

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 512
Commerce Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 6/22/05

Short Title: Electric Service Conflicts.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

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:

1 ...
 2 (2) "Line" means any conductor located inside the ~~city~~ city, or any
 3 conductor within 300 feet of areas annexed by the city that is a primary
 4 supplier, for distributing or transmitting electricity, ~~other than~~except as
 5 follows:

6 a. For overhead construction, a conductor from the pole nearest
 7 the premises of a consumer to such premises, or a conductor
 8 from a line tap to such ~~premises, and~~ premises.

9 b. For underground construction, a conductor from the transformer
 10 (or the junction point, if there be one) nearest the premises of a
 11 consumer to such premises.

12 ...
 13 (5) "Secondary supplier" means a person, firm, or corporation that is not a
 14 primary supplier, but that furnishes electricity at retail to one or more
 15 consumers other than itself within the limits of a ~~city~~ city, or that has a
 16 conductor located within 300 feet of an area annexed by a city that is
 17 ~~but is not~~ a primary supplier. A primary supplier that furnishes electric
 18 service within a city pursuant to a franchise or contract that limits or
 19 restricts the classes of consumers or types of electric service permitted
 20 to such supplier shall, in and with respect to any area annexed by the
 21 city after April 20, 1965, be a primary supplier for such classes of
 22 consumers or types of service, and if it furnishes other electric service
 23 in the annexed area on the effective date of annexation, shall be a
 24 secondary supplier, in and with respect to such annexed area, for all
 25 other electric service. A primary supplier that continues to furnish
 26 electric service after the expiration of a franchise or contract that
 27 limited or restricted such primary supplier with respect to classes of
 28 consumers or types of electric service shall, in and with respect to any
 29 area annexed by the city after April 20, 1965, be a secondary supplier
 30 for all electric service if it is furnishing electric service in the annexed
 31 area on the effective date of annexation."

32 **SECTION 3.** Part 2 of Article 16 of Chapter 160A of the General Statutes is
 33 amended by adding new sections to read:

34 **§ 160A-331.1. Construction of lines between June 1, 2005, and May 31, 2007.**

35 During the period beginning June 1, 2005, and ending May 31, 2007, a city shall not
 36 construct or extend an electric distribution line outside of its corporate limits as of June
 37 1, 2005, in territory assigned to an electric membership corporation by the North
 38 Carolina Utilities Commission without the written consent of the electric membership
 39 corporation. Provided, however, that the consent of an electric membership corporation
 40 shall not be required in connection with the proposed construction of an electric
 41 distribution line solely to serve a facility owned by a city. The electric membership
 42 corporation shall give its consent unless the electric membership corporation, in good
 43 faith, believes that the construction of the electric distribution line is not necessary to
 44 satisfy the reasonable needs of the public for the delivery of an adequate and reliable

1 supply of electric energy and that, when compared with reasonable, alternative courses
2 of action and locations, construction of the electric distribution line in the proposed
3 location is not reasonable, preferred, in the public interest, and the most economical and
4 practically feasible route to deliver electric energy in accordance with prudent utilities
5 practice. Any dispute concerning the failure of the electric membership corporation to
6 give its written consent shall be submitted to prelitigation mediation in accordance with
7 the provisions of G.S. 7A-38.3B.

8 **"§ 160A-331.2. Agreements of electric suppliers.**

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

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

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

40 "(6b) A primary supplier or secondary supplier that, after the determination
41 date, offers to serve any premises initially requiring electric service for
42 which a consumer has a right to choose suppliers under subsections (5)
43 or (6) of this section, without providing the consumer written notice

1 that the consumer may be entitled to choose another electric supplier
2 for the premises, shall not have the right to serve those premises."

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

5 "(c) It shall be unlawful for a primary supplier or secondary supplier to serve
6 premises within a city that the supplier does not have the right to serve under the
7 provisions of this Article. Upon receiving written notice from another supplier of
8 electric service that has authority to lawfully provide service to the premises in dispute
9 that the provision of service by the current supplier is unlawful, the primary supplier or
10 secondary supplier that is providing electric service shall be obligated to discontinue
11 service and remove all of its facilities used in the provision of the unlawful service
12 within 30 days after substitute electric service can be provided by an electric supplier
13 with authority to lawfully provide service to the premises, unless the supplier currently
14 providing service has a good faith basis for believing it has authority to continue
15 rendering such service. If the primary or secondary supplier is determined to be
16 providing electric services unlawfully, and is found to have unreasonably failed to fulfill
17 its obligation to discontinue service as required above, the supplier of electric service
18 that has authority to lawfully provide service to the premises may bring an action to
19 compel performance of those obligations, and may recover in that action its costs of
20 enforcing this subsection, including its reasonable attorneys' fees."

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

22 "**§ 117-10.2. Restriction on municipal service.**

23 Except as otherwise provided in this section, no electric membership corporation
24 shall furnish electric service to, or within the limits of, any incorporated city or town,
25 except pursuant to a franchise that may be granted under the provisions of
26 G.S. 117-10.1, or as permitted under G.S. 160A-331, 160A-331.1, 160A-331.2,
27 160A-332, and 160A-333. ~~An~~ In addition, an electric membership corporation may
28 furnish electric service to, or within the limits of, any incorporated city or town if the
29 city or town and all electric suppliers, including public utilities, other electric
30 membership corporations and other cities or towns, then furnishing electric service to or
31 within such city or town consent thereto in writing."

32 **SECTION 7.** Article 2 of Chapter 117 of the General Statutes is amended by
33 adding a new section to read:

34 "**§ 117-10.3. Construction of lines between June 1, 2005, and May 31, 2007.**

35 During the period beginning June 1, 2005, and ending May 31, 2007, an electric
36 membership corporation shall not construct or extend an electric distribution line in
37 territory assigned to it by the North Carolina Utilities Commission without the written
38 consent of the municipality that owns and maintains its own electric system whose
39 corporate limits, as of June 1, 2005, are within three miles of any part of the line or
40 extension proposed to be constructed by the electric membership corporation. The
41 municipality shall give its consent unless the municipality, in good faith, believes that
42 the construction or extension of the electric distribution line is not necessary to satisfy
43 the reasonable needs of the public for the delivery of an adequate and reliable supply of
44 electric energy and that, when compared with reasonable, alternative courses of action

1 and locations, construction of that part of the electric distribution line in the proposed
2 location within three miles of the city is not reasonable, preferred, in the public interest,
3 and the most economical and practically feasible route to deliver electric energy in
4 accordance with prudent utilities practice. Any dispute concerning the failure of the
5 municipality to give its written consent shall be submitted to prelitigation mediation in
6 accordance with the provisions of G.S. 7A-38.3B."

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

9 **"§ 7A-38.3B. Prelitigation mediation of territorial disputes.**

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

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

17 (1) Electric supplier. – Any electric membership corporation, or any
18 municipality that owns, operates, and maintains its own electric
19 system.

20 (2) Mediated settlement conference. – A conference of electric suppliers
21 and their representatives conducted by a mediator.

22 (3) Mediation. – An informal process conducted by a mediator with the
23 objective of helping parties voluntarily settle their dispute.

24 (4) Mediator. – A neutral person who acts to encourage and facilitate a
25 resolution of a territorial dispute. A mediator does not make an award
26 or render a judgment as to the merits of the action.

27 (5) Territorial dispute. – A disagreement between electric providers over
28 (i) the right to serve premises located in areas outside of or within
29 municipal limits, (ii) the failure of a municipality to give its written
30 consent to the construction of an electric distribution line by an electric
31 membership corporation pursuant to the provisions of G.S. 117-10.3,
32 or (iii) the failure of an electric membership corporation to give its
33 written consent to the construction of an electric distribution line by a
34 municipality pursuant to the provisions of G.S. 160A-331.1.

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

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

42 (e) Initiation of Mediation. – Mediation of a territorial dispute that is subject to
43 the provisions of G.S. 117-10.3 or G.S. 160A-331.1 shall be initiated by filing a request
44 for mediation with the clerk of superior court in a county in which a civil action

1 between the electric suppliers could have been brought. The filing of such a request for
2 mediation shall commence a special proceeding in the superior court. The party filing
3 the request for mediation also shall mail a copy of the request by certified mail, return
4 receipt requested, to each party to the dispute. The clerk shall provide each party with a
5 list of mediators certified by the Dispute Resolution Commission. If the parties agree in
6 writing to the selection of a mediator from that list, the clerk shall appoint that mediator
7 selected by the parties. If the parties do not agree on the selection of a mediator, the
8 party filing the request for mediation shall bring the matter to the attention of the clerk,
9 and a mediator shall be appointed by the senior resident superior court judge. The clerk
10 shall notify the mediator and the parties of the appointment of the mediator.

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

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

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

39 (i) Binding Decision. – If an agreement was not reached as a result of mediation
40 or if mediation is waived pursuant to subsection (g) of this section, the electric suppliers
41 shall submit their territorial dispute to a member of the Public Staff of the North
42 Carolina Utilities Commission who shall have the authority to issue an opinion
43 resolving the territorial dispute that is binding on the parties. If the parties do not agree
44 on the selection of a member of the Public Staff, the Executive Director of the Public

1 Staff shall appoint a member of the Public Staff to hear the territorial dispute and render
2 an opinion. The opinion resolving the dispute shall be considered in the nature of an
3 arbitrator's award and may be enforced in the same manner as an arbitration award
4 under G.S. 1-569.25.

5 (j) Time Periods Tolloed. – Time periods relating to the filing of a claim or the
6 taking of other action with respect to a territorial dispute, including any applicable
7 statutes of limitations, shall be tolled upon the filing of a request for mediation under
8 this section, until 30 days after the date on which the mediation is concluded as set forth
9 in the mediator's certification, or if the mediator fails to set forth such date, until 30 days
10 after the filing of the certification under subsection (g) of this section.

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

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