

§ 62-134. Change of rates; notice; suspension and investigation.

(a) Unless the Commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this Chapter, except after 30 days' notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice, which may include notice by publication, of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.

(b) Whenever there is filed with the Commission by any public utility any schedule stating a new or revised rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates. Pending such hearing and the decision thereon, the Commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than 270 days beyond the time when such rate or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate shall go into effect at the end of such period. After hearing, whether completed before or after the rate goes into effect, the Commission may make such order with respect thereto as would be proper in a proceeding instituted after it had become effective.

(c) At any hearing involving a rate changed or sought to be changed by the public utility, the burden of proof shall be upon the public utility to show that the changed rate is just and reasonable.

(d) Notwithstanding the provisions of this Article, any public utility engaged solely in distributing electricity to retail customers, which electricity has been purchased at wholesale rates from another public utility, an electric membership corporation or a municipality, may in its discretion, and without the necessity of public hearings as in this section is otherwise provided, elect to adopt the same retail rates to customers charged by the public utility, electric membership corporation or municipality from whom the wholesale power is purchased for the same service, unless the North Carolina Utility Commission finds upon a hearing, either on its own initiative or upon complaint, that the rate of return earned by such utility upon the basis of such rates is unjust and unreasonable. In such a proceeding the burden of proof shall be upon the electrical distribution company.

(e) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1197, s. 2.

(f) The Commission may adopt rules prescribing the information and exhibits required to be filed with any applications, or tariff for an increase in utility rates, including but not limited to all of the evidence or proof through the end of the test period which the utility will rely on at any hearing on such increase, and the Commission may suspend such increase until such data, information or exhibits are filed, in addition to the time provided for suspension of such increase in other provisions of this Chapter.

(g) The provisions of this section shall not be applicable to bus companies or to their rates, fares or tariffs.

(h) Notwithstanding the requirements of subsections (a) and (b) of this section, the Commission may, in lieu of fixing specific rates or tariffs for competitive services offered by a public utility defined in G.S. 62-3(23)a.6., adopt practices and procedures to permit pricing

flexibility, detariffing services, or both. In exercising its authority to permit pricing flexibility, detariffing of services, or both, the Commission shall first determine that the service is competitive. After a determination that the service is competitive, the Commission shall consider the following in deciding whether to permit pricing flexibility, detariffing of services, or both:

- (1) The extent to which competing telecommunications services are available from alternative providers in the relevant geographic or service market;
- (2) The market share, growth in market share, ease of entry, and affiliations of alternative providers;
- (3) The size and number of alternative providers and the ability of such alternative providers to make functionally equivalent or substitute services readily available at competitive rates and on competitive terms and conditions;
- (4) Whether the exercise of Commission authority produces tangible benefits to consumers that exceed those available by reliance on market forces;
- (5) Whether the exercise of Commission authority inhibits the public utility from competing with unregulated providers of functionally equivalent telecommunications services;
- (6) Whether the existence of competition tends to prevent abuses, unjust discrimination or excessive charges for the service or facility offered;
- (7) Whether the public utility would gain an unfair advantage in its competitive activities; and
- (8) Any other relevant factors protecting the public interest.

(i) On motion of any interested party and for good cause shown, the Commission shall hold hearings prior to adopting any pricing flexibility or detariffing of services permitted under this section. The Commission may also revoke a determination made under this section when the Commission determines, after notice and opportunity to be heard, that the public interest requires that the rates and charges for the service be more fully regulated.

(j) Notwithstanding the provisions of G.S. 62-140, the Commission may permit public utilities subject to subsection (h) of this section to offer competitive services to business customers upon agreement between the public utility and the customer provided the services are compensatory and cover the costs of providing the service. (1933, c. 307, s. 7; 1939, c. 365, s. 3; 1941, c. 97; 1945, c. 725; 1947, c. 1008, s. 24; 1949, c. 1132, s. 22; 1959, c. 422; 1963, c. 1165, s. 1; 1971, c. 551; 1973, c. 1444; 1975, c. 243, s. 8; c. 510, c. 867, s. 7; 1981 (Reg. Sess., 1982), c. 1197, s. 2; 1985, c. 676, s. 15(3); 1989, c. 112, s. 3.)