

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. ER-100, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Petition to Amend Commission	)	RULEMAKING PETITION
Rule R22-5		OF THE PUBLIC STAFF

NOW COMES THE PUBLIC STAFF - North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Christopher J. Ayers, and respectfully petitions the Commission to amend Commission Rule R22 and authorize electric resellers to collect a fee (a "returned check charge"), not to exceed the amount permitted under G.S. 25-3-506, when a tenant pays a bill for resold electric service by check and the check is returned by the bank for insufficient funds or because the tenant does not have an account at the bank. In support of this petition, the Public Staff respectfully shows unto the Commission:

1. Commission Rule R22 was adopted by the Commission in its *Order Adopting Final Rules*, issued on April 19, 2012, in Docket No. ER-100, Sub 0, for the purpose of implementing G.S. 62-110(h) and regulating the activities of landlords who resell electric service to tenants in residential buildings or complexes. The rule has since been amended on three occasions, but none of the amendments relate to returned check charges.<sup>1</sup>

---

<sup>1</sup> Docket No. ER-100, Sub 0, *Order Amending Final Rules* (March 31, 2014); Docket No. ER-100, Sub 1, *Order on Motion for Reconsideration and Amendment* (Nov. 5, 2013); Docket No. ER-100, Sub 1, *Order Granting Petition for Rule Clarification* (Sept. 4, 2013).

2. At present Rule R22 does not specifically state whether an electric reseller is allowed to collect a returned check charge. In recent weeks the Public Staff has become aware that electric resellers and parties seeking authorization to resell electric service need clearer guidance on whether such charges are permitted.

3. Following internal discussion on this matter, the Public Staff has concluded that it would be reasonable for electric resellers to collect returned check charges, so long as they are consistent with G.S. 25-3-506. Among the Public Staff's reasons for reaching this conclusion are the following:

a. When a check is tendered without sufficient funds in the account to cover it, the person writing the check is normally at fault, not the recipient. The imposition of a reasonable returned check charge serves to place the loss on the party responsible for it.

b. Electric, gas and water utilities are already permitted to impose returned check charges, under Commission Rules R12-11(d), R12-10(d), and R7-4(d), respectively. There appears to be no good reason for treating electric resellers differently.

c. As far as the Public Staff is able to determine, the present wording of the rule does not reflect an intentional decision by the Commission in Docket No. ER-100, Sub 0, that electric resellers should be prohibited from collecting returned check

charges. The issue of whether to allow such charges simply did not arise in that proceeding.

d. It is important that a returned check charge be reasonable and not excessive. G.S. 25-3-506 places a reasonable limit of \$25 on these charges.

4. For all these reasons, the Public Staff requests the Commission to amend Rule R22 and authorize electric resellers to collect a returned check charge, not to exceed the limit set by G.S. 25-3-506, in appropriate circumstances. The specific wording of the Public Staff's proposed amendment is set out in Attachment A hereto.

WHEREFORE, the Public Staff prays:

1. That Commission Rule R22 be amended as set forth in Attachment A hereto; and
2. For such other and further relief as the Commission may deem just and proper.

This the 4th day of March, 2015.

PUBLIC STAFF  
Christopher J. Ayers  
Executive Director

Antoinette R. Wike  
Chief Counsel

Electronically submitted  
s/ David T. Drooz  
Staff Attorney

Robert S. Gillam  
Staff Attorney

4326 Mail Service Center  
Raleigh, North Carolina 27699-4326  
Telephone: (919) 733-6110  
[david.drooz@psncuc.nc.gov](mailto:david.drooz@psncuc.nc.gov)  
[bob.gillam@psncuc.nc.gov](mailto:bob.gillam@psncuc.nc.gov)

## ATTACHMENT A

TEXT OF PROPOSED AMENDMENT TO RULE R22

The Public Staff proposes that R22 be amended as shown in the underlined font below.

R22-4(a)(4):

the administrative fee per tenant, returned check charge, 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;

R22-5(a)(6):

the administrative fee per tenant, returned check charge, 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;

R22-5(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) and a returned check charge no greater than the amount authorized in G.S. 25-3-506.

R22-5(f):

The provider may impose a returned check charge, not to exceed the maximum authorized by G.S. 25-3-506, for a check on which payment has been refused by the payor bank because of insufficient funds or because the tenant did not have an account at that bank.

Existing subsections (f), (g) and (h) of Rule R22-5 should be redesignated as subsections (g), (h) and (i) respectively.

R22-7(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, returned check charge, and late fee, if any. A copy of the supplier's current schedule of charges shall also be included in these disclosures.

R22 Appendix ER-1:

14. Returned check charge: \_\_\_\_\_ (Pursuant  
to R22-5 and General Statute 25-3-506, no more than \$25.00.)

R22 Appendix ER-2:

16. Returned check charge: \_\_\_\_\_ (Pursuant  
to R22-5 and General Statute 25-3-506, no more than \$25.00.)

The subsections of Appendix ER-1 and ER-2 that follow these new provisions should be renumbered accordingly.

CERTIFICATE OF SERVICE

I certify that a copy of this Rulemaking Petition of the Public Staff has been served on all parties of record or their attorneys, or both, by United States mail, first class or better; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party. It has been served on all persons who are on the service list of ER-100, Sub 1.

This the 4th day of March, 2015.

Electronically submitted  
s/ Robert S. Gillam