

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1991**

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HOUSE BILL 1039  
Committee Substitute Favorable 6/13/91

Short Title: Natural Gas Expansion/Cost.

(Public)

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Sponsors:

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Referred to:

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April 22, 1991

A BILL TO BE ENTITLED

1 AN ACT TO FACILITATE THE CONSTRUCTION OF FACILITIES IN AND THE  
2 EXTENSION OF NATURAL GAS SERVICE TO UNSERVED AREAS AND TO  
3 REVISE THE PROCEDURES FOR GAS COST ADJUSTMENTS FOR  
4 NATURAL GAS LOCAL DISTRIBUTION COMPANIES.  
5

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

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

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

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

1 The General Assembly of North Carolina enacts:

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

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

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

11 "**§ 62-158. Natural Gas Expansion.**

12 (a) In order to facilitate the construction of facilities in and the extension of  
13 natural gas service to unserved areas, the Commission may, after a hearing, order a  
14 natural gas local distribution company to create a special natural gas expansion fund to  
15 be used by that company to construct natural gas facilities in areas within the company's  
16 franchised territory that otherwise would not be feasible for the company to construct.  
17 The fund shall be supervised and administered by the Commission. Any applicable  
18 taxes shall be paid out of the fund.

19 (b) Sources of funding for a natural gas local distribution company's expansion  
20 fund may, pursuant to the order of the Commission, after hearing, include:

21 (1) Refunds to a local distribution company from the company's suppliers  
22 of natural gas and transportation services pursuant to refund orders or  
23 requirements of the Federal Energy Regulatory Commission;

24 (2) Expansion surcharges by the local distribution company charged to  
25 customers purchasing natural gas or transportation services throughout  
26 that company's franchised territory; provided, however, in determining  
27 the amount of any surcharge the Commission shall take into account  
28 the prices of alternative sources of energy and the need to remain  
29 competitive with those alternative sources, and the need to maintain  
30 just and reasonable rates for natural gas and transportation services for  
31 all customers served by the company; and

32 (3) Other sources of funding approved by the Commission.

33 (c) The application of all such funds to expansion projects shall be pursuant to  
34 the order of the Commission. The Commission shall ensure that all projects to which  
35 expansion funds are applied are consistent with the intent of this section and G.S. 62-  
36 2(9). In determining economic feasibility, the Commission shall employ the net present  
37 value method of analysis on a project specific basis. Only those projects with a negative  
38 net present value shall be determined to be economically infeasible for the company to  
39 construct. In no event shall the Commission authorize a distribution from the fund of an  
40 amount greater than the negative net present value of any proposed project as  
41 determined by the Commission. If at any time a project is determined by the  
42 Commission to have become economically feasible, the Commission may require the  
43 company to remit to the expansion fund or to customers appropriate portions of the  
44 distributions from the fund related to the project, and the Commission may order such

1 funds to be returned with interest in a reasonable amount to be determined by the  
2 Commission. Utility plant acquired with expansion funds shall be included in the local  
3 distribution company's rate base at zero cost except to the extent such funds have been  
4 remitted by the company pursuant to order of the Commission.

5 (d) The Commission, after hearing, may adopt rules to implement this section,  
6 including rules for the establishment of expansion funds, for the use of such funds, for  
7 the remittance to the expansion fund or to customers of supplier and transporter refunds  
8 and expansion surcharges or other funds that were sources of the expansion fund, and  
9 for appropriate accounting, reporting and ratemaking treatment. The Commission and  
10 Public Staff shall report to the Joint Legislative Utility Review Committee on the  
11 operation of any expansion funds in conjunction with the reports required under G.S.  
12 62-36A."

13 Sec. 3. Chapter 105 of the General Statutes is amended by adding a new  
14 section to read:

15 "**§ 105-130.5A. Exclusion by certain public utilities from State net income of**  
16 **surcharges collected with the approval of the Utilities Commission.**

17 In determining State net income, natural gas local distribution companies shall  
18 exclude special charges collected from customers on account of a natural gas expansion  
19 surcharge approved by the North Carolina Utilities Commission pursuant to G.S. 62-  
20 158."

21 Sec. 4. G.S. 105-116 is amended by adding a new subsection to read:

22 "(c1) The tax imposed by this section does not apply to special charges collected  
23 within this State by natural gas utilities pursuant to expansion surcharges approved by  
24 the Utilities Commission under G.S. 62-158."

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

26 "(4a) At the rate of three percent (3%) of the gross receipts derived  
27 by a utility from sales of electricity, piped natural gas, or local  
28 telecommunications service as defined by G.S. however, the tax  
29 imposed by this section shall not apply to special charges  
30 collected within this State by natural gas utilities pursuant to  
31 expansion surcharges approved by the North Carolina Utilities  
32 Commission under G.S. 62-158. A person who operates a  
33 utility is considered a retailer under this Article."

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

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

39 Sec. 7. G.S. 62-133(f) is repealed; provided, however, that the repeal of G.S.  
40 62-133(f) shall not affect the right of any natural gas local distribution company to  
41 recover any costs previously approved by the Commission.

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

44 "**§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.**

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

4 (b) From time to time, as changes in the cost of natural gas require, each natural  
5 gas local distribution company may apply to the Commission for permission to change  
6 its rates to track changes in the cost of natural gas supply and transportation. The  
7 Commission may, without a hearing, issue an order allowing such rate changes to  
8 become effective simultaneously with the effective date of the change in the cost of  
9 natural gas or at any other time ordered by the Commission. If the Commission has not  
10 issued an order under this subsection within 120 days after the application, the utility  
11 may place the requested rate adjustment into effect. If the rate adjustment is finally  
12 determined to be excessive or is denied, the utility shall make refund of any excess, plus  
13 interest as provided in G.S. 62-130(e), to its customers in a manner ordered by the  
14 Commission. Any rate adjustment under this subsection is subject to review under  
15 subsection (c) of this section.

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

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

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

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

39 Sec. 10. This act is effective upon ratification, but the enactment of Sections  
40 7 and 8 of this bill shall not have any effect on any matter presently before any court.