

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SESSION LAW 2005-150
SENATE BILL 512

AN ACT TO PROHIBIT THE PRACTICE OF CONDITIONING THE PROVISION OF WATER OR SEWER SERVICES UPON AGREEING TO BE SUPPLIED WITH ELECTRICITY, TO PRESERVE THE CORRIDOR SERVICE RIGHTS OF ELECTRIC SUPPLIERS OUTSIDE CITIES FROM BEING LOST OR DILUTED DUE TO EXTRATERRITORIAL SERVICES BY CITIES, AND TO ADDRESS OTHER ELECTRIC TERRITORY ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"§ 75-39. Conditioning services on electric service prohibited.

(a) No municipality or other provider of water or sewer services may offer, or agree to provide, extend, enhance, or accelerate the provision of water or sewer services, or facilities or other municipal services or facilities, to any person in consideration of that person or another person agreeing to receive electric service from the municipality or another electric supplier.

(b) No municipality or other provider of water or sewer services may refuse to provide, or threaten or act to deny, delay, or terminate the provision of, water or sewer services or facilities, or other municipal services or facilities, to any person as a result of, or in an attempt to influence, the choice of an electric supplier by that person or another person.

(c) A violation of this section by any municipality or other provider of water or sewer services shall constitute an unfair method of competition and an unfair act or practice under G.S. 75-1.1."

SECTION 2. 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:

...

(2) "Line" means any conductor located inside the ~~city~~ city, or any conductor within 300 feet of areas annexed by the city that is a primary supplier, for distributing or transmitting electricity, ~~other than~~ except as follows:

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~~ premises.

- 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.

...

- (5) "Secondary supplier" means a person, firm, or corporation that is not a primary supplier, but that furnishes electricity at retail to one or more consumers other than itself within the limits of a city-city, or that has a conductor located within 300 feet of an area annexed by a city that is ~~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 3. Part 2 of Article 16 of Chapter 160A of the General Statutes is amended by adding new sections to read:

"§ 160A-331.1. Construction of lines between June 1, 2005, and May 31, 2007.

During the period beginning June 1, 2005, and ending May 31, 2007, a city shall not construct or extend an electric distribution line outside of its corporate limits as of June 1, 2005, in territory assigned to an electric membership corporation by the North Carolina Utilities Commission without the written consent of the electric membership corporation. Provided, however, that the consent of an electric membership corporation shall not be required in connection with the proposed construction of an electric distribution line solely to serve a facility owned by a city. The electric membership corporation shall give its consent unless the electric membership corporation, in good faith, believes that the construction of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of the electric distribution line in the proposed location is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the electric membership corporation to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of G.S. 7A-38.3B.

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

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

(b) During the period beginning June 1, 2005, and ending May 31, 2007, electric membership corporations and cities that own and maintain their own electric distribution lines shall undertake good faith negotiations concerning the provision of future electric services within areas outside of the corporate limits of such cities as of June 1, 2005, and the development of agreements relating to the provision of electric services, the location of lines, and the areas within which electric services may be provided by such electric suppliers. To the extent such negotiations produce any agreements between the affected electric suppliers, such agreements shall be submitted to the North Carolina Utilities Commission for approval under this section. To the extent such negotiations do not produce an agreement and disputes among the suppliers remain as of May 31, 2007, such disputes shall be resolved pursuant to the provisions of G.S. 7A-38.3B(i)."

SECTION 4. G.S. 160A-332(a) is amended by adding a new subdivision to read:

"(6b) A primary supplier or secondary supplier that, after the determination date, offers to serve any premises initially requiring electric service for which a consumer has a right to choose suppliers under subsections (5) or (6) of this section, without providing the consumer written notice that the consumer may be entitled to choose another electric supplier for the premises, shall not have the right to serve those premises."

SECTION 5. G.S. 160A-332 is amended by adding a new subsection to read:

"(c) It shall be unlawful for a primary supplier or secondary supplier to serve premises within a city that the supplier does not have the right to serve under the provisions of this Article. Upon receiving written notice from another supplier of electric service that has authority to lawfully provide service to the premises in dispute that the provision of service by the current supplier is unlawful, the primary supplier or

secondary supplier that is providing electric service shall be obligated to discontinue service and remove all of its facilities used in the provision of the unlawful service within 30 days after substitute electric service can be provided by an electric supplier with authority to lawfully provide service to the premises, unless the supplier currently providing service has a good faith basis for believing it has authority to continue rendering such service. If the primary or secondary supplier is determined to be providing electric services unlawfully, and is found to have unreasonably failed to fulfill its obligation to discontinue service as required above, the supplier of electric service that has authority to lawfully provide service to the premises may bring an action to compel performance of those obligations, and may recover in that action its costs of enforcing this subsection, including its reasonable attorneys' fees."

SECTION 6. G.S. 117-10.2 reads as rewritten:

"§ 117-10.2. Restriction on municipal service.

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. 160A-331, 160A-331.1, 160A-331.2, 160A-332, and 160A-333. ~~An~~In addition, 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 7. Article 2 of Chapter 117 of the General Statutes is amended by adding a new section to read:

"§ 117-10.3. Construction of lines between June 1, 2005, and May 31, 2007.

During the period beginning June 1, 2005, and ending May 31, 2007, an electric membership corporation shall not construct or extend an electric distribution line in territory assigned to it by the North Carolina Utilities Commission without the written consent of the municipality that owns and maintains its own electric system whose corporate limits, as of June 1, 2005, are within three miles of any part of the line or extension proposed to be constructed by the electric membership corporation. The municipality shall give its consent unless the municipality, in good faith, believes that the construction or extension of the electric distribution line is not necessary to satisfy the reasonable needs of the public for the delivery of an adequate and reliable supply of electric energy and that, when compared with reasonable, alternative courses of action and locations, construction of that part of the electric distribution line in the proposed location within three miles of the city is not reasonable, preferred, in the public interest, and the most economical and practically feasible route to deliver electric energy in accordance with prudent utilities practice. Any dispute concerning the failure of the municipality to give its written consent shall be submitted to prelitigation mediation in accordance with the provisions of G.S. 7A-38.3B."

SECTION 8. Article 5 of Chapter 7A of the General Statutes is amended by adding the following new section to read:

"§ 7A-38.3B. Prelitigation mediation of territorial disputes.

(a) Purpose. – The General Assembly finds that a system of mediated settlement conferences should be established to facilitate the settlement of territorial disputes between certain electric suppliers. Therefore, this section is enacted to require those electric suppliers and their representatives to participate in mediation conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections.

(b) Definitions. – As used in this section, the following terms mean:

- (1) Electric supplier. – Any electric membership corporation, or any municipality that owns, operates, and maintains its own electric system.
- (2) Mediated settlement conference. – A conference of electric suppliers and their representatives conducted by a mediator.
- (3) Mediation. – An informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
- (4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a territorial dispute. A mediator does not make an award or render a judgment as to the merits of the action.
- (5) Territorial dispute. – A disagreement between electric providers over (i) the right to serve premises located in areas outside of or within municipal limits, (ii) the failure of a municipality to give its written consent to the construction of an electric distribution line by an electric membership corporation pursuant to the provisions of G.S. 117-10.3, or (iii) the failure of an electric membership corporation to give its written consent to the construction of an electric distribution line by a municipality pursuant to the provisions of G.S. 160A-331.1.

(c) Voluntary Mediation. – The parties to a territorial dispute may agree at any time to mediation of the dispute under the provisions of this section.

(d) Mandatory Mediation. – In lieu of commencing a civil action involving a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1, an electric supplier shall initiate mediation pursuant to this section. If an electric supplier brings an action involving such a territorial dispute, that action shall, upon motion of any party prior to trial, be dismissed without prejudice by the court.

(e) Initiation of Mediation. – Mediation of a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1 shall be initiated by filing a request for mediation with the clerk of superior court in a county in which a civil action between the electric suppliers could have been brought. The filing of such a request for mediation shall commence a special proceeding in the superior court. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk,

and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(f) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the applicable provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections, as supplemented and modified by this section. The Supreme Court may adopt additional rules and standards to implement this section.

(g) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting. In the event the parties waive mediation, then they shall proceed as provided in subsection (i) of this section.

(h) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (g) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section. If an agreement is not reached at the mediation, the parties shall proceed under subsection (i) of this section. If an agreement is reached at the mediation, the parties shall reduce its terms to writing and shall sign it. A proposed consent order incorporating the signed agreement shall be filed with the court within 14 days after the agreement is signed, and such order shall be entered by the court. Subject to the provisions of subsection (k) of this section, the signed agreement and consent order shall be binding on the parties and shall conclude the special proceeding.

(i) Binding Decision. – If an agreement was not reached as a result of mediation or if mediation is waived pursuant to subsection (g) of this section, the electric suppliers shall submit their territorial dispute to a member of the Public Staff of the North Carolina Utilities Commission who shall have the authority to issue an opinion resolving the territorial dispute that is binding on the parties. If the parties do not agree on the selection of a member of the Public Staff, the Executive Director of the Public Staff shall appoint a member of the Public Staff to hear the territorial dispute and render an opinion. The opinion resolving the dispute shall be considered in the nature of an arbitrator's award and may be enforced in the same manner as an arbitration award under G.S. 1-569.25.

(j) Time Periods Tolloed. – Time periods relating to the filing of a claim or the taking of other action with respect to a territorial dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth

in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section.

(k) Agreements Approved. – Any agreement reached as a result of mediation pursuant to this section that involves or relates to an electric supplier subject to the territorial jurisdiction of the North Carolina Utilities Commission shall be subject to the approval of the Commission under G.S. 160A-331.2."

SECTION 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 6:51 p.m. this 5th day of July, 2005