

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. M-100, SUB 142

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Implementation of House Bill 356 – An Act)	
to Clarify the Cap on the Utilities Regulatory)	ORDER AMENDING
Fee Reserve, to Set the Regulatory Fee in)	COMMISSION RULE R15-1
Statute, and to Allow the Commission to)	
Raise or Lower the Fee)	

BY THE COMMISSION: On June 30, 2015, North Carolina Session Law 2015-134, House Bill 356 (HB 356), An Act to Clarify the Cap on the Utilities Regulatory Fee Reserve, to Set the Regulatory Fee in Statute, and to Allow the Commission to Raise or Lower the Fee, was signed into law, having previously been ratified by the North Carolina General Assembly.

HB 356, among other things, made changes to the general statutes concerning the regulatory fee for public utilities and how the regulatory fee is adjusted.

By Order dated July 21, 2015, the Commission initiated this generic proceeding and requested comments from the parties.

On July 30, 2015, the Carolina Utility Customers Association, Inc. (CUCA), filed a petition with the Commission seeking to intervene in this docket. The Commission granted CUCA's petition to intervene by Order dated August 18, 2015.

Initial comments were filed on September 21, 2015, by: (1) the North Carolina Utilities Commission – Public Staff (Public Staff), Duke Energy Carolinas, LLC, Duke Energy Progress, LLC (collectively, Duke), Virginia Electric and Power Company, d/b/a Dominion North Carolina Power (DNCP), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. d/b/a PSNC Energy (PSNC Energy), Aqua North Carolina, Inc. (Aqua), and Utilities, Inc., as joint commenters (the Joint Commenters); (2) Frontier Natural Gas Company (Frontier); and (3) Toccoa Natural Gas (Toccoa). No party filed any reply comments.

INITIAL COMMENTS

The Joint Commenters noted that, prior to the enactment of HB 356, pursuant to G.S. 62-302, the Commission proposed and the General Assembly set the regulatory fee rate by law. The Joint Commenters stated that, generally, the regulatory fee was enacted in the State's budget bill. The Joint Commenters stated that, in HB 356, the General

Assembly amended G.S. 62-302 to: (1) set the regulatory fee rate for noncompetitive jurisdictional revenues at 0.148%, effective July 1, 2015¹; (2) set the regulatory fee for each electric membership corporation at \$200,000; and (3) authorize the Commission to change the regulatory fee rate annually, depending on the level of estimated receipts, expenditures and the Commission's reserve fund.²

The Joint Commenters noted that G.S. 62-302(e) provides that if a utility's regulatory fee obligation is changed, the Commission shall either adjust the utility's rates to reflect the change or approve the utility's request for an accounting order allowing deferral of the change in the fee obligation.

The Joint Commenters maintained that Commission Rule R15-1 sets forth the parameters for use of the regulatory fee funds and the procedure for utilities to pay the regulatory fee to the Commission, including the submission of a Public Utility Regulatory Fee Report (NCUC FORM RF). The Joint Commenters stated that this rule will need to be modified to reflect the changes in HB 356 as more fully described below.

The Joint Commenters stated that they jointly worked on revisions to Commission Rule R15-1 to reflect the changes enacted in HB 356. The Joint Commenters attached a copy of Commission Rule R15-1 with the recommended changes agreed to by all of the Joint Commenters to their filing for the Commission's consideration. The Joint Commenters asserted that the proposed revisions to the Rule conform to HB 356 and provide utilities with flexibility to change rates or defer any difference in a change in the regulatory fee in an orderly fashion. The Joint Commenters noted that the Rule is written so that it serves as the Commission's approval of deferral requests without the need for multiple utilities to file requests to do so every time the regulatory fee changes.

The Joint Commenters maintained that because revised Commission Rule R15-1 contemplates utilities' use of deferral accounting to comply with HB 356, the Joint Commenters respectfully request the Commission to provide any approvals necessary for utilities to establish deferral accounts required to comply with the proposed rule. The Joint Commenters asserted that such authority should be granted *nunc pro tunc* back to July 1, 2015, which is the date the adjusted regulatory fee under HB 356 became effective.

The Joint Commenters noted that there are two additional items that the Commission will need to address that are not addressed in the joint comments. First, the Joint Commenters stated that the Commission will need to determine whether to change the \$25.00 quarterly estimated fee. The Joint Commenters maintained that they do not have an opinion as to whether this should be changed. Second, the Joint Commenters

¹ The regulatory fee for Subsection (h) and Subsection (m) competitive jurisdictional revenues, set in North Carolina Session Law 2014-59, did not change.

² HB 356 provides that the amount of the reserve may not exceed one-half of the cost of operating the Commission and the Public Staff as reflected in the certified budget for the previous fiscal year.

noted that NCUC Form RF will need to be amended to conform to the amended Commission Rule R15-1.

Frontier noted that it is a North Carolina limited liability company registered to do business and doing business in North Carolina. Frontier stated that it is a public utility, pursuant to Chapter 62 of the North Carolina General Statutes, authorized and engaged in the business of purchasing, transporting, distributing, and selling natural gas to customers within its certificated service territory in North Carolina.

Frontier stated that its predecessor, Frontier Utilities of North Carolina, Inc., received its Certificate of Public Convenience and Necessity (CPCN) in consolidated Docket Nos. G-38, Sub 0 and G-9, Sub 357 by Order of the Commission issued on January 30, 1996. Frontier noted that that Order granting the CPCN also approved Frontier's initial base margin rates. Frontier maintained that the calculations and projections that were used in determining the base margin rates were based largely upon assumptions of the price of competitive fuels and the likelihood and number of customer conversions and new customer connections³.

Frontier noted that its rates are also reviewed and adjusted annually, as approved by the Commission in Purchased Gas Adjustment proceedings, pursuant to G.S. 62-133.4 and Commission Rule R1-17(k)(6), to accommodate changes in the wholesale cost of gas, but the purchased gas adjustments do not include or affect the regulatory fee.

Frontier asserted that although it pays the established regulatory fee quarterly pursuant to G.S. 62-133.4 and Commission Rule R15-1, it has never adjusted its base rates for changes in the regulatory fee. Frontier noted that it has never requested a change in its base margin rates in a general rate case since the establishment of its rates in its initial CPCN Order, other than the previously-noted reduction in 2007.

Frontier maintained that it would be appropriate for the Company to continue to pay the required regulatory fee as it has always done but to be exempted from having to participate in any rate adjustment dockets for changes in the regulatory fee when such fees are either increased or decreased by the Commission.

Frontier requested that the Commission expressly exempt the Company from any resulting rate adjustments to reflect changes to its regulatory fee obligation at the time such adjustments are approved by the Commission.

Toccoa, a division of the City of Toccoa, Georgia, noted that it is a public utility authorized to provide natural gas service in Franklin County, North Carolina pursuant to Chapter 62 of the North Carolina General Statutes, and is registered to do business and is doing business in Franklin County, North Carolina. Toccoa stated that it is a public utility

³ Frontier noted that its base margin rates for Residential Firm Service and Small General Firm Service were reduced ten percent in Docket No. G-40, Sub 67 in the Commission's September 13, 2007 Order Approving Purchase of Stock and Transfer of Control of Company.

primarily engaged in the business of purchasing, transporting, distributing, and selling natural gas to customers in both Georgia and Franklin County, North Carolina.

Toccoa maintained that it received its CPCN in Docket No. G-41, Sub 0 by Order of the Commission issued on December 8, 1988, and is authorized, by that Order, to adjust its base rates upward or downward without having to secure advance approval of the Commission so long as the rates charged remain at or below the level of Maximum Rates authorized in that docket. Toccoa noted that the Maximum Rates were based on estimated revenues and expenses, which included an amount for the then established regulatory fee rate of 0.09%. Toccoa stated that its initial tariffed rates, however, were equal to those offered to its out-of-city customers in Georgia, which were significantly lower than the Maximum Rates.

Toccoa noted that its rates are also reviewed and adjusted annually, as approved by the Commission in Purchased Gas Adjustment proceedings, pursuant to G.S. 62-133.4 and Commission Rule R1-17(k)(6), to accommodate changes in the wholesale cost of gas, but the purchased gas adjustments do not include the regulatory fee.

Toccoa asserted that, although it pays the established regulatory fee quarterly pursuant to G.S. 62-133.4 and Commission Rule R15-1, it has never adjusted its base rates for changes in the regulatory fee. Toccoa stated that, in fact, it has never requested a change in its base margin rates in a general rate case since the establishment of its Maximum Rates in its initial CPCN Order.

Toccoa maintained that it would be appropriate for it to continue to pay the required regulatory fee as it has always done but to be exempted from having to participate in any rate adjustment dockets for changes in the regulatory fee when such fees are either increased or decreased by the Commission.

Toccoa requested that the Commission expressly exempt Toccoa from any resulting rate adjustments to reflect changes to its regulatory fee obligation at the time such adjustments are approved by the Commission.

REPLY COMMENTS

No party filed any reply comments.

DISCUSSION

Session Law 2014-59 (HB 1052) was signed into law on July 7, 2014. That legislation first introduced statutory language which would allow public utilities to recover increases in the regulatory fee obligation. Specifically, G.S. 62-302(e) stated:

Recovery of fee increase. – If a utility's regulatory fee obligation is increased, the Commission shall either adjust the utility's rates to allow for

the recovery of the increased fee obligation, or approve the utility's request for an accounting order allowing deferral of the increase in the fee obligation.

HB 1052 was effective July 1, 2015, and also effective July 1, 2015, the regulatory fee for noncompetitive jurisdictional revenues was increased from 0.135% to 0.148%.

HB 356 amended G.S. 62-302(e), effective July 1, 2015, to recognize both increases and decreases in the regulatory fee obligation. Specifically, G.S. 62-302(e) currently states:

Fee changes. – If a utility's regulatory fee obligation is changed, the Commission shall either adjust the utility's rates to reflect the change or approve the utility's request for an accounting order allowing deferral of the change in the fee obligation.

In reviewing the Joint Commenters' proposed revisions to Commission Rule R15-1, the Commission has made the following substantive changes:

(1) Additional Language in Fee Imposed Section of Commission Rule R15-1

The Commission has added language to Commission Rule R15-1(a) to reflect the language in HB 356 concerning the regulatory fee for electric membership corporations. HB 356 amended G.S. 62-302(b1) to specifically state that the regulatory fee for each fiscal year for each electric membership corporation is \$200,000.

(2) Deletion of Commission Rule R15-1(b) – Rate

On July 11, 2016, the Commission issued an Order in Docket No. M-100, Sub 142 setting the regulatory fee rate at 0.14% for noncompetitive jurisdictional revenues, effective July 1, 2016. Under Commission Rule R15-1, as revised by the Commission herein, an Order shall be issued by the Commission every year establishing the regulatory fee rate for noncompetitive jurisdictional revenues for the upcoming fiscal year (July 1 through June 30). Therefore, for the current purpose of amending Commission Rule R15-1 to reflect HB 356, it is appropriate to remove the rate from the rule since the rate will be set by Commission Order each year. The current regulatory fee rates for Subsection (h) and Subsection (m) competitive jurisdictional revenues are outlined in HB 356 and will only change with future legislation.

(3) Additional Language in Procedure for Setting the Regulatory Fee Rate Section of Commission Rule R15-1

The Commission has added language to reflect that Commission orders setting the regulatory fee rate will be issued in Docket No. M-100, Sub 142. The Commission has also added language to note that if there will be no change made to the regulatory fee rate on noncompetitive jurisdictional revenues, then the Commission will issue an Order

in Docket No. M-100, Sub 142 acknowledging that there will be no change in the rate for the next fiscal year.

(4) Changes to the Definitions Section of Commission Rule R15-1

The Joint Commenters deleted from the definition of noncompetitive jurisdictional revenues in Commission Rule R15-1 that “[f]or telecommunications companies, all revenues and other receipts derived from access charges and yellow pages advertising are to be included as North Carolina jurisdictional revenues.” Further, the Joint Commenters added language to the definitions of Subsection (h) competitive jurisdictional revenues and Subsection (m) competitive jurisdictional revenues to specify that those categories include all revenues and other receipts derived from access charges and yellow pages advertising. Access charges are non-retail services and revenues associated with access charges are appropriately classified as noncompetitive jurisdictional revenues. The Commission specifically noted in its April 8, 2010, Order Ruling on Motions for Reconsideration issued in Docket No. P-100, Sub 165, that it “. . . also concurs with the Public Staff that access charges are non-retail services which remain under Commission jurisdiction as specifically granted in G.S. 62-133.5(j)”. See Order Ruling on Motions for Reconsideration, Docket No. P-100, Sub 165, p. 20 (April 8, 2010) The Commission has revised these definitions to appropriately note that access charges are classified as noncompetitive jurisdictional revenues.

(5) Changes to the When Due Section of Commission Rule R15-1

The Commission has determined that it is not appropriate to include a copy of NCUC FORM RF in Commission Rule R15-1 and shall remove it from the When Due Section of Commission Rule R15-1. The Commission has been, and will continue to, post a current copy of the NCUC FORM RF for noncompetitive jurisdictional revenues, Subsection (h) competitive jurisdictional revenues, and Subsection (m) competitive jurisdictional revenues on its website at <http://www.ncuc.net/regfeereporting.html>. Further, the Commission is specifying that the \$25.00 per year minimum regulatory fee is on a per company basis, and there is not a separate \$25.00 per year minimum for a company’s noncompetitive jurisdictional revenues and Subsection (h) or Subsection (m) competitive jurisdictional revenues.

(6) Changes to Supporting Data Section of Commission Rule R15-1

The Commission notes that only rate-of-return regulated incumbent local exchange companies (ILECs) are required to file T.S.-1 reports. North Carolina no longer has any rate-of-return regulated ILECs, and, therefore, no T.S.-1 reports are currently required to be filed by any ILEC. To reflect this fact, the Commission has removed the reference to T.S.-1 reports from the Joint Commenters’ proposed Commission Rule R15-1. Further, reconciliations of revenues required in Commission Rule R15-1 would only include noncompetitive jurisdictional revenues and, therefore, any references to competitive jurisdictional revenues have been deleted.

(7) Changes to Procedure to Reflect Regulatory Fee Change Section of Commission Rule R15-1

The Commission has modified the section concerning the procedures utilities will follow to reflect a change in the regulatory fee. The Commission finds that it is appropriate to require the Public Staff to make a determination on the accuracy of a utility's requested change to its base rates and file with the Commission the results of the Public Staff's review within 15 days of a utility's request.

The Commission has made other minor edits and revisions to the Joint Commenters' proposed Commission Rule R15-1. All of the Commission's changes to the Joint Commenters' proposed Commission Rule R15-1 are reflected on Appendix A attached to this Order. Appendix B includes a clean copy of the Commission's final version of Commission Rule R15-1.

Further, by this Order, and based on the specific directive to the Commission in HB 356, the Commission hereby authorizes and approves the establishment of deferral accounts (regulatory asset or regulatory liability accounts) by utilities to allow the companies to comply with Commission Rule R15-1. Such authority is granted *nunc pro tunc* back to July 1, 2015, the effective date of statutory language changes in HB 1052 that authorize the Commission to allow utilities to either adjust base rates or establish regulatory asset or regulatory liability accounts for regulatory fee increases (that was subsequently changed in HB 356, effective July 1, 2015, for any changes, increases or decreases, in the regulatory fee obligation). The Commission specifically notes that it has not applied its two-prong test (whether the out-of-period items of revenue or cost were realized on the basis of an unusual or extraordinary event or change of circumstances and whether the event or change results in revenues or costs that would materially impact a utility's financial condition) in analyzing the appropriateness of using deferral accounting in this proceeding because HB 356 requires the Commission to either adjust base rates or establish regulatory asset or regulatory liability accounts for changes in the regulatory fee.

Finally, to address Frontier's and Toccoa's request to be exempt from changing rates to reflect changes in the regulatory fee, the Commission concludes the following. Although Frontier did not specifically state that its base rates include an amount for the regulatory fee, the Company did state that it has never adjusted its base rates for changes in the regulatory fee. The Commission shall conclude from that statement that Frontier's base rates do include an amount for the regulatory fee. Toccoa did specifically state in its comments that its Maximum Rates were based on estimated revenues and expenses, which included an amount for the then established regulatory fee rate of 0.09%. The language in HB 356 is clear that the Commission shall either adjust a utility's rates to reflect a change in the regulatory fee or approve the utility's request for an accounting order allowing deferral of the change in the fee obligation. The Commission does not find that it has the statutory authority to allow Frontier or Toccoa to be exempt from this section of HB 356. Therefore, without statutory authority, the Commission must deny Frontier's and Toccoa's request to be expressly exempt from any resulting rate adjustments to

reflect changes to its regulatory fee obligation at the time such adjustments are approved by the Commission. However, with the language approved by the Commission in this Order for inclusion in Commission Rule R15-1, if Frontier or Toccoa do not request authority to adjust their base rates for a change in the regulatory fee obligation, then Frontier and Toccoa will be required to defer in a regulatory asset or regulatory liability account the difference between the regulatory fee included in base rates or rider rates and the new regulatory fee.

CONCLUSIONS

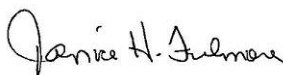
The Commission concludes that it is appropriate to adopt revised Commission Rule R15-1- Regulatory Fee as reflected in Appendix B.

IT IS, THEREFORE, ORDERED that Commission Rule R15-1 – Regulatory Fee is hereby amended as reflected in Appendix B of this Order, effective the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of August, 2016.

NORTH CAROLINA UTILITIES COMMISSION



Janice H. Fulmore, Deputy Clerk

Commissioner Jerry C. Dockham did not participate in this decision.

Rule R15-1. Regulatory fee.

(a) *Fee Imposed.* G.S. 62-302 requires each public utility regulated by the North Carolina Utilities Commission to pay a quarterly regulatory fee to the Commission, which shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public and to maintain a reasonable margin for a reserve fund.

The electric membership corporation regulatory fee for each fiscal year is two hundred thousand dollars (\$200,000).

~~.(b) Rate.~~

~~(1) Effective July 1, 2015, unless adjusted under subsection (c), the regulatory fee is a percentage of a utility's North Carolina jurisdictional revenues as follows:~~

~~Noncompetitive jurisdictional revenues 0.148%~~

~~Subsection (h) competitive jurisdictional revenues 0.06%~~

~~Subsection (m) competitive jurisdictional revenues 0.05%~~

~~(2) Effective July 1, 2016, unless adjusted under subsection (c), the regulatory fee is a percentage of a utility's North Carolina jurisdictional revenues as follows:~~

~~Noncompetitive jurisdictional revenues 0.148%~~

~~Subsection (h) competitive jurisdictional revenues 0.04%~~

~~Subsection (m) competitive jurisdictional revenues 0.02%~~

(~~be~~) Procedure for ~~Setting~~Adjusting the Regulatory Fee Rate. In the first half of each calendar year, the Commission shall review the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including a reasonable margin for the reserve fund allowed under G.S. 62-302, and shall enter an order setting the regulatory fee rate. In making this determination, the Commission shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated change in competitive and noncompetitive jurisdictional revenues.

If the estimated receipts provided for under this section are less than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission ~~may shall issue~~enter an order in Docket No. M-100, Sub 142 increasing the public utility regulatory fee rate on noncompetitive jurisdictional revenues effective for the next fiscal year. In no event may the percentage rate of the public utility regulatory fee on noncompetitive jurisdictional revenues exceed seventeen and one-half hundredths of one percent (0.175%).

If the estimated receipts provided for under this section are more than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission shall ~~issue~~enter an order in Docket No. M-100, Sub 142 decreasing the public utility regulatory fee rate on noncompetitive jurisdictional revenues effective for the next fiscal year.

If no change will be made to the regulatory fee rate on noncompetitive jurisdictional revenues, then the Commission will issue an Order in Docket No. M-100, Sub 142 acknowledging that there will be no change in the rate effective for the next fiscal year.

(~~cd~~) *Definitions.* As used in this rule:

(1) "Noncompetitive jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from intrastate switched access charges are to be included as noncompetitive jurisdictional revenues.

(2) "Subsection (h) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(h), including all revenues and other receipts derived from ~~access charges and~~ yellow pages advertising.

(3) "Subsection (m) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(m) including all revenues and other receipts derived from ~~access charges and~~ yellow pages advertising.

(~~de~~) *When Due.* The regulatory fee imposed by G.S. 62-302 is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Each public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and file a report, either electronically on the Commission's website or by hard copy, on the form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter. Receipts shall be reported on an accrual basis. The form of the report shall be posted on

~~the Commission's website at <http://www.ncuc.net/regfeereporting.html> as set forth in the Appendix to this Chapter. (NCUC FORM RF).~~

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of six dollars and twenty-five cents (\$6.25) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars (\$25.00) ~~(\$6.25 x 4).~~ The estimated fee of \$25.00 is on a per company basis. If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars (\$25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

~~(ef)~~ *Use of Proceeds.* A special fund in the Office of the State Treasurer, the "Utilities Commission and Public Staff Fund," shall be created. The fees collected pursuant to G.S. 62-302 and all other funds received by the Commission and the Public Staff shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in

regulating public utilities in the interest of the public as provided by Chapter 62 of the North Carolina General Statutes.

(f) *Supporting Data.* Upon request of the Commission or the Public Staff, a utility shall supply supporting data and workpapers substantiating its Public Utility Regulatory Fee Report (NCUC FORM RF).

Utilities now filing quarterly reports with the Commission in compliance with the Commission's ongoing surveillance program (NCUC FORMS E.S.-1 and, G.S.-1, ~~and T.S.-1~~) shall include as part of those quarterly reports a schedule setting forth a detailed reconciliation of the ~~competitive or~~ noncompetitive jurisdictional revenues reflected in those reports to the level of ~~competitive or~~ noncompetitive jurisdictional revenues reflected in the Public Utility Regulatory Fee Report (NCUC FORM RF) for the same quarterly reporting period.

Utilities not now filing quarterly reports shall include as part of their annual reports to be filed with the Commission a schedule setting forth a detailed reconciliation of the total ~~competitive or~~ noncompetitive jurisdictional revenues reflected in those annual reports to the level of ~~competitive or~~ noncompetitive jurisdictional revenues reflected in the four quarterly Public Utility Regulatory Fee Reports encompassed by the 12-month period on which the annual report is based.

(g) *Failure to File.* Failure to complete and file the Public Utility Regulatory Fee Report (NCUC FORM RF) and pay the regulatory fee as prescribed may result in the imposition of a penalty, a fine, and/or cancellation of certificate ~~both~~.

(hi) *Procedure to Reflect Regulatory Fee Change.* Effective July 1, 2015, ~~if~~ the rates of a utility include the regulatory fee, upon any change in the regulatory fee, rates shall be adjusted to reflect the change in the regulatory fee as follows:

- a. If a utility requests authority to adjust its base rates ~~concurrently~~ for a change in the regulatory fee obligation, the Commission shall ~~issue~~enter an order authorizing the change in base rates. The Public Staff shall make a determination on the accuracy of the utility's requested change to its base rates and shall file with the Commission the results of the Public Staff's review within 15 days of the utility's request.
- b. If a utility does not file a request under subdivision (a), rates shall be adjusted in the next proceeding changing the utility's base rates or rider rates. A utility shall defer in a regulatory asset or regulatory liability account the difference between the regulatory fee included in base rates or rider rates and the new regulatory fee. The disposition of any deferral shall be addressed in the utility's next general rate case.

Rule R15-1. Regulatory fee.

(a) *Fee Imposed.* G.S. 62-302 requires each public utility regulated by the North Carolina Utilities Commission to pay a quarterly regulatory fee to the Commission, which shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public and to maintain a reasonable margin for a reserve fund.

The electric membership corporation regulatory fee for each fiscal year is two hundred thousand dollars (\$200,000).

(b) *Procedure for Setting the Regulatory Fee Rate.* In the first half of each calendar year, the Commission shall review the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including a reasonable margin for the reserve fund allowed under G.S. 62-302, and shall enter an order setting the regulatory fee rate. In making this determination, the Commission shall consider all relevant factors that may affect the cost of operating the Commission or the Public Staff or a possible unanticipated change in competitive and noncompetitive jurisdictional revenues.

If the estimated receipts provided for under this section are less than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission may issue an order in Docket No. M-100, Sub 142 increasing the public utility regulatory fee rate on noncompetitive jurisdictional revenues effective for the next fiscal year. In no event may the percentage rate of the public utility regulatory fee on noncompetitive jurisdictional revenues exceed seventeen and one-half hundredths of one percent (0.175%).

If the estimated receipts provided for under this section are more than the estimated cost of operating the Commission and the Public Staff for the next fiscal year, including the reasonable margin for the reserve fund, then the Commission shall issue an order in Docket No. M-100, Sub 142 decreasing the public utility regulatory fee rate on noncompetitive jurisdictional revenues effective for the next fiscal year.

If no change will be made to the regulatory fee rate on noncompetitive jurisdictional revenues, then the Commission will issue an Order in Docket No. M-100, Sub 142 acknowledging that there will be no change in the rate effective for the next fiscal year.

(c) *Definitions.* As used in this rule:

(1) "Noncompetitive jurisdictional revenues" means all revenues derived or realized from intrastate tariffs, rates, and charges approved or allowed by the Commission or collected pursuant to Commission order or rule, but not including tap-on fees or any other form of contributions in aid of construction. For telecommunications companies, all revenues and other receipts derived from intrastate switched access charges are to be included as noncompetitive jurisdictional revenues.

(2) "Subsection (h) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local providers that have elected to operate under G.S. 62-133.5(h), including all revenues and other receipts derived from yellow pages advertising.

(3) "Subsection (m) competitive jurisdictional revenues" means all revenues derived from retail services provided by local exchange companies and competing local

providers that have elected to operate under G.S. 62-133.5(m), including all revenues and other receipts derived from yellow pages advertising.

(d) *When Due.* The regulatory fee imposed by G.S. 62-302 is due and payable to the Commission on or before the 15th day of the second month following the end of each quarter. Each public utility subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and file a report, either electronically on the Commission's website or by hard copy, on the form prescribed by the Commission. The report shall state the public utility's total North Carolina jurisdictional revenues for the preceding quarter. Receipts shall be reported on an accrual basis. The form of the report shall be posted on the Commission's website at <http://www.ncuc.net/regfeereporting.html>.

If a public utility's report for the first quarter of any fiscal year shows that application of the percentage rate would yield a quarterly fee of six dollars and twenty-five cents (\$6.25) or less, the public utility shall pay an estimated fee for the entire fiscal year in the amount of twenty-five dollars (\$25.00)(\$6.25 x 4). The estimated fee of \$25.00 is on a per company basis. If, after payment of the estimated fee, the public utility's subsequent returns show that application of the percentage rate would yield quarterly fees that total more than twenty-five dollars (\$25.00) for the entire fiscal year, the public utility shall pay the cumulative amount of the fee resulting from application of the percentage rate, to the extent it exceeds the amount of fees, other than any surcharge, previously paid.

(e) *Use of Proceeds.* A special fund in the Office of the State Treasurer, the "Utilities Commission and Public Staff Fund," shall be created. The fees collected pursuant to G.S. 62-302 and all other funds received by the Commission and the Public Staff shall be deposited in the Utilities Commission and Public Staff Fund. The Fund shall

be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Monies in the Fund shall only be spent pursuant to appropriation by the General Assembly.

The Utilities Commission and Public Staff Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the Fund shall revert to the General Fund. All funds credited to the Utilities Commission and Public Staff Fund shall be used only to pay the expenses of the Commission and the Public Staff in regulating public utilities in the interest of the public as provided by Chapter 62 of the North Carolina General Statutes.

(f) *Supporting Data.* Upon request of the Commission or the Public Staff, a utility shall supply supporting data and workpapers substantiating its Public Utility Regulatory Fee Report (NCUC FORM RF).

Utilities now filing quarterly reports with the Commission in compliance with the Commission's ongoing surveillance program (NCUC FORMS E.S.-1 and G.S.-1) shall include as part of those quarterly reports a schedule setting forth a detailed reconciliation of the noncompetitive jurisdictional revenues reflected in those reports to the level of noncompetitive jurisdictional revenues reflected in the Public Utility Regulatory Fee Report (NCUC FORM RF) for the same quarterly reporting period.

Utilities not now filing quarterly reports shall include as part of their annual reports to be filed with the Commission a schedule setting forth a detailed reconciliation of the total noncompetitive jurisdictional revenues reflected in those annual reports to the level of noncompetitive jurisdictional revenues reflected in the four quarterly Public Utility

Regulatory Fee Reports encompassed by the 12-month period on which the annual report is based.

(g) *Failure to File.* Failure to complete and file the Public Utility Regulatory Fee Report (NCUC FORM RF) and pay the regulatory fee as prescribed may result in the imposition of a penalty, a fine, and/or cancellation of certificate.

(h) *Procedure to Reflect Regulatory Fee Change.* Effective July 1, 2015, if the rates of a utility include the regulatory fee, upon any change in the regulatory fee, rates shall be adjusted to reflect the change in the regulatory fee as follows:

- a. If a utility requests authority to adjust its base rates for a change in the regulatory fee obligation, the Commission shall issue an order authorizing the change in base rates. The Public Staff shall make a determination on the accuracy of the utility's requested change to its base rates and shall file with the Commission the results of the Public Staff's review within 15 days of the utility's request.
- b. If a utility does not file a request under subdivision (a), rates shall be adjusted in the next proceeding changing the utility's base rates or rider rates. A utility shall defer in a regulatory asset or regulatory liability account the difference between the regulatory fee included in base rates or rider rates and the new regulatory fee. The disposition of any deferral shall be addressed in the utility's next general rate case.