

Article 5.

Review and Enforcement of Orders.

§ 62-90. Right of appeal.

(a) Any party to a proceeding before the Commission may appeal from any final order or decision of the Commission within 30 days after the entry of the final order or decision, or within an additional time fixed by the Commission, not to exceed 30 additional days, and by order made within 30 days, if the party aggrieved by the decision or order files with the Commission a notice of appeal that sets forth specifically the ground or grounds on which the aggrieved party considers the decision or order to be unlawful, unjust, unreasonable, or unwarranted and that includes the errors alleged to have been committed by the Commission.

All other parties may give a notice of cross-appeal that sets forth specifically the grounds on which the party considers the decision or order to be unlawful, unjust, unreasonable, or unwarranted and that includes the errors alleged to have been committed by the Commission. The notice of cross-appeal shall be filed with the Commission within 20 days after the first notice of appeal has been filed, or within an additional time fixed by the Commission, not to exceed 20 additional days by order made within 20 days of the first filed notice of appeal.

(b) Any party may appeal from all or any portion of any final order or decision of the Commission in the manner provided in this section. Copy of the notice of appeal shall be mailed by the appealing party, at the time of filing with the Commission, to each party to the proceeding to the addresses as they appear in the files of the Commission in the proceeding. The failure of any party, other than the Commission, to be served with or to receive a copy of the notice of appeal does not affect the validity or regularity of the appeal.

(c) The Commission may on motion of any party to the proceeding or on its own motion set the objections to the final order upon which the appeal is based for further hearing before the Commission.

(d) The appeal lies to the appellate division of the General Court of Justice as provided in G.S. 7A-29. The procedure for the appeal is provided by the rules of appellate procedure.

(e), (f) Repealed by Session Laws 1975, c. 391, s. 12.

(g) Repealed by Session Laws 1983, c. 526, s. 5. (1949, c. 989, s. 1; 1955, c. 1207, s. 1; 1959, c. 639, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 1; 1975, c. 391, s. 12; 1983, c. 526, ss. 4, 5; c. 572; 2023-54, s. 9.)

§ 62-91. Appeal docketed; title on appeal; priorities on appeal.

Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Utilities Commission shall be entitled "State of North Carolina ex rel. Utilities Commission (here add any additional parties in support of the Commission Order and their capacity before the Commission), Appellee(s) v. (here insert name of appellant and his capacity before the Commission), Appellant." Appeals from the Utilities Commission pending in the superior courts on September 30, 1967, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 6; 1975, c. 391, s. 13; 1983, c. 526, s. 6.)

§ 62-92. Parties on appeal.

In any appeal to the appellate division of the General Court of Justice, the complainant in the original complaint before the Commission shall be a party to the record and each of the parties to

the proceeding before the Commission shall have a right to appear and participate in said appeal. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 2; 1983, c. 526, s. 7.)

§ 62-93. No evidence admitted on appeal; remission for further evidence.

No evidence shall be received at the hearing on appeal but if any party shall satisfy the court that evidence has been discovered since the hearing before the Commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the Commission with directions to take such subsequently discovered evidence, and after consideration thereof, to make such order as the Commission may deem proper, from which order an appeal shall lie as in the case of any other final order from which an appeal may be taken as provided in G.S. 62-90. (1949, c. 989, s. 1; 1955, c. 1207, s. 2; 1963, c. 1165, s. 1.)

§ 62-94. Record on appeal; extent of review.

(a) On appeal the court shall review the record and the issues raised in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the decision null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are any of the following:

- (1) In violation of constitutional provisions.
- (2) In excess of statutory authority or jurisdiction of the Commission.
- (3) Made upon unlawful proceedings.
- (4) Affected by other errors of law.
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted.
- (6) Arbitrary or capricious.

(c) In making these determinations, the court shall review the whole record or the portions of it that are cited by any party, and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal that were not set forth specifically in the appellant's notice of appeal filed with the Commission.

(d) The court shall also compel action of the Commission unlawfully withheld or unlawfully or unreasonably delayed.

(e) Upon any appeal, the rates fixed or any rule, finding, determination, or order made by the Commission under this Chapter is prima facie just and reasonable. (1949, c. 989, s. 1; 1955, c. 1207, s. 3; 1963, c. 1165, s. 1; 1969, c. 614; 1975, c. 391, s. 14; 2023-54, s. 10.)

§ 62-95. Relief pending review on appeal.

Pending judicial review, the Commission is authorized, where it finds that justice so requires, to postpone the effective date of any action taken by it. Upon such conditions as may be required and to the extent necessary to prevent irreparable injury, a judge of the appellate court with jurisdiction over the case on appeal is authorized to issue all necessary and appropriate process to

postpone the effective date of any action by the Commission or take such action as may be necessary to preserve status or rights of any of the parties pending conclusion of the proceedings on appeal. The court may require the applicant for such stay to post adequate bond as required by the court. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 8; 1983, c. 526, s. 8.)

§ 62-96. Appeal to Supreme Court.

Appeals of final orders of the Utilities Commission to the Supreme Court are governed by Article 5 of General Statutes Chapter 7A. In all appeals filed in the Court of Appeals, any party may file a motion for discretionary review in the Supreme Court pursuant to G.S. 7A-31. If the Commission is the appealing party, it is not required to give any undertaking or make any deposit to assure payment of the cost of the appeal, and the court may advance the cause on its docket. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 3; 1983, c. 526, s. 9.)

§ 62-97. Judgment on appeal enforced by mandamus.

In all cases in which, upon appeal, an order or decision of the Commission is affirmed, in whole or in part, the appellate court shall include in its decree a mandamus to the appropriate party to put said order in force, or so much thereof as shall be affirmed, or the appellate court may make such other order as it deems appropriate. (1949, c. 989, s. 1; 1963, c. 1165, s. 1.)

§ 62-98. Peremptory mandamus to enforce order, when no appeal.

(a) If no appeal is taken from an order or decision of the Commission within the time prescribed by law and the person to which the order or decision is directed fails to put the same in operation, as therein required, the Commission may apply to a superior court judge who has jurisdiction pursuant to G.S. 7A-47.1 or G.S. 7A-48 in Wake County or in the district or set of districts as defined in G.S. 7A-41.1 in which the business is conducted, upon 10 days' notice, for a peremptory mandamus upon said person for the putting in force of said order or decision; and if said judge shall find that the order of said Commission was valid and within the scope of its powers, he shall issue such peremptory mandamus.

(b) An appeal shall lie to the Court of Appeals in behalf of the Commission, or the defendant, from the refusal or the granting of such peremptory mandamus. The remedy prescribed in this section for enforcement of orders of the Commission is in addition to other remedies prescribed by law. (1949, c. 989, s. 1; 1963, c. 1165, s. 1; 1967, c. 1190, s. 4; 1987 (Reg. Sess., 1988), c. 1037, s. 92.)

§ 62-99. Repealed by Session Laws 1967, c. 1190, s. 5.