

GENERAL ASSEMBLY OF NORTH CAROLINA  
1991 SESSION

CHAPTER 598  
HOUSE BILL 1039

AN ACT TO FACILITATE THE CONSTRUCTION OF FACILITIES IN AND THE  
EXTENSION OF NATURAL GAS SERVICE TO UNSERVED AREAS AND TO  
REVISE THE PROCEDURES FOR GAS COST ADJUSTMENTS FOR  
NATURAL GAS LOCAL DISTRIBUTION COMPANIES.

Whereas, the 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and

Whereas, the reports of the utilities, the Commission and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and

Whereas, the 1991 General Assembly finds it necessary and in the public interest to authorize special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and

Whereas, the 1991 General Assembly further finds that the expansion of natural gas service benefits all customers in all customer classes of a local distribution company so that all customers should pay a fair and reasonably proportionate share of the cost of expanding natural gas service; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-2 is amended by adding a new subdivision to read:

"(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of an expansion fund for each natural gas local distribution company to be administered under the supervision of the North Carolina Utilities Commission."

Sec. 2. Chapter 62 of the General Statutes is amended by adding a new section to read:

**"§ 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 not be greater than fifteen cents (15¢) per dekatherm; and
- (3) Other sources of funding approved by the Commission.

(c) The application of all such funds to expansion projects shall be pursuant to the order of the Commission. The Commission shall ensure that all projects to which expansion funds are applied are consistent with the intent of this section and G.S. 62-2(9). In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company to construct. In no event shall the Commission authorize a distribution from the fund of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission may require the company to remit to the expansion fund or to customers appropriate portions of the distributions from the fund related to the project, and the Commission may order such funds to be returned with interest in a reasonable amount to be determined by the Commission. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(d) The Commission, after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and ratemaking treatment. The Commission and

Public Staff shall report to the Joint Legislative Utility Review Committee on the operation of any expansion funds in conjunction with the reports required under G.S. 62-36A."

Sec. 3. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158."

Sec. 4. G.S. 105-116(c) reads as rewritten:

"(c) ~~Gas Surcharges.~~ Special Charges. Gross receipts of a natural gas company do not include ~~special~~ the following:

(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

(2) Natural gas expansion surcharges imposed under G.S. 62-158."

Sec. 5. G.S. 105-164.4(a)(4a) reads as rewritten:

"(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e). Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article."

Sec. 6. G.S. 158-7.1(b)(5) reads as rewritten:

"(5) A county or city may ~~extend~~ construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned."

Sec. 7. G.S. 62-133(f) is repealed; provided, however, that the repeal of G.S. 62-133(f) shall not affect the right of any natural gas local distribution company to recover any costs previously approved by the Commission.

Sec. 8. Chapter 62 of the General Statutes is amended by adding a new section to read:

**"§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.**

(a) Rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and transportation may be determined under this section rather than under G.S. 62-133(b), (c), or (d).

(b) From time to time, as changes in the cost of natural gas require, each natural gas local distribution company may apply to the Commission for permission to change its rates to track changes in the cost of natural gas supply and transportation. The Commission may, without a hearing, issue an order allowing such rate changes to

become effective simultaneously with the effective date of the change in the cost of natural gas or at any other time ordered by the Commission. If the Commission has not issued an order under this subsection within 120 days after the application, the utility may place the requested rate adjustment into effect. If the rate adjustment is finally determined to be excessive or is denied, the utility shall make refund of any excess, plus interest as provided in G.S. 62-130(e), to its customers in a manner ordered by the Commission. Any rate adjustment under this subsection is subject to review under subsection (c) of this section.

(c) Each natural gas local distribution company shall submit to the Commission information and data for an historical 12-month test period concerning the utility's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. This information and data shall be filed on an annual basis in the form and detail and at the time required by the Commission. The Commission, upon notice and hearing, shall compare the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period. If those prudently incurred costs are greater or less than the recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any over-recovery by credit to bill or through a decrement in its rates and shall permit the utility to recover any deficiency through an increment in its rates.

(d) Nothing in this section prohibits the Commission from investigating and changing unreasonable rates as authorized by this Chapter, nor does it prohibit the Commission from disallowing the recovery of any gas costs not prudently incurred by a utility.

(e) As used in this section, the word 'cost' or 'costs' shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system."

Sec. 9. The Joint Legislative Utility Review Committee shall study the matter of gas cost adjustment for natural gas local distribution companies, including whether any changes in legislation are needed, and shall report its findings, together with any recommendations it may have, including recommendations for the enactment of legislation, to the 1992 Regular Session of the 1991 General Assembly.

Sec. 10. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158."

Sec. 11. This act is effective upon ratification, but the enactment of Sections 7 and 8 of this bill shall not have any effect on any matter presently before any court.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

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James C. Gardner  
President of the Senate

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Daniel Blue, Jr.  
Speaker of the House of Representatives