

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 476\*  
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Short Title: EMC Subsidiaries.

(Public)

Sponsors:

Referred to:

March 23, 1999

A BILL TO BE ENTITLED  
AN ACT CONCERNING THE GRANT OF POWERS TO ELECTRIC MEMBERSHIP  
CORPORATIONS REGARDING SUBSIDIARY ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 117-18 is amended by adding a new subdivision to read:

"(14) As to electric membership corporations, to conduct the activities permitted by G.S. 117-18.1."

Section 2. Article 2 of Chapter 117 of the General Statutes is amended by adding a new section to read:

**"§ 117-18.1. Subsidiary business activities.**

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and operate any interest up to and including full controlling interest in separate business entities that provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

(1) They are not financed with loans or grants from the Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA)

1           or the USDA or with similar financing from any successor agency. This  
2           limitation shall not apply to RUS or USDA loans or grants, or loans or  
3           grants from successor agencies, for water or wastewater collection and  
4           treatment projects.

5           (2) They are subject to all taxes, specifically including federal and State  
6           income taxes, levied against business entities of the same structure and  
7           engaged in the same activities.

8           (3) They fully compensate the electric membership corporation for the use  
9           of personnel, services, equipment, or tangible and intangible property,  
10           the greater of (i) a competitive price, which is a price comparable with  
11           prices generally being charged at the time in arms length transactions in  
12           the same market, or (ii) the electric membership corporation's fully  
13           distributed costs, which shall include all direct and indirect costs,  
14           including cost of capital incurred in providing the personnel, services,  
15           equipment, tangible property, or intangible property in question. The  
16           value of real property shall include the intangible value of not having to  
17           purchase the real property being used, and the value of the identification  
18           with the EMC that will exist because of the use of the particular real  
19           property. Should the Utilities Commission, upon complaint showing  
20           reasonable grounds for investigation, find after investigation, that the  
21           charges for those transactions between the electric membership  
22           corporation and the other business entity do not conform with the  
23           provisions of this subdivision, the Utilities Commission is empowered  
24           to direct the electric membership corporation to adjust those charges to  
25           comply with the provisions of this subdivision. If the electric  
26           membership corporation does not comply with the Utilities  
27           Commission's directive, then the Utilities Commission is empowered to  
28           direct the electric membership corporation to divest its interest in the  
29           other business entity. For purposes of enforcing this subdivision,  
30           members of the Utilities Commission, the Utilities Commission staff,  
31           and the Public Staff are authorized to inspect the books and records of  
32           such other business entities and the electric membership corporations.  
33           The Utilities Commission shall have the authority to adopt rules and  
34           reporting requirements to enforce this subdivision. The provisions of  
35           G.S. 62-310(a), 62-311, 62-312, 62-313, 62-314, 62-315, 62-316, 62-  
36           326, and 62-327 shall apply to electric membership corporations with  
37           respect to the application of this subdivision.

38           (4) They are organized and operated pursuant to Chapter 55 or Chapter 57C  
39           of the General Statutes.

40           (5) They do not receive from an electric membership corporation any  
41           investment, loan, guarantee, or pledge of assets in an amount that, in the  
42           aggregate, exceeds ten percent (10%) of the assets of that electric  
43           membership corporation.

1       (b) An electric membership corporation may not form or organize a separate  
2 business entity to engage in activities involving the distribution, storage, or sale of oil, as  
3 defined in G.S. 143-215.77(8), specifically including liquefied petroleum gases, but may  
4 acquire, hold, dispose of, and operate any interest in an existing business entity already  
5 engaged in these activities, subject to the other provisions of this section.

6       (c) No director, or spouse of a director, of an electric membership corporation may  
7 be employed or have any financial interest in any separate business entity formed,  
8 organized, acquired, held, or operated by an electric membership corporation pursuant to  
9 the provisions of this section."

10           Section 3. G.S. 117-30(a) reads as rewritten:

11       "(a) In the event it is ascertained by the Rural Electrification Authority that the  
12 community or communities referred to in the foregoing section [~~G.S. 117-29~~]-G.S. 117-29  
13 are in need of telephone service and that there is a sufficient number of persons to be  
14 served to justify such services, and the telephone company serving in the area in which  
15 the community or communities are located is unwilling to provide such service, a  
16 telephone membership corporation may be organized by such community or communities  
17 in the same manner that electric membership corporations may be formed under Article 2  
18 of this Chapter, and all of the provisions of said Article shall be applicable to the  
19 formation of telephone membership corporations and such corporations shall have all the  
20 authority, powers and duties of such a corporation when formed under the provisions of  
21 said Article; except that the provisions of G.S. 117-8, 117-9, 117-10.1, 117-10.2, 117-  
22 16.1, 117-18(14), 117-18.1, 117-19 and 117-24 shall not be applicable to the organization  
23 of a telephone membership corporation, and except that such corporations so formed for  
24 the express purpose of providing telephone service necessary to serve the community or  
25 communities prescribed in the application may also provide the community or  
26 communities prescribed in the application with any communication service for the  
27 transmission of voice, sounds, signals, pictures, writing or signs of all kinds through the  
28 use of electricity or the electromagnetic spectrum between the transmitting and receiving  
29 apparatus, together with any telecommunications service requiring band-width capacity,  
30 including, but not limited to community antenna and cable television services, and  
31 including all lines, wires, cables, radio, light, electromagnetic impulse and all facilities,  
32 systems or other means used in the rendition of such services, but not including message  
33 telegram service or radio broadcasting services or facilities within the meaning of section  
34 3(o) of the Federal Communications Act of 1934, as amended (47 USC § 153(o)) and  
35 except that such corporation so formed shall have no authority to engage in any other  
36 business. Provided, that the references in Article 2 of this Chapter to "power lines" or  
37 "energy" as to such telephone membership corporations shall be construed to mean  
38 telephone lines, broadband cables and lines, telephone service and broadband  
39 communications services. Provided further, that nothing herein shall be construed to  
40 authorize any telephone membership corporation organized hereunder to duplicate any  
41 line or lines, systems or other means by which adequate telephone service is being  
42 furnished; or to build or to construct a telephone line, or telephone lines, or telephone  
43 systems, or otherwise to provide facilities or means of furnishing telephone service to any

1 person, community, town or city then being adequately served by a telephone company,  
2 corporation or system; or to provide telephone service in an unserved area while any  
3 telephone company, corporation or system is acting in good faith and with reasonable  
4 diligence in arranging to provide adequate telephone service to such person, community,  
5 town or city."

6 Section 4. Article 3 of Chapter 62 of the General Statutes is amended by  
7 adding a new section to read:

8 **"§ 62-53. Electric membership corporation subsidiaries.**

9 In addition to any other authority granted to the Commission in this Chapter, the  
10 Commission shall have the authority to regulate electric membership corporations as  
11 provided in G.S. 117-18.1."

12 Section 5. G.S. 62-302 reads as rewritten:

13 **"§ 62-302. Regulatory fee.**

14 (a) Fee Imposed. – It is the policy of the State of North Carolina to provide fair  
15 regulation of public utilities in the interest of the public, as provided in G.S. 62-2. The  
16 cost of regulating public utilities is a burden incident to the privilege of operating as a  
17 public utility. Therefore, for the purpose of defraying the cost of regulating public  
18 utilities, every public utility subject to the jurisdiction of the Commission shall pay a  
19 quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section.  
20 The fees collected shall be used only to pay the expenses of the Commission and the  
21 Public Staff in regulating public utilities in the interest of the public. It is also the policy  
22 of the State to provide limited oversight of certain electric membership corporations as  
23 provided in G.S. 62-53.

24 (b) Public Utility Rate. –

- 25 (1) For the 1989-90 fiscal year, the regulatory fee shall be the greater of (i)  
26 twelve hundredths percent (0.12%) of each public utility's North  
27 Carolina jurisdictional revenues for each quarter or (ii) six dollars and  
28 twenty-five cents (\$6.25) each quarter.
- 29 (2) For fiscal years beginning on or after July 1, 1990, the regulatory fee  
30 shall be the greater of (i) a percentage rate, established by the General  
31 Assembly, of each public utility's North Carolina jurisdictional revenues  
32 for each quarter or (ii) six dollars and twenty-five cents (\$6.25) each  
33 quarter.

34 When the Commission prepares its budget request for the upcoming  
35 fiscal year, the Commission shall propose a percentage rate of the  
36 regulatory fee. For fiscal years beginning in an odd-numbered year, that  
37 proposed rate shall be included in the budget message the Governor  
38 submits to the General Assembly pursuant to G.S. 143-11. For fiscal  
39 years beginning in an even-numbered year, that proposed rate shall be  
40 included in a special budget message the Governor shall submit to the  
41 General Assembly. The General Assembly shall set the percentage rate  
42 of the regulatory fee by law.

1           The percentage rate may not exceed the amount necessary to  
2           generate funds sufficient to defray the estimated cost of the operations  
3           of the Commission and the Public Staff for the upcoming fiscal year,  
4           including a reasonable margin for a reserve fund. The amount of the  
5           reserve may not exceed the estimated cost of operating the Commission  
6           and the Public Staff for the upcoming fiscal year. In calculating the  
7           amount of the reserve, the General Assembly shall consider all relevant  
8           factors that may affect the cost of operating the Commission or the  
9           Public Staff or a possible unanticipated increase or decrease in North  
10          Carolina jurisdictional revenues.

11          (3) If the Commission, the Public Staff, or both experience a revenue  
12          shortfall, the Commission shall implement a temporary regulatory fee  
13          surcharge to avert the deficiency that would otherwise occur. In no  
14          event may the total percentage rate of the regulatory fee plus any  
15          surcharge established by the Commission exceed twenty-five  
16          hundredths percent (0.25%).

17          (4) As used in this section, the term "North Carolina jurisdictional  
18          revenues" means all revenues derived or realized from intrastate tariffs,  
19          rates, and charges approved or allowed by the Commission or collected  
20          pursuant to Commission order or rule, but not including tap-on fees or  
21          any other form of contributions in aid of construction.

22          **(b1) Electric Membership Corporation Rate.** – For the purpose of providing the  
23          oversight authorized by G.S. 62-53 and G.S. 117-18.1, beginning with the 1999-2000  
24          fiscal year the North Carolina Electric Membership Corporation shall pay an annual flat  
25          fee to the fund established in subsection (d) of this section. The amount of the annual fee  
26          shall be as established by the General Assembly by law.

27          When the Commission prepares its budget request for the upcoming fiscal year, the  
28          Commission shall propose the amount of the regulatory fee. For fiscal years beginning in  
29          an odd-numbered year, the proposed amount shall be included in the budget message the  
30          Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years  
31          beginning in an even-numbered year, the proposed amount shall be included in a special  
32          budget message the Governor shall submit to the General Assembly.

33          The amount of the fee proposed by the Commission may not exceed the amount  
34          necessary to defray the estimated cost of the operations of the Commission and the Public  
35          Staff for the regulation of the electric membership corporations in the upcoming fiscal  
36          year, including a reasonable margin for a reserve fund. The amount of the reserve may  
37          not exceed the estimated cost of the Commission and the Public Staff for the regulation  
38          of the electric membership corporations for the upcoming fiscal year. The fee will be  
39          assessed on a quarterly basis and will be due and payable to the Commission on or before  
40          the 15th day of the second month following the end of each quarter.

41          (c) When Due. – The regulatory fee imposed under this ~~section~~ section, except the  
42          fee imposed by subsection (b1) of this section, is due and payable to the Commission on  
43          or before the 15th day of the second month following the end of each quarter. Every

1 public utility subject to the regulatory fee shall, on or before the date the fee is due for  
2 each quarter, prepare and render a report on a form prescribed by the Commission. The  
3 report shall state the public utility's total North Carolina jurisdictional revenues for the  
4 preceding quarter and shall be accompanied by any supporting documentation that the  
5 Commission may by rule require. Receipts shall be reported on an accrual basis.

6 If a public utility's report for the first quarter of any fiscal year shows that application  
7 of the percentage rate would yield a quarterly fee of twenty-five dollars (\$25.00) or less,  
8 the public utility shall pay an estimated fee for the entire fiscal year in the amount of  
9 twenty-five dollars (\$25.00). If, after payment of the estimated fee, the public utility's  
10 subsequent returns show that application of the percentage rate would yield quarterly fees  
11 that total more than twenty-five dollars (\$25.00) for the entire fiscal year, the public  
12 utility shall pay the cumulative amount of the fee resulting from application of the  
13 percentage rate, to the extent it exceeds the amount of fees, other than any surcharge,  
14 previously paid.

15 (d) Use of Proceeds. – A special fund in the office of State Treasurer, the Utilities  
16 Commission and Public Staff Fund, is created. The fees collected pursuant to this section  
17 and all other funds received by the Commission or the Public Staff, except for the clear  
18 proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear proceeds of  
19 funds forfeited pursuant to G.S. 62-310(a), shall be deposited in the Utilities Commission  
20 and Public Staff Fund. The Fund shall be placed in an interest bearing account and any  
21 interest or other income derived from the Fund shall be credited to the Fund. Moneys in  
22 the Fund shall only be spent pursuant to appropriation by the General Assembly.

23 The Utilities Commission and Public Staff Fund shall be subject to the provisions of  
24 the Executive Budget Act except that no unexpended surplus of the Fund shall revert to  
25 the General Fund. All funds credited to the Utilities Commission and Public Staff Fund  
26 shall be used only to pay the expenses of the Commission and the Public Staff in  
27 regulating public utilities in the interest of the public as provided by this ~~Chapter~~-Chapter  
28 and in regulating electric membership corporations as provided in G.S. 117-18.1.

29 The clear proceeds of civil penalties collected pursuant to G.S. 62-50(d) and the clear  
30 proceeds of funds forfeited pursuant to G.S. 62-310(a) shall be remitted to the Civil  
31 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

32 Section 6. G.S. 62-300 is amended by adding a new subsection to read:

33 "(e) The provisions of this section shall apply with respect to the regulation of  
34 electric membership corporations as provided in G.S. 117-18.1."

35 Section 7. Four years after this act becomes law, the Utilities Commission  
36 shall report to the Joint Legislative Utility Review Committee on activities the  
37 Commission has conducted pursuant to the provisions of this act. The report shall  
38 contain the Utilities Commission's recommendations, if any, with regard to any action to  
39 be taken by the General Assembly.

40 Section 8. It is the intent of the General Assembly that both the election of  
41 board members and the hiring of employees of electric membership corporations should  
42 reflect the diversity of the communities those corporations serve. To those ends, the  
43 General Assembly directs that each electric membership corporation of North Carolina

1 shall report minority representation on its board and in its workforce to the North  
2 Carolina Association of Electric Cooperatives so that the Association can report on  
3 minority representation to the Joint Legislative Commission on Governmental  
4 Operations. The North Carolina Association of Electric Cooperatives shall make an  
5 interim report on minority representation on the boards and workforces of the electric  
6 membership corporations two years after this act becomes law, and shall make a final  
7 report on that subject four years after this act becomes law.

8           Section 9. This act is effective when it becomes law.