

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-346
SENATE BILL 848

AN ACT TO PROVIDE THAT CERTAIN SECONDARY SUPPLIERS OF ELECTRIC SERVICE MAY FURNISH SERVICE WITHIN THE CORPORATE LIMITS OF A CITY WITH WRITTEN CONSENT FROM THE CITY, TO ALLOW THE BOARD OF AN ELECTRIC MEMBERSHIP CORPORATION TO VOTE BY PROXY ON DECISIONS TO ENCUMBER CORPORATE PROPERTY OR TO DISSOLVE THE CORPORATION, AND TO MAKE TECHNICAL CHANGES TO THE LAW REGARDING MUNICIPAL ELECTRIC SERVICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-331 reads as rewritten:

"§ 160A-331. Definitions.

Unless the context otherwise requires, the following words and phrases shall have the meanings indicated when used in this Part:

- (1) 'Assigned area' means any portion of an area annexed to or incorporated into a city which, on or before the effective date of annexation or incorporation, had been assigned by the North Carolina Utilities Commission to a specific electric supplier pursuant to G.S. 62-110.2.
- (1a) 'Assigned supplier' means a person, firm, or corporation to which the North Carolina Utilities Commission had assigned a specific area for service as an electric supplier pursuant to G.S. 62-110.2, which area, in whole or in part, is subsequently annexed to or incorporated into a city.
- ~~(1b)~~ The 'determination date' is
 - a. April 20, 1965, with respect to areas within the corporate limits of any city as of April 20, 1965;
 - b. The effective date of annexation with respect to areas annexed to any city after April 20, 1965;
 - c. The date a primary supplier comes into being with respect to any city first incorporated after April 20, 1965.
- (2) 'Line' means any conductor located inside the city for distributing or transmitting electricity, other than
 - a. For overhead construction, a conductor from the pole nearest the premises of a consumer to such premises, or a conductor from a line tap to such premises, and

- b. For underground construction, a conductor from the transformer (or the junction point, if there be one) nearest the premises of a consumer to such premises.
- (3) 'Premises' means the building, structure, or facility to which electricity is being or is to be furnished. Two or more buildings, structures, or facilities that are located on one tract or contiguous tracts of land and are used by one electric consumer for commercial, industrial, institutional, or governmental purposes, shall together constitute one 'premises,' except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one 'premises' if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.
- (4) 'Primary supplier' means a city that owns and maintains its own electric system, or a person, firm, or corporation that furnishes electric service within a city pursuant to a franchise granted by, or contract with, a city, or that, having furnished service pursuant to a franchise or contract, is continuing to furnish service within a city after the expiration of the franchise or contract.
- (5) 'Secondary supplier' means a person, firm, or corporation that furnishes electricity at retail to one or more consumers other than itself within the limits of a city but is not a primary supplier. A primary supplier that furnishes electric service within a city pursuant to a franchise or contract that limits or restricts the classes of consumers or types of electric service permitted to such supplier shall, in and with respect to any area annexed by the city after April 20, 1965, be a primary supplier for such classes of consumers or types of service, and if it furnishes other electric service in the annexed area on the effective date of annexation, shall be a secondary supplier, in and with respect to such annexed area, for all other electric service. A primary supplier that continues to furnish electric service after the expiration of a franchise or contract that limited or restricted such primary supplier with respect to classes of consumers or types of electric service shall, in and with respect to any area annexed by the city after April 20, 1965, be a secondary supplier for all electric service if it is furnishing electric service in the annexed area on the effective date of annexation."

Section 2. G.S. 160A-332(a) reads as rewritten:

"(a) The suppliers of electric service inside the corporate limits of any city in which a secondary supplier was furnishing electric service on the determination date (as defined in G.S. 160A-331(1)) shall have rights and be subject to restrictions as follows:

- (1) The secondary supplier shall have the right to serve all premises being served by it, or to which any of its facilities are attached, on the determination date.

- (2) The secondary supplier shall have the right, subject to subdivision (3) of this section, to serve all premises initially requiring electric service after the determination date which are located wholly within 300 feet of its lines and located wholly more than 300 feet from the lines of the primary supplier, as such suppliers' lines existed on the determination date.
- (3) Any premises initially requiring electric service after the determination date which are located wholly within 300 feet of a secondary supplier's lines and wholly within 300 feet of another secondary supplier's lines, but wholly more than 300 feet from the primary supplier's lines, as the lines of all suppliers existed on the determination date, may be served by the secondary supplier which the consumer chooses, and no other supplier shall thereafter furnish electric service to such premises, except with the written consent of the supplier then serving the premises.
- (4) A primary supplier shall not furnish electric service to any premises which a secondary supplier has the right to serve as set forth in subdivisions (1), (2), ~~and (3)-(3)~~, and (6a) of this section, except with the written consent of the secondary supplier.
- (5) Any premises initially requiring electric service after the determination date which are located wholly or partially within 300 feet of the primary supplier's lines and are located wholly or partially within 300 feet of the secondary supplier's lines, as such suppliers' lines existed on the determination date, may be served by either the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6) Any premises initially requiring electric service after the determination date, which are located only partially within 300 feet of the secondary supplier's lines and are located wholly more than 300 feet from the primary supplier's lines, as such supplier's lines existed on the determination date, may be served either by the secondary supplier or the primary supplier, whichever the consumer chooses, and no other supplier shall thereafter furnish service to such premises, except with the written consent of the supplier then serving the premises.
- (6a) Notwithstanding any other provision of law, a secondary supplier, upon obtaining the prior written consent of the city, shall be the exclusive provider of electric service within (i) any assigned area for which that secondary supplier had been assigned supplier prior to the determination date; or (ii) any area previously unassigned by the North Carolina Utilities Commission pursuant to G.S. 62-110.2. However, any rights of other electric suppliers existing under G.S. 62-110.2 prior to the determination date to provide service shall continue to exist without impairment in the areas described in (i) and (ii) above.

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

Section 3. G.S. 117-10.2 reads as rewritten:

"§ 117-10.2. Restriction on municipal service.

~~No~~ Except as otherwise provided in this section, no electric membership corporation shall furnish electric service to, or within the limits of, any incorporated city or town, except pursuant to a franchise that may be granted under the provisions of G.S. 117-10.1, or as permitted under ~~G.S. 160-511, 160-512, and 160-513; provided, that an~~ G.S. 160A-331, 160A-332, and 160A-333. An electric membership corporation may furnish electric service to, or within the limits of, any incorporated city or town if the city or town and all electric suppliers, including public utilities, other electric membership corporations and other cities or towns, then furnishing electric service to or within such city or town consent thereto in writing."

Section 4. G.S. 117-20 reads as rewritten:

"§ 117-20. Encumbrance, sale, etc., of property.

No corporation may sell, mortgage, lease or otherwise encumber or dispose of any of its property (other than merchandise and property which lie within the limits of an incorporated city or town, or which shall represent not in excess of ten percent (10%) of the total value of the corporation's assets, or which in the judgment of the board are not necessary or useful in operating the corporation) unless

- (1) Authorized so to do by the votes cast in person or by proxy by at least two-thirds of its total membership, ~~without proxies,~~ and
- (2) The consent of the holders of seventy-five per centum (75%) in amount of the bonds of such corporation then outstanding is obtained.

Notwithstanding the foregoing provisions of this section, the members of such a corporation may, by the affirmative majority of the votes cast in person or by proxy at any meeting of the members, delegate to the board of directors the power and authority (i) to borrow moneys from any source and in such amounts as the board may from time to time determine, (ii) to mortgage or otherwise pledge or encumber any or all of the corporation's property or assets as security therefor, and (iii) with respect to Electric Membership Corporations only, to sell and lease back any of the corporation's property or assets."

Section 5. G.S. 117-24 reads as rewritten:

"§ 117-24. Dissolution.

Any corporation created hereunder may be dissolved by filing, as hereinafter provided, a certificate which shall be entitled and endorsed 'Certificate of Dissolution of _____' (the blank space being filled in with the name of the corporation) and shall state:

- (1) Name of the corporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the names of the original corporations.

- (2) The date of filing of the certificate of incorporation, and if such corporation is a corporation resulting from a consolidation as herein provided, the dates on which the certificates of incorporation of the original corporations were filed.
- (3) That the corporation elects to dissolve.
- (4) The name and post-office address of each of its directors, and the name, title and post-office address of each of its officers.

Such certificate shall be subscribed and acknowledged in the same manner as an original certificate of incorporation by the president or a vice-president, and the secretary or an assistant secretary, who shall make and annex an affidavit, stating that they have been authorized to execute and file such certificate by the votes cast in person or by proxy by at least two-thirds of its total ~~membership, without proxies.~~ membership.

A certificate of dissolution and a certified copy or copies thereof shall be filed in the same place as an original certificate of incorporation and thereupon the corporation shall be deemed to be dissolved.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities or obligations of the corporation have been satisfied or discharged shall be distributed among the members in such manner as is provided for in the corporation's charter or bylaws, and the charter or bylaws may provide for distributions to persons who were members in one or more prior years."

Section 6. This act is effective when it becomes law and applies only to annexations or incorporations that occur on or after the effective date. This act expires on the date of the adjournment sine die of the 1999 General Assembly.

In the General Assembly read three times and ratified this the 29th day of July, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:05 a.m. this 31st day of July, 1997