, Hurley, Miller, Mitchell, and Rogers. The following ex-officio members were present: Representatives Baddour, Cunningham, Dedmon and Hackney. Committee Counsel Steve Rose was also present.

The Chair called the meeting to order and recognized Representative George Miller who presented HJR 1349 – A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION. A committee handout concerning Mr. Ervin is attached (Attachment I) and made a part of the minutes.

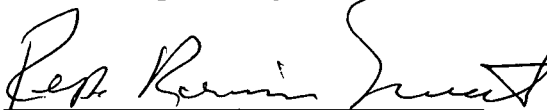
Representative Miller spoke briefly and then introduced Mr. Ervin who commented on the role of the Utilities Commission. He said that he understands the Legislature created the Commission and that it operates within policy set by the Legislature. He is familiar with the policy and is prepared to carry out that policy. The regulation of utility rates is a balancing act in the best interest of all parties. He is prepared to fairly represent all parties.


Representative Hurley asked about the deregulation of utilities in North Carolina. Mr. Ervin responded that deregulation is probably the most important issue before the Commission during the time that he would serve. He believes that it must be carried out in such a way that everybody benefits from it.

Representative Zeno Edwards moved for a favorable report and the motion carried.

The meeting was adjourned at 12:07 p.m.

Respectfully submitted,


Representative Ronnie Smith
Chair


Jane B. Bass
Committee Assistant



North Carolina General Assembly
House of Representatives
State Legislative Building
Raleigh 27601-1096

REPRESENTATIVE RONALD L. SMITH
4TH DISTRICT



**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 1349 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE GOVERNOR TO
MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

1349

APR 26 99

H

HOUSE PRINCIPAL CLERK

D

HOUSE JOINT RESOLUTION DRHJR2310*-LG342(4.7)

Sponsors: Representatives Miller, Church, and Smith (Primary Sponsors).

Referred to:

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
2 APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE
3 GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES
4 COMMISSION.

5 Whereas, under the provisions of G.S. 62-10, appointments made by the
6 Governor to membership on the North Carolina Utilities Commission are subject to
7 confirmation by the General Assembly by joint resolution; and

8 Whereas, the Governor has submitted to the presiding officers of the
9 House of Representatives and the Senate, the name of his appointee to serve a full
10 term on the North Carolina Utilities Commission; Now, therefore,

11 Be it resolved by the Senate, the House of Representatives concurring:

12 Section 1. The appointment of Samuel James Ervin, IV to the North
13 Carolina Utilities Commission for a term beginning on July 1, 1999, and expiring on
14 July 1, 2007, is confirmed.

15 Section 2. This resolution is effective upon ratification.

Samuel James Ervin, IV

Employment

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Post Office Drawer 1269
Morganton, North Carolina 28680-1269
828/437-4220
Fax: 828/438-4517

Residence

517 Lenoir Street
Morganton, North Carolina 28655
828/433-0163

Education

J.D., cum laude, 1981. Harvard Law School, Harvard University, Cambridge, Massachusetts.

A.B., History, magna cum laude, 1978. Davidson College, Davidson, North Carolina.

Graduate, 1974. Freedom High School, Morganton, North Carolina.

Educational Honors

Phi Beta Kappa
Phi Eta Sigma
National Merit Scholar
Joseph Moore McConnell Scholar - 1974-1977
Lunsford Richardson Scholar - 1977-1978
North Carolina Fellow

Employment History

Licensed to practice law in 1981. Admitted to practice before the North Carolina state courts, the United States District Courts for the Eastern, Middle, and Western Districts of North Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

Practice currently involves civil and criminal litigation in the state and federal courts, as well as a considerable amount of utility regulation work before the North Carolina Utilities Commission and frequent appearances before state appellate courts.

Employment History (continued)

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Morganton, North Carolina

Stockholder:	1985 – Present
Associate:	1981 – 1985

Professional Memberships

Burke County Bar Association	American Trial Lawyers Association
North Carolina State Bar	American Bar Association
North Carolina Bar Association	North Carolina Academy of Trial Lawyers

Boards of Directors

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Center for Death Penalty Litigation
Lawyers Mutual Liability Insurance Company of North Carolina, Inc.

Professional Activities

Member, North Carolina Bar Association Administration of Justice Task Force – 1996-Present

Member, North Carolina Bar Association Task Force on the Quality and Value of Legal Services – 1992-1993

Member, Long-Range Solutions Subcommittee of the All-Bar Death Penalty Representation Committee – 1993

Member, Advisory Board, North Carolina Death Penalty Resource Center – 1991- 1995

Publications

"False Arrest, Abuse of Process, Malicious Prosecution, and Assault"

Presented at the 1989 Intentional Torts Seminar sponsored by the Civil Litigation Section of the North Carolina Bar Association.

"Proof of Damages – The Plaintiff's Case"

Presented at the 1989 Personal Injury Damages Seminar sponsored by Wake Forest University School of Law.

"Dealing with Damages – The Plaintiff's Case" Co-authored with Robert B. Byrd.

Presented by Robert B. Byrd at the 1986 Personal Injury Damages Seminar sponsored by Wake Forest University School of Law.

Personal Information

Born in Morganton, North Carolina, on November 18, 1955

Parents: Honorable Sam J. Ervin, III, and Elisabeth C. Ervin

Married Mary Temple Ervin on March 15, 1986

Stepchildren: Davin Patrick Coutu, born on November 2, 1978
 Kelly Stephen Coutu, born on August 19, 1981

Children: Samuel James Ervin, V, born on November 28, 1987
 Michael Worth Ervin, born on April 19, 1991

Religious and Civic Activities

Member, First Presbyterian Church, Morganton, North Carolina
Active Deacon, 1982-1984; 1987-1989
Active Elder, 1989-1992, 1998-

Director, Burke County United Way, 1985-1990

Director, Presbyterian Learning Center – 1993-1996



RECEIVED

APR 21 1999

RESEARCH DIVISION

NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET

RALEIGH 27603-8003

(919) 733-5103

GEORGE F. BASON
CHAIRMAN

June 16, 1998

The Honorable James B. Hunt, Jr.
Governor of North Carolina
Raleigh, North Carolina

Regarding: Evaluation of Statement of Economic Interest filed by
Samuel James Ervin, IV, NC Utilities Commission

Dear Governor Hunt:

In accordance with Section 4 of Executive Order Number 127, we have completed our evaluation of Mr. Ervin's statement of economic interest.

We did not find an actual conflict of interest or the potential for conflict of interest. This evaluation is given providing he follows his explanation of how he proposes to resolve conflicts of interest as stated in his statement of economic interest.

Mr. Ervin indicated that he will sell all stock he owns in companies regulated by the Utilities Commission or which appear before the Utilities Commission prior to taking office. He will leave his law firm and resign from all boards of directors on which he is now serving (except the elder position with his church) upon confirmation by the General Assembly. He will comply with all provisions of the Code of Judicial Conduct, including those portions dealing with the hearing of cases involving former clients, while in office.

Upon appointment we will send a copy of this evaluation letter to the Chairman of the Commission for information purposes.

Sincerely,

George F. Bason

George F. Bason
Chairman

cc: Mr. Ervin
Chairman of the Commission

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 5, 1999
Members Conference Room
Immediately After Session

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

SJR 975 – Confirm Ervin

ADJOURNMENT

Minutes
House Committee on Public Utilities
May 5, 1999

The House Committee on Public Utilities met Wednesday, May 5, 1999 in the Members Conference Room at 3:10 p.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; and Representatives George Miller and Gene Rogers. Committee Counsel Steve Rose was present.

The Chair called the meeting to order and recognized Representative George Miller who presented SJR 975 – A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION. A committee handout concerning SJR 975 is attached (Attachment I) and made a part of the minutes.

Representative Zeno Edwards moved for a favorable report and the motion carried.

The meeting was adjourned at 3:15 p.m.

Respectfully submitted,



Representative Ronnie Smith
Chair



Jane B. Bass
Committee Assistant

5/5/99

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

S.J.R. 975 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE JOINT RESOLUTION 975

Sponsors: Senator Soles.

Referred to: Commerce.

April 15, 1999

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE
2 APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE
3 GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES
4 COMMISSION.

5 Whereas, under the provisions of G.S. 62-10, appointments made by the
6 Governor to membership on the North Carolina Utilities Commission are subject to
7 confirmation by the General Assembly by joint resolution; and

8 Whereas, the Governor has submitted to the presiding officers of the
9 House of Representatives and the Senate, the name of his appointee to serve a full
10 term on the North Carolina Utilities Commission; Now, therefore,
11 Be it resolved by the Senate, the House of Representatives concurring:

12 Section 1. The appointment of Samuel James Ervin, IV to the North
13 Carolina Utilities Commission for a term beginning on July 1, 1999, and expiring on
14 July 1, 2007, is confirmed.

15 Section 2. This resolution is effective upon ratification.



BILL ANALYSIS

SJR 975: Confirmation of Appointment of Samuel James Ervin, IV to Utilities Commission

Committee: House Public Utilities Committee**Date:** May 5, 1999**Version:****Introduced by:** Senator Soles**Summary by:** Steven Rose

Committee Counsel

Mr. Ervin has been appointed by the Governor to an eight year term on the Utilities Commission. SJR 975 confirms that appointment as required by G.S. 62-10. The term begins July 1, 1999 and expires July 1, 2007. The resolution is effective upon ratification. SJR 975 is similar to HJR 1349, which received a favorable report in this Committee and passed the House on April 28, 1999.

The North Carolina Utilities Commission consists of seven commissioners who are appointed for eight year terms. Commissioners are appointed by the Governor and must be confirmed by the General Assembly by Joint Resolution.

A Utilities Commissioner is presently paid a salary of \$97,389. This is about the same as a Superior Court Judge. There are fixed salary increases based upon length of service on the Utilities Commission, 4.8% after five years of service and 9.6% after ten years. Members of the Utilities Commission are subject to the same standards of conduct as a judge. They may be removed during their term of office only for cause, by impeachment.

During service on the Commission, a Commissioner may not engage in any other employment, business, profession or vocation. During the term of office the Commissioner may not be associated in any way with any public utility company, including ownership of any interest.

The General Assembly created the Utilities Commission and establishes policies which the Commission carries out, usually with broad discretion. The Commission is both a regulator of public utilities, as well

as a judge in all contested matters relating to public utilities. Decisions of the Utilities Commission are appealable directly to the North Carolina Court of Appeals, with the exception of general rate cases, which are appealable directly to the North Carolina Supreme Court.

The North Carolina Utilities Commission regulates the rates and services of the intrastate operations of public utilities supplying electricity, gas, certain telecommunications services, water and sewer services, taxis, and certain aspects of bus, train, trucking, express package and mail services. The extent of this regulation varies from utility to utility, and there are limitations imposed by federal law. The Commission hears and decides proceedings relating to the issuance of utility franchises, the construction of electric generating plants, the setting of utility rates, the adjustment of electric utility rates based upon fuel cost changes, the adjustment of natural gas rates based upon changes in the cost of natural gas, use of natural gas expansion funds, the provision of new utility services, and the adjudication of complaints concerning the services of public utilities. Again, the extent of the Commission's jurisdiction varies from utility to utility and is affected in some cases by federal law.

SJR975-SMRL-002

August 28, 1997, substituted "15" for "10" throughout subdivision (23)a.2.; and deleted language beginning "or nonprofit water membership" and ending "governing board of the corporation" following "telephone membership corporation" in subdivision (23)d.

Session Laws 1998-128, ss. 1-3, effective September 4, 1998, inserted "other

than a carrier by rail" following "person" in subdivisions (6) and (22); deleted "train" preceding "bus" in subdivision (6); deleted "or railways" following "bus" in subdivision (23)a.3.; in subdivision (23)a.4. deleted "railways or" preceding "motor vehicles" and substituted "carriers by rail" for "except"; and made punctuation changes.

CASE NOTES

In determining the scope of the Commission's authority, the emphasis should be placed on the public utility function rather than a literal reading of the statutory definition of "public utility," and the statutory definition should not be read so narrowly as to preclude commission's jurisdiction over a function which is required to provide adequate service to the subscribers. *State ex rel. Utils. Comm'n v. Southern Bell Tel. & Tel. Co.*, 326 N.C. 522, 391 S.E.2d 487 (1990).

Sewage Treatment System is Public Utility. — The operation of a sewage treatment system for compensation is a public utility within the meaning of the Public Utilities Act. *Ocean Glen Townhouse Condominium Owners Ass'n Phase I v. State ex rel. N.C. Utils. Comm'n*, 126 N.C. App. 495, 486 S.E.2d 223 (1997).

Sand-pit Company Not a "Public

Utility." — Sand-pit company which did not own or operate any trucks to haul its sand was not a "public utility" as defined by this section. *Gordon v. Garner*, 127 N.C. App. 649, 493 S.E.2d 58 (1997).

As to what constitutes a contract carrier, etc. —

A company which offers white-water rafting excursions is not a common carrier, because any "transportation" was merely incidental to primary purpose of outdoor adventure, camaraderie, excitement and thrills. *Beavers v. Federal Ins. Co.*, 113 N.C. App. 254, 437 S.E.2d 881, cert. denied, 336 N.C. 602, 447 S.E.2d 384 (1994).

Cited in *In re Lower Cape Fear Water & Sewer Auth.*, 229 N.C. 675, 407 S.E.2d 155 (1991); *State ex rel. Utils. Comm'n v. Mountain Elec. Coop.*, 108 N.C. App. 283, 423 S.E.2d 516 (1992); *State ex rel. Utils. Comm'n v. Empire Power Co.*, 112 N.C. App. 265, 435 S.E.2d 553 (1993).

OPINIONS OF ATTORNEY GENERAL

The Department of Correction, as a State Agency, is not a public utility and is not subject to the fee requirements of § 62-302. See Opinion of Attor-

ney General to LaVee Hamer, General Counsel, North Carolina Department of Correction, — N.C.A.G. — (October 17, 1994).

ARTICLE 2.

Organization of Utilities Commission.

§ 62-10. Number; appointment; terms; qualifications; chairman; vacancies; compensation; other employment prohibited.

(a) The North Carolina Utilities Commission shall consist of seven commissioners who shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before May 1, of the year in which the terms for which the appointments are to be made are to expire. Upon failure of the Governor to submit names as herein

provided, the Lieutenant Governor and Speaker of the House jointly shall submit the names of a like number of commissioners to the General Assembly on or before May 15 of the same year for confirmation by the General Assembly. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to adjournment of the then current session of the General Assembly. This subsection shall be subject to the provisions of subsection (c) of this section.

(b) The terms of the commissioners now serving shall expire at the conclusion of the term for which they were appointed which shall remain as before with two regular eight-year terms expiring on July 1 of each fourth year after July 1, 1965, and the fifth term expiring on July 1 of each eighth year after July 1, 1963. The terms of office of utilities commissioners thereafter shall be eight years commencing on July 1 of the year in which the predecessor terms expired, and ending on July 1 of the eighth year thereafter.

(c) In order to increase the number of commissioners to seven, the names of two additional commissioners shall be submitted to the General Assembly on or before May 27, 1975, for confirmation by the General Assembly as provided in G.S. 62-10(a). The commissioners so appointed and confirmed shall serve new terms commencing on July 1, 1975, one of which shall be for a period of two years (with the immediate successor serving for a period of six years), and one of which shall be for a period of two years.

Thereafter, the terms of office of the additional commissioners shall be for eight years as provided in G.S. 62-10(b).

(d) A commissioner in office shall continue to serve until his successor is duly confirmed and qualified but such holdover shall not affect the expiration date of such succeeding term.

(e) On July 1, 1965, and every four years thereafter, one of the commissioners shall be designated by the Governor to serve as chairman of the Commission for the succeeding four years and until his successor is duly confirmed and qualifies. Upon death or resignation of the commissioner appointed as chairman, the Governor shall designate the chairman from the remaining commissioners and appoint a successor as hereinafter provided to fill the vacancy on the Commission.

(f) In case of death, incapacity, resignation or vacancy for any other reason in the office of any commissioner prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Upon failure of the Governor to submit the name of the successor, the Lieutenant Governor and Speaker of the House jointly shall submit the name of a successor to the General Assembly within six weeks after the vacancy arises. Regardless of the way in which names of commissioners are submitted, confirmation of commissioners must be accomplished prior to the adjournment of the then current session of the General Assembly.

(g) If a vacancy arises or exists pursuant to either subsection (a) or (c) or (f) of this section when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly.

(h) The salary of each commissioner and that of the commissioner designated as chairman shall be set by the General Assembly in the

d Speaker of the House jointly nber of commissioners to the of the same year for regardless of the way in submitted, confirmation of prior to adjournment of the assembly. This subsection shall ion (c) of this section.

s now serving shall expire at ey were appointed which shall it-year terms expiring on July 5, and the fifth term expiring ly 1, 1963. The terms of office hall be eight years commenc-redecessor terms expired, and hereafter.

of commissioners to seven, the rs shall be submitted to the , 1975, for confirmation by the 62-10(a). The commissioners ve new terms commencing on a period of two years (with the riod of six years), and one of rs.

he additional commissioners G.S. 62-10(b).

continue to serve until his ed but such holdover shall not eeding term.

r years thereafter, one of the y Governor to serve as iding four years and until uaries. Upon death or resig-l as chairman, the Governor he remaining commissioners r provided to fill the vacancy

signation or vacancy for any ssioner prior to the expiration ccessor shall be submitted by r the vacancy arises to the the General Assembly. Upon e name of the successor, the he House jointly shall submit il Assembly within six weeks f the way in which names of ation of commissioners must nment of the then current

suant to either subsection (a) General Assembly is not in d urgent by the Governor, the l serve on an interim basis Assembly. and that of the commissioner the General Assembly in the

Current Operations Appropriations Act. In lieu of merit and other increment raises paid to regular State employees, each commis-sioner, including the commissioner designated as chairman, shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, and nine and six-tenths percent (9.6%) after 10 years of service. "Service" means service as a member of the Utilities Commission.

(i) The standards of judicial conduct provided for judges in Article 30 Chapter 7A of the General Statutes shall apply to members of the Commission. Members of the Commission shall be liable to impeach-ment for the causes and in the manner provided for judges of the General Court of Justice in Chapter 123 of the General Statutes. Members of the Commission shall not engage in any other employ-ment, business, profession, or vocation while in office.

(j) Members of the Commission shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a). (1941, c. 97, s. 2; 1949, c. 1009, s. 1; 1959, c. 1319; 1963, c. 1165, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 867, ss. 1, 2; 1977, c. 468, s. 1; c. 913, s. 2; 1983 (Reg. Sess., 1984), c. 1116, s. 91; 1989, c. 781, s. 41.2; 1993 (Reg. Sess., 1994), c. 769, s. 7.4(b); 1996, 2nd Ex. Sess., c. 18, s. 28.2(b); 1997-443, s. 33.5.)

Editor's Note. — Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 2 provides: "This act shall be known as 'The Current Operations and Capital Improvements Appropriations Act of 1994.'"

Session Laws 1993 (Reg. Sess., 1994), c. 769, s. 43.5 is a severability clause.

Session Laws 1995, c. 358, s. 2, as amended by Session Laws 1995, c. 437, s. 1, and by Session Laws 1995, c. 467, s. 1, provides that the salaries established by Session Laws 1993, c. 769, s. 7.4, shall remain until July 28, 1995, at the level set by or under that section as of June 30, 1995; and that no State employee or officer may prior to July 28, 1995, receive a merit increase or annual increment.

Session Laws 1996, Second Extra Ses-sion, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Ses-sion, c. 18, s. 29.5, is a severability clause.

Session Laws 1997-443, s. 1.1, pro-vides: "This act shall be known as 'The Current Operations and Capital Im-provements Appropriations Act of 1997'."

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective July 1, 1997, re-wrote the first sentence of subsection (h).

§ 62-15. Office of executive director; public staff, structure and function.

(a) There is established in the Commission the office of executive director, whose salary shall be the same as that fixed for members of the Commission. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Utility

of the additional commissioners provided in G.S. 62-10(b).

shall continue to serve until his qualified but such holdover shall of such succeeding term.

for four years thereafter, one of the to be appointed by the Governor to serve as the succeeding four years and until and qualifies. Upon death or resignation of the chairman, the Governor from the remaining commissioners to be appointed to fill the vacancy

by resignation or vacancy for any commissioner prior to the expiration of his successor shall be submitted to the General Assembly. The chairman of the House jointly shall submit the name of the successor to the General Assembly within six months. Regardless of the way in which submitted, confirmation of commissioner to the adjournment of the then Assembly.

pursuant to either subsection (a) the General Assembly is not in session, the chairman shall be deemed urgent by the Governor, and shall serve on an interim basis until the next General Assembly.

The chairman shall be the same as that of the superior court except that the chairman shall receive one thousand dollars per annum. In lieu of merit and salary of regular State employees, each commissioner designated as chairman, shall receive an amount equal to four and eight-tenths percent of the salary payable monthly after five years of service (9.6%) after 10 years of service as a member of the Utilities Commission.

conduct provided for judges in Article 2 of the Statutes shall apply to members of the Commission. The chairman shall be liable to the Commission in the manner provided for judges in Chapter 123 of the General Statutes. The chairman shall not engage in any other occupation, or vocation while in office.

The chairman shall be reimbursed for travel expenses allowed to State officers and employees. (1, c. 97, s. 2; 1949, c. 1009, s. 1; 1967, c. 1238; 1975, c. 243, s. 3; c. 1983, s. 2; 1983 (Reg. Sess., 1984), c. 1.)

Effect of Amendments. — The 1989 amendment, effective August 12, 1989, substituted "by joint resolution" for "in joint session" in the first sentence of subsection (a).

State Government Reorganization. — The Utilities Commission was transferred

to the Department of Commerce (now the Department of Economic and Community Development) by Chapter 143A-174.

CASE NOTES

Applied in State ex rel. Utilities Commission v. Carolina Tel. & Tel. Co., 21 N.C. App. 251, 204 S.E.2d 181 (1974).

§ 62-11. Oath of office.

Each utilities commissioner before entering upon the duties of his office shall file with the Secretary of State his oath of office to support the Constitution and laws of the United States and the Constitution and laws of the State of North Carolina, and to well and truly perform the duties of his said office as utilities commissioner, and that he is not the agent or attorney of any public utility, or an employee thereof, and that he has no interest in any public utility. (1933, c. 134, s. 5; 1935, c. 280; 1939, c. 404; 1941, c. 97; 1963, c. 1165, s. 1.)

§ 62-12. Organization of Commission; adoption of rules and regulations therefor.

To facilitate the work of the Commission and for administrative purposes, the chairman of the Commission, with the consent and approval of the Commission, may organize the work of the Commission in several hearing divisions and operating departments. The chairman may designate a member of the Commission as the head of any division or divisions and assign to members of the Commission various duties in connection therewith. Subject to the provisions of the State Personnel Act (Article 2 of Chapter 143 of the General Statutes), the Commission shall prepare and adopt rules and regulations governing the personnel, departments or divisions and all internal affairs and business of the Commission. (1941, c. 97, s. 3; 1949, c. 1008, s. 2; 1957, c. 1062, s. 1; 1963, c. 1165, s. 1.)

Editor's Note. — Article 2, Chapter 143, referred to in this section, was repealed by Session Laws 1965, c. 640, s. 1.

For present provisions as to State Personnel System, see §§ 126-1 through 126-12.

§ 62-13. Chairman to direct Commission.

(a) The chairman shall be the chief executive and administrative officer of the Commission.

(b) The chairman shall determine whether matters pending before the Commission shall be considered or heard initially by the full Commission, a panel of three commissioners, a hearing commissioner, or a hearing examiner. Subject to the rules of the Commission, the chairman shall assign members of the Commission to proceedings and shall assign members to preside at proceedings before the full Commission or a panel of three commissioners.

Samuel James Ervin, IV

Employment

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Post Office Drawer 1269
Morganton, North Carolina 28680-1269
828/437-4220
Fax: 828/438-4517

Residence

517 Lenoir Street
Morganton, North Carolina 28655
828/433-0163

Education

J.D., cum laude, 1981. Harvard Law School, Harvard University, Cambridge, Massachusetts.

A.B., History, magna cum laude, 1978. Davidson College, Davidson, North Carolina.

Graduate, 1974. Freedom High School, Morganton, North Carolina.

Educational Honors

Phi Beta Kappa
Phi Eta Sigma
National Merit Scholar
Joseph Moore McConnell Scholar - 1974-1977
Lunsford Richardson Scholar - 1977-1978
North Carolina Fellow

Employment History

Licensed to practice law in 1981. Admitted to practice before the North Carolina state courts, the United States District Courts for the Eastern, Middle, and Western Districts of North Carolina, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

Practice currently involves civil and criminal litigation in the state and federal courts, as well as a considerable amount of utility regulation work before the North Carolina Utilities Commission and frequent appearances before state appellate courts.

Employment History (continued)

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Morganton, North Carolina

Stockholder:	1985 - Present
Associate:	1981 - 1985

Professional Memberships

Burke County Bar Association
North Carolina State Bar
North Carolina Bar Association

American Trial Lawyers Association
American Bar Association
North Carolina Academy of Trial Lawyers

Boards of Directors

Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Center for Death Penalty Litigation
Lawyers Mutual Liability Insurance Company of North Carolina, Inc.

Professional Activities

Member, North Carolina Bar Association Administration of Justice Task Force - 1996-Present

Member, North Carolina Bar Association Task Force on the Quality and Value of Legal Services - 1992-1993

Member, Long-Range Solutions Subcommittee of the All-Bar Death Penalty Representation Committee - 1993

Member, Advisory Board, North Carolina Death Penalty Resource Center - 1991- 1995

Publications

"False Arrest, Abuse of Process, Malicious Prosecution, and Assault"

Presented at the 1989 Intentional Torts Seminar sponsored by the Civil Litigation Section of the North Carolina Bar Association.

"Proof of Damages – The Plaintiff's Case"

Presented at the 1989 Personal Injury Damages Seminar sponsored by Wake Forest University School of Law.

"Dealing with Damages – The Plaintiff's Case" Co-authored with Robert B. Byrd.

Presented by Robert B. Byrd at the 1986 Personal Injury Damages Seminar sponsored by Wake Forest University School of Law.

Personal Information

Born in Morganton, North Carolina, on November 18, 1955

Parents: Honorable Sam J. Ervin, III, and Elisabeth C. Ervin

Married Mary Temple Ervin on March 15, 1986

Stepchildren: Davin Patrick Coutu, born on November 2, 1978
 Kelly Stephen Coutu, born on August 19, 1981

Children: Samuel James Ervin, V, born on November 28, 1987
 Michael Worth Ervin, born on April 19, 1991

Religious and Civic Activities

Member, First Presbyterian Church, Morganton, North Carolina
Active Deacon, 1982-1984; 1987-1989
Active Elder, 1989-1992, 1998-

Director, Burke County United Way, 1985-1990

Director, Presbyterian Learning Center – 1993-1996



RECEIVED

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RESEARCH DIVISION

NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-5103

GEORGE F. BASON
CHAIRMAN

June 16, 1998

The Honorable James B. Hunt, Jr.
Governor of North Carolina
Raleigh, North Carolina

Regarding: Evaluation of Statement of Economic Interest filed by
Samuel James Ervin, IV, NC Utilities Commission

Dear Governor Hunt:

In accordance with Section 4 of Executive Order Number 127, we have completed our evaluation of Mr. Ervin's statement of economic interest.

We did not find an actual conflict of interest or the potential for conflict of interest. This evaluation is given providing he follows his explanation of how he proposes to resolve conflicts of interest as stated in his statement of economic interest.

Mr. Ervin indicated that he will sell all stock he owns in companies regulated by the Utilities Commission or which appear before the Utilities Commission prior to taking office. He will leave his law firm and resign from all boards of directors on which he is now serving (except the elder position with his church) upon confirmation by the General Assembly. He will comply with all provisions of the Code of Judicial Conduct, including those portions dealing with the hearing of cases involving former clients, while in office.

Upon appointment we will send a copy of this evaluation letter to the Chairman of the Commission for information purposes.

Sincerely,

George F. Bason

George F. Bason
Chairman

cc: Mr. Ervin
Chairman of the Commission

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH 27603-8003
(919) 733-2780 FAX (919) 733-2785

6/16/98

STATEMENT OF ECONOMIC INTEREST FOR EXECUTIVE ORDER NUMBER 127 AS
AMENDED BY EXECUTIVE ORDER NUMBER 131 BY GOVERNOR JAMES B. HUNT JR.

MAIL FORM TO - BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603
OR INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q
COURIER 51-01-00 FOR ASSISTANCE, CALL MILLIE DONAVANT, 919-733-2780

Name of Person Filing Samuel James Ervin, IV
Name of Spouse Marv Temple Ervin
Home Address 517 Lenoir Street
Morganton, North Carolina 28655
Home Telephone 828-433-0163

STATE GOVERNMENT EMPLOYEES

Agency, Division
Position
Address (Include Building & Courier)
Telephone Number

APPOINTEES TO BOARDS, COMMISSIONS, OR COUNCILS

Your Employer, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A.
Your Position Title, Attorney
Business Activity of Your Employer Law firm engaged in the general practice of law
Your Office Address Post Office Drawer 1269
Morganton, North Carolina 28680-1269
Your Telephone Number 828-437-4220
Name of Board on which you are serving nominated for appointment to the North Carolina Utilities Commission

Are you, or your employer, licensed or regulated by the Board which you are serving, or have business relationships with the same area of State Government with which you are associated?
☐ Yes ☒ No If so, please explain

USE ATTACHMENTS IF NEEDED

1. List all parcels of real estate located in North Carolina in which you, or your spouse, have an ownership interest valued more than \$10,000. Give street address or other description adequate to determine the location of each parcel. State the specific interest held in each identified parcel. Identify real estate that is currently leased or rented to a State Government Agency, and identify the Agency. If persons other than your spouse have an ownership interest in the property, state the type of ownership and name of the person having the interest. If any parcels are located in an area over which the Board you are serving on has regulatory authority or could otherwise be affected by Board decisions, please explain.

My wife and I own a house and lot which we use as our principal residence located at 517 Lenoir Street, Morganton, North Carolina, as tenants by the entireties. In addition, my wife and I own a 4/18ths interest in a vacant lot located behind our residence which has a total value in excess of \$10,000 as tenants by the entireties; the other owners of interests in the property are Sam J. Ervin, III; Laura Ervin Smith; Leslie Ervin Hansler; Hugh Tate Ervin, Jr.; John W. Ervin, Jr.; Dorothy Ervin; Dorman I. Hall, Jr.; Joseph E. Hall; Sarah Hall; Laura Hall; James K. Hall, III; and Justin M. Hall, all of whom are tenants in common with me and my wife.

I do not currently lease or rent any real property to any agency of state government. The Utilities has jurisdiction over certain types of utility service which are or could be provided at the locations at which I own real property; except in this respect, my service on the Utilities Commission should not affect the character of real property.

2. Identify personal property sold to or bought from the State within the preceding two years and personal property currently leased or rented to the State by you or your spouse. Indicate whether the transactions are in accordance with the provisions of the Division of Purchase and Contract. If not, please explain.

My wife and I have not sold any personal property to or bought personal property from the State within the past two years. My wife and I do not currently lease or rent any personal property to the State.

3. List the name of each publicly-owned company in which the value of securities held by you or your spouse exceeds \$10,000. You may attach a list from your broker.

I own shares in First Union and Sonoco Products which may exceed \$10,000.00 in value. Although I own shares in a number of other publicly-held companies, none of my interests in any particular company exceed the \$10,000 threshold.

4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

I have an ownership interest in the law firm of Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., in which I have practiced law since 1981

With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

My law firm is a guaranty capitalholder in Lawyers Mutual Liability Insurance Company of North Carolina, lawyer-owned professional liability insurer which operates in North Carolina. I am not certain of the value of this interest. In addition, my law firm operates a retirement plan in which it holds interests in numerous publicly-held companies; although I do not understand this question to require a listing or description of such entities; I will be happy to provide such a statement.

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

I am a licensed attorney and have practiced before the Utilities Commission on behalf of what is now SGL Carbon, the Carolina Utility Customers Association, Inc., and other clients on a regular basis since 1981.

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

- (1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or
- (2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity should be listed.

I currently own stock in a number of companies regulated to a greater or lesser extent to the Utilities Commission, including AT&T, BellSouth, Duke Energy, and Sprint; I intend to sell these securities prior to taking office. I am a licensed attorney practicing with the firm of Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., and have represented the Carolina Utility Customers Association, Inc., an organization of industrial utility customers, and some of its member companies, such as SGL Carbon and National Spinning, before the Utilities Commission; I will resign from my law firm, cease practicing law, and follow the Code of Judicial Conduct in cases which come before the Utilities Commission involving these entities.

6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

Director - Lawyers Mutual Liability Insurance Company of North Carolina, Inc.; Director - Byrd, B. Ervin, Whisnant, McMahon & Ervin, P.A.; Director - Center for Death Penalty Litigation, Inc.; Elder - First Presbyterian Church of Morganton, North Carolina. I do not believe any of these relationships involves a conflict of interest with my duties as a member of the Utilities Commission; however, I plan to resign from the first three boards prior to taking office.

7. Are you an elected official at the local government level? If so, please explain.

No.

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the names and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

Not applicable.

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

My wife and I own interests with a value in excess of \$10,000 in the Amcap Fund, the Colonial Fund A, the Growth Fund of America, the Twentieth Century International Growth Fund, the Twentieth Century Ultra Fund, and the Washington Mutual Investors Fund. In addition, my wife and I have one or more checking and savings accounts at NationsBank which may, at various times, have a value in excess of \$10,000. My wife and I own a United States Treasury bond worth in excess of \$10,000. I am insured under a number of life insurance policies, including ones issued by EVLICO, Chubb Life, and one purchased through my law firm. Finally, I own a professional library of law books, a collection of antique law books, and an IRA at First Citizens, each of which has a value which may exceed \$10,000.00.

Wife - retirement account w/ Burke County.

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

Neither my wife nor I owe amounts of at least \$10,000 for anything except the mortgage under which we purchased our personal residence.

11. List sources of income for you and your spouse where \$10,000 or more was received from each source as shown. For each source listed, describe the type of income received, and state the name of the business entity or individual from which the income was received. Some examples of income are salary or wages, professional fees, honoraria, interest, stock dividends, capital gains, and business profits.

I earned at least \$10,000.00 working as an attorney for Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., during 1997. My wife earned in excess of \$10,000.00 during 1997 while employed by Frve Regional Medical Center and the Burke County Department of Health as a nurse. Although we had other sources of income in 1997, neither of us received at least \$10,000.00 from any other single source of income.

Please explain if any of the sources of income are regulated by, receive permits from, or otherwise are connected with the same area of State Government with which you are connected.

Although I am subject to regulation as an attorney by the North Carolina State Bar and my wife is subject to regulation as a nurse by the Board of Nursing, neither of these sources of income is controlled by the Utilities Commission.

12. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated has during any single year of the past five years earned legal fees in excess of \$10,000 from any of the following categories of legal representation:

☐ Admiralty ☐ Taxation ☒ Decedent's estates ☒ Corporation law ☒ Real property
☒ Negligence (representing plaintiffs) ☒ Negligence (representing defendants)
☒ Criminal law ☒ Labor law ☒ Insurance law ☒ Administrative law
☒ Utilities regulation or representation of regulated utilities ☒ Representation of local governments

My law firm does not maintain records which permit me to answer this question precisely; for that reason, I have checked all areas in which my firm has done significant work at any time in recent years.

13. If the information has not been included in the previous questions, list all non-publicly owned businesses you have been associated with during the past five years as an employee, officer, director, partner, or owner. For each business listed, state your association, and the time period of your association. To the best of your knowledge, state whether any of the businesses listed does business with the same area of State Government with which you are associated. State the nature of the business, and whether you or the business is licensed by, regulated by, receive permits, grants or other funding from the same area of State Government with which you are associated.

I referee soccer games for schools and other organizations as an independent proprietor and have done so for the past three years. The Utilities Commission has no direct connection with this business.

List your associations with civic organizations if the organizations receive grants or other funding from State Government. Include the type of funding and the name of the State Agency from which the funding is received.

I am currently a member of the Board of Directors of the Center for Death Penalty Litigation, which receives a grant from the North Carolina State Bar.

14. List all gifts received with a value exceeding \$200 during the twelve months preceding the date of this statement from sources other than your spouse or relatives.

None.

List all gifts received with a value exceeding \$100 from any source having business with or regulated by the State.

None.

15. Within the preceding five years have you or your spouse filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceeding under the various laws of the various states of these United States? Within the preceding five years have you or your spouse owned 5% or more of any corporation that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States? Within the preceding five years have you or your spouse been a general partner in any partnership or owned 5% of any corporation which was a general partner in any partnership that has filed voluntarily or been placed involuntarily under the protection of the bankruptcy laws of these United States or receivership, assignment for the benefit of creditors, or other insolvency proceedings under the various laws of the various states of these United States. If so, provide a brief summary of facts and circumstances regarding each listed bankruptcy.

No.

16. Having read Executive Order Number 127, as amended by Executive Order 131, state any problems or conflicts of interest you may have which are not fully covered in previous questions. Include an explanation of how you would propose to resolve the matter.

The only conflicts of interest of which I am aware are discussed above. I plan to sell all stock I own in companies regulated by the Utilities Commission or which appear before the Utilities Commission prior to taking office. I will leave my law firm and resign from all boards of directors on which I am now serving (except the session at my church) upon confirmation by the General Assembly. I will comply with all provisions of the Code of Judicial Conduct, including those portions dealing with the hearing of cases involving former clients, while in office.

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments, and to the best of my knowledge and belief it is true, correct, and complete. I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein. I acknowledge that I am under a continuing obligation to avoid conflicts of interest and the appearance of conflicts of interest. If I believe a potential for conflict exists, I will inquire of the Board of Ethics as to that potential conflict.

6/12/98

Date

Sam J. Euz

Signature of Person Filing

STATE OF NORTH CAROLINA

COUNTY OF Burke

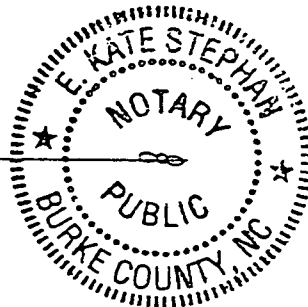
Subscribed and sworn to before me this the 12th day of June, 1998.

My Commission Expires:

1/10/2003

E. Kate Stephan

Notary Public



Samuel James Ervin, IV
517 Lenoir Street
Morganton, North Carolina 28655
828/433-0163

October 7, 1998

Millie Donavant
North Carolina Board of Ethics
116 West Jones Street
Raleigh, North Carolina 27603-8003

Dear Ms. Donavant:

This is to confirm our recent telephone conversation, in which I indicated to you that I needed to make a correction to the ethics information which I submitted in connection with my pending nomination for membership on the North Carolina Utilities Commission. At that time, you indicated that I could make any necessary amendments by simply sending you a letter containing the relevant corrected or supplemental information.

The first question posed in the ethics questionnaire inquired as to whether either my spouse or I owned any interest in any parcel of real property located in North Carolina which was valued at over \$10,000. I have recently learned to my surprise that my mother-in-law, Daisy Pennington Temple, actually titled the tract of real property upon which her residence is situated in Davie County, North Carolina, and may have titled an adjoining tract, both of which are located in the vicinity of 118 Roberson Road in Mocksville, North Carolina, to herself and her daughters as tenants in common when she obtained the property in 1977. As far as I have been able to ascertain, the owners of interest in this property are Daisy Pennington Temple; Mary Temple Ervin; and Joy Temple Howerton. Except for the fact that the Utilities Commission has jurisdiction over certain types of utility services which are or could be provided at this location, my service on the Utilities Commission should not be affected by my wife's interest in these tracts of real property.

The sixth question on the ethics questionnaire inquired of the extent to which I serve as a director on any board of directors. I inadvertently omitted any reference to the fact that I am a member of the Board of Directors of the Sam J. Ervin, Jr., Library, which is a charitable organization affiliated with Western Piedmont Community College which is responsible for overseeing the operation of the Sam J. Ervin, Jr., Library at Western Piedmont and the related annual seminar. I simply forgot that I was a member of this board at the time that I completed the initial ethics form and apologize for this omission. I do not believe that this relationship involves a conflict of interest with my duties as a member of the Utilities Commission and do not plan to resign from this board upon taking office.

I trust that this information will be adequate for you to make the necessary ethics determination. If you have any questions, please do not hesitate to let me know.

Sincerely,



Sam J. Ervin, IV

SJE/eks

NORTH CAROLINA BOARD OF ETHICS
116 WEST JONES STREET
RALEIGH, NC 27603-8003
919/733-2780
Fax: 919/733-2785

SUPPLEMENTAL STATEMENT OF ECONOMIC INTEREST
FOR EXECUTIVE ORDER NUMBER 127, AS AMENDED BY EXECUTIVE ORDER 131
BY GOVERNOR JAMES B. HUNT, JR.

MAIL FORM TO: BOARD OF ETHICS, 116 WEST JONES STREET, RALEIGH, NC 27603 OR
INTEROFFICE MAIL TO THE ADMINISTRATION BUILDING, ROOM 2009Q COURIER 51-01-00
FOR ASSISTANCE, CALL MILLIE DONAVANT OR MAUREEN ATTA, 919/733-2780278

Executive Order 127 requires that the Statement of Economic Interest be updated annually by May 15th.
New information must be reported and information no longer applicable must be deleted.

IF YOU DO NOT HAVE ANY CHANGES TO REPORT, please sign, date, and have this page notarized by a
notary public. Upon completion, please return this signed, dated and notarized page ONLY to the above
address.

IF YOU DO HAVE CHANGES TO REPORT, please disregard this cover sheet and make the applicable
change to the Statement of Economic Interest form. Please sign, date, and have the form notarized before
returning it to the Board of Ethics at the above address.

Name of Person Filing:

Samuel James Ervin, IV.

Name of Board Appointed to:

North Carolina Utilities Commission

OR

Name of State Agency Employed by:

VERIFICATION

I hereby do certify that I have read this form, and to the best of my knowledge and belief have no additional
information to disclose that was not disclosed in my previously filed Statement of Economic Interest, except as
shown on the attached pages. I hereby do certify that I have not transferred, and will not transfer, any asset, interest
or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

04-20-99
Date

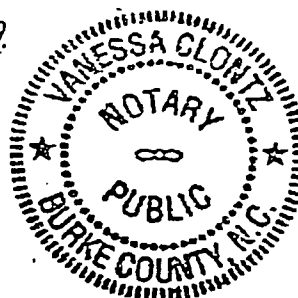
Samuel James Ervin, IV.
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Burke

Subscribed and sworn before me this the 20 day of April, 1999.

My Commission Expires:
08/08/2000

Vanessa Clontz
Notary Public



6. List all directorships on all boards on which you are serving. Please explain any situations which could appear to be a conflict of interest with your official duties.

7. Are you an elected official at the local government level? If so, please explain.

8. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by you, list the name and address of the trustee and a description of the trust. To the extent such information is available to you, include a list of businesses in which the trust has an ownership interest exceeding \$10,000.

9. List assets with a valuation of at least \$10,000 each held by you or your spouse which have not been listed elsewhere. Some examples are mutual funds, certificates of deposit, bank accounts and retirement accounts. It is not necessary to list household furniture, jewelry, automobiles, and other personal effects.

I stated in the disclosure form that I filed in 1998 that I was insured by a policy of life insurance procured by my law firm. I have recently learned that there are four such policies instead of one. The Twentieth Century International Growth and Twentieth Century Ultra mutual funds are now known as American Century. Except as thus modified, the previous response is correct to the best of my knowledge.

10. List liabilities with a valuation of at least \$10,000 each for you and your spouse. Give the name of the creditor, and describe the nature of the liability. It is not necessary to list credit card debts, mortgage for personal residence, and automobile loans.

4. List the name and business activity of each non-publicly-owned company or business entity in which the value of securities or other equity interests held by you or your spouse exceeds \$10,000, including but not limited to, interests held in partnerships, limited partnerships, joint ventures, limited liability companies or partnerships, and closely held corporations.

With respect to the entities listed, should any of the entities own securities or equity interests exceeding \$10,000 in other companies or business entities, list the name of the company or business entity and a brief description of the business activity of each.

Are you, your spouse, or any of the entities listed licensed by, regulated by, or have business relationships with the same area of State Government with which you are associated? If so, please explain.

I do not currently represent any person or business before the Utilities Commission, although I have represented a number of clients before the Utilities Commission in the past as was previously disclosed.

5. You are required to make a good faith effort to list any individual or business entity with which you or your spouse have a financial or professional relationship provided:

(1) The nature of the relationship presents a conflict of interest or the appearance of a conflict of interest for you while performing your official duties, or

(2) Any separate financial or professional interest of such individual or business entity would present a conflict of interest or appearance of a conflict of interest for you while performing your official duties. For each individual or business entity listed, generally describe the financial or professional relationship and provide a brief explanation of why the individual or business entity has been listed.

I do not currently represent any person or business before the Utilities Commission, although I have in the past represented a number of clients before the Utilities Commission as was previously disclosed.

5/1/99

Hillie - I was working on some financial matters this weekend and discovered two (and possibly three) further errors in my financial reports. My Bell South stock, which I had previously reported under #8 but not #1, is worth slightly less than \$12,000 as a result it should have been listed under #1 as well. Similarly, my Sprint preferred stock may now be worth slightly over \$10,000 and should be listed under #1 as well as under #8. I continue to plan to sell these stocks upon filing offers. Finally, I discovered that my Exxon stock, which I had not previously mentioned, is worth slightly less than \$12,000. it should have been listed separately under #1. I do not believe that my continued ownership of this stock creates a conflict of interest. Please let me know if I need to send you any additional information or to provide you with this information in a more formal fashion. I am sending a copy of this information to Steve Rose for his records.

Sam J. Ervin, Jr.

828-5137-4220

This is a supplement to the note
I faxed you over the week-end. The
Sprint preferred stock I own is worth
well over \$10,000 and should have
been listed in response to #1 in
addition to under #5. I continue to plan
to sell this stock upon taking office.
I am sending a copy of this note to
Steve Rose for his records as well.

Sam J. Enright
828-437-4220

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

Wednesday, May 12, 1999

Room 544

10:00 AM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

S 658 - EXTEND SUNSET/MUNICIPAL ELECTRIC AMENDMENT

H 777 - FUTURE OF ELECTRIC SERVICE/FUNDING

S 1008 - EXTEND UNIVERSAL SERVICE DEADLINE

ADJOURNMENT

Minutes
House Committee on Public Utilities
May 12, 1999

The House Committee on Public Utilities met Wednesday, May 12, 1999 in Room 544 of the Legislative Office Building at 10:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representative Zeno Edwards and Representative Drew Saunders, Vice-Chairs; and Representatives Grady, Hurley, McComas, Miller, Mitchell and Starnes. Committee Counsel members Esther Manheimer and Steve Rose were present. A Visitor Registration list is attached (Attachment I) and made part of the minutes.

The Chair called the meeting to order. Pages Cherron Belle from Durham County and Edward Gregory from Halifax County were introduced.

Senator Walter H. Dalton, bill sponsor, was recognized to speak for SB 658 – AN ACT TO EXTEND THE SUNSET ON THE LAW PROVIDING THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, ALLOWING THE BOARD OF AN ELECTRIC OR TELEPHONE MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE AN ELECTRIC MEMBERSHIP CORPORATION, AND MAKING TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE. A summary of his comments is attached (Attachment II) and made part of the minutes. Representative Danny McComas moved for a favorable report and the motion carried.

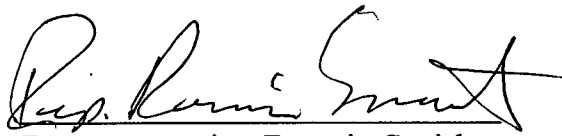
Senator David Hoyle, bill sponsor, was recognized to speak for SB 1008 – AN ACT TO EXTEND THE TIME FOR THE NORTH CAROLINA UTILITIES COMMISSION TO ADOPT FINAL RULES REGARDING UNIVERSAL SERVICE. A summary of his comments is attached (Attachment III) and made part of the minutes. Representative Danny McComas moved for a favorable report and the motion carried.

Representative Danny McComas, bill sponsor, was recognized to speak for HB 777 – AN ACT TO PROVIDE FOR REIMBURSEMENT OF ADDITIONAL EXPENSES OF THE COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA FROM THE UTILITIES COMMISSION AND PUBLIC STAFF FUND. A summary of his comments is attached (Attachment IV) and made part of the minutes. There was much discussion including questions by Representative George Miller about the expenses of the Commission. Committee Counsel Esther

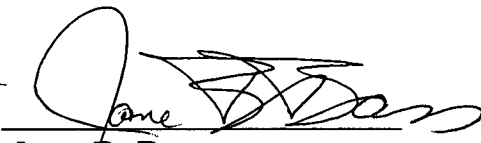
Manheimer and Steve Rose answered questions and provided a handout that is shown in Attachment V and made a part of the minutes. Representative Frank Mitchell moved for a favorable report and the motion carried.

The meeting was adjourned at 10:45 a. m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rep. Ronnie Smith", written over a horizontal line.

Representative Ronnie Smith
Chair

A handwritten signature in black ink, appearing to read "Jane B. Bass", written over a horizontal line.

Jane B. Bass
Committee Assistant

**1999 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

5/12/99

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

H.B. 777 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR REIMBURSEMENT OF ADDITIONAL EXPENSES OF THE COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA FROM THE UTILITIES COMMISSION AND PUBLIC STAFF FUND.

☒ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on Appropriations ☐ Finance ☐.

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/24/99

VISITOR REGISTRATION SHEETPUBLIC UTILITIES

Name of Committee

May 12, 1999

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Dale Hotchkiss	NCAEC
Mark Mason	Capital Group
Brenda Dougherty	Sprint
John Patino	AT&T
Alisa Barana	Electricities
Bedi Kullbatt	Ral-
Tom Killian	More + Van Allen
Jimmy Roberts	G. U. C. A.
Sam Watson	NCUC
David Simmons	ZDA, PA
John McAlister	Duke Energy
RW Kaylor	Kay, Law Firm
Robert Benavise	NCUC Staff
John O'Brien	Lattures Assoc, Inc
James Orr	G. U. A. L.
Wayne R. Davis	SP Assoc Electric
Stacy Leuter	Brown, Dixon
Joe Fischer	Piedmont Nat. Gas
J. Caldwell	Mid-Carolina COG
Mike Morton	Piedmont Farm Credit
J. Wilbur Cobb	Piedmont Farm Credit
Jeff Van Dyle	BELLSOUTH
David Haight	NCPIA
Nat Reed	CCUC
Barbara Wilk	Serra Club

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

3

SENATE BILL 658
Commerce Committee Substitute Adopted 4/14/99
Third Edition Engrossed 4/15/99

Short Title: Extend Sunset/Mun. Electric Amend.

(Public)

Sponsors:

Referred to:

March 30, 1999

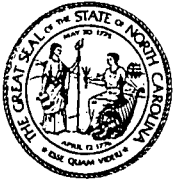
1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE SUNSET ON THE LAW PROVIDING THAT
3 CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY
4 FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH
5 WRITTEN CONSENT FROM THE CITY, ALLOWING THE BOARD OF AN
6 ELECTRIC OR TELEPHONE MEMBERSHIP CORPORATION TO VOTE BY
7 PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO
8 DISSOLVE AN ELECTRIC MEMBERSHIP CORPORATION, AND MAKING
9 TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL
10 ELECTRIC SERVICE.

11 The General Assembly of North Carolina enacts:

12 Section 1. Section 6 of S.L. 1997-346 reads as rewritten:

13 "Section 6. This act is effective when it becomes law and applies only to
14 annexations or incorporations that occur on or after the effective date. ~~This act~~
15 ~~expires on the date of the adjournment sine die of the 1999 General Assembly. This~~
16 act expires on December 31, 2003."

17 Section 2. This act is effective when it becomes law.



BILL ANALYSIS

SENATE BILL 658:
**Extend Sunset on Statutory Provisions Relating to Providing
Electric Service Within City Limits and Relating to the
Governing of Electric and Telephone Membership
Corporations**

Committee: House Public Utilities
Committee
Date: May 12, 1999
Version: 1

Introduced by: Senator Dalton
Summary by: Steven Rose
Committee Counsel

Senate Bill 658 amends Section 6 of S.L. 1997-346 by extending the sunset provision. As presently written, S.L. 1997-346 would expire on the date of adjournment sine die of the 1999 General Assembly. The bill extends the sunset to December 31, 2003.

S.L. 1997-346 became law July 31, 1997 and was effective on that date. However, it will expire on the date of adjournment sine die of the 1999 General Assembly. S.L. 1997-346 allows secondary suppliers of electricity (suppliers other than the city or the entity holding a franchise from the city) to supply electricity in newly annexed municipal territory with the agreement of the city. The act also made changes to Chapter 117 of the General Statutes, which applies to electric membership corporations and telephone membership corporations. It allows for voting by proxy where the issue involves sale or encumbrance of co-op property, or the dissolution of an electric cooperative. Prior to the 1997 amendments, only votes cast in person could be counted.

The act is effective when it becomes law.

S658-SMRL-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 1008

Short Title: Extend Univ. Service Deadline.

(Public)

Sponsors: Senator Hoyle.

Referred to: Commerce.

April 15, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE TIME FOR THE NORTH CAROLINA UTILITIES
3 COMMISSION TO ADOPT FINAL RULES REGARDING UNIVERSAL
4 SERVICE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 62-110(f1) reads as rewritten:
7 "(f1) Except as provided in subsection (f2) of this section, the Commission is
8 authorized, following notice and an opportunity for interested parties to be heard, to
9 issue a certificate to any person applying to provide local exchange or exchange
10 access services as a public utility as defined in G.S. 62-3(23)a.6., without regard to
11 whether local telephone service is already being provided in the territory for which
12 the certificate is sought, provided that the person seeking to provide the service
13 makes a satisfactory showing to the Commission that (i) the person is fit, capable, and
14 financially able to render such service; (ii) the service to be provided will reasonably
15 meet the service standards that the Commission may adopt; (iii) the provision of the
16 service will not adversely impact the availability of reasonably affordable local
17 exchange service; (iv) the person, to the extent it may be required to do so by the
18 Commission, will participate in the support of universally available telephone service
19 at affordable rates; and (v) the provision of the service does not otherwise adversely
20 impact the public interest. In its application for certification, the person seeking to
21 provide the service shall set forth with particularity the proposed geographic territory
22 to be served and the types of local exchange and exchange access services to be
23 provided. Except as provided in G.S. 62-133.5(f), any person receiving a certificate
24 under this section shall, until otherwise determined by the Commission, file and

1 maintain with the Commission a complete list of the local exchange and exchange
2 access services to be provided and the prices charged for those services, and shall be
3 subject to such reporting requirements as the Commission may require.

4 Any certificate issued by the Commission pursuant to this subsection shall not
5 permit the provision of local exchange or exchange access service until July 1, 1996,
6 unless the Commission shall have approved a price regulation plan pursuant to G.S.
7 62-133.5(a) for a local exchange company with an effective date prior to July 1, 1996.
8 In the event a price regulation plan becomes effective prior to July 1, 1996, the
9 Commission is authorized to permit the provision of local exchange or exchange
10 access service by a competing local provider in the franchised area of such local
11 exchange company.

12 The Commission is authorized to adopt rules it finds necessary (i) to provide for
13 the reasonable interconnection of facilities between all providers of
14 telecommunications services; (ii) to determine when necessary the rates for such
15 interconnection; (iii) to provide for the reasonable unbundling of essential facilities
16 where technically and economically feasible; (iv) to provide for the transfer of
17 telephone numbers between providers in a manner that is technically and
18 economically reasonable; (v) to provide for the continued development and
19 encouragement of universally available telephone service at reasonably affordable
20 rates; and (vi) to carry out the provisions of this subsection in a manner consistent
21 with the public interest, which will include a consideration of whether and to what
22 extent resale should be permitted.

23 Local exchange companies and competing local providers shall negotiate the rates
24 for local interconnection. In the event that the parties are unable to agree within 90
25 days of a bona fide request for interconnection on appropriate rates for
26 interconnection, either party may petition the Commission for determination of the
27 appropriate rates for interconnection. The Commission shall determine the
28 appropriate rates for interconnection within 180 days from the filing of the petition.

29 Each local exchange company shall be the universal service provider in the area in
30 which it is certificated to operate on July 1, 1995, until otherwise determined by the
31 Commission. In continuing this State's commitment to universal service, the
32 Commission shall, by December 31, 1996, adopt interim rules that designate the
33 person that should be the universal service provider and to determine whether
34 universal service should be funded through interconnection rates or through some
35 other funding mechanism. By ~~July 1, 1999~~, July 1, 2001, the Commission shall
36 complete an investigation and adopt final rules concerning the provision of universal
37 services, the person that should be the universal service provider, and whether
38 universal service should be funded through interconnection rates or through some
39 other funding mechanism.

40 The Commission shall make the determination required pursuant to this subsection
41 in a manner that furthers this State's policy favoring universally available telephone
42 service at reasonable rates."

43 Section 2. This act is effective when it becomes law.

**SENATE BILL 1008:
Extend the Universal Service Deadline****BILL ANALYSIS**

Committee: House Public Utilities
Committee
Date: May 12, 1999
Version: 1

Introduced by: Senator Hoyle
Summary by: Steven Rose
Committee Counsel

Senate Bill 1008 amends G.S. 62-110(f1) by extending the date by which the Utilities Commission must adopt final rules concerning the provision of universal telecommunications service. The present deadline is July 1, 1999. The bill extends this to July 1, 2001.

The act is effective when it becomes law.

The 1995 General Assembly enacted Chapter 27 (House Bill 161), which authorized competitive local telecommunications service as well as pricing mechanisms that would be alternative to the traditional rate base method of establishing rates for local telephone service. Chapter 27 required the Commission to adopt interim universal service rules by December 31, 1996, and to adopt final rules for the provision of funding of universal service by July 1, 1998. That date was extended to July 1, 1999 by Session Laws 1998-212.

The Utilities Commission has requested this extension because it lacks crucial information from the Federal Communications Commission as to how much of the costs of universal service will be recovered at the interstate level. In addition, the Commission has been engaged in a number of major telecommunications dockets as a result of the passage of Chapter 27 in 1995.

SI008-SMRL-002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 777*

Short Title: Future of Electric Service/Funding.

(Public)

Sponsors: Representative McComas.

Referred to: Public Utilities.

March 31, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR REIMBURSEMENT OF ADDITIONAL EXPENSES
3 OF THE COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN
4 NORTH CAROLINA FROM THE UTILITIES COMMISSION AND PUBLIC
5 STAFF FUND.

6 The General Assembly of North Carolina enacts:

7 Section 1. Section 10.1 of S.L. 1997-483 reads as rewritten:

8 "Section 10.1. Notwithstanding G.S. 62-302(d), all expenses during the ~~1997-98~~
9 ~~and the 1998-99~~ 1997-98, 1998-99, and 1999-2000 fiscal years of the Study
10 Commission on the Future of Electric Service in North Carolina, established in S.L.
11 1997-40, shall be reimbursed from funds in the Utilities Commission and Public Staff
12 Fund. There is allocated initially one hundred thousand dollars (\$100,000) from the
13 Utilities Commission and Public Staff Fund to the General Assembly for the purpose
14 of enabling the Study Commission on the Future of Electric Service in North
15 Carolina to organize and begin its work. Upon the certification of the need for
16 additional funds by the cochairs of the Study Commission on the Future of Electric
17 Service in North Carolina for the work of the Commission, the Utilities Commission
18 shall transfer the additional funds from the Utilities Commission and Public Staff
19 Fund to the General Assembly for that purpose."

20 Section 2. This act becomes effective July 1, 1999.



HOUSE BILL 777: Future of Electric Service/Funding

BILL ANALYSIS

Committee: Public Utilities
Date: April 14, 1999
Version: First Edition

Introduced by: Representative McComas
Summary by: Esther Manheimer
Committee Counsel

BILL ANALYSIS: House Bill 777 would allow the Study Commission on the Future of Electric Service in North Carolina to continue to be reimbursed from the funds in the Utilities Commission and Public Staff Fund through the 1999-2000 fiscal year.

This act becomes effective July 1, 1999.

BACKGROUND: The Study Commission on the Future of Electric Service was established in 1997 by Senate Bill 38 and is funded by the Utilities Commission and Public Staff Fund. The Fund is in turn financed by regulatory fees paid by the regulated utilities. When the Study Commission cochairs certify the need for additional funds, the Chair of the Utilities Commission authorizes the Treasurer to make the transfer. The current authority to transfer funds expires on June 30, 1999. The Study Commission plans to meet during the 1999-2000 interim and make its final report to the 2000 session.

(b)
servi
insta

rs, and cost of
party at whose
e incurred.

(c) No application, petition, complaint, notice of appeal, notice of application for writ of certiorari, or other document or paper, the filing of which requires the payment of a fee under this Article, shall be deemed filed until the fees herein required shall have been paid to the Commission.

(d) The fees and charges as set forth in subdivisions (1), (7), (9) and (10) of subsection (a) of this section shall not apply to the State of North Carolina or to any board, department, commission, institution or other agency of the State; and all applications, petitions or complaints submitted by the State of North Carolina or any board, department, commission, institution or other agency of the State shall be filed without the payment of the fees required by this section. All transcripts, papers, orders, certificates, or other records necessary to perfect an appeal, or to determine whether an appeal is to be taken, shall be furnished without charge to the Attorney General upon his request in cases in which the Attorney General appears in the public interest or as representing any board, department, commission, institution or other agency of the State. (1953, c. 825, s. 1; 1955, c. 64; 1957, c. 1152, s. 15; 1961, c. 472, ss. 2-4; 1963, c. 1165, s. 1; 1967, c. 1039; c. 1190, s. 7; 1969, c. 721, s. 2; 1971, c. 736, s. 2; 1975, c. 447, s. 1; 1977, c. 1003; 1977, 2nd Sess., c. 129, s. 32; 1979, c. 792; 1985, c. 311, ss. 1-4; c. 454, ss. 18, 19; c. 676, s. 24; 1991, c. 189, s. 2; 1995, c. 523, ss. 29, 32; 1997-437, s. 3; 1998-128, s. 10.)

Editor's Note. — Session Laws 1991, c. 189, s. 2, which amended this section by adding subdivision (a)(13), became effective December 1, 1991, but was not applicable to any transmission line that the public utility or other person had begun to construct before that date.

Effect of Amendments. — The 1997

amendment, effective August 28, 1997, added subdivision (a)(15).

The 1998 amendment, effective September 4, 1998, deleted "and rail" preceding "carriers" throughout subdivisions (a)(2), (a)(3), and (a)(6), and repealed subdivision (a)(4a) concerning discontinuance of train service or facilities.

§ 62-301: Repealed by Session Laws 1989, c. 787, s. 2, effective July 1, 1989.

Editor's Note. —

Session Laws 1991, c. 451, s. 1, effective June 28, 1991, amends Session Laws 1989, c. 787, s. 5, as set out in the main volume under this section, so as to delete the provision that repeal of the section would expire June 30, 1991, and the provision for reversion of proceeds

and interest to the General Fund. As amended, Session Laws 1989, c. 787, s. 5, provides "This act shall become effective July 1, 1989 and shall apply to public utility North Carolina jurisdictional revenues earned on or after that date."

The section is set out above as repealed.

§ 62-302. Regulatory fee.

(a) Fee Imposed. — It is the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The cost of regulating public utilities is a burden incident to the privilege of operating as a public utility. Therefore, for the purpose of defraying the cost of regulating public utilities, every public utility subject to the jurisdiction of the Commission shall pay a quarterly regulatory fee, in addition to all

rs, and cost of party at whose e incurred.

at, notice of appeal, notice of her document or paper, the a fee under this Article, shall required shall have been paid

in subdivisions (1), (7), (9) shall not apply to the State department, commission, insti- all applications, petitions or North Carolina or any board, r other agency of the State f the fees required by this certificates, or other records ermine whether an appeal is out charge to the Attorney which the Attorney General esenting any board, depart- agency of the State. (1953, c. 5; 1961, c. 472, ss. 2-4; 1963, 969, c. 721, s. 2; 1971, c. 736, 1977, 2nd Sess., c. 129, s. 32; ss. 18, 19; c. 676, s. 24; 1991, 7-437, s. 3; 1998-128, s. 10.)

Ime... effective August 28, 1997, sub... on (a)(15). 1998 amendment, effective Sep- r 4, 1998, deleted "and rail" preced- arriers" throughout subdivisions (a)(3), and (a)(6), and repealed ision (a)(4a) concerning discon- ce of train service or facilities.

1989, c. 787, s. 2, effective

interest to the General Fund. As ed, Session Laws 1989, c. 787, s. 5, es "This act shall become effective , 1989 and shall apply to public North Carolina jurisdictional rev- earned on or after that date." : section is set out above as re-

he State of North Carolina ities in the interest of the cost of regulating public ege of operating as a public ying the cost of regulating ct to the jurisdiction of the tory fee, in addition to all

other fees and taxes, as provided in this section. The fees collected 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.

(b) Rate. —

(1) For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i) twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents (\$6.25) each quarter.

(2) For fiscal years beginning on or after July 1, 1990, the regulatory fee shall be the greater of (i) a percentage rate, established by the General Assembly, of each public utility's North Carolina jurisdictional revenues for each quarter or (ii) six dollars and twenty-five cents (\$6.25) each quarter.

When the Commission prepares its budget request for the upcoming fiscal year, the Commission shall propose a percentage rate of the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor shall submit to the General Assembly. The General Assembly shall set the percentage rate of the regulatory fee by law.

The percentage rate may not exceed the amount neces- sary to generate funds sufficient to defray the estimated cost of the operations of the Commission and the Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Commission and the Public Staff for the upcoming fiscal year. In calculating the amount of the reserve, the General Assem- bly shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated increase or decrease in North Caro- lina jurisdictional revenues.

(3) If the Commission, the Public Staff, or both experience a revenue shortfall, the Commission shall implement a tem- porary regulatory fee surcharge to avert the deficiency that would otherwise occur. In no event may the total percent- age rate of the regulatory fee plus any surcharge estab- lished by the Commission exceed twenty-five hundredths percent (0.25%).

(4) As used in this section, the term "North Carolina jurisdic- tional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Com- mission order or rule, but not including tap-on fees or any other form of contributions in aid of construction.

(c) When Due. — The regulatory fee imposed under this section is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Every public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Commission. The report shall state the public utility's total

North Carolina jurisdictional revenues for the preceding quarter and shall be accompanied by any supporting documentation that the Commission may by rule require. Receipts shall be reported on an accrual basis.

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 twenty-five dollars (\$25.00) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars (\$25.00). 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.

(d) Use of Proceeds. — A special fund in the office of State Treasurer, the Utilities Commission and Public Staff Fund, is created. The fees collected pursuant to this section and all other funds received by the Commission or the Public Staff, except for the clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a), 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. Moneys 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 this Chapter.

The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1989, c. 787, s. 1; 1998-215, s. 126.)

Editor's Note. —

Session Laws 1989 (Reg. Sess., 1990), c. 937, s. 1, effective July 17, 1990, and applicable to public utility North Carolina jurisdictional revenues earned on or after July 1, 1990, provides: "For the 1990-91 fiscal year, the percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is twelve hundredths percent (0.12%) of each public utility's North Carolina jurisdictional revenues for each quarter."

Session Laws 1991, c. 451, s. 1 amends Session Laws 1989, c. 787, s. 5, as set out in the main volume under this section, so as to delete the June 30, 1991, expiration provision and the provision for reversion of proceeds and interest to the General

Fund. As amended, Session Laws 1989, c. 787, s. 5, provides "This act shall become effective July 1, 1989 and shall apply to public utility North Carolina jurisdictional revenues earned on or after that date."

Session Laws 1991, c. 689, s. 143, provides: "The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1991."

Session Laws 1991, c. 689, s. 352 provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1991-93 biennium, the textual provisions

Future of Electric Service				
			EXPENSES	Balance
social security contributions	531511	1900008500	\$ 2,564.65	\$ 278.66
retirement contributions	531521	1900008500	\$ 2,365.66	\$ 1,775.84
misc. contractual service	532199	1900008500	\$ 704,283.16	\$ 1,512.82
public members travel	532731	1900008500	\$ 1,381.77	\$ 175.50
public members subsistence	532732	1900008500	\$ 2,623.00	\$ 128.00
telephone service	532811	1900008500	\$ 36.47	\$ 97.52
postage, frieght,	532840	1900008500	\$ 1,029.07	\$ 129.91
print, bind, duplicate	532850	1900008500	\$ 3,109.55	\$ 72.44
advertising	532860	1900008500	\$ 12,703.60	
office supplies	533110	1900008500	\$ 480.73	
lbrry&lrrning resources	534630	1900008500	\$ 302.82	
membership dues	535830	1900008500	\$ 752.20	\$ 0.20
agency reserve				\$209,221.00
GA members in state-transp.	532714	1900208500	\$5,337.74	\$ 1,124.20
GA members in state subs.	532727002	1900208500	\$9,984.00	\$ 2,128.00
registration fees	532930	1900208500	\$275.00	
staff in state transp.(air)	532712	1900408500	\$ 1,413.19	
staff in state transp.(ground)	532714	1900408500	\$ 1,037.46	\$ 299.90
staff lodging in state	532721	1900408500	\$ 838.21	
staff lodging out of state	532722	1900408500	\$ 794.88	
staff meals in state	532724	1900408500	\$ 450.00	\$ 86.00
staff meals out of state	532725	1900408500	\$ 244.00	
registration fees	532930	1900408500	\$ 575.00	
Temporary wages	531311	1900508500	\$ 27,477.37	\$ 1,935.33
temporary in state-transp.	532714	1900508500	\$ 316.48	
temporary in state-lodging	532721	1900508500	\$ 439.27	
temporary in state-meals	532724	1900508500	\$ 212.00	
total Expenditures			\$ 781,027.28	
balance as of March 31				\$218,965.32

Research Triangle Institute									
July 8, 1998: Recap. of funds regarding: Commission on Future Of Electric Service									
contract name	Task Number	Phase #	Max. amount of task	Billing Date	Billing #	Invoice amount	Balance	Check Date	check number
Resolving Stranded Cost	4	1	\$33,750.00	April 6, 1998	1	\$4,210.00	\$29,540.00	July 9, 1998	40014106
Resolving Stranded Cost	4	1	\$33,750.00	May 12, 1998	2	\$9,443.56	\$20,096.44	July 9, 1998	40014105
Resolving Stranded Cost	4	1	\$33,750.00	June 17, 1998	4	\$871.00	\$19,225.44	August 26, 1998	40014945
Resolving Stranded Cost	4	1	\$33,750.00	May 28, 1998	3-revised	\$16,871.96	\$2,353.48	August 28, 1998	40014945
Resolving Stranded Cost	4	1	\$33,750.00	Oct. 6, 1998	6	\$850.00	\$1,503.48	November 12, 1998	40015961
Resolving Stranded Cost	4	1	\$33,750.00	Sept. 16, 1998	5	\$43.02	\$1,460.60	November 12, 1998	40015961
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	June 17, 1998	2-revised	\$30,350.25	\$169,649.75	August 28, 1998	40014945
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	May 28, 1998	2-revised	\$9,114.85	\$160,534.90	August 28, 1998	40014945
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	Aug. 27, 1998	4	\$37,927.54	\$122,607.36	October 5, 1998	40015512
Resolving Stranded Cost-Phase 2	6	2	\$200,000.00	Oct 6, 1998	4	\$14,873.46	\$107,733.90	November 12, 1998	40015961
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	Sept. 21, 1998	5	\$28,397.71	\$79,336.19	November 12, 1998	40015961
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	Jan. 19, 1999	8	\$466.61	\$78,869.58	March 9, 1999	40017557
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	Jan. 15, 1999	7	\$16,931.46	\$61,938.12	March 11, 1999	40017640
Resolving Stranded Cost-Phase 2	4	2	\$200,000.00	July 28, 1999	3	\$61,929.58	\$8.54	March 9, 1999	40017554
State & Local Consideration	3	1	\$27,150.00	April 6, 1998	1	\$3,405.00	\$23,745.00	July 9, 1998	40014103
State & Local Consideration	3	1	\$27,150.00	May 12, 1998	2	\$9,313.39	\$14,431.61	July 9, 1998	40014104
State & Local Consideration	3	1	\$27,150.00	June 17, 1998	4	\$536.50	\$13,895.11	August 28, 1998	40014945
State & Local Consideration	3	1	\$27,150.00	May 28, 1998	3	\$3,562.00	\$10,333.11	August 28, 1998	40014945
State & Local Consideration	3	1	\$27,150.00	Aug 28, 1998	5	\$515.94	\$9,817.17	October 5, 1998	40015512
State & Local Consideration	3	1	\$27,150.00	Oct 6, 1998	7	\$3,794.12	\$6,023.05	November 12, 1998	40015961
State & Local Consideration	3	1	\$27,150.00	sept. 21, 1998	6	\$2,552.75	\$3,470.75	November 12, 1998	40015961
State & Local Consideration	3	1	\$27,150.00	Jan. 15, 1999	8	\$2,485.00	\$985.75	March 9, 1999	40017560

State & Local Consideration-Phase 2	3	2	\$100,000.00	June 18, 1998	1	\$7,278.00	\$92,722.00	August 28, 1998	40014945
State & Local Consideration-Phase 2	3	2	\$100,000.00	Aug 27, 1998	3	\$3,565.75	\$79,156.25	October 5, 1998	40015512
State & Local Consideration-Phase 2	3	2	\$100,000.00	Oct 6, 1998	5	\$4,729.42	\$74,426.83	November 12, 1998	40015561
State & Local Consideration-Phase 2	3	2	\$100,000.00	Sept 21, 1998	4	\$14,634.54	\$59,792.29	November 12, 1998	40015561
State & Local Consideration-Phase 2	3	2	\$100,000.00	Jan 15, 1999	6	\$3,241.00	\$56,551.29	March 9, 1999	40017559
State & Local Consideration-Phase 2	3	2	\$100,000.00	July 28, 1999	2	\$31,713.07	\$24,838.22	March 9, 1999	40017555
Comparisons of Elect. Rates	2		\$59,850.00	April 6, 1998	1	\$15,985.00	\$43,865.00	July 9, 1998	40014107
Comparisons of Elect. Rates	2		\$59,850.00	May 12, 1998	2	\$25,284.60	\$18,580.40	July 9, 1998	40014108
Comparisons of Elect. Rates	2		\$59,850.00	June 17, 1998	4	(\$160.82)	\$18,741.22	August 28, 1998	40014945
Comparisons of Elect. Rates	2		\$59,850.00	May 28, 1998	3	\$18,574.50	\$166.72	August 28, 1998	40014945
Comparisons of Elect. Rates	2		\$59,850.00	Sept 21, 1998	5	\$62.76	\$103.96	November 12, 1998	40015561
Management & Support	1		\$200,000.00	April 6, 1998	1	\$26,069.36	\$173,960.64	July 9, 1998	40014102
Management & Support	1		\$200,000.00	May 12, 1998	2	\$9,519.51	\$164,411.13	July 9, 1998	40014101
Management & Support	1		\$200,000.00	June 17, 1998	4	\$4,178.16	\$160,232.97	August 28, 1998	40014945
Management & Support	1		\$200,000.00	May 28, 1998	3	\$17,539.55	\$142,693.42	August 28, 1998	40014945
Management & Support	1		\$200,000.00	Aug 27, 1998	6	\$7,960.92	\$134,732.50	October 5, 1998	40015512
Management & Support	1		\$200,000.00	Oct 6, 1998	8	\$6,102.90	\$128,629.60	Nov 12, 1998	40015661
Management & Support	1		\$200,000.00	Sept 21, 1998	7	\$3,107.99	\$125,521.61	Nov 12, 1998	40015661
Management & Support	1		\$200,000.00	Jan 15, 1999	9	\$7,057.00	\$118,464.61	March 9, 1999	40017562
Management & Support	1		\$200,000.00	Jan 19, 1999	10	\$8,910.52	\$109,554.09	March 9, 1999	40017561
Management & Support	1		\$200,000.00	Jan 19, 1999	11	\$10,999.00	\$98,555.09	March 9, 1999	40017552
Management & Support	1		\$200,000.00	July 27, 1998	5	\$7,969.37	\$90,585.72	March 9, 1999	40017553
Summarize Written Public Comments	7		\$7,500.00	June 17, 1998	1	\$340.00	\$7,160.00	August 28, 1998	40014945
Summarize Written Public Comments	7		\$7,500.00	July 28, 1998	2	\$7,138.18	\$21.82	March 9, 1999	40017558

State & Local Consideration-Phase 2	3	2	\$100,000.00	June 18, 1998	1	\$7,278.00	\$92,722.00	August 28, 1998	40014945
State & Local Consideration-Phase 2	3	2	\$100,000.00	Aug 27, 1998	3	\$3,565.75	\$79,156.25	October 5, 1998	40015512
State & Local Consideration-Phase 2	3	2	\$100,000.00	Oct 6, 1998	5	\$4,729.42	\$74,426.83	November 12, 1998	40015561
State & Local Consideration-Phase 2	3	2	\$100,000.00	Sept 21, 1998	4	\$14,634.54	\$59,792.29	November 12, 1998	40015561
State & Local Consideration-Phase 2	3	2	\$100,000.00	Jan 15, 1999	6	\$3,241.00	\$56,551.29	March 9, 1999	40017559
State & Local Consideration-Phase 2	3	2	\$100,000.00	July 28, 1999	2	\$31,713.07	\$24,838.22	March 9, 1999	40017555
Comparisons of Elect. Rates	2		\$59,850.00	April 6, 1998	1	\$15,985.00	\$43,865.00	July 9, 1998	40014107
Comparisons of Elect. Rates	2		\$59,850.00	May 12, 1998	2	\$25,284.60	\$18,580.40	July 9, 1998	40014108
Comparisons of Elect. Rates	2		\$59,850.00	June 17, 1998	4	(\$160.82)	\$18,741.22	August 28, 1998	40014945
Comparisons of Elect. Rates	2		\$59,850.00	May 28, 1998	3	\$18,574.50	\$166.72	August 28, 1998	40014945
Comparisons of Elect. Rates	2		\$59,850.00	Sept 21, 1998	5	\$62.76	\$103.96	November 12, 1998	40015561
Management & Support	1		\$200,000.00	April 6, 1998	1	\$26,069.36	\$173,960.64	July 9, 1998	40014102
Management & Support	1		\$200,000.00	May 12, 1998	2	\$9,519.51	\$164,411.13	July 9, 1998	40014101
Management & Support	1		\$200,000.00	June 17, 1998	4	\$4,178.16	\$160,232.97	August 28, 1998	40014945
Management & Support	1		\$200,000.00	May 28, 1998	3	\$17,539.55	\$142,693.42	August 28, 1998	40014945
Management & Support	1		\$200,000.00	Aug 27, 1998	6	\$7,960.92	\$134,732.50	October 5, 1998	40015512
Management & Support	1		\$200,000.00	Oct 6, 1998	8	\$6,102.90	\$128,629.60	Nov 12, 1998	40015561
Management & Support	1		\$200,000.00	Sept 21, 1998	7	\$3,107.99	\$125,521.61	Nov 12, 1998	40015561
Management & Support	1		\$200,000.00	Jan 15, 1999	9	\$7,057.00	\$118,464.61	March 9, 1999	40017562
Management & Support	1		\$200,000.00	Jan 19, 1999	10	\$8,910.52	\$109,554.09	March 9, 1999	40017561
Management & Support	1		\$200,000.00	Jan 19, 1999	11	\$10,999.00	\$98,555.09	March 9, 1999	40017552
Management & Support	1		\$200,000.00	July 27, 1998	5	\$7,969.37	\$90,585.72	March 9, 1999	40017553
Summarize Written Public Comments	7		\$7,500.00	June 17, 1998	1	\$340.00	\$7,160.00	August 28, 1998	40014945
Summarize Written Public Comments	7		\$7,500.00	July 28, 1998	2	\$7,138.18	\$21.82	March 9, 1999	40017558

Reliability Consideration Phase II	6	2	\$110,000.00	June 18, 1998	1	\$5,134.00	\$104,866.00	August 28, 1998	40014945
Reliability Consideration Phase II	6	2	\$110,000.00	Aug 27, 1998	3	\$19,820.16	\$85,045.84	October 5, 1998	40015512
Reliability Consideration Phase II	6	2	\$110,000.00	Oct 06, 1998	5	\$1,100.50	\$83,945.30	November 12, 1998	40015961
Reliability Consideration Phase II	6	2	\$110,000.00	Sept 21, 1998	4	\$13,296.79	\$70,648.00	November 12, 1998	40015961
Reliability Consideration Phase II	6	2	\$110,000.00	Jan 19, 1999	8	\$2,501.35	\$68,146.65	March 11, 1999	40017637
Reliability Consideration Phase II	6	2	\$110,000.00	July 28, 1999	2	\$16,183.18	\$51,963.47	March 9, 1999	40017550
Reliability Consideration Phase I	6	1	\$25,000.00	June 17, 1998	2	\$3,115.00	\$21,885.00	August 28, 1998	40014945
	6	1	\$25,000.00	May 28, 1998	1	\$6,315.00	\$15,570.00	August 28, 1998	40014945
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	June 18, 1998	1	\$14,770.00	\$135,230.00	August 28, 1998	40014945
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	Aug 27, 1998	3	\$3,631.10	\$131,598.90	October 5, 1998	40015512
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	Oct 06, 1998	5	\$6,149.97	\$125,448.93	November 6, 1998	40015961
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	Sept 21, 1998	4	\$12,746.76	\$112,702.17	November 12, 1998	40015961
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	Jan 19, 1999	7	\$6,540.25	\$106,161.92	March 9, 1999	40017556
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	July 28, 1998	2	\$5,710.81	\$100,451.11	March 9, 1999	40017551
Economics Benefits/Detriment-Ph. II	5	2	\$150,000.00	Jan 15, 1999	6	\$29,239.83	\$71,211.28	March 11, 1999	40017639
Economics Benefits/Detriment-Ph. I	5	1	\$25,000.00	June 17, 1998	2	\$3,625.00	\$21,375.00	August 28, 1998	40014945
Economics Benefits/Detriment-Ph. I	5	1	\$25,000.00	May 28, 1998	1	\$10,170.00	\$11,205.00	August 28, 1998	40014945
Cost Impacts of Govt tax & policies	8		\$70,000.00	Jan 19, 1999	2	\$5,400.00	\$64,600.00	March 11, 1999	40017641
Cost Impacts of Govt tax & policies	8		\$70,000.00	Jan 19, 1999	3	\$11,866.50	\$52,733.50	March 11, 1999	40017638
Cost Impacts of Govt tax & policies	8		\$70,000.00	Jan 15, 1999	1	\$10,925.00	\$41,808.50	March 11, 1999	40017636

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

July 8, 1999
Room 1228
11:00 AM

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

SB 547 – Telecommunications Relay Service/AB

ADJOURNMENT

Minutes
House Committee on Public Utilities
July 8, 1999

The House Committee on Public Utilities met Thursday, July 8, 1999 in Room 1228 of the Legislative Building at 11:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representatives Creech, McCombs, Mitchell, Starnes and ex officio member Representative Dedmon. Committee Counsel Steve Rose was present. A Visitor Registration list is attached (Attachment I) and made part of the minutes.

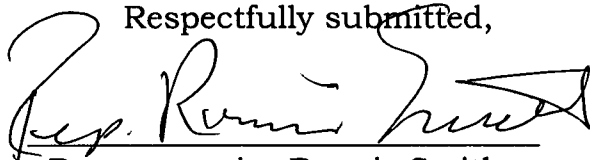
The Chair called the meeting to order and introduced the following pages: Audrey Bowerman from Wake County, Ellen Johnson from Wake County, and Erika Burti from Pitt County.

Steve Rose was introduced to explain SB 547 - A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS RELAY SERVICE TO ASSIST DEAF AND HEARING IMPAIRED PERSONS, INCLUDING THOSE WHO ALSO HAVE VISION IMPAIRMENT. Committee handouts concerning SB 547 are attached (Attachments II and III) and made a part of the minutes.

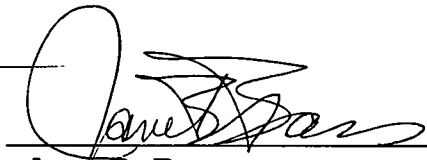
Representative McComas moved for a favorable report and a recommendation that the bill be re-referred to the Committee on Finance. The motion carried.

The meeting was adjourned at 11:14 a. m.

Respectfully submitted,



Representative Ronnie Smith
Chair



Jane B. Bass
Committee Assistant

**1998 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Smith** for the Committee on **PUBLIC UTILITIES**.

☐ Committee Substitute for

S.B. 547 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS RELAY SERVICE TO ASSIST DEAF AND HEARING IMPAIRED PERSONS, INCLUDING THOSE WHO ALSO HAVE VISION IMPAIRMENT.

☐ With a favorable report.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on ~~☐ Appropriations~~ ☒ Finance ~~☐~~

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the Committee on ☐ Appropriations ☐ Finance ☐

☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title, unfavorable as to original bill (Committee Substitute Bill #), (and recommendation that the committee substitute bill #) be re-referred to the Committee on .)

☐ With a favorable report as to House committee substitute bill (#), ☐ which changes the title, unfavorable as to Senate committee substitute bill.

☐ And having received a unanimous vote in committee, is placed on the Consent Calendar.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

S

2

SENATE BILL 547
Finance Committee Substitute Adopted 6/24/99

Short Title: Telecommunications Relay Service/AB.

(Public)

Sponsors:

Referred to:

March 29, 1999

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A
3 TELECOMMUNICATIONS RELAY SERVICE TO ASSIST DEAF AND
4 HEARING IMPAIRED PERSONS, INCLUDING THOSE WHO ALSO HAVE
5 VISION IMPAIRMENT.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 62-157 reads as rewritten:
8 "~~§ 62-157. Dual party relay system.~~ Telecommunications relay service.
9 (a) Finding. -- The General Assembly finds and declares that it is in the public
10 interest to provide access to public telecommunications services for hearing impaired
11 or speech impaired ~~persons~~ persons, including those who also have vision
12 impairment, and that a statewide ~~dual party telephone relay system~~
13 telecommunications relay service for telephone service should be established.
14 (a1) Definitions. -- For purposes of this section:
15 (1) "Exchange access facility" means the access from a particular
16 telephone subscriber's premises to the telephone system of a local
17 exchange telephone company, and includes local exchange
18 company-provided access lines, private branch exchange trunks,
19 and centrex network access registers, all as defined by tariffs of
20 telephone companies as approved by the Commission.
21 (2) "Local service provider" means a local exchange company,
22 competing local provider, or telephone membership corporation.

1 (b) Authority to Require Surcharge. -- The Commission shall require ~~local~~
2 ~~exchange companies and telephone membership corporations~~ local service providers
3 to impose a monthly surcharge on all residential and business local exchange access
4 facilities to fund a statewide ~~dual-party telephone relay system~~ telecommunications
5 relay service by which hearing impaired or speech impaired ~~persons~~ persons,
6 including those who also have vision impairment, may communicate with others by
7 telephone. ~~For the purpose of this section, exchange access facility means the access~~
8 ~~from a particular telephone subscriber's premises to the telephone system of a local~~
9 ~~exchange telephone company. Exchange access facilities include local exchange~~
10 ~~company provided access lines, private branch exchange trunks, and centrex network~~
11 ~~access registers, all as defined by tariffs of telephone companies as approved by the~~
12 ~~Commission.~~ This surcharge, however, may not be imposed on participants in the
13 Subscriber Line Charge Waiver Program or the Link-up Carolina Program
14 established by the Commission. This surcharge, and long distance revenues collected
15 under subsection (f) of this section, are not includable in gross receipts subject to the
16 franchise tax levied under G.S. 105-120 or the sales tax levied under G.S. 105-164.4.

17 (c) ~~Initiating Petition.~~ Specification of Surcharge. -- ~~Not later than February 1,~~
18 ~~1990, the~~ The Department of Health and Human Services shall initiate a ~~dual-party~~
19 ~~relay system~~ telecommunications relay service by filing a petition with the
20 Commission requesting the ~~system~~ service and detailing initial projected required
21 funding. The Commission shall, after giving notice and an opportunity to be heard to
22 other interested parties, set the initial monthly surcharge based upon the amount of
23 funding necessary to implement and operate the ~~system,~~ service, including a
24 reasonable margin for a reserve. The surcharge shall be identified on customer bills
25 as a special surcharge for provision of a ~~dual-party relay system.~~ telecommunications
26 relay service for hearing impaired and speech impaired persons. The Commission
27 may, upon petition of any interested party, and after giving notice and an opportunity
28 to be heard to other interested parties, revise the surcharge from time to time if the
29 funding requirements change. In no event shall the surcharge exceed twenty-five
30 cents (25¢) per ~~month.~~ month for each exchange access facility.

31 (d) Funds to Be Deposited in Special Account. -- The local ~~exchange companies~~
32 ~~and telephone membership corporations~~ service providers shall collect the surcharge
33 from their customers and deposit the moneys collected with the State Treasurer, who
34 shall maintain the funds in an interest-bearing, nonreverting account. After consulting
35 with the State Treasurer, the Commission shall direct how and when the local
36 ~~exchange companies and telephone membership corporations~~ service providers shall
37 deposit these moneys. ~~The funds deposited in this account may not be used to lease~~
38 ~~or purchase telecommunications devices for hearing impaired or speech impaired~~
39 ~~persons, except those devices used by the operator of the relay system established~~
40 ~~under this section.~~ Revenues from this fund shall be available only to the
41 Department of Health and Human Services to administer the statewide ~~dual-party~~
42 ~~telephone relay system,~~ telecommunications relay service program, including its
43 establishment, operation, and promotion. The Commission may allow the
44 Department of Health and Human Services to use up to four cents (4¢) per access

1 line per month of the surcharge for the purpose of providing telecommunications
2 devices for hearing impaired or speech impaired persons, including those who also
3 have vision impairment, through a distribution program. The Commission shall
4 prepare such guidelines for the distribution program as it deems appropriate and in
5 the public interest. Both the Commission and the Public Staff may audit all aspects
6 of the telecommunications relay service program, including the distribution programs,
7 as it does with any public utility subject to the provisions of this Chapter. Equipment
8 paid for with surcharge revenues, as allowed by the Commission, may be distributed
9 only by the Department of Health and Human Services.

10 (e) Administration of Service. -- The Department of Health and Human Services
11 shall administer the statewide ~~dual-party telephone relay system~~, telecommunications
12 relay service program, including its establishment, operation, and promotion. The
13 Department may contract out the provision of this service for four-year periods to
14 one or more service providers, using the provisions of G.S. 143-129.

15 (f) Charge to Users. -- The users of the ~~relay system~~ telecommunications relay
16 service shall be charged their approved long distance and local rates for telephone
17 services (including the surcharge required by this section), but no additional charges
18 may be imposed for the use of the relay ~~system~~ service. The local ~~exchange~~
19 ~~companies and telephone membership corporations~~ service providers shall collect
20 revenues from the users of the relay ~~system~~ service for long distance services provided
21 through the relay ~~system~~ service. These revenues shall be deposited in the special
22 fund established in subsection (d) of this section in a manner determined by the
23 Commission after consulting with the State Treasurer. Local ~~exchange companies and~~
24 ~~telephone membership corporations~~ service providers shall be compensated for
25 collection, inquiry, and other administrative services provided by said companies,
26 subject to the approval of the Commission.

27 (g) Reporting Requirement. -- The Commission shall, after consulting with the
28 Department of Health and Human Services, develop a format and filing schedule for
29 a comprehensive financial and operational report on the ~~dual-party relay system~~.
30 telecommunications relay service program. The Department of Health and Human
31 Services shall thereafter prepare and file these reports as required by the Commission
32 with the Commission and ~~Joint Legislative Utility Review Committee~~ the Public
33 Staff. The Department shall also be required to report to the Revenue Laws Study
34 Committee.

35 (h) Power to Regulate. -- The Commission shall have the same power to regulate
36 the operation of the ~~dual-party relay system~~ telecommunications relay service
37 program as it has to regulate any public utility subject to the provisions of this
38 Chapter."

39 Section 2. This act is effective when it becomes law.

<u>NAME</u>	<u>FIRM OR AGENCY AND ADDRESS</u>
Harry Walker	ALLTEL
Mark Mason	Capital Group
John Hughes	Bailey & Brown
John Polivach	AVET
George McCoy	DSD/H/H
Pam Morris	DSD/H/H Interpreter
LINDA NELSON	DSD/H/H
Lynn Day	DSD/H/H
Pam Morris	ASD/H/H
Bruce Cox	Small Hydro
John Hogan	Small Hydro
Tom Vukobratovic	Span

SENATE BILL 547: Telecommunications Relay Service/AB

BILL ANALYSIS

Committee: House Public Utilities
Date: July 8, 1999
Version: Second Edition

Introduced by: Sen. Hoyle
Summary by: Steven Rose
Committee Counsel

SUMMARY: *Senate Bill 547 amends G.S. 62-157 of the General Statutes to replace the reference to a "dual party relay system" with "telecommunications relay service". The bill clarifies that statewide telecommunications relay service for telephone service will be provided not only to hearing impaired or speech impaired persons, but also to such persons who are visually impaired. The bill authorizes the Utilities Commission to allow the Department of Health and Human Services to use a portion of the surcharge collected by local providers to provide telecommunications devices for persons with the above described impairments. The surcharge is currently imposed on all residential and business local exchange access facilities and is used to fund a statewide system for hearing impaired or speech impaired persons. Senate Bill 547 is an agency bill. The act is effective when it becomes law.*

CURRENT LAW: Under current law, G.S. 62-157 provides access to public telecommunications services to persons who are hearing impaired or speech impaired. This access system is funded through a monthly surcharge that is imposed on all residential and business local exchange access facilities. The surcharge is identified on a customer's bill and may not exceed 25 cents per month. The surcharges collected by local service providers are maintained in an interest-bearing, nonreverting account with the State Treasurer. Revenues from this fund are available only to the Department of Health and Human Service and used to administer the statewide access system.

The users of the access system are also charged the surcharge.

The surcharge is not included in the gross receipts subject to the State franchise or sales tax.

BILL ANALYSIS: Senate Bill 547 amends G.S. 62-157 by replacing references to the "dual party relay system" with references to "telecommunications relay service". The bill also clarifies that this service is provided not only to persons who are hearing impaired or speech impaired, but also to such persons who are visually impaired. The bill also authorizes the Utilities Commission to allow DHHS to use up to four cents of each monthly surcharge imposed per access line for the purpose of providing telecommunications devices for persons with the above impairments. The bill directs the Utilities Commission to prepare guidelines for distributing the devices. Both the Commission and the Public Staff may audit the telecommunications relay service program, including the distribution of the devices. Only DHHS may distribute the devices that are paid for with surcharge revenues. DHHS must file regular reports with the Utilities Commission and the Public Staff.

The Utilities Commission indicates that different equipment is needed for persons who are both hearing impaired and visually impaired, and that many people cannot afford the needed equipment. The distribution of the equipment will be based upon financial need.

Martha K. Walston, Counsel to the Senate Finance Committee, contributed to this summary

S547-SMRL-001

Commission determines to be reasonably necessary to avoid undue hardships.

(g) No order shall be entered under this section except after interested parties have been afforded reasonable notice and opportunity for hearing.

(h) Parties to any agreement approved by the Commission under this section and other parties are, if the approval of such agreement is not prohibited by subsection (d) or (e) of this section, hereby relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of such agreement in conformity with the terms and conditions prescribed by the Commission.

(i) Any action of the Commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of the relief provisions of subsection (h) of this section. (1977, c. 219, s. 1; 1998-128, s. 7.)

Effect of Amendments. — The 1998 amendment, effective September 4, 1998, deleted "carriers by rail" are carriers of the same class" following "section" in subdivision (a)(2).

§ 62-152.2. Standard transportation practices.

(a) For the purposes of this section, "standard transportation practices" means:

- (1) Uniform cargo liability rules.
- (2) Uniform bills of lading or receipts for property being transported.
- (3) Uniform cargo credit rules.
- (4) Antitrust immunity for joint line rates or routes, classification, and mileage guides.

(b) A person otherwise exempt from regulation by the Commission under Public Law 103-305 may file an application with the Commission to participate in one or more standard transportation practices under rules set out by the Commission. (1995, c. 523, s. 10.1.)

Editor's Note. — Session Laws 1995, c. 523, s. 33, made this section effective upon ratification. The act was ratified July 29, 1995.

§ 62-157. Dual party relay system.

(a) Finding. — The General Assembly finds and declares that it is in the public interest to provide access to public telecommunications services for hearing impaired or speech impaired persons and that a statewide dual party telephone relay system for telephone service should be established.

(b) Authority to Require Surcharge. — The Commission shall require local exchange companies and telephone membership corporations to impose a monthly surcharge on all residential and business local exchange access facilities to fund a statewide dual party telephone relay system by which hearing impaired or speech

impaired persons may the purpose of this access from a particular telephone system of a access facilities including lines, private branch registers, all as defined provided by the Commission imposed on participants Program or the Link Commission. This surcharge under subsection (f) of receipts subject to the full sales tax levied under

(c) Initiating Petition Department of Health party relay system by filing the system and details Commission shall, after heard to other interests based upon the amount operate the system, including surcharge shall be identical for provision of a dual party upon petition of any interested opportunity to hear surcharge from the hearing no event shall the surcharge month.

(d) Funds to Be Deposited exchange companies are collect the surcharge from collected with the State an interest-bearing, non-State Treasurer, the Commission local exchange companies shall deposit these monies not be used to lease a hearing impaired or speech used by the operator of section. Revenues from the Department of Health statewide dual party telephone lishment, operation, and

(e) Administration of Human Services shall phone relay system, including promotion. The Department service for four-year period the provisions of G.S. 1

(f) Charge to Users. charged their approved services (including the additional charges may The local exchange companies tions shall collect revenue

impaired persons may communicate with others by telephone. For the purpose of this section, exchange access facility means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company. Exchange access facilities include local exchange company provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission. This surcharge, however, may not be imposed on participants in the Subscriber Line Charge Waiver Program or the Link-up Carolina Program established by the Commission. This surcharge, and long distance revenues collected under subsection (f) of this section, are not includable in gross receipts subject to the franchise tax levied under G.S. 105-120 or the sales tax levied under G.S. 105-164.4.

(c) Initiating Petition. — Not later than February 1, 1990, the Department of Health and Human Services shall initiate a dual party relay system by filing a petition with the Commission requesting the system and detailing initial projected required funding. The Commission shall, after giving notice and an opportunity to be heard to other interested parties, set the initial monthly surcharge based upon the amount of funding necessary to implement and operate the system, including a reasonable margin for a reserve. The surcharge shall be identified on customer bills as a special surcharge for provision of a dual party relay system. The Commission may, upon petition of any interested party, and after giving notice and an opportunity to be heard to other interested parties, revise the surcharge from time to time if the funding requirements change. In no event shall the surcharge exceed twenty-five cents (25¢) per month.

(d) Funds to Be Deposited in Special Account. — The local exchange companies and telephone membership corporations shall collect the surcharge from their customers and deposit the moneys collected with the State Treasurer, who shall maintain the funds in an interest-bearing, nonreverting account. After consulting with the State Treasurer, the Commission shall direct how and when the local exchange companies and telephone membership corporations shall deposit these moneys. The funds deposited in this account may not be used to lease or purchase telecommunications devices for hearing impaired or speech impaired persons, except those devices used by the operator of the relay system established under this section. Revenues from this fund shall be available only to the Department of Health and Human Services to administer the statewide dual party telephone relay system, including its establishment, operation, and promotion.

(e) Administration of Service. — The Department of Health and Human Services shall administer the statewide dual party telephone relay system, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129.

(f) Charge to Users. — The users of the relay system shall be charged their approved long distance and local rates for telephone services (including the surcharge required by this section), but no additional charges may be imposed for the use of the relay system. The local exchange companies and telephone membership corporations shall collect revenues from the users of the relay system for

long distance services provided through the relay system. These revenues shall be deposited in the special fund established in subsection (d) of this section in a manner determined by the Commission after consulting with the State Treasurer. Local exchange companies and telephone membership corporations shall be compensated for collection, inquiry, and other administrative services provided by said companies, subject to the approval of the Commission.

(g) Reporting Requirement. — The Commission shall, after consulting with the Department of Health and Human Services, develop a format and filing schedule for a comprehensive financial and operational report on the dual party relay system. The Department of Health and Human Services shall thereafter prepare and file these reports as required by the Commission with the Commission and Joint Legislative Utility Review Committee.

(h) Power to Regulate. — The Commission shall have the same power to regulate the operation of the dual party relay system as it has to regulate any public utility subject to the provisions of this Chapter. (1989, c. 599; 1997-443, s. 11A.118(a).)

Editor's Note. —

The historical citation in parentheses at the end of this section, as set out in the main volume, should read "(1989, c. 599)."

Session Laws 1997-443, s. 1.1, provides: "This act shall be known as 'The Current Operations and Capital Im-

provements Appropriations Act of 1997".

Session Laws 1997-443, s. 35.4, is a severability clause.

Effect of Amendments. — The 1997 amendment, effective August 28, 1997, substituted "Health and Human Services" for "Human Resources."

§ 62-158. Natural gas expansion.

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may, after a hearing, order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within the company's franchised territory that otherwise would not be feasible for the company to construct. The fund shall be supervised and administered by the Commission. Any applicable taxes shall be paid out of the fund.

(b) Sources of funding for a natural gas local distribution company's expansion fund may, pursuant to the order of the Commission, after hearing, include:

- (1) Refunds to a local distribution company from the company's suppliers of natural gas and transportation services pursuant to refund orders or requirements of the Federal Energy Regulatory Commission;
- (2) Expansion surcharges by the local distribution company charged to customers purchasing natural gas or transportation services throughout that company's franchised territory; provided, however, in determining the amount of any surcharge the Commission shall take into account the prices of alternative sources of energy and the need to remain competitive with those alternative sources, and the need to maintain just and reasonable rates for natural gas and transportation services for all customers served by the company; provided further that the expansion surcharge

shall be gr
and

(3) Other sources

(c) The application of pursuant to the order ensure that all projects consistent with the in determining economic f net present value metho those projects with a ne to be economically infe event shall the Commis of an amount greater proposed project as det project is determined b cally feasible, the Comm the expansion fund or distributions from the f sion may order such reasonable amount to plant acquired with exp distribution company's such funds have been re the Commission.

(d) The Commission this section, including funds, for the use of su. fund or to customers. expansion surcharges expansion fund and f ratemaking the ent. report to the Joint Leg operation of any expan required under G.S. 62-

Editor's Note. — Session c. 598, s. 11, made this section

The purpose of this section facilitate the construction and the extension of natural into areas of the State where be economically feasible to ex traditional funding methods provide infrastructure to aid recruitment and economic de State ex rel. Utils. Comm'n v. Natural Gas Co., 346 N.C. S.E.2d 591 (1997).

Expansion fund legis proper delegation of leg thorty to an administrative is not unconstitutional. Sta Utils. Comm'n v. Carolina Ut ers Ass'n, 336 N.C. 657, 446 (1994).

Senate Bill 547 - Telecommunications Relay Service
Sponsored by Senator David Hoyle

[This additional information was prepared by the Public Staff - North Carolina Utilities Commission.]

What is Telecommunications Equipment Distribution Program (TEDP)?

Telecommunications Equipment Distribution Program provides telecommunication devices for the Deaf (TTYs), flashing light phone ring signalers, volume amplifiers, loud ringers, TTYs with Large Visual Displays or any other equipment which fits the individual's telecommunication needs. A teletypewriter (TTY), also called a telephone device for the deaf (TDD), enables you to type a message, and your message appears on the other person's TTY. Some TTYs have "voice over" capability, so that a speech-impaired person hears the caller's voice. Some TTYs have speech synthesizers for calling persons with normal hearing.

Who would be eligible?

Any North Carolina resident who is Deaf, Hard of Hearing, Deaf-Blind, Speech-disabled and has phone service in his/her home. Hearing or speech impairment would be verified by a doctor or audiologist. Proof of income would be needed to meet the means test established by the Utilities Commission.

How would one get equipment through this program?

By contacting the Equipment Distribution Program which would be administered through the Telecommunications Relay Service, a Division of the Department of Health and Human Services.

How would the program be paid for and accounted for?

The Utilities Commission would use up to four cents of the existing TRS surcharge for this purpose. This compares to fifteen cents charged by the Florida and California, and fifteen cents is being recommended now in New York. Guidelines for the Program would be established by the Utilities Commission. The Utilities Commission and the Public Staff would have the same authority to monitor and audit the program as it has over any other public utility.

What are other states doing about equipment distribution programs?

Approximately 35 states have equipment distribution programs, and most pay for the program through a telephone surcharge. Most states apply the surcharge to regular phones and cellular phones. North Carolina has not applied the surcharge to cellular phones to date. North Carolina has one of the lowest surcharges in the country.

Why have an equipment distribution program?

To allow hearing/speech impaired or deaf persons access to the telecommunications system if they have had no access up until now because they could not afford the equipment. In addition, most states believe that such a program is necessary to meet the requirements of the Americans with Disabilities Act (ADA) and the Telecommunications Act of 1996.

Statistics

- ▶ 8.6% of the population has a hearing loss of some degree; 645,000 in North Carolina.*
- ▶ Only 20% of those people who need a hearing aid have one.**
- ▶ The prevalence of hearing impairment at all ages decreases as family income increases.*
- ▶ The prevalence of hearing impairment is greater at all ages among the population in rural areas.*
- ▶ Persons 65 years and older are eight times more likely to have hearing impairment than ages 18-34 (i.e., 3.4 percent of the population ages 18-34 have hearing impairment, compared to 29.1 percent of the population 65 and older.)*
- ▶ Of the estimated 20 million deaf and hard of hearing persons in the U.S., approximately 3 out of 4 persons had onset of hearing loss after age 18.*

* Center for Assessment and Demographic Studies, Gallaudet University, based on statistics from the National Center for Health Statistics of the U.S. Department of Health and Human Services.

** Hard of Hearing Advocates (HOHA) of Framingham, MA.

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

May 31, 2000
Room 544
10:00 A.M.

CALL TO ORDER

Representative Ronnie Smith, Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

HB 1493 – Telephone Solicitations

ADJOURNMENT

Minutes
House Committee on Public Utilities
June 7, 2000

The House Committee on Public Utilities met Wednesday, May 31, 2000 in Room 544 of the Legislative Office Building at 10:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representative Drew Saunders and Zeno Edwards, Vice-Chairs; and Representatives Jimmy Ford, Robert Grady, John Hall, George Holmes, Bill Hurley, Danny McComas, Gene McCombs, George Miller, Frank Mitchell, Gene Rogers, and Edgar Starnes. Ex Officio Member Andy Dedmon was also present.

Chair Ronnie Smith called the meeting to order. He recognized the following pages: Casey Locklear, Ashley Burleson and Brandon Yopp.

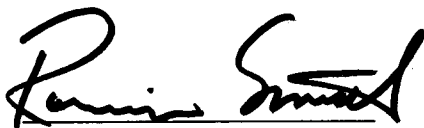
Rep. Zeno Edwards was recognized to submit a Proposed Committee Substitute on HB 1493 – Telephone Solicitations for discussion.

Rep. Gordon Allen was then recognized to explain the Committee Substitute. Rep. Allen said this bill is good for the people of North Carolina. Although not as strong as he would have liked, it is a good first step.

After discussion by several of the members, many of whom wished the bill was stronger, Rep. McComas made a motion for a favorable report as to committee substitute and unfavorable as to the original bill. Motion carried.

The meeting adjourned at 10:50.

Respectfully submitted:


Ronnie Smith
Chair


Ann Jordan
Committee Assistant

**2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Smith** for the Committee on **Public Utilities**.

☐ Committee Substitute for,

H.B. 1493 A BILL TO BE ENTITLED AN ACT TO PROVIDE CONSUMERS WITH
CONTROL OVER TELEPHONE SOLICITATION CALLS TO THEIR HOMES

☐ With a favorable report.

☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.

☐ With a favorable report, as amended.

☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.

☒ With a favorable report as to committee substitute bill (# _____), ☐ which changes the title,
unfavorable as to (original bill) (Committee Substitute Bill # _____), (and recommendation
that the committee substitute bill # _____) be re-referred to the Committee on _____.)

☐ With a favorable report as to House committee substitute bill (# _____), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

☐ With recommendation that the House do not concur; request conferees.

☐ With recommendation that the House concur; committee believes bill to be material.

☐ With an unfavorable report, with a Minority Report attached.

☐ Without prejudice.

☐ With an indefinite postponement report.

☐ With an indefinite postponement report, with a Minority Report attached.

☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/25/00

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

D

HOUSE BILL 1493*

Proposed Committee Substitute H1493-PCS5080-SK002

Short Title: Controlling Telephone Solicitations.

(Public)

Sponsors:

Referred to:

May 9, 2000

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE CONSUMERS WITH CONTROL OVER TELEPHONE
3 SOLICITATION CALLS TO THEIR HOMES.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Assembly finds that:

- 6 (1) The use of the telephone to market goods and services to
7 consumers is increasing;
8 (2) Some citizens of this State wish to have a means of controlling
9 these calls to their residences;
10 (3) The rights to privacy and commercial speech can be balanced in a
11 way that accommodates both the privacy of individuals and
12 legitimate telemarketing practices; and
13 (4) The public interest requires the establishment of a mechanism
14 under which the citizens of this State can decide whether or not
15 they wish to receive telemarketing calls in their homes.

16 Section 2. Chapter 75 of the General Statutes is amended by adding a
17 new section to read:

18 **"§ 75-30.1. Restrictions on telephone solicitations.**

19 **(a) For purposes of this section:**

- 20 (1) **'Residential telephone subscriber' means a person who subscribes**
21 **to residential telephone service from a local exchange company**
22 **and uses that service primarily for residential purposes, or the**
23 **persons living or residing with that person.**

(2) 'Telephone solicitation' means a voice communication over a telephone line to a residential telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services, or for the purpose of obtaining information that will or may be used for that purpose, but does not include the following communications:

a. To any person with that person's prior express invitation or permission;

b. To any person with whom the telephone solicitor has an established business relationship; or

c. By or on behalf of a tax-exempt nonprofit organization.

(3) 'Telephone solicitor' means any business or other legal entity doing business in this State that makes telephone solicitations or causes telephone solicitations to be made.

(b) Any telephone solicitor who makes a telephone solicitation to a residential telephone subscriber shall:

(1) At the beginning of the call, state clearly the identity of the business, individual, or other legal entity initiating the call, and identify the person making the call by that person's name.

(2) During the call, state clearly the telephone number, other than that of the automatic dialer or prerecorded message machine player that placed the call, or the address of the business, individual, or other legal entity initiating the call.

(3) Terminate the call if the person does not consent to the call.

(4) If the person called requests to be taken off the contact list of the telephone solicitor, take all steps necessary to remove that person's name and telephone number from the contact records of the business, individual, or other legal entity initiating the call.

(c) Every telephone solicitor who makes telephone solicitations in this State shall implement in-house systems and procedures designed to prevent further calls to persons who have asked not to be called again. Compliance with section 64.1200(e) of the Federal Communications Commission's Restrictions on Telephone Solicitation constitutes compliance with this section.

(d) No telephone solicitor shall initiate a call to a residential telephone subscriber who has communicated to that telephone solicitor a desire to be taken off the contact list of that solicitor.

(e) No telephone solicitor shall initiate a call to a residential telephone subscriber after 9:00 p.m. or before 8:00 a.m. at the called party's location.

(f) No telephone solicitor who makes a telephone solicitation to the telephone line of a residential telephone subscriber in this State shall knowingly use any method to block or otherwise circumvent that subscriber's use of a caller identification service.

A telephone solicitor who makes a telephone solicitation to the telephone line of a residential subscriber through the use of a private branch exchange (PBX) or other call-generating system that does not transmit caller identification information shall

1 not be in violation of this subsection. No provider of telephone caller identification
2 services shall be held liable for violations of this subsection committed by other
3 persons or entities.

4 (g) Every telephone solicitor who makes telephone solicitations in this State shall
5 keep a record for a period of 24 months from the date a call is placed of the legal
6 name and any fictitious name used, resident address, telephone number, and job title
7 of each person who places a telephone solicitation for that telephone solicitor. If
8 callers for a telephone solicitor use fictitious names, each fictitious name shall be
9 traceable to only one specific caller.

10 (h) The Attorney General may investigate any complaints received alleging
11 violations of subsections (b) through (g) of this section. If, after investigating a
12 complaint, the Attorney General finds that there has been a violation of subsections
13 (b) through (g) of this section, the Attorney General may bring an action to impose a
14 civil penalty and to seek any other appropriate relief, including equitable relief to
15 restrain the violation pursuant to G.S. 75-14. Actions for civil penalties under this
16 section shall be consistent with the provisions of G.S. 75-15.2, except that the penalty
17 imposed for a violation of this section shall not exceed five hundred dollars (\$500.00)
18 per violation.

19 (i) A person who has received more than one telephone solicitation within any
20 12-month period by or on behalf of the same telephone solicitor in violation of
21 subsections (b) through (g) of this section may bring either or both of the following
22 actions in the General Court of Justice:

- 23 (1) An action to enjoin further violations.
24 (2) An action to recover for actual monetary losses resulting from each
25 violation or up to five hundred dollars (\$500.00) in damages for
26 each violation, whichever is greater.

27 In an action brought pursuant to this section, a prevailing plaintiff shall be entitled
28 to recover reasonable attorneys' fees, and the court may award reasonable attorneys'
29 fees to a prevailing defendant if the court finds that the plaintiff knew, or should have
30 known, that the action was frivolous and malicious.

31 (j) A citizen of this State is also entitled to bring an action in the General Court
32 of Justice to enforce the private rights of action established by federal law under 47
33 U.S.C. § 227(b)(3) and 47 U.S.C. § 227(c)(5).

34 (k) Actions brought pursuant to subsections (i) and (j) of this section shall be tried
35 in the county where the plaintiff resides at the time of the commencement of the
36 action."

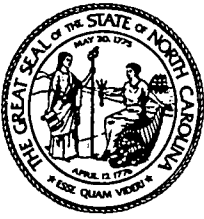
37 Section 3. Chapter 62 of the General Statutes is amended by adding a
38 new section to read:

39 **"§ 62-53. Notification of opportunity to object to telephone solicitation.**

40 The Commission shall require each local exchange company to notify all persons
41 who subscribe to residential service from that company of the provisions of G.S. 75-
42 30.1, of the federal laws allowing consumers to object to receiving telephone
43 solicitations, and of programs made available by private industry that allow
44 consumers to have their names removed from telemarketing lists, by enclosing that

1 information, at least annually, in every telephone bill mailed to residential customers.
2 The Commission shall also ensure that this information is printed in a clear,
3 conspicuous manner in the consumer information pages of each telephone directory
4 distributed to residential customers."

5 Section 4. This act becomes effective October 1, 2000, and applies to
6 telephone calls made on or after that date. Section 3 applies to all telephone
7 directories printed on or after that date.



HOUSE BILL 1493: Controlling Telephone Solicitations

BILL ANALYSIS

Committee: House Public Utilities
Date: May 31, 2000
Version: PCS-001

Introduced by: Representative Allen
Summary by: Esther Manheimer
Committee Counsel

BILL ANALYSIS:

Solicitors to Remove Residential Telephone Subscribers from their Contact List.

This bill mirrors the federal law regarding telephone solicitation and would require each telephone solicitor doing business in this State to remove residential telephone subscribers from their contact list when the residential subscriber requests to be removed from the contact list. The NC Utilities Commission must require local carriers to notify their residential subscribers of the provisions in this bill, of the federal laws pertaining to telephone solicitation, and of the private industry programs of the same nature (e.g. Direct Marketing Association). The NC Utilities Commission must require that notification must be placed at least once a year in the telephone bills of residential telephone subscribers and conspicuously published in telephone books.

Telephone solicitation does NOT include: calls made with the permission of the person called; calls made to persons with whom the solicitor has an established, continuing business relationship; and calls made by or on behalf of tax-exempt nonprofit organizations.

Solicitors Prohibited from Soliciting those Requesting to be Removed from their Contact List.

Solicitors doing business in NC are prohibited from calling any telephone number where the residential telephone subscriber requests to be removed from the solicitor's contact list. Additionally, this bill requires solicitors to:

- Identify the business, individual or entity initiating the call and the person making the call (identify themselves by their name);
- State the telephone number of the entity initiating the call;
- Terminate the call if the telephone subscriber does not consent to the solicitation;
- Establish procedures to prevent further calls to persons who request not to be called again;
- Restrict their calls to the hours between 8:00 a.m. and 9:00 p.m.; and
- Not block the telephone subscribers' caller ID.
- Keep a record of each caller's legal and fictitious name, address, telephone number, and job title.

Enforcement.

Attorney General.

This bill authorizes the Attorney General to investigate solicitors who violate the provisions described in the above section. The Attorney General may impose a civil penalty of not more than \$500 for each violation and may seek equitable relief to restrain further violations. In

HOUSE BILL 1493

Page 2

determining the amount of the civil penalty or whether to waive the penalty for the first violation the court must consider all relevant circumstances, including:

- Extent of the harm caused;
- Nature and persistence of conduct;
- Length of time over which conduct occurred;
- The assets, liabilities, and net worth of the entity; and
- Any corrective action taken by the telephone solicitor.

State Private Right of Action.

This bill also grants persons receiving more than one solicitation within a twelve-month period from the same solicitor in violation of this bill the right to enjoin the solicitor and sue for up to \$500 in damages. Prevailing plaintiffs are entitled to attorney fees. Conversely, prevailing defendants may be awarded attorney fees if the court finds that the plaintiff knew or should have known that the action was frivolous and malicious.

Federal Private Right of Action.

Citizens may also initiate an action in State court to enforce the provisions of federal law regarding telephone solicitation. This provision is included in the bill because it has come to the staff's attention that the private right of action under federal law contains conditional language that entitles a person to relief under the federal law only "if otherwise permitted by the laws or rules of court of a State...." 42 U.S.C. § 227(b)(3) and (c)(5). Reportedly, some actions have been disallowed due to the lack of a NC State law that specifically permits these types of actions. Venue under both the State and federal private right of action is in the county where the plaintiff resides.

Effective Date.

This act becomes effective October 1, 2000. This act applies to all telephone directories published and all telephone calls made on or after October 1, 2000.

Constitutional Considerations.

This legislation appears to be a constitutionally-permissible method of balancing the first amendment free speech rights of telephone solicitors engaging in commercial speech with the governmental interest of protecting citizens' privacy within their own homes. In addition, this bill tackles the problem of the State's jurisdiction over interstate calls. The federal law covers interstate calls (calls originating outside NC) and clearly any NC law would cover intrastate calls. This bill is substantially similar to the federal law and thus creates uniform coverage over all telephone solicitations in NC – both inter and intrastate telephone solicitations.

VISITOR REGISTRATION SHEET

Public Utilities

Name of Committee

May 31, 2000

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wade Rubin	New Observer
Barry Smith	Freedom Newspapers
Bob Hillman	Public Staff - NCUC
David Richman	Attorney Gen. Office
Phil Telfer	" " "
Dick Carlton	Securities Industry Assn.
Wadette	Brooks Pierce
Cam Crider	" "
Larry Mathiot	Sprint
John Bowditch	Alley Associates
Alan Wescott	Sprint
John Polanski	AT&T
Bryan Hawk	BellSouth
Bob Price	Jordan Price
Tom Womack	Sprint
David Simmons	Alley Associate, Inc
Leon Kilian	More Van Alst
Robert PABchel	Young, Moore
August Williams	NCCCS
Jeff Van Dyke	BELLSOUTH
Esterline Davis	Electric City
Alvin Barlow	Electric City
Lisa Pierce	Assn. of Insurance & Financial Advs.
Phil Kaylor	Kaylor Law Firm
Bender	S.I.A.
Joe Foster	GTE
Joe Pennington	Penn Natural Gas Co.

VISITOR REGISTRATION SHEET

Public Utilities

Name of Committee

May 31, 2000

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Andy Ellen

NCRMA

From Preston

NCRMA

Flanagan

Bone & Assoc-

W. K. Sullivan

WCSK

VLMBest

[Handwritten signature]

Charlie Diehl

NC Trucking Assoc.

AGENDA

HOUSE COMMITTEE ON PUBLIC UTILITIES

June 7, 2000
Room 544
10:00 A.M.

CALL TO ORDER

Representative Drew Saunders, Vice-Chair
Public Utilities Committee

BILLS TO BE CONSIDERED

HB 1593 – Extend Electric Service Study Commission

ADJOURNMENT

Minutes
House Committee on Public Utilities
June 7, 2000

The House Committee on Public Utilities met Wednesday, June 7, 2000 in Room 544 of the Legislative Office Building at 10:00 a.m. The following members were present: Representative Ronnie Smith, Chair; Representative Drew Saunders, Vice-Chair and Representatives Jimmy Ford, Robert Grady, John Hall, Bill Hurley, Danny McComas, and Frank Mitchell.

Vice-Chair Drew Saunders called the meeting to order. He recognized Cara Allison and Jacqueline Allison from Cumberland County. Rep. Bill Hurley sponsored them.

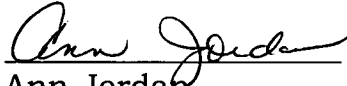
Vice-Chair Saunders recognized Rep. Ronnie Smith to explain HB 1493 that extends the Study Commission on The Future of Electric Service in North Carolina.

Rep Frank Mitchell moved for a favorable report on the bill. Motion carried.

The meeting adjourned at 10:09.

Respectfully submitted:

Rep. Drew Saunders
Vice-Chair


Ann Jordan
Committee Assistant

**2000 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) Smith for the Committee on **PUBLIC UTILITIES.**

- ☐ Committee Substitute for
H.B. 1593 A BILL TO BE ENTITLED AN ACT TO EXTEND THE STUDY
COMMISSION ON THE FUTURE OF ELECTRIC SERVICE IN NORTH CAROLINA.
- ☒ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to committee substitute bill (#), ☐ which changes the title,
unfavorable as to (original bill) (Committee Substitute Bill #), (and recommendation
that the committee substitute bill #) be re-referred to the Committee on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/25/00

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

H

1

HOUSE BILL 1593*

Short Title: Extend Electric Service Comm.

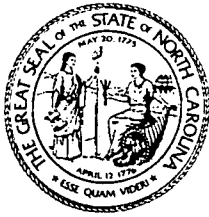
(Public)

Sponsors: Representatives Smith; McMahan and Mitchell.

Referred to: Rules, Calendar, and Operations of the House.

May 18, 2000

1 A BILL TO BE ENTITLED
2 AN ACT TO EXTEND THE STUDY COMMISSION ON THE FUTURE OF
3 ELECTRIC SERVICE IN NORTH CAROLINA.
4 The General Assembly of North Carolina enacts:
5 Section 1. Section 4 of S.L. 1997-40 reads as rewritten:
6 "Section 4. The Commission shall make a report to the 1998 Regular Session of
7 the 1997 General Assembly, which may contain recommendations, and shall report
8 the results of its study and its recommendations to the 1999 General Assembly. ~~The~~
9 ~~Commission shall terminate upon filing its final report.~~ The Commission shall report
10 periodically thereafter and shall terminate June 30, 2006."
11 Section 2. This act becomes effective May 1, 2000.



BILL ANALYSIS

HB 1593: EXTEND ELECTRIC SERVICE STUDY COMMISSION

Committee: House Public Utilities
Date: June 7, 2000
Version: I

Introduced by: Rep. Smith
Summary by: Steven Rose
Committee Counsel

SUMMARY: *House Bill 1593 extends the Study Commission on the Future of Electric Service in North Carolina until June 30, 2006. This extension was recommended by the Study Commission in its report to the 2000 Regular Session of the 1999 General Assembly. The effective date is May 1, 2000.*

CURRENT LAW: Under Section 4 of S.L. 1997-40, the Study Commission on the Future of Electric Service in North Carolina terminates upon filing its final report. That report was filed May 16, 2000.

BILL ANALYSIS: House Bill 1593 was recommended by the Study Commission on the Future of Electric Service in North Carolina in its report to the 2000 Regular Session of the 1999 General Assembly. This bill is one of the nine recommendations contained in that report. Under the current law, SL 1997-40, the Study Commission ended upon the filing of its report to the General Assembly. This occurred May 16, 2000. However, seven of the nine recommendations of the Study Commission require further action by the Study Commission, including the recommending of specific legislation to the 2001 General Assembly and the 2003 General Assembly.

BACKGROUND: The Study Commission on the Future of Electric Service in North Carolina was created by the 1997 General Assembly to study the question of whether or not North Carolina should restructure its electric utility industry to allow for retail competition in the sale of electricity, and if so, how that should be done. The final report of the Study Commission was required to be made to the 1999 General Assembly at which time the Study Commission would terminate.

The Study Commission worked diligently at its task and finally answered the threshold question of whether or not the electric utility industry in North Carolina should be restructured on April 3, 2000. The recommendation of the Study Commission is that it should be restructured with full retail competition being established by January 1, 2006. (A transition period introducing retail competition would begin January 1, 2005.) However, the Commission has not agreed on a recommendation for legislation spelling out how retail choice would be accomplished, how stranded costs would be dealt with, how municipal power agency debt will be handled, what specific consumer protection provisions will be included, what provisions regarding the environment and alternative energy will be included, what tax law revisions will be made, and what legislation might be necessary regarding transmission and distribution regulation. Recommendation 9 of the Study Commission's final report is that the Study Commission be extended until June 30, 2006, in order to recommend specific legislation, to review activities related to the implementation of Commission recommendations, and to recommend any additional needed legislation not foreseen at the present time. The effective date of the bill is May 1, 2000. The purpose of this effective date is to be sure there is no lapse in the authority of the Commission until its work is completed.

H1593-SMRL-001

Public Utilities

Date 6/7/2020

NAME _____

NAME Gene Upchurch

CPA

Rev King

Kashgar Fine

Michael Thompson

Dominion NC

Sean V. Ervin, D

N. C. Utilities Commission

Bob Hillman

Public Staff - NCUC