

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. ER-100, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement)	ORDER INITIATING
Session Law 2011-252 (Senate Bill 533))	RULEMAKING PROCEEDING

BY THE COMMISSION: On June 23, 2011, North Carolina Session Law 2011-252 (Senate Bill 533) was signed into law by the Governor, having been previously ratified by the North Carolina General Assembly. In this legislation, the General Assembly authorized lessors of residential buildings to bill tenants for electric service where there are individual electric service meters for each apartment in the residential building, the lessor is the account holder for the electric meters, and the lessor has a separate lease for each bedroom within each apartment. Senate Bill 533 becomes effective on October 1, 2011, and requires the Commission to adopt rules to implement the legislation.

On July 21, 2011, the Public Staff filed a Petition for Rulemaking in this docket. The Petition included the Public Staff's proposed rules and proposed application form for authority to become an electric reseller. The Public Staff requested that the Commission initiate a rulemaking proceeding requesting comments and reply comments on the Public Staff's proposed rules and adopt the proposed rules on an interim basis until the Commission approves final rules.

The Public Staff stated that it is aware of the following entities that have expressed an interest in Senate Bill 533: the investor-owned electric utilities in North Carolina, the North Carolina Attorney General's Office, the North Carolina Justice Center, and the Apartment Association of North Carolina. The Public Staff served a copy of its Petition on these entities and recommended that they be notified directly of the initiation of this rulemaking proceeding.

Based upon the foregoing, the Commission finds good cause to initiate this rulemaking proceeding to adopt final rules to implement Senate Bill 533. To begin the rulemaking process, the Commission made minor revisions to the proposed rules and application form submitted by the Public Staff and will adopt those rules and the application form on an interim basis. The interim rules and application form are attached to this Order. The Commission invites interested persons to petition to intervene and file comments and reply comments on the interim rules, additional proposed rules, and other comments and information to assist the Commission in adopting final rules. After careful consideration of the initial comments and reply comments, the Commission will issue final rules.

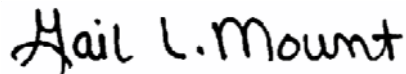
IT IS, THEREFORE, ORDERED, as follows:

1. That the proposed rules and application form, attached hereto, are hereby adopted on an interim basis effective the date of this Order and continuing in effect until final rules are issued by the Commission;
2. That Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., Duke Energy Carolinas, LLC, Virginia Electric and Power Company d/b/a Dominion North Carolina Power, North Carolina Electric Membership Corporation, and ElectriCities of North Carolina, Inc., are hereby made parties of record in this proceeding;
3. That any person having an interest in this proceeding may file a petition to intervene stating such interest on or before Friday, September 16, 2011;
4. That parties may file initial comments on the proposed rules on or before Friday, September 16, 2011, and may file reply comments on or before Friday, September 30, 2011; and
5. That the Chief Clerk shall mail a copy of this Order to the North Carolina Attorney General's Office, the North Carolina Justice Center, and the Apartment Association of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of August, 2011.

NORTH CAROLINA UTILITIES COMMISSION



Gail L. Mount, Deputy Clerk

Chapter 22
Provision of Electric Service by Landlords

- Rule R22-1. Application.
- Rule R22-2. Definitions.
- Rule R22-3. Utility status; certificate.
- Rule R22-4. Application for authority.
- Rule R22-5. Bills of the provider.
- Rule R22-6. Records, reports and fees.
- Rule R22-7. Disconnection; billing procedure.

Rule R22-1. Application.

Pursuant to G.S. 62-110(g1), this Chapter governs the resale of electricity by a lessor of a residential building or complex that has individually metered units for electric service in the lessor's name, where the lessor (a) charges the actual costs of providing electric service to each tenant, and (b) has a separate lease for each bedroom in the unit.

Rule R22-2. Definitions.

(a) *Provider.* A lessor who purchases electric utility service from a supplier and charges for the costs of providing the service to tenants. A provider must be the owner of the premises served.

(b) *Supplier.* A public utility, or an agency or organization exempted from regulation, from which a provider purchases electric service.

(c) *Tenant.* A lessee who purchases electric service from a provider.

Rule R22-3. Utility status; certificate.

(a) Every provider is a public utility as defined by G.S. 62-3(23)a.1. and shall comply with all applicable provisions of the Public Utilities Act and all applicable rules and regulations of the Commission, except as hereinafter provided.

(b) A provider who charges for electric service under this Rule:

- (1) is solely responsible for the prompt payment of all bills rendered by the supplier and is the retail customer of the supplier subject to all rules, regulations, tariffs, riders and service regulations associated with the provision of electric service to retail customers of the supplier;
- (2) is not considered a wholesale customer of the supplier; and
- (3) is not subject to the requirements of G.S. 62-133.8, 62-133.9, or Rules R8-67 through R8-69.

(c) No provider shall begin charging for the costs of providing electric service prior to applying for and receiving a certificate of authority from the Commission.

Rule R22-4. Application for authority.

(a) Every application for authority to charge for the costs of providing electric service shall be in such form and detail as the Commission may prescribe and shall include:

- (1) a description of the applicant, including legal name and type of business entity, and a description of the property to be served, including business or marketing name if any, street address, and number of units;
- (2) a description of the proposed billing method and billing statements;
- (3) the proposed method of allocating the supplier's charges to the tenants;
- (4) the administrative fee per tenant and late payment charge, if any, proposed to be charged by the applicant, and the number of days after the bill is mailed or otherwise delivered when the late payment fee would begin to be applied;
- (5) the applicant's plans for retention and availability of records;
- (6) the name of and contact information for the applicant and its agents, including mailing address, email address, and telephone number;
- (7) the name of and contact information for the supplier of electric service to the applicant's rental property;
- (8) the current schedule of charges from the supplier;
- (9) a copy of the lease forms to be used by the applicant for tenants who are billed for electric service pursuant to this Chapter;
- (10) a statement indicating the particular provisions of the lease forms pertaining to billing for electric service;
- (11) the verified signature of the Applicant or Applicant's authorized representative;
- (12) the required filing fee;
- (13) one (1) original and seven (7) collated copies of the Application; and
- (14) any additional information that the Commission may require.

(b) The Commission shall approve or disapprove an application within 60 days of the filing of a completed application with the Commission. If the Commission has not issued an Order disapproving a completed application within 60 days, the application shall be deemed approved; provided, however, no person or entity may charge for electric utility service in a manner inconsistent with Chapter 62 of the North Carolina General Statutes.

Rule R22-5. Bills of the provider.

(a) Bills for electric service sent by the provider to the tenant shall contain all of the following information:

- (1) the bill charged by the supplier for the unit as a whole and the amount of charges allocated to the tenant during the billing period;
- (2) the name of the supplier;
- (3) the beginning and ending dates for the usage period and, if provided by the supplier, the date the meter for the unit was read for that usage period;
- (4) the past-due date;
- (5) the name of the provider and a local or toll-free telephone number and address of the provider that the tenants can use to obtain more information about the bill;
- (6) the amount of administrative fee and the late payment charge approved by the Commission and included in the bill, if any; and
- (7) a statement of the tenant's right to address questions about the bill to the provider and the tenant's right to file a complaint with, or otherwise seek recourse from, the Commission if the tenant cannot resolve an electric service billing dispute with the provider.

(b) The provider or the provider's billing agent shall equally divide the actual amount of the individual electric service bill for a unit among all the tenants in the unit and shall send one bill to each tenant.

(c) The amount charged shall be prorated when a tenant has not leased the unit for the same number of days as the other tenants in the unit during the billing period.

(d) Each bill may include an administrative fee no greater than the amount authorized in Rule R18-6 for water service and, when applicable, a late payment charge no greater than the amount authorized in Rule R12-9(d).

(e) A late payment charge may be applied to the balance in arrears after the past-due date.

(f) The provider shall not charge the cost of electricity from any other unit or common area in a tenant's bill. "Common area" means parts of the rental property outside the individually metered unit where the tenant dwells.

(g) No provider shall charge or collect any greater compensation for the costs of providing electric service than the rates approved by the Commission.

(h) The provider may, at the provider's option, pay any portion of any bill sent to a tenant; provided, however, that (i) the provider must still send each tenant bills in accordance with the other provisions in Rule R22-5, and (ii) the provider must comply with G.S. 62-140 regarding non-discrimination in billing for utility service.

Rule R22-6. Records, reports and fees.

(a) The provider shall maintain for a minimum of 36 months records that demonstrate how each tenant's allocated costs were calculated for electric service, as well as any other electric utility service-related fees charged to each tenant.

(b) All records shall be kept at the office or offices of the provider in North Carolina, or shall be made available at its office in North Carolina upon request, and shall be available during regular business hours for examination by the Commission or Public Staff or their duly authorized representatives. Within three business days after a written request to the provider, a customer may examine the records pertaining to the customer's account, including the actual per unit public utility, agency or organization billings, during regular business hours at the provider's office in North Carolina and may obtain a copy of those records at a reasonable cost, which shall not exceed twenty-five cents (25¢) per page.

(c) Providers shall not be required to file an annual report to the Commission as required by Rule R1-32.

(d) Providers shall pay a regulatory fee and file a regulatory fee report as required by Rule R15-1.

(e) Special reports shall also be made concerning any particular matter upon request by the Commission.

Rule R22-7. Disconnection; billing procedure.

- (a) Any payment to the provider shall be applied first to the rent owed and then to charges for utility service, unless otherwise designated by the tenant.
- (b) No charge for connection or disconnection shall be allowed.
- (c) No provider may disconnect electric service for nonpayment.
- (d) Bills shall be rendered at least monthly.
- (e) The date after which a bill for electric utility service is due (the past due date) shall be disclosed on the bill and shall not be less than twenty-five (25) days after the bill is mailed or otherwise delivered to the tenant.
- (f) A provider shall not bill for or attempt to collect for excess usage resulting from a meter malfunction or other electrical condition in appliances such as water heaters, HVAC systems, or ranges furnished by the provider to the tenant, when the malfunction is not known to the tenant or when the malfunction has been reported to the provider.
- (g) Every provider shall provide to each tenant at the time the lease agreement is signed, and shall maintain in its business office, in public view, near the place where payments are received, the following:
 - (1) A copy of the rates, rules and regulations of the provider applicable to the premises served from that office, with respect to electric utility service;
 - (2) A copy of these rules and regulations (Chapter 22);
 - (3) A statement advising tenants that they should first contact the provider's office with any questions they may have regarding bills or complaints about service, and that in cases of dispute, they may contact the Commission either by calling the Public Staff - North Carolina Utilities Commission, Consumer Services Division, at (866) 380-9816 (in-state calls only) or (919) 733-9277 or by appearing in person or writing the Public Staff - North Carolina Utilities Commission, Consumer Services Division, 4326 Mail Service Center, Raleigh, North Carolina 27699-4326.
- (h) Each provider shall adopt a means of informing its tenants initially and on an annual basis as to the provider's method of allocating bills to the individual tenants and its administrative fee and late fee, if any. A copy of the supplier's current schedule of charges shall also be included in these disclosures.
- (i) Every provider shall promptly notify the Commission in writing of any change in the information required in Rule R22-4(a), except for changes in the rates and charges of the supplier (Rule R22-4(a)(8)).

DOCKET NO. ER-_____,SUB_____
FILING FEE RECEIVED _____

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

APPLICATION FOR CERTIFICATE OF AUTHORITY TO RESELL ELECTRIC SERVICE IN ACCORDANCE WITH
G.S. 62-110(g1) and NORTH CAROLINA UTILITIES COMMISSION CHAPTER 22

INSTRUCTIONS

If additional space is needed, supplementary sheets may be attached. If any section does not apply, write "not applicable."
Utility laws, the Commission's Rules, and other information may be accessed at <http://www.ncuc.net/index.htm>

APPLICANT

1. Name of owner _____
(Individual name if the owner is a sole proprietor or business name if not a sole proprietor.)
2. Business mailing address of owner _____
City and state _____ Zip code _____
3. Business telephone number _____ Business fax number _____
4. Business email address _____

PROPOSED UTILITY SERVICE AREA

5. Name of Apartment Complex(es) _____
6. Street Address of Apartment Complex(es) _____
7. County (or counties) _____
8. Name, address and telephone number of the supplier(s) of purchased power _____

9. Number of tenants that can be served at each separate property: _____

RESALE PROVISIONS

10. Describe the method Applicant proposes to use to allocate the supplier's individual electric bill for a unit among all the tenants in the unit (NCUC Rule R22-5): _____

11. Monthly administrative fee per bill: _____
(Pursuant to NCUC Rule R22-5(d), no more than \$3.75 per month - the maximum amount authorized for water resellers by Commission Rule R18-6, may be added to the cost of electric service as an administrative fee. The amount of administrative fee, up to the maximum amount, should be justified by Applicant's actual costs.)
12. Bills will be past due _____ days after they are mailed or otherwise delivered to tenants. (NCUC Rule R22-7(e) specifies that bills shall not be past due less than twenty-five (25) days after mailing or other delivery to tenants).
13. Late fee amount: _____
(Pursuant to NCUC Rule R22-5(d) and (e), no more than 1% per month on the balance in arrears.)
Number of days after mailing or other delivery of bills at which the late fee begins to apply: _____
(See NCUC Rule R22-5(e) and (7)(e).)
14. Statement of the Applicant's plans for retention and availability of records (see NCUC Rule R22-6(a) and (b)): _____

PERSONS TO CONTACT

	<u>NAME</u>	<u>ADDRESS</u>	<u>TELEPHONE</u>
15. Management	_____	_____	_____

		Email _____	
16. Complaints or Billing	_____	_____	_____

		Email _____	
17. Emergency Service	_____	_____	_____

		Email _____	
18. Filing and Payment of Regulatory Fees to Utilities Commission	_____	_____	_____

		Email _____	

OTHER PROVISIONS

- 19. Applicant must promptly notify the Commission in writing if any information supplied on this form changes in the future.
- 20. Applicant must also file quarterly Regulatory Fee Reports and make regulatory fee payments. Details are set out in NCUC Rule R15-1.

REQUIRED EXHIBITS

- 21. If the Applicant is a corporation, LLC, LP, or other legal business entity, enclose a copy of the certification from the North Carolina Secretary of State (Articles of Incorporation or Application for Certificate of Authority for Limited Liability Company, etc.). **(Must match name on Line 1 of application.)**
- 22. If the Applicant is a partnership, enclose a copy of the partnership agreement. **(Must match name on Line 1 of application.)**
- 23. Enclose a copy of a Warranty Deed showing that the Applicant has ownership of all the property necessary to operate the utility. **(Must match name on Line 1 of application.)**
- 24. Enclose a vicinity map showing the location of the apartment complex in sufficient detail for someone not familiar with the county to locate the apartment complex. (A county roadmap with the apartment complex outlined is suggested.)
- 25. Enclose a copy of the supplier's schedule of rates that will be charged to the Applicant for purchased power.
- 26. Enclose a copy of any agreements or contracts that the Applicant has entered into covering the provision of billing and collections services to the apartment complex.
- 27. Indicate the number of apartment buildings to be served, the number of units in each apartment building and the number of bedrooms in each unit.
- 28. Enclose a copy of the template or form used for billing statements.
- 29. Enclose a copy(ies) of the form(s) used for leases to tenants, including a statement of which parts of the lease relate to billing for electric service.

FILING INSTRUCTIONS

- 30. Submit one (1) original application with required exhibits and **original notarized signature**, plus seven (7) additional collated copies to: [USPS address] **Chief Clerk's Office, North Carolina Utilities Commission, 4325 Mail Service Center, Raleigh, North Carolina 27699-4325**, or [overnight delivery or hand delivery at street address] **Chief Clerk's Office, North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27603**. Provide a self-addressed stamped envelope, plus an additional copy, if a file-stamped copy is requested by the Applicant.
- 31. Enclose a filing fee as required by G.S. 62-300. A Class A utility (annual electricity reseller revenues of \$1,000,000 or more) requires a \$250 filing fee. A Class B utility (annual electricity reseller revenues between \$200,000 and \$1,000,000) requires a \$100 filing fee. A Class C utility (annual electricity reseller revenues less than \$200,000) requires a \$25 filing fee. **MAKE CHECK PAYABLE TO N.C. DEPARTMENT OF COMMERCE/UTILITIES COMMISSION.**

SIGNATURE

- 32. Application shall be signed and verified by an authorized representative of the Applicant.

Signature _____
Printed Name _____
Title _____
Date _____

- 33. (Typed or Printed Named) _____
personally appearing before me and, being first duly sworn, says that the information contained in this application and in the exhibits attached hereto are true to the best of his/her knowledge and belief.

This the _____ day of _____, 20_____

Notary Public
My Commission Expires: _____
Date

(NOTARY SEAL)