

Article 4.

Procedure Before the Commission.

§ 62-60. Commission acting in judicial capacity; administering oaths and hearing evidence; decisions; quorum.

For the purpose of conducting hearings, making decisions and issuing orders, and in formal investigations where a record is made of testimony under oath, the Commission shall be deemed to exercise functions judicial in nature and shall have all the powers and jurisdiction of a court of general jurisdiction as to all subjects over which the Commission has or may hereafter be given jurisdiction by law. The commissioners and members of the Commission's staff designated and assigned as examiners shall have full power to administer oaths and to hear and take evidence. The Commission shall render its decisions upon questions of law and of fact in the same manner as a court of record. A majority of the commissioners shall constitute a quorum, and any order or decision of a majority of the commissioners shall constitute the order or decision of the Commission, except as otherwise provided in this Chapter. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-60.1. Commission to sit in panels of three.

(a) The Utilities Commission shall sit in panels of three commissioners each unless the chairman by order shall set the proceeding for hearing by the full Commission.

(b) Any order or decision made unanimously by a panel of three commissioners shall constitute the order or decision of the Commission, except as otherwise provided in this Chapter; provided, however, that upon motion of any three commissioners not sitting on the panel, made within 10 days of issuance of such order or decision of the panel, with notice to parties of record, the order or decision of the panel shall thereby be stayed and the full Commission shall review the order or decision of the panel and shall within 30 days of said motion either affirm or modify the order or decision of the panel or remand the matter to the panel for further proceedings; provided that the foregoing shall not limit the right of parties to seek review of such order or decision under G.S. 62-90.

(c) In the event an order or decision of the panel of three is not made unanimously, such order or decision shall be a recommended order only, subject to review by the full Commission, with all commissioners eligible to participate in the final arguments and decision. Review shall take place in accordance with the provisions of G.S. 62-78 and the Commission shall decide the matter in controversy and make appropriate order or decision thereon within 60 days of the date of the recommended order. If within the filing period specified by the panel no exception has been filed by a party, or if the Commission within the same period has not advised the parties that it will conduct a review upon its own motion, the recommended order or decision shall become the final order or decision of the Commission. Nothing in this section shall amend or repeal the provisions of G.S. 62-134.

(d) This section shall become effective July 1, 1975, and shall not affect the utilization of or the procedures outlined for utilization of a hearing commissioner or a hearing examiner as provided for elsewhere in Chapter 62. (1975, c. 243, s. 4; 1977, c. 468, s. 13.)

§ 62-61. Witnesses; production of papers; contempt.

The Commission shall have the same power to compel the attendance of witnesses, require the examination of persons and parties, and compel the production of books and papers, and punish for contempt, as by law is conferred upon the superior courts. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-62. Issuance and service of subpoenas.

All subpoenas for witnesses to appear before the Commission, a division of the Commission or a hearing commissioner or examiner and notice to persons or corporations, shall be issued by the Commission or its chief clerk or a deputy clerk and be directed to any sheriff or other officer authorized by law to serve process issued out of the superior courts, who shall execute the same and make due return thereof as directed therein, under the penalties prescribed by law for a failure to execute and return the process of any court. The Commission shall have the authority to require the applicant for a subpoena for persons and documents to make a reasonable showing that the evidence of such persons or documents will be material and relevant to the issue in the proceeding. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1995, c. 379, s. 14(c).)

§ 62-63. Service of process and notices.

The chief clerk, a deputy clerk, or any authorized agent of the Commission may serve any notice issued by it and his return thereof shall be evidence of said service; and it shall be the duty of the sheriffs and all officers authorized by law to serve process issuing out of the superior courts, to serve any process, subpoenas and notices issued by the Commission, and such officers shall be entitled to the same fees as are prescribed by law for serving similar papers issuing from the superior court. Service of notice of all hearings, investigations and proceedings by the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions governing civil actions in the superior courts of this State, and may be made personally by an authorized agent of the Commission or by mailing in a sealed envelope, registered, with postage prepaid, or by certified mail. (1949, c. 989, s. 1; 1957, c. 1152, s. 2; 1963, c. 1165, s. 1.)

§ 62-64. Bonds.

All bonds or undertakings required to be given by any of the provisions of this Chapter shall be payable to the State of North Carolina, and may be sued on as are other undertakings which are payable to the State. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-65. Rules of evidence; judicial notice.

(a) When acting as a court of record, the Commission shall apply the rules of evidence applicable in civil actions in the superior court, insofar as practicable, but no decision or order of the Commission shall be made or entered in any such proceeding unless the same is supported by competent material and substantial evidence upon consideration of the whole record. Oral evidence shall be taken on oath or affirmation. The rules of privilege shall be effective to the same extent that they are now or hereafter recognized in civil actions in the superior court. The Commission may exclude incompetent, irrelevant, immaterial and unduly repetitious or cumulative evidence. All evidence, including records and documents in the possession of the Commission of which it desires to avail itself, shall be made a part of the record in the case by definite reference thereto at the hearing. Any party introducing any document or record in evidence by reference shall bear the expense of all copies required for the record in the event of an appeal from the Commission's order. Every party to a proceeding shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues, to impeach any witness regardless of which party first called such witness to testify and to rebut the evidence against him. If a party does not testify in his own behalf, he may be called and examined as if under cross-examination.

(b) The Commission may take judicial notice of its decisions, the annual reports of public utilities on file with the Commission, published reports of federal regulatory agencies, the decisions of State and federal courts, State and federal statutes, public information and data published by official State and federal agencies and reputable financial reporting services, generally recognized technical and scientific facts within the Commission's specialized knowledge, and such other facts and evidence as may be judicially noticed by justices and judges of the General Court of Justice. When any Commission decision relies upon such judicial notice of material facts not appearing in evidence, it shall be so stated with particularity in such decision and any party shall, upon petition filed within 10 days after service of the decision, be afforded an opportunity to contest the purported facts noticed or show to the contrary in a rehearing set with proper notice to all parties; but the Commission may notify the parties before or during the hearing of facts judicially noticed, and afford at the hearing a reasonable opportunity to contest the purported facts noticed, or show to the contrary. (1949, c. 989, s. 1; 1959, c. 639, s. 2; 1963, c. 1165, s. 1; 1973, c. 108, s. 21.)

§ 62-66. Depositions.

The Commission or any party to a proceeding may take and use depositions of witnesses in the same manner as provided by law for the taking and use of depositions in civil actions in the superior court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-67. Repealed by Session Laws 1981, c. 193, s. 1.

§ 62-68. Use of affidavits.

At any time, 10 or more days prior to a hearing or a continued hearing, any party or the Commission may send by registered or certified mail or deliver to the opposing parties a copy of any affidavit proposed to be used in evidence, together with the notice as herein provided. Unless an opposing party or the Commission at least five days prior to the hearing, if the affidavit and notice are received at least 20 days prior to such hearing, otherwise at any time prior to or during such hearing, sends by registered or certified mail or delivers to the proponent a request to cross-examine the affiant at the hearing, the right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant at the hearing is not afforded after request therefor is made as herein provided, the affidavit shall not be received in evidence. The notice accompanying the affidavit shall set forth the name and address of the affiant and shall contain a statement that the affiant will not be called to testify orally and will not be subject to cross-examination unless the opposing parties or the Commission demand the right of cross-examination by notice mailed or delivered to the proponent at least five days prior to the hearing if the notice and affidavit are received at least 20 days prior to such hearing, otherwise at any time prior to or during such hearing. (1949, c. 989, s. 1; 1957, c. 1152, s. 3; 1963, c. 1165, s. 1.)

§ 62-69. Stipulations and agreements; prehearing conference.

(a) In all contested proceedings the Commission, by prehearing conferences and in such other manner as it may deem expedient and in the public interest, shall encourage the parties and their counsel to make and enter stipulations of record for the following purposes:

- (1) Eliminating the necessity of proof of all facts which may be admitted and the authenticity of documentary evidence,

- (2) Facilitating the use of exhibits, and
- (3) Clarifying the issues of fact and law.

The Commission may make informal disposition of any contested proceeding by stipulation, agreed settlement, consent order or default.

(b) Unless otherwise provided in the Commission's rules of practice and procedure, such prehearing conferences may be ordered by the Commission or requested by any party to a proceeding in substantially the same manner, and with substantially the same subsequent procedure, as provided by law for the conduct of pretrial hearings in the superior court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-70. Ex parte communications.

(a) In all matters and proceedings pending on the Commission's formal docket, with adversary parties of record, all communications or contact of any nature whatsoever between any party and the Commission or any of its members, or any hearing examiner assigned to such docket, whether verbal or written, formal or informal, which pertains to the merits of such matter or proceeding, shall be made only with full knowledge of, or notice to, all other parties of record. All parties shall have an opportunity to be informed fully as to the nature of such communication and to be present and heard with respect thereto. In all matters and proceedings which are judicial in nature, it is the specific intent of this section that all members of the Commission shall conduct all trials, hearings and proceedings before them in the manner and in accordance with the judicial standards applicable to judges of the General Court of Justice, as provided in Chapter 7A of the General Statutes, and upon the initiation of any such proceedings, and particularly during the trial or hearing thereof, there shall be no communications or contacts of any nature, including telephone communications, written correspondence, or direct office conferences, between any party or such party's attorney and any member of the Commission or any hearing examiner, without all other parties to such proceeding having full notice and opportunity to be present and heard with respect to any such contact or communication.

Any commissioner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General, or who otherwise violates any of the provisions of this subsection shall be liable to impeachment. Any examiner who knowingly receives any such communication or contact during such proceeding and who fails promptly to report the same to the Attorney General or who otherwise violates any of the provisions of this subsection shall be subject to dismissal from employment for cause.

(b) In the event any such communication or contact shall be received by the Commission or any commissioner or any hearing examiner assigned to such docket without such knowledge or notice to all other parties, the Commission shall immediately cause a formal record of such violation to be made in its docket and thereafter no ruling or decision shall be made in favor of such violating party until the aggrieved party shall waive such violation or the Commission shall find as a fact that such party was not prejudiced thereby or that any such prejudice, if present, has been removed.

(c) Any contacts or communications made in violation of this section which are not recorded by the Commission may be recorded by notice to the Commission by any aggrieved party and, unless the Commission shall find that such violation did not in fact occur, such recording shall have the same effect as if done by the Commission.

(d) In matters not under this section, the Commission may secure information and receive communications ex parte, it being the purpose of this section to protect adversary interests where

they exist but not otherwise to restrict unduly the administrative and legislative functions of the Commission.

(e) This section shall not modify any notice required in the case of pleadings and proceedings which are subject to other requirements of notice to parties of record, whether by statute or by rule of the Commission, and the Commission may adopt reasonable rules to coordinate this section with such other requirements.

(f) In addition to the foregoing provisions regarding contacts with members of the Commission and hearing examiners, if any party of record, including the assistant attorney general when he is a party, confers with or otherwise contacts any staff personnel employed by the Commission regarding the merits of a pending proceeding, the staff employee shall promptly forward by regular mail a memorandum of the date and general subject matter of such contact to all other parties of record to the proceeding.

(g) Notwithstanding the foregoing, no communication by a public utility or by the Public Staff regarding the level of rates specifically proposed to be charged by a public utility shall be made or directed to the Commission, a member of the Commission, or hearing examiner, except in the form of written tariff, petition, application, pleading, written response, written recommendation, recorded conference, intervention, answer, pleading, sworn testimony and related exhibits, oral argument on the record, or brief. Willful violations of the provisions of this section on the part of any public utility shall subject such public utility to the penalties provided in G.S. 62-310(a). Willful violations of the provisions of this section by a member of the Public Staff shall subject such person to dismissal for cause. (1963, c. 1165, s. 1; 1977, c. 468, s. 14; 1979, c. 332, s. 2; 2021-23, s. 24.)

§ 62-71. Hearings to be public; record of proceedings.

(a) All formal hearings before the Commission, a panel of three commissioners, a commissioner or an examiner shall be public, and shall be conducted in accordance with such rules as the Commission may prescribe. A full and complete record shall be kept of all proceedings on any formal hearing, and all testimony shall be taken by a reporter appointed by the Commission. Any party to a proceeding shall be entitled to a copy of the record or any part thereof upon the payment of the reasonable cost thereof as determined by the Commission.

(b) The Commission in its discretion may approve stenographic or mechanical methods of recording testimony, or a combination of such methods, and a transcript of any such record shall be valid for all purposes, subject to protest and settlement by the Commission.

(c) The Commission is authorized to provide daily transcripts of testimony in cases of substantial public interest and in other cases where time is an important factor to the parties involved.

(d) The Commission shall have authority to contract with or employ on a temporary basis, when deemed necessary by the chairman of the Commission, court reporters in addition to those employed on a full-time basis by the Commission, for the purpose of recording and transcribing testimony given at hearings before the Commission involving any Class A or B utility. The Commission is authorized to charge the cost of employing such court reporters directly to the involved utility or utilities. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1975, c. 243, s. 9; 1981, c. 1022.)

§ 62-72. Commission may make rules of practice and procedure.

Except as otherwise provided in this Chapter, the Commission is authorized to make and promulgate rules of practice and procedure for the Commission hearings. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-73. Complaints against public utilities.

Complaints may be made by the Commission on its own motion or by any person having an interest, either direct or as a representative of any persons having a direct interest in the subject matter of such complaint by petition or complaint in writing setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation or rate heretofore established or fixed by or for any public utility in violation of any provision of law or of any order or rule of the Commission, or that any rate, service, classification, rule, regulation or practice is unjust and unreasonable. Upon good cause shown and in compliance with the rules of the Commission, the Commission shall also allow any such person authorized to file a complaint, to intervene in any pending proceeding. The Commission, by rule, may prescribe the form of complaints filed under this section, and may in its discretion order two or more complaints dealing with the same subject matter to be joined in one hearing. Unless the Commission shall determine, upon consideration of the complaint or otherwise, and after notice to the complainant and opportunity to be heard, that no reasonable ground exists for an investigation of such complaint, the Commission shall fix a time and place for hearing, after reasonable notice to the complainant and the utility complained of, which notice shall be not less than 10 days before the time set for such hearing. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-73.1. Complaints against providers of telephone services.

(a) A local exchange company or competing local provider that is unable to resolve a customer complaint shall (i) provide notice to the consumer of the consumer's right to contact the Public Staff of the Commission and (ii) provide to the consumer, in writing, contact information for the Public Staff, including both a toll-free telephone number and an electronic mail address.

(b) The Public Staff shall keep a record of all complaints received pertaining to the provider, including the nature of each complaint and the resolution thereof. If the Public Staff determines that it cannot reasonably resolve the matter, the matter shall be referred to the Commission. The standard for review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate. (2009-238, s. 5.)

§ 62-74. Complaints by public utilities.

Any public utility shall have the right to file a complaint against any other public utility or any person on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint and notice of hearing shall be served by the Commission upon such interested persons as it may designate. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 2021-23, s. 8.)

§ 62-75. Burden of proof.

Except as otherwise limited in this Chapter, in all proceedings instituted by the Commission for the purpose of investigating any rate, service, classification, rule, regulation or practice, the burden of proof shall be upon the public utility whose rate, service, classification, rule, regulation or practice is under investigation to show that the same is just and reasonable. In all other proceedings

the burden of proof shall be upon the complainant. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1985, c. 676, s. 8.)

§ 62-76. Hearings by Commission, panel of three commissioners, single commissioner, or examiner.

(a) Except as otherwise provided in this Chapter, any matter requiring a hearing shall be heard and decided by the Commission or shall be referred to a panel of three commissioners or one of the commissioners or a qualified member of the Commission staff as examiner for hearing, report and recommendation of an appropriate order or decision thereon. Subject to the limitations prescribed in this Article, a panel of three commissioners, hearing commissioner or examiner to whom a hearing has been referred by order of the chairman shall have all the rights, duties, powers and jurisdiction conferred by this Chapter upon the Commission. The chairman, in his discretion, may direct any hearing by the Commission or any panel, commissioner or examiner to be held in such place or places within the State as he may determine to be in the public interest and as will best serve the convenience of interested parties. Before any member of the Commission staff enters upon the performance of duties as an examiner, he shall first take, subscribe to and file with the Commission an oath similar to the oath required of members of the Commission.

(b) Repealed by Session Laws 1975, c. 243, s. 5.

(c) In all cases in which a pending proceeding shall be assigned to a hearing commissioner, such commissioner shall hear and determine the proceedings and submit his recommended order, but, in the event of a petition to the full Commission to review such recommended order, the hearing commissioner shall take no part in such review, either in hearing oral argument or in consideration of the Commission's decision, but his vote shall be counted in such decision to affirm his original order. (1949, c. 989, s. 1; 1959, c. 639, s. 3; 1963, c. 1165, s. 1; 1975, c. 243, ss. 5, 9, 10.)

§ 62-77. Recommended decision of panel of three commissioners, single commissioner or examiner.

Any report, order or decision made or recommended by a panel of three commissioners, commissioner or examiner with respect to any matter referred for hearing shall be in writing and shall set forth separately findings of fact and conclusions of law and shall be filed with the Commission. A copy of such recommended order, report and findings shall be served upon the parties who have appeared in the proceeding. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1975, c. 243, s. 9.)

§ 62-78. Proposed findings, briefs, exceptions, orders, expediting cases, and other procedure.

(a) Prior to each decision or order by the Commission in a proceeding initially heard by it and prior to any recommended decision or order of a panel of three commissioners, commissioner or examiner, the parties shall be afforded an opportunity to submit, within the time prescribed by order entered in the cause, unless further extended by order of the Commission, for the consideration of the Commission, panel, commissioner or examiner, as the case may be, proposed findings of fact and conclusions of law and briefs or, in its discretion, oral arguments in lieu thereof.

(b) Within the time prescribed by the panel of three commissioners, commissioner, or examiner, the parties shall be afforded an opportunity to file exceptions to the recommended decision or order and a brief in support thereof, provided the time so fixed shall be not less than 15

days from the date of such recommended decision or order. The record shall show the ruling upon each requested finding and conclusion or exception.

(c) In all proceedings in which a panel of three commissioners, commissioner or examiner has filed a report, recommended decision or order to which exceptions have been filed, the Commission, before making its final decision or order, shall afford the party or parties an opportunity for oral argument. When no exceptions are filed within the time specified to a recommended decision or order, such recommended decision or order shall become the order of the Commission and shall immediately become effective unless the order is stayed or postponed by the Commission; provided, the Commission may, on its own motion, review any such matter and take action thereon as if exceptions thereto had been filed.

(d) When exceptions are filed, as herein provided, it shall be the duty of the Commission to consider the same and if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding as may be necessary or proper to carry out the purposes of this Chapter. The Commission, after review, upon the whole record, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order or decision thereon.

(e) The Commission may expedite the hearing and decision of any case if the public interest so requires by the use of pretrial conferences, daily transcripts of evidence, trial briefs, and prompt oral argument, and by granting priority to the hearing and decision of such case. (1949, c. 989, s. 1; 1959, c. 639, s. 4; 1963, c. 1165, s. 1; 1975, c. 243, ss. 9, 10; c. 867, s. 5.)

§ 62-79. Final orders and decisions; findings; service; compliance.

(a) All final orders and decisions of the Commission shall be sufficient in detail to enable the court on appeal to determine the controverted questions presented in the proceedings and shall include:

- (1) Findings and conclusions and the reasons or bases therefor upon all the material issues of fact, law, or discretion presented in the record, and
- (2) The appropriate rule, order, sanction, relief or statement of denial thereof.

(b) A copy of every final order or decision under the seal of the Commission shall be served in the manner prescribed by the Commission upon the person against whom it runs or his attorney and notice thereof shall be given to the other parties to the proceeding or their attorney. Such order shall take effect and become operative when issued unless otherwise designated therein and shall continue in force either for a period which may be designated therein or until changed or revoked by the Commission. If an order cannot, in the judgment of the Commission, be complied with within the time designated therein, the Commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. (1949, c. 989, s. 1; 1957, c. 1152, s. 4; 1959, c. 639, s. 4; 1961, c. 472, s. 1; 1963, c. 1165, s. 1; 1981, c. 193, s. 2; 2021-23, s. 9.)

§ 62-80. Powers of Commission to rescind, alter or amend prior order or decision.

The Commission may at any time upon notice to the public utility and to the other parties of record affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-81. Special procedure in hearing and deciding rate cases.

(a) All cases or proceedings, declared to be or properly classified as general rate cases under G.S. 62-137, or any proceedings which will substantially affect any utility's overall level of earnings or rate of return, shall be set for trial or hearing by the Commission, which trial or hearing shall be set to commence within 180 days of the institution or filing thereof. All such cases or proceedings shall be subject to the time frame established under G.S. 62-134(b). All such cases or proceedings shall be tried or heard and decided in accordance with the ratemaking procedure set forth in G.S. 62-133 and such cases shall be given priority over all other cases or proceedings pending before the Commission. In all such cases the Commission shall make a transcript of the evidence and testimony presented and received by it and shall furnish a copy thereof to any party so requesting by the third business day after the taking of such evidence and testimony.

(b) Any public utility filing or applying for an increase in rates for electric, telephone, natural gas, water, or sewer service shall notify its customers proposed to be affected by such increase of such filing by regular mail, by newspaper publications, or by electronic means, as directed by the Commission, within 30 days of such filing, which notice shall state that the Commission shall set and shall conduct a trial or hearing with respect to such filing or application within 180 days of said filing date. All other public utilities shall give such notice in such manner as shall be prescribed by the Commission.

(c) In cases or proceedings filed with and pending before the Commission, where either (i) the total annual revenue requested, or (ii) where the total annual revenue increase requested, is less than two million dollars (\$2,000,000), even though all or a substantial portion of the rate structure is being initially established or is under review, the chairman of the Commission may refer the proceeding to a panel of three commissioners or to a hearing commissioner or to a hearing examiner for hearing.

(d) In all proceedings for an increase in rates and all other proceedings declared to be general rate cases under G.S. 62-137, the Commission shall conduct the hearing or portions of the hearing within the area of the State served by the public utility whose rates are under consideration, provided this subsection shall not apply to proceedings held pursuant to G.S. 62-133.2 and G.S. 62-133.4.

(e) Repealed by Session Laws 2021-23, s. 10, effective May 17, 2021.

(f) Notwithstanding the provisions of this section, or other provisions of this Chapter which would otherwise require a hearing, where there is no significant public protest received within 30 days of the publication of notice of a proposed rate change for a water or sewer utility, the Commission may decide the proceeding based on the record without a trial or hearing, provided said utility and all other parties of record have waived their right to any such hearing. Any decision made pursuant to this subsection shall be made in accordance with the provisions of G.S. 62-133 or 62-133.1. (1963, c. 1165, s. 1; 1973, c. 1074; 1975, c. 45; c. 243, ss. 6, 9; c. 867, s. 6; 1977, c. 468, s. 15; 1981, c. 193, s. 3; c. 439; 2021-23, ss. 10, 25.)

§ 62-82. Special procedure on application for certificate for generating facility; appeal from award order.

(a) Notice of Application for Certificate for Generating Facility; Hearing; Briefs and Oral Arguments. – Whenever there is filed with the Commission an application for a certificate of public convenience and necessity for the construction of a facility for the generation of electricity under G.S. 62-110.1, the Commission shall require the applicant to publish a notice thereof once a week for four successive weeks in a newspaper of general circulation in the county where such

facility is proposed to be constructed and thereafter the Commission upon complaint shall, or upon its own initiative may, upon reasonable notice, enter upon a hearing to determine whether such certificate shall be awarded. Any such hearing must be commenced by the Commission not later than three months after the filing of such application, and the procedure for rendering decisions therein shall be given priority over all other cases on the Commission's calendar of hearings and decisions, except rate proceedings referred to in G.S. 62-81. Such applications shall be heard as provided in G.S. 62-60.1, and the Commission shall, upon request of the applicant, furnish a transcript of evidence and testimony submitted by the end of the second business day after the taking of each day of testimony. The Commission or panel shall require that briefs and oral arguments in such cases be submitted within 30 days after the conclusion of the hearing, and the Commission or panel shall render its decision in such cases within 60 days after submission of such briefs and arguments. If the Commission or panel does not, upon its own initiative, order a hearing and does not receive a complaint within 10 days after the last day of publication of the notice, the Commission or panel shall enter an order awarding the certificate.

(b) Compensation for Damages Sustained by Appeal from Award of Certificate under G.S. 62-110.1; Bond Prerequisite to Appeal. – Any party or parties opposing, and appealing from, an order of the Commission which awards a certificate under G.S. 62-110.1 shall be obligated to recompense the party to whom the certificate is awarded, if such award is affirmed upon appeal, for the damages, if any, which such party sustains by reason of the delay in beginning the construction of the facility which is occasioned by the appeal, such damages to be measured by the increase in the cost of such generating facility (excluding legal fees, court costs, and other expenses incurred in connection with the appeal). No appeal from any order of the Commission which awards any such certificate may be taken by any party opposing such award unless, within the time limit for filing notice of appeal as provided for in G.S. 62-90, such party shall have filed with the Commission a bond with sureties approved by the Commission, or an undertaking approved by the Commission, in such amount as the Commission determines will be reasonably sufficient to discharge the obligation hereinabove imposed upon such appealing party. The Commission may, when there are two or more such appealing parties, permit them to file a joint bond or undertaking. If the award order of the Commission is affirmed on appeal, the Commission shall determine the amount, if any, of damages sustained by the party to whom the certificate was awarded, and shall issue appropriate orders to assure that such damages be paid and, if necessary, that the bond or undertaking be enforced. (1965, c. 287, s. 3; 1975, c. 243, s. 7; 2004-199, s. 23; 2013-410, s. 29; 2021-23, s. 11.)

§§ 62-83 through 62-89. Reserved for future codification purposes.