

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH50259-LM-98 (03/16)

Short Title: Electric Service Territories. (Public)

Sponsors: Representative Cole.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH STANDARDS FOR FAIR COMPETITION BY PRESERVING THE ASSIGNMENTS OF ELECTRIC SERVICE TERRITORIES MADE BY THE NORTH CAROLINA UTILITIES COMMISSION FROM EROSION DUE TO ANNEXATION AND TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER AND SEWER SERVICE BY A CITY TO AN ANNEXATION PETITIONER UPON THE PETITIONER AGREEING TO BE SUPPLIED WITH ELECTRICITY BY THE CITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-110.2 reads as rewritten:

"§ 62-110.2. Electric service in areas outside of municipalities and areas annexed after June 30, 2005, by municipalities engaged in electric service competition.

(a) As used in this section, unless the context otherwise requires, the term:

...

(3) "Electric supplier" means any public utility furnishing electric service ~~or any service~~, electric membership corporation, joint agency or joint municipal assistance agency created pursuant to Chapter 159B of the General Statutes, municipality that owns, operates, or maintains its own electric system, or municipality that on January 1, 2005, was a member of a joint agency or joint municipal assistance agency created pursuant to Chapter 159B of the General Statutes.

...

(b) In areas outside of municipalities and areas that are annexed after June 30, 2005, by a municipality that is an electric supplier, electric suppliers shall have rights and be subject to restrictions as follows:

1 ...

2 (10) No electric supplier shall furnish electric service to any premises in
3 this State outside the limits of any incorporated city or town or to any
4 premises in this State wholly or partially within any area that is
5 annexed after June 30, 2005, by a municipality that is an electric
6 supplier, except as permitted by this section; provided, that nothing in
7 this section shall restrict the right of an electric supplier to furnish
8 electric service to itself or to exchange or interchange electric energy
9 with, purchase electric energy from or sell electric energy to any other
10 electric supplier.

11 ...

12 (c) (1) In order to avoid unnecessary duplication of electric facilities, the
13 Commission is authorized and directed to assign, as soon as
14 practicable after January 1, 1966, to electric suppliers all areas, by
15 adequately defined boundaries, that are outside the corporate limits of
16 municipalities or any previously unassigned areas that are outside the
17 corporate limits of a municipality when this section becomes effective
18 but is subsequently annexed by a municipality that is an electric
19 supplier, and that are more than 300 feet from the lines of all electric
20 suppliers as such lines exist on the dates of the assignments; provided,
21 that the Commission may leave unassigned any area in which the
22 Commission, in its discretion, determines that the existing lines of two
23 or more electric suppliers are in such close proximity that no
24 substantial avoidance of duplication of facilities would be
25 accomplished by assignment of such area. The Commission shall make
26 assignments of areas in accordance with public convenience and
27 necessity, considering, among other things, the location of existing
28 lines and facilities of electric suppliers and the adequacy and
29 dependability of the service of electric suppliers, but not considering
30 rate differentials among electric suppliers.

31 ...

32 (e) The furnishing of electric service in any area ~~which becomes a part of any~~that
33 is annexed after June 30, 2005, by a municipality that is an electric supplier after April
34 20, 1965, either by annexation or incorporation, (whether or not such the area, or any
35 portion thereof, shall have been assigned pursuant to subsection (c) of this section) shall
36 be subject to the provisions of Part 2, Article 16 of Chapter 160A of the General
37 Statutes, and any this section only. Any provisions of this section Part 2 of Chapter 160A
38 of the General Statutes that are inconsistent with said Article this section shall not be
39 applicable within such the area after the effective date of such annexation or
40 incorporation. annexation. The furnishing of electric service in any area that becomes a
41 part of a municipality prior to June 30, 2005, by either annexation or incorporation
42 (whether or not the area, or any portion thereof, shall have been assigned pursuant to
43 subsection (c) of this section) shall be subject to the provisions of Part 2 of Article 16 of
44 Chapter 160A of the General Statutes, and any provision of this section inconsistent

1 with that Article shall not be applicable within the area after the effective date of
 2 incorporation."

3 **SECTION 2.** G.S. 160A-312(a) reads as rewritten:

4 "(a) A city shall have authority to acquire, construct, establish, enlarge, improve,
 5 maintain, own, operate, and contract for the operation of any or all of the public
 6 enterprises as defined in this Article to furnish services to the city and its citizens.
 7 Subject to Part 2 of this ~~Article~~, Article and the limitations on the extension or provision
 8 of electric service by municipalities that are electric suppliers as defined in
 9 G.S. 62-110.2, a city may acquire, construct, establish, enlarge, improve, maintain, own,
 10 and operate any public enterprise outside its corporate limits, within reasonable
 11 limitations, but in no case shall a city be held liable for damages to those outside the
 12 corporate limits for failure to furnish any public enterprise service."

13 **SECTION 3.** G.S. 160A-331 reads as rewritten:

14 **"§ 160A-331. Definitions.**

15 Unless the context otherwise requires, the following words and phrases shall have
 16 the meanings indicated when used in this ~~Part~~: Part, and shall apply only to areas that are
 17 annexed before June 30, 2005, by a municipality that is an electric supplier as defined in
 18 G.S. 62-110.2:

19 ...

20 (2) "Line" means any conductor located inside the city or within 300 feet
 21 of the corporate limits of the city for distributing or transmitting
 22 electricity, other than

- 23 a. For overhead construction, a conductor from the pole nearest
 24 the premises of a consumer to such premises, or a conductor
 25 from a line tap to such premises, and
- 26 b. For underground construction, a conductor from the transformer
 27 (or the junction point, if there be one) nearest the premises of a
 28 consumer to such premises.

29 ...

30 (5) "Secondary supplier" means a person, firm, or corporation that
 31 furnishes electricity at retail to one or more consumers other than itself
 32 within the limits of a city or that has a conductor within 300 feet of the
 33 limits of a city but is not a primary supplier. A primary supplier that
 34 furnishes electric service within a city pursuant to a franchise or
 35 contract that limits or restricts the classes of consumers or types of
 36 electric service permitted to such supplier shall, in and with respect to
 37 any area annexed by the city after April 20, 1965, be a primary
 38 supplier for such classes of consumers or types of service, and if it
 39 furnishes other electric service in the annexed area on the effective
 40 date of annexation, shall be a secondary supplier, in and with respect
 41 to such annexed area, for all other electric service. A primary supplier
 42 that continues to furnish electric service after the expiration of a
 43 franchise or contract that limited or restricted such primary supplier
 44 with respect to classes of consumers or types of electric service shall,

1 in and with respect to any area annexed by the city after April 20,
2 1965, be a secondary supplier for all electric service if it is furnishing
3 electric service in the annexed area on the effective date of
4 annexation."

5 **SECTION 4.** G.S. 160A-332 reads as rewritten:

6 **"§ 160A-332. Electric service within city limits.**

7 (a) The suppliers of electric service in any area inside the corporate limits of any
8 city that is not an electric supplier as defined in G.S. 62-110.2 or in any area that on or
9 before June 30, 2005, is inside the corporate limits of a city that is an electric supplier as
10 defined in G.S. 62-110.2, and the city is one in which a secondary supplier was
11 furnishing-authorized to furnish electric service on the determination date (as defined in
12 G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

13 ...

14 (7) Except as provided in subdivisions (1), (2), (3), (5), (6), and (6a) of
15 this ~~section,~~section and in G.S. 62-110.2, a secondary supplier shall
16 not furnish electric service within the corporate limits of any city
17 unless it first obtains the written consent of the city and the primary
18 supplier."

19 **SECTION 5.** G.S. 160A-333 reads as rewritten:

20 **"§ 160A-333. Temporary electric service.**

21 No electric supplier shall furnish temporary electric service for the construction of
22 premises which it would not have the right to serve under this Part or G.S. 62-110.2 if
23 such premises were already constructed. The construction of lines for, and the
24 furnishing of, temporary electric service for the construction of premises which any
25 other electric supplier, if chosen by the consumer, would have the right to serve if such
26 premises were already constructed, shall not impair the right of such other electric
27 supplier to furnish service to such premises after the construction thereof, if then chosen
28 by the consumer; nor, unless the consumer chooses to have such premises served by the
29 supplier that furnished the temporary service, shall the furnishing of such temporary
30 service or the construction of a line therefor impair the right of any other electric
31 supplier to furnish service to any other premises which, without regard to the
32 construction of such temporary service line, it has the right to serve."

33 **SECTION 6.** G.S. 160A-336 reads as rewritten:

34 **"§ 160A-336. Electric service for city facilities.**

35 No provisions of this Part or G.S. 62-110.2 shall prevent a city that is a primary
36 supplier from furnishing its own electric service for city ~~facilities,~~ or facilities. No
37 provision of this Part shall prevent any other primary supplier from furnishing electric
38 street lighting service to a city inside its corporate limits."

39 **SECTION 7.** G.S. 160A-337 reads as rewritten:

40 **"§ 160A-337. Effect of Part on rights and duties of primary supplier.**

41 Except for the rights granted to and restrictions upon primary suppliers contained in
42 the provisions of this Part, nothing in this Part shall diminish, enlarge, alter, or affect in
43 any way the rights and duties of a primary or secondary supplier to furnish electric
44 service to premises within the corporate limits of a city. Nothing in this Part shall

1 diminish, enlarge, alter, or affect in any way the rights granted to and restrictions placed
2 upon electric suppliers under G.S. 62-110.2 to furnish electric service to premises that
3 are wholly or partially within areas that are annexed after June 30, 2005, by a city that is
4 an electric supplier as defined in G.S. 62-110.2."

5 **SECTION 8.** Part 1 of Article 4A of Chapter 160A of the General Statutes is
6 amended by adding the following new section to read:

7 **"§ 160A-31.2. Conditions for provision of city services prohibited.**

8 (a) A city shall not require a petitioner or any other person to accept electric
9 service provided by the city as a condition of granting a petition under this Part, and no
10 person shall communicate such a requirement to a petitioner or any other person.

11 (b) A city shall not offer to accelerate the provision of municipal services under
12 this Part to a petitioner or any other person if the petitioner or other person agrees to
13 accept electric service provided by the city, and no person shall communicate such an
14 offer to a petitioner or any other person.

15 (c) A violation of this section by a city or person shall constitute an unfair
16 method of competition and an unfair act or practice under Chapter 75 of the General
17 Statutes. A person who violates any provision of this section shall be guilty of a Class 2
18 misdemeanor."

19 **SECTION 9.** Part 4 of Article 4A of Chapter 160A of the General Statutes is
20 amended by adding the following new section to read:

21 **"§ 160A-58.5A. Conditions for provision of city services prohibited.**

22 (a) A city shall not require a petitioner or any other person to accept electric
23 service provided by the city as a condition of granting a petition under this Part, and no
24 person shall communicate such a requirement to a petitioner or any other person.

25 (b) A city shall not offer to accelerate the provision of municipal services under
26 this Part to a petitioner or any other person if the petitioner or other person agrees to
27 accept electric service provided by the city, and no person shall communicate such an
28 offer to a petitioner or any other person.

29 (c) A violation of this section by a city or person shall constitute an unfair
30 method of competition and an unfair act or practice under Chapter 75 of the General
31 Statutes. A person who violates any provision of this section shall be guilty of a Class 2
32 misdemeanor."

33 **SECTION 10.** G.S. 117-10.2 reads as rewritten:

34 **"§ 117-10.2. Restriction on municipal service.**

35 Except as otherwise provided in this ~~section~~,section and G.S. 62-110.2, no electric
36 membership corporation shall furnish electric service to, or within the limits of, any
37 incorporated city or town, except pursuant to a franchise that may be granted under the
38 provisions of G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-332, and
39 160A-333. An electric membership corporation may furnish electric service to, or
40 within the limits of, any incorporated city or town if the city or town and all electric
41 suppliers, including public utilities, other electric membership corporations and other
42 cities or towns, then furnishing electric service to or within such city or town consent
43 thereto in writing. To the extent that the provision of electric service by an electric
44 membership corporation is permitted under G.S. 62-110.2, an electric membership

1 corporation may furnish electric service in areas that are annexed after June 30, 2005,
2 by a city that is an electric supplier as defined in G.S. 62-110.2."

3 **SECTION 11.** This act is effective when it becomes law. Sections 1 through
4 7 of this act shall apply to all areas within a city when this act becomes law, and to areas
5 to be annexed by a city that is an electric supplier as defined in G.S. 62-110.2, as
6 enacted in Section 1 of this act, but the annexation was not commenced (evidenced by
7 the adoption of a resolution under G.S. 160A-37(a) or G.S. 160A-49(a) or the receipt of
8 a valid petition under G.S. 160A-31 or G.S. 160A-58.1) before January 1, 2005.
9 Sections 8 and 9 of this act shall apply to offenses committed on or after the effective
10 date of this act.