

**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 ADOPTING
Session Law 2011-252)	FINAL RULES

BY THE COMMISSION: On August 17, 2011, the Commission issued an Order Instituting Rulemaking Proceeding to adopt final rules to implement Senate Bill 533, an act that allows certain lessors to resell electricity to their tenants. The August 17, 2011 Order adopted interim rules and the application form. The Commission invited interested persons to petition to intervene and file comments and reply comments on the interim rules, additional proposed rules, and other comments to assist the Commission in adopting final rules.

Comments were filed on September 16, 2011, by Progress Energy Carolinas, Inc., and Duke Energy Carolinas, LLC, jointly (PEC/DEC), North Carolina Justice Center (NCJC), and Dominion North Carolina Power (DNCP). On September 30, 2011, reply comments were filed by Apartment Association of North Carolina (AANC), and the Public Staff. Recommendations were made for every Rule, except Rule R22-1. Some of the parties also recommended changes to the application form.

The Commission has carefully considered all of the comments filed in this docket in adopting final rules to implement Session Law 2011-252. The positions of the parties and the Commission's conclusions are summarized below. Appendix A to this Order is a clean version of the final rules. Appendix B is a black-lined comparison of the final rules to the interim rules attached to the Commission's August 17, 2011 Order.

A. Rule R22-2. Definitions.

1. The Interim Rule:

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.

2. Parties' Comments

PEC/DEC requested that the definition of tenant in provision (c) be clarified to cover landlord tenant situations where no signed lease agreement exists. The proposed definition would read “A lessee who purchases electric service from a provider, irrespective of whether there is a signed lease agreement.”¹ In its reply comments, the Public Staff disagreed with PEC/DEC’s recommendation referring to G.S. 62-110(g1)(5)(f) and Rule R22-4(a)(9). Both the statute and Rule state that there will be a lease form used by the lessor. To clarify that a signed lease is a requirement of the statute and Rules, the Public Staff recommended revising the definition of Provider in Rule R22-2(a) as follows: “A provider must be the owner of the premises served, and must have a current fully executed lease.”

NCJC recommended an additional definition entitled “Supplier’s Individual Electric Bill” be added to Rule R22-2. The new recommended term and definition are as follows:

(d) Supplier’s Individual Electric Bill. The actual amount charged by the supplier for the unit as a whole net of any amount charged by the supplier that is not recoverable from the tenants such as connection or disconnection charges, provider late fees or amounts attributed to excess usage as provided in Rule R22-7(f).

NCJC argues that this newly defined term clarifies which supplier charges are not recoverable by the provider from tenants. No substantive objections were made in the reply comments to this recommendation.

3. Discussion and Conclusions

The Commission declines to adopt PEC/DEC’s proposal regarding covering situations where an executed lease might not exist. Rather, the Commission adopts the Public Staff’s clarification language for Rule R22-2(a) that clearly states that a lease agreement is required as both the statute and Rule R22-4 state that a lease form shall exist. Specifically, G.S. 62-110(g1) requires that the lessor have a separate lease for each bedroom, and G.S. 62-110(g1)(5)(f) requires the lessor to provide to the Commission, in its application, a copy of the lease forms to be used.

With respect to NCJC’s recommendation of adding a definition for Supplier’s Individual Electric Bill, the Commission concludes it is appropriate to add this definition as new subsection (c) as proposed by NCJC to clarify that certain supplier charges are not recoverable from tenants. The Commission agrees that this term and definition are helpful to explain to all parties involved which charges a provider may not pass on to its tenants. The Commission concludes that the word “Individual” be changed to “Unit” to clarify and reflect that the electric bill being defined is the electric bill for the unit to be

¹ The underlined text in this Order indicates the suggested language by a party and the strike-through text indicates the language that the party suggests striking from the Interim Rules.

divided equally among the tenants. The Commission also concludes to add the word “Service” since the NCJC added the word “Service” to the term in later requests for the addition of this term. The Commission concludes that the term “net of” be changed to “less” for clarity. The Commission further concludes that this new definition should be located as new section (c) and the definition of “Tenant” be renumbered as (d) for alphabetical listing purposes. The new language is as follows:

(c) Supplier’s ~~Individual Unit~~ Electric Service Bill. The actual amount charged by the supplier for the unit as a whole ~~less net of~~ any amount charged by the supplier that is not recoverable from the tenants, such as connection or disconnection charges, provider late fees or amounts attributed to excess usage as provided in Rule R22-7(f).

B. Rule R22-3. Utility status; certificate.

1. The Interim Rule

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.

2. Parties’ Comments

In its reply comments, the Public Staff recommended a change to Rule R22-3(b)(1). The Public Staff suggested that the word “residential” be added before the words “electric service to retail customers of the supplier.” By adding the word “residential,” the Rule makes clear that residential rates, as opposed to another rate, apply and that Rules setting forth protections surrounding residential electric service are applicable to the service provided by the supplier to the provider.

3. Discussion and Conclusions

The Commission agrees with the Public Staff that the Rule should be amended to clarify that the electric service provided by the supplier to the provider is residential electric service. The addition of the word “residential” clarifies that residential rates apply, as opposed to another rate, and that the applicable protections surrounding residential electric service are applicable in the context of the supplier-provider relationship.

C. Rule R22-4. Application for authority.

1. The Interim Rule

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.

2. Parties' Comments

PEC/DEC stated that they believe that an applicant seeking a certificate to resell electric service may not only be an owner, but could be a property manager or other entity. Therefore, PEC/DEC recommended that Rule R22-4(a)(1), as well as the application, should be clarified to reflect this possibility.

In its reply comments, the Public Staff disagreed, stating that an applicant seeking a certificate to resell electric service may only be the lessor/owner per G.S. 62-110(g1) and cannot be a property manager or other entity as suggested by PEC/DEC. So that all potential applicants understand that only lessor-owners may apply for a certificate to resell electric service, the Public Staff suggested that the following clarification language be added to Rule R22-4(a)(1):

(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 lessor, who is 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;

PEC/DEC's second recommended change to Rule R22-4 related to a scenario where the applicant has more than one property or apartment complex. PEC/DEC recommended that the following sentence be added to the end of Rule R22-4(a)(1): "A separate application is required for each property or apartment complex." The rationale for this addition is to avoid confusion that may occur if more than one property or apartment complex is listed on the application. No objections were made to this change in the reply comments.

NCJC recommended that a new section, section (c), as set forth below, be added to Rule R22-4. The reason for the recommendation is to provide notice to the supplier/utility of this new process for the resale of electric service. The new language is as follows:

- (c) An approved certificate of authority from the Commission to charge for the costs of providing electric service under these rules shall be delivered to the supplier from which the provider purchases electric service and include information in [Rule] R22-4(a)(1) and (6).

No objections were made to NCJC's suggested addition of section (c) in the reply comments.

3. Discussion and Conclusions

The Commission declines to adopt PEC/DEC's recommendation which would allow an entity other than the lessor who is also the owner to be an applicant. G.S. 62-110(g1) and Rule R22-2(a) clearly indicate that it is only the lessor that has the authority to apply for a certificate to resell electric service. Lessor is defined as the owner of the property. Furthermore, since PEC/DEC questioned whether the applicant could be some entity other than the lessor who is the owner of the property, the Commission concludes the Public Staff's clarification language to Rule R22-4(a)(1), that specifically states that the applicant is the lessor, is helpful to notify all of the parties involved that only the lessor, who is the owner of the property, can be an applicant.

The Commission agrees to adopt PEC/DEC's recommendation to add a sentence to the end of Rule R22-4(a)(1) to require a separate application for each property or apartment complex. When multiple properties or apartment complexes are involved on one application form, confusion is likely. The additional language makes clear that when an applicant has more than one piece of property or apartment complex, a separate application is required for each property to avoid any confusion associated with trying to put too much information on one application. The Commission recognizes that this change will require the applicants to pay multiple filing fees. However, the clarity provided by one application per property outweighs the additional filing fees that the applicant will need to pay for filing multiple applications for multiple properties.

Lastly, the Commission finds good cause to adopt NCJC's addition of section (c) requiring notice to the supplier. Since the lessor's ability to resell electric service is a new concept and process, notice to the supplier will be beneficial.

D. Rule R22-5. Bills of the provider.

1. The Interim Rule

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.

2. Parties' Comments

PEC/DEC recommended that Rule R22-5(a)(4) be expanded to reflect a requirement in G.S. 62-110(g1) that the past due date shall not be less than 25 days after the bill is mailed or otherwise delivered to the tenant. Although this same language appears in proposed Rule R22-7(e), PEC/DEC believe that it bears repeating in this Rule as well. PEC/DEC's recommendation for Rule R22-5(a)(4) is as follows:

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

...

- (4) the past-due date, which shall not be less than 25 days after the bill is mailed or otherwise delivered to the tenant;

No party objected to PEC/DEC's recommendation.

NCJC recommended changing the words "bill charged by the supplier" and "individual electric service bill" in Rule R22-5(a)(1) and Rule R22-5(b) to "Supplier's Individual Electric Service Bill." The requested change is to clarify which charges the

supplier is allowed to bill to the tenant. NCJC has already requested that this new term, "Supplier's Individual Electric Service Bill," be added to Rule R22-2, which is the Rule containing the definitions. NCJC's suggested changes to this Rule are to provide consistent language within the Rules. The NCJC's suggested changes are as follows:

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

- (1) the Supplier's Individual Electric Service Bill ~~bill charged by the supplier for the unit as a whole~~ and the amount of charges allocated to the tenant during the billing period;

...

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

No party objected to NCJC's recommendation.

3. Discussion and Conclusions

The Commission agrees with PEC/DEC that adding in the language that restates the statutory requirement that the past-due date shall not be less than 25 days after the bill is mailed or otherwise delivered to the tenant is worth repeating for clarity purposes.

The Commission also agrees with NCJC's revisions that insert the newly defined term "Supplier's Unit Electric Service Bill" in place of any undefined language regarding a provider's bill to its tenants. However, as stated in the discussion of Rule R22-2, the new term shall be "Supplier's Unit Electric Service Bill" instead of "Supplier's Individual Electric Service Bill." This change is to make clear that the bill being referred to is the unit's bill less any charges that the provider may not pass on to its tenants, and not the supplier's full bill to the provider. Therefore, the Commission concludes that the following changes be made to Rule R22-5:

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

- (1) the Supplier's Unit Electric Service Bill ~~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, which shall not be less than 25 days after the bill is mailed or otherwise delivered to the tenant;

- (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 Supplier's Unit Electric Service Bill ~~individual electric service bill~~ for ~~the~~ unit among all the tenants in the unit and shall send one bill to each tenant.

E. Rule R22-6. Records, reports and fees.

1. The Interim Rule

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.

2. Parties' Comments

PEC/DEC noted in their comments that Rule R22-6(b) makes reference to the provider's office in North Carolina, but does not require the provider to maintain an office in North Carolina. Therefore, PEC/DEC recommended that Rule R22-6(a) be modified as follows:

- (a) The provider shall maintain an office in North Carolina and 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.

No other party filed reply comments to PEC/DEC's requested change.

3. Discussion and Conclusions

The Commission notes that G.S. 62-110(g1) does not require that the provider maintain an office in North Carolina. Rather, it merely requires that the lessor maintain billing records for 36 months and that a tenant may inspect these records during reasonable business hours at a local address, and may obtain copies of the records for a reasonable copying fee. Therefore, the Commission concludes to modify Rule R22-6(b) to require that all records be kept at an office at the apartment complex or some other local office of the provider's designation to allow tenants reasonable access. The Commission finds good cause to adopt the following changes to the language of Rule R22-6(b):

(b) All records required to be maintained by the provider pursuant to section (a), shall be kept at an office at the apartment complex or some other designated local address and shall be made available during regular business hours for inspection by a tenant, the Commission, or the Public Staff. ~~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 The tenant may obtain a copy of those records at a reasonable cost, which shall not exceed twenty-five cents (25¢) per page.~~

F. Rule R22-7. Disconnection; billing procedure.

1. The Interim Rule

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)).

2. Parties' Comments

a. PEC/DEC recommendations

PEC/DEC recommended changing the word "utility" in Rule R22-7(a) to "electric" to emphasize the fact that these rules apply only to electric service. The Public Staff stated in its reply comments that it assumed that the Commission purposefully used the word "utility" to place electric service on the same level as water and sewer as far as allocation of payments is concerned in G.S. 42-26(b).

PEC/DEC recommended that Rule R22-7(c) be revised to clarify that the provider is not the utility. The language of section (c) currently states that no provider may disconnect electric service for nonpayment. PEC/DEC want the Rule to be explicit that the word "provider" does not refer to the utility in this context. Rather, it refers to the provider. The requested changes to section (c) would read as follows:

(c) No provider may request that the supplier disconnect electric service for nonpayment of the bill by the tenant.

In its reply comments, the Public Staff agreed with the premise behind PEC/DEC's proposed revisions of section (c). However, the Public Staff requested an additional revision to section (c) to also discourage "self-help" disconnects by providers, as follows:

(c) No provider may disconnect or request the supplier to disconnect electric service for the tenant's nonpayment of a bill~~for nonpayment~~.

Lastly, PEC/DEC requested that language be added to Rule R22-7(g) to address their previously stated concerns regarding potential cases where there is not a signed lease agreement between the provider and the tenant. Again, the Public Staff opposed the proposed change to section (g) based upon the premise that an executed lease agreement is required by the statute and Rules, as set forth in more detail in the discussion of Rule R22-2 above.

b. NCJC recommendations

NCJC recommended many changes to Rule R22-7. First, NCJC recommended a minor change to section (b), as follows:

(b) No charge for connection or disconnection or late fee or deposit paid by the provider to the supplier shall be allowed.

The purpose for this change is to clarify that late fees and deposits paid by the provider to the supplier may not be billed to the tenant.

NCJC also had a concern that, while the other requirements from Senate Bill 533 regarding arrearages are included in the Interim Rule, the prohibition against terminating a lease for failure to pay electric service is not included and it should be included in the final rules. Therefore, NCJC recommended adding a new section (b) to Rule R22-7 to clearly state, per Senate Bill 533 and G.S. 42-26(b), that a provider may not terminate the lease for nonpayment of electric service, as follows:

(b) No provider may terminate a lease for nonpayment of electric service.

AANC, in its reply comments, argued that this protection against termination of a lease for nonpayment of electric service is not in Senate Bill 533. The Public Staff did not have any objections to the above-stated proposed language of NCJC in its reply comments.

Lastly, NCJC recommended lengthy changes, which shall be summarized herein, relating to the issue of providing notice and process protections surrounding potential shut-offs of the tenant's electric service by a provider. NCJC stated that it modeled its proposed language from the notice and process protections related to shut-offs that are currently contained in Rule R12-11, entitled Disconnection of Residential Electric Service, and adapted that language to fit the new construct created by Senate Bill 533.

NCJC would have these notice and process protections apply to the supplier as well as the provider.

To effectuate these goals, NCJC recommended adding lengthy sections to Rule R22-7, as well as adding a new Rule R22-8, and adding a new section to Rule R12-11(a).

NCJC's proposed new sections to Rule R22-7, Rule R22-7(k)-(q) would track the notice and process protections related to shut-offs that are contained in Rule R12-11.

According to NCJC, its proposed new rule, Rule R22-8, would suspend a provider's authority to charge for electric service being provided to its tenants if the tenant's service is threatened with termination due to nonpayment by the provider. The rationale for this suggested addition would be to ensure that there is a consequence for providers who fail to pay for electric service and to serve as a deterrent for such action.

Lastly, the proposed change to Rule R12-11(a) would clearly state that the requested notice and process requirements set forth in NCJC's proposed new sections, Rule R22-7(k)-(q), would also apply to, not only the provider, but also, the supplier. NCJC believes this will provide the tenant ultimate protection against shut-offs.

Dominion, in its initial comments, opposed any changes to the rules that would alter the current understanding that the utility supplier's relationship and obligations are solely with and to the provider and not the tenants. More specifically, Dominion would oppose any changes to the Rules that would create any obligations by the utility/supplier to the tenant. The nonpayment of a bill and termination of service are matters that remain between the supplier and the provider.

The Public Staff did not disagree with the principles stated in Dominion's comments, provided there is an exception for emergency circumstances. For example, if a provider fails to pay its utility bill due to financial crisis, it may be appropriate for the Commission to invoke temporary emergency measures to avoid mass termination of service. The Public Staff did not propose any language, but suggested that such measures should be invoked on a case-by-case basis and only invoked after notice to all parties.

With respect to the comments made by NCJC, the Public Staff stated that it shared the concerns of NCJC regarding notice of disconnection issues. However, the Public Staff stated that G.S. 62-110(g1)(2) makes clear that the provider, and not the tenant, is the customer of the supplier. The Public Staff, thereafter, suggested that protection of the tenants may be provided by adding a section (j) to Rule R22-7, as follows:

(j) If a provider anticipates that it will not pay a supplier's bill on time, or if the provider receives notice from the supplier of pending disconnection, whichever comes first, the provider must within 24 hours provide written notice to the

Commission and all of the provider's tenants of the anticipated nonpayment or disconnection notice. A provider may not abandon or cease providing electric service to its tenants without advance permission from the Commission.

The Public Staff stated that it does not agree with the language in NCJC's proposed Rule R22-8. The Public Staff does not believe that requiring a provider to provide free electric service to tenants is a practical solution for the provider's nonpayment to the supplier. Nonpayment by the provider usually indicates cash flow issues, which would only be deepened by not receiving the tenant's payments. The Public Staff offered an alternative Rule R22-8 to provide as a deterrent as follows:

Providers who do not fulfill their obligation to provide electric service to their tenants, do not pay their supplier, or otherwise violate conditions of their certificate or Commission rules, are subject to sanction by the Commission.

Lastly, with respect to NCJC's proposed changes to Rule R12-11, which involves disconnection for nonpayment by the provider, the Public Staff stated its belief that the proposed revision to Rule R12-11 was unnecessary and potentially confusing, as disconnection for nonpayment is already prohibited by Rule R22-7.

3. Discussion and Conclusions

With respect to the first change requested by PEC/DEC to Rule R22-7(a), the Commission does not find good cause to substitute the word "electric" for the word "utility." The Commission agrees with the Public Staff that the Commission purposefully used the word "utility" to place electric service and water service on the same level as far as allocation of payments is concerned under G.S. 42-26(b). Senate Bill 533 makes clear that any payments by the tenant shall be applied first to the rent, then applied to the three utility services in no specific order. To make PEC/DEC's requested change might give an argument that electric service is to be paid before water and sewer service.

For the same reasons set forth in the Commission's determination regarding Rule R22-2, the Commission declines to adopt PEC/DEC's proposed revision of Rule R22-7(g), which attempts to capture situations where lease agreements do not exist. As stated prior, the statute and Rules require a signed lease agreement between the provider and the tenant.

The Commission agrees to adopt NCJC's proposed revisions to the current Rule R22-7(b) which clarify that charges for late fees and deposits may not be passed on to a tenant. The Commission also agrees to adopt NCJC's proposed new section (b), which states that no provider may terminate a lease for nonpayment of electric service. AANC opposed this revision, stating that it was not in Senate Bill 533, but AANC inadvertently overlooked Section 1 of Senate Bill 533. Section 1 of Senate Bill 533 makes clear that a provider may not terminate a tenant's lease for nonpayment of electric service. Therefore, the Commission agrees it should be included

within the Rules. However, the Commission finds that, instead of creating a new section (b) and having to renumber the remaining sections, this additional language be added to the already existing section (b).

The Commission declines to adopt NCJC's suggested proposed additional and lengthy sections (k) through (q), as well as the suggested changes to Rule R12-11. The proposed additional sections (k) through (q) track the current notice requirements and process protections related to shut-offs that already exist for residential electric customers in Rule R12-11. NCJC is suggesting that these sections be set forth in Rule R22-7(k)-(q) to make clear that these protections apply to this newly created provider-tenant relationship. NCJC further recommended a change to current Rule R12-11 to make it clear that these same notice and process protections for the tenants apply to the supplier in addition to the provider.

The Commission agrees with the Public Staff that the statute makes clear that the customer of the utility/supplier is the provider, not the tenant. However, the Commission finds good cause to provide the tenant with similar notice and process protections as set forth in Rule R12-11, and adopts the Public Staff's proposed Rule R22-7(j), as follows:

(j) If a provider anticipates that it will not pay a supplier's bill on time, or if the provider receives notice from the supplier of pending disconnection, whichever comes first, the provider must within 24 hours provide written notice to the Commission and all of the provider's affected tenants of the anticipated nonpayment or disconnection notice. A provider may not abandon or cease providing electric service to its tenants without advance permission from the Commission.

This addition to Rule R22-7 will provide the affected tenants with notice and process protections from the proper party, the provider. The Commission finds good cause to insert the word "affected" before tenants to cover situations where not all of the provider's tenants are threatened with a potential disconnection.

The Commission concludes not adopt NCJC's proposed new Rule R22-8, which would suspend the provider's authority to charge its tenants for electric service if a tenant's service is threatened with termination due to nonpayment by the provider. The Commission agrees with the Public Staff that cutting off revenue from the provider whose nonpayment to the supplier may be due to financial issues would only exacerbate the problem. The Public Staff offered an alternative Rule R22-8, which would allow the Commission to sanction providers who did not fulfill their obligation to provide electric service to their tenants. The Commission agrees, in principle, with the Public Staff's suggested deterrent language, but declines to adopt the Public Staff's recommended new Rule R22-8. Rather, the Commission concludes to revise Rule R22-3(a), as follows:

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

This suggested revision is a more streamlined avenue to reinforce that the provider is subject to penalties and actions as set forth in Article 15 of Chapter 62, G.S. 62-310 et. seq., and does not create new language, such as the word “sanctions,” that would need to be defined.

G. Application Form.

1. Parties' Comments

PEC/DEC and the Public Staff were the only parties to file comments regarding the application form. Their comments are summarized below.

In their first comment, PEC/DEC stated that a property management firm may be the applicant and that the application form should reflect this potential situation by added space for both an applicant and an owner.

PEC/DEC also stated that to conform with its proposed recommendation, that a separate application be made for each separate property or apartment complex of a provider, that the word “Complex(es)” in provisions 5 and 6, as well as the word “counties” in provision 7 and “supplier(s)” in provision 8, be made singular.

PEC/DEC questioned the meaning of “each separate property” in provision 9, which states: “Number of tenants that can be served at each separate property.” PEC/DEC questioned whether “each separate property” refers to separately-leased bedrooms within a unit, units within a given building, buildings within a given apartment complex, or multiple apartment complexes in the same state owned by the same applicant. However, PEC/DEC did not provide substitute language.

PEC/DEC also questioned the usefulness of provision 10, which requires the applicant to state the method the applicant proposes to use to allocate the supplier’s individual electric bill for a unit among tenants in the unit. PEC/DEC argued that the allocation method is already detailed in Rule R22-5, so the applicant really does not have leeway to propose an alternate allocation method.

Provision 19 of the application states: “Applicant must notify the Commission in writing if any information supplied on this form changes in the future.” PEC/DEC suggested that an extra space needed to be deleted in provision 19, and, more substantively, that a statement be added in provision 19 and/or Rule R22-6 requiring an applicant to make an annual filing certifying the continued correctness of information. Lastly, PEC/DEC suggested a minor grammatical change in provision 33 of the application form.

In its reply comments, the Public Staff disagreed with PEC/DEC's first requested change regarding adding space to allow for a property management firm to be the applicant. As stated in its discussion of Rule R22-2 above, the Public Staff argued that the applicant for a certificate must be the owner of the property. The Public Staff, thereafter, offered that the proper place for any agent names was provided in provisions 15 through 18 of the application form.

The Public Staff did not object to PEC/DEC's recommendations for provisions 5 through 8 making the words apartment complex(es) and count(ies) and supplier(s) singular to reflect that each complex owned by the applicant must have a separate application. Since, PEC/DEC stated that they were confused as to what the words "at each separate property" in provision 9 meant, the Public Staff recommended that they be revised to "at this apartment complex." The Public Staff believes this change will make clear the provision refers to tenants per apartment complex.

Although PEC/DEC questioned why provision 10 was in the application form, the Public Staff argued that provision 10 should remain to underscore to the provider how the allocation between tenants is to occur.

Lastly, the Public Staff agreed that a space needed to be removed in provision 19 and that a grammatical change needed to be made in provision 33. However, the Public Staff stated it opposed changing provision 19 to require a provider to make an annual filing stating the information remains accurate, arguing that it would be too burdensome on the provider.

2. Discussion and Conclusions

Consistent with its earlier recommendations, the Commission declines to adopt PEC/DEC's suggestion to add additional space in the applicant section of the application in case an applicant is a different entity than the lessor.

The Commission adopts PEC/DEC's suggested revisions to provisions 5 through 8 which make the words apartment complex(es), count(ies), and supplier(s) singular in these provisions to reflect that a separate application must be filed for each apartment complex.

The Commission adopts the Public Staff's proposed language revising provision 9, as follows: "Number of tenants that can be served at this apartment complex:~~at each property.~~"

The Commission adopts the Public Staff's recommendation that provision 10 remain in the application form to reinforce to the provider what type of allocation between tenants is required under Senate Bill 533.

The Commission adopts PEC/DEC's suggestion that the extra space be removed in provision 19 and the word "are" be changed to "is" in provision 33.

Finally, the Commission declines to adopt PEC/DEC's recommendation requiring a provider to make an annual filing certifying that all the information in the application remains accurate. However, the Commission finds good cause to revise provision 19, to specify the time frame which a provider must notify the Commission of any changes to the information previously supplied, as follows:

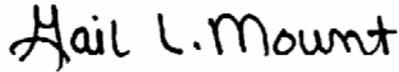
19. Applicant must ~~promptly~~ notify the Commission in writing within 30 days if any information supplied on this form changes in the future.

IT IS, THEREFORE, ORDERED that the Commission Rules and Regulations shall be, and hereby are, amended as set out in Appendix A, attached hereto, effective as of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of April, 2012.

NORTH CAROLINA UTILITIES COMMISSION

Handwritten signature of Gail L. Mount in black ink.

Gail L. Mount, Chief Clerk

Commissioner ToNola D. Brown-Bland did not participate.

Bh041912.01

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, and must have a current fully executed lease for each tenant.

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

(c) *Supplier's Unit Electric Service Bill.* The actual amount charged by the supplier for the unit as a whole less any amount charged by the supplier that is not recoverable from the tenants such as connection or disconnection charges, provider late fees or amounts attributed to excess usage as provided in Rule R22-7(f).

(d) *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, and shall be subject to 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 residential 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 lessor, who is 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. A separate application is required for each property or apartment complex;
- (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.

(c) An approved certificate of authority from the Commission to charge for the costs of providing electric service under these rules shall be delivered to the supplier from which the provider purchases electric service and include information in R22-4(a)(1) and (6).

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 Supplier's Unit Electric Service Bill for the unit 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, which shall not be less than 25 days after the bill is mailed or otherwise delivered to the tenant;
 - (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 Supplier's Unit 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 required to be maintained by the provider pursuant to section (a), shall be kept at an office at the apartment complex or some other designated local address and shall be made available during regular business hours for inspection by a tenant, the Commission, or the Public Staff. The tenant

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 or late fee or deposit paid by the provider to the supplier shall be allowed, and no provider may terminate a lease for nonpayment of electric service.

(c) No provider may disconnect or request the supplier to disconnect electric service for the tenant's nonpayment of a bill.

(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)).

(j) If a provider anticipates that it will not pay a supplier's bill on time, or if the provider receives notice from the supplier of pending disconnection, whichever comes first, the provider must within 24 hours provide written notice to the Commission and all of the provider's affected tenants of the anticipated nonpayment or disconnection notice. A provider may not abandon or cease providing electric service to its tenants without advance permission from the Commission.

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 _____
6. Street Address of Apartment Complex _____
7. County _____
8. Name, address and telephone number of the supplier of purchased power _____

9. Number of tenants that can be served at this apartment complex: _____

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 notify the Commission in writing within 30 days 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 is true to the best of his/her knowledge and belief.

This the _____ day of _____, 20____

Notary Public

My Commission Expires: _____
Date

(NOTARY SEAL)

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, and must have a current fully executed lease for each tenant.

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

(c) *Supplier's Individual Unit Electric Service Bill*. The actual amount charged by the supplier for the unit as a whole less ~~net~~ of any amount charged by the supplier that is not recoverable from the tenants such as connection or disconnection charges, provider late fees or amounts attributed to excess usage as provided in Rule R22-7(f).

(ed) *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, and shall be subject to 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 residential 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 lessor, who is 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. A separate application is required for each property or apartment complex;
- (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.

(c) An approved certificate of authority from the Commission to charge for the costs of providing electric service under these rules shall be delivered to the supplier from which the provider purchases electric service and include information in R22-4(a)(1) and (6).

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 Supplier's Individual Unit Electric Service Bill ~~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, which shall not be less than 25 days after the bill is mailed or otherwise delivered to the tenant;
 - (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 Supplier's Individual Unit Electric Service Bill ~~individual electric service bill~~ for the the 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 required to be maintained by the provider pursuant to section (a), shall be kept at an office at the apartment complex or some other designated local address and shall be made available during regular business hours for inspection by a tenant, the Commission, or the Public Staff. ~~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~~ The tenant 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 or late fee or deposit paid by the provider to the supplier shall be allowed, and no provider may terminate a lease for nonpayment of electric service.

(c) No provider may disconnect or request the supplier to disconnect electric service for the tenant's nonpayment of a bill.

(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)).

(j) If a provider anticipates that it will not pay a supplier's bill on time, or if the provider receives notice from the supplier of pending disconnection, whichever comes first, the provider must within 24 hours provide written notice to the Commission and all of the provider's affected tenants of the anticipated nonpayment or disconnection notice. A provider may not abandon or cease providing electric service to its tenants without advance permission from the Commission.

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 this apartment complex:~~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 within 30 days 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 ~~is~~ are true to the best of his/her knowledge and belief.

This the _____ day of _____, 20____

Notary Public

My Commission Expires: _____

Date

(NOTARY SEAL)