

R6-63 FORFEITURE OF EXCLUSIVE FRANCHISE RIGHTS

(a) Purpose. - The purpose of this Rule is to implement the portion of G.S. 62-36A(b) which provides for expansion of service by each franchised natural gas local distribution company to all areas of its franchise territory within three years, and which further provides that any local distribution company that the Commission determines is not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, shall forfeit its exclusive franchise rights to that portion of its territory not being served.

(b) Forfeiture For Failure To Provide Service. - Each natural gas utility shall provide for the expansion of natural gas service to at least some portion of each county within its certificated service territory, as established by the Commission, on or before the following date:

- (i) July 1, 1998 for certificated service territories existing on July 1, 1995, or
- (ii) three years after the date a certificate of public convenience and necessity is awarded for newly certificated service territories, or the natural gas utility shall be subject to forfeiture of its exclusive franchise rights to each such unserved county located within its service territory upon a finding by the Commission that the natural gas utility is not providing adequate service to at least some portion of that county on the applicable date set forth above.

(c) Review Proceedings. - The Commission will initiate a review proceeding for each natural gas utility subject to its jurisdiction following the applicable date set forth in subsection (b)(i) or (b)(ii) above to determine whether the utility is providing adequate service to at least some portion of each county within its franchise territory. The Commission will require the utility to file testimony, and the testimony shall include the following:

- (i) A list of counties in the certificated service territory in which the natural gas utility has no transmission facilities or distribution system in service on such date;
- (ii) A description of any immediate plans the natural gas utility has to serve a portion of any of the unserved counties listed;
- (iii) A description of right-of-way acquisition, natural gas system design work being undertaken, or natural gas system construction work in progress by the natural gas utility on such date in any of the unserved counties listed;
- (iv) Citation by case caption and docket number of any pending application before the Commission for the use of expansion funds for the construction of natural gas facilities in any of the listed unserved counties and a description of the current status of any such expansion fund project to the extent a Commission order approving the project has been issued; and
- (v) Any other information the natural gas utility may wish the Commission to consider relating to its efforts to provide service to the unserved counties listed.

The Commission will allow for interventions by interested persons and will allow all intervenors to participate fully in the review proceedings. The Commission will allow the Public Staff and other intervenors to file testimony, in which they may propose that counties other than those listed by the utility be considered for forfeiture and provide support for their proposal. The Commission will schedule a hearing and will provide for public notice thereof to be given throughout the franchise territory of the utility. Following the hearing, the Commission shall issue an order in which it will determine whether the natural gas utility is providing adequate service to at least some portion of each county within its franchise territory and if the Commission finds that the utility is not providing adequate service to at least some portion of any such county, the Commission will order that the natural gas utility forfeit its exclusive franchise rights to each such county.

(d) Adequate Service. - The Commission will determine whether adequate service is being provided to at least some portion of each county in a natural gas utility's franchise territory based on the review proceedings provided in subsection (c) above. The requirement that adequate service must be provided by the applicable date set forth in subsection (b)(i) or (ii) above may be deemed to have been met for a given county even though the natural gas utility has not actually begun providing service if the following conditions are met:

- (i) the natural gas utility has completed a substantial amount of design process/service for the construction of natural gas facilities into at least some portion of the county, such as the preparation of engineering design for pipe size and capacity parameter, rectifier facilities, route location, materials specifications, construction specifications and drawings by an engineer sufficient to indicate the facilities to be built; or
- (ii) the natural gas utility has begun to acquire rights-of-way for the construction and operation of natural gas facilities in the county; or
- (iii) by at least six months before the applicable date set forth in subsection (b)(i) or (ii) above, the natural gas utility filed an application that complies with the Commission's applicable orders and rules for use of expansion funds for the construction of facilities into at least some portion of the county; and

- (iv) it appears likely that the construction of the facilities will be completed and service will be provided within two years of the applicable date set forth in subsection (b)(i) or (ii) above.

If the natural gas utility meets the above conditions, it will be given two years from the applicable date set forth in subsection (b)(i) or (ii) above to complete construction of its proposed project and begin providing service. If construction of the facilities included in the proposed project are not substantially completed at the end of the two-year period, the Commission shall issue an order requiring the utility to show cause why the Commission should not find that the requirements of G.S. 62-36A(b) and of this Rule have not been met and why the Commission should not issue an order declaring the natural gas utility to have forfeited its exclusive franchise rights to such county in which the proposed facilities are not completed and in service. (NCUC Docket No. G-100, Sub 70, 3/19/96.)