

7A-38.3C. Prelitigation mediation of territorial disputes.

(a) Purpose. – The General Assembly finds that a system of mediated settlement conferences should be established to facilitate the settlement of territorial disputes between certain electric suppliers. Therefore, this section is enacted to require those electric suppliers and their representatives to participate in mediation conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections.

(b) Definitions. – As used in this section, the following terms mean:

- (1) Electric supplier. – Any electric membership corporation, or any municipality that owns, operates, and maintains its own electric system.
- (2) Mediated settlement conference. – A conference of electric suppliers and their representatives conducted by a mediator.
- (3) Mediation. – An informal process conducted by a mediator with the objective of helping parties voluntarily settle their dispute.
- (4) Mediator. – A neutral person who acts to encourage and facilitate a resolution of a territorial dispute. A mediator does not make an award or render a judgment as to the merits of the action.
- (5) Territorial dispute. – A disagreement between electric providers over (i) the right to serve premises located in areas outside of or within municipal limits, (ii) the failure of a municipality to give its written consent to the construction of an electric distribution line by an electric membership corporation pursuant to the provisions of G.S. 117-10.3, or (iii) the failure of an electric membership corporation to give its written consent to the construction of an electric distribution line by a municipality pursuant to the provisions of G.S. 160A-331.1.

(c) Voluntary Mediation. – The parties to a territorial dispute may agree at any time to mediation of the dispute under the provisions of this section.

(d) Mandatory Mediation. – In lieu of commencing a civil action involving a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1, an electric supplier shall initiate mediation pursuant to this section. If an electric supplier brings an action involving such a territorial dispute, that action shall, upon motion of any party prior to trial, be dismissed without prejudice by the court.

(e) Initiation of Mediation. – Mediation of a territorial dispute that is subject to the provisions of G.S. 117-10.3 or G.S. 160A-331.1 shall be initiated by filing a request for mediation with the clerk of superior court in a county in which a civil action between the electric suppliers could have been brought. The filing of such a request for mediation shall commence a special proceeding in the superior court. The party filing the request for mediation also shall mail a copy of the

request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(f) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the applicable provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections, as supplemented and modified by this section. The Supreme Court may adopt additional rules and standards to implement this section.

(g) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting. In the event the parties waive mediation, then they shall proceed as provided in subsection (i) of this section.

(h) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (g) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. The sanctions in G.S. 7A-38.1(g) do not apply to prelitigation mediation conducted under this section. If an agreement is not reached at the mediation, the parties shall proceed under subsection (i) of this section. If an agreement is reached at the mediation, the parties shall reduce its terms to writing and shall sign it. A proposed consent order incorporating the signed agreement shall be filed with the court within 14 days after the agreement is signed, and such order shall be entered by the court. Subject to the provisions of subsection (k) of this section, the signed agreement and consent order shall be binding on the parties and shall conclude the special proceeding.

(i) Binding Decision. – If an agreement was not reached as a result of mediation or if mediation is waived pursuant to subsection (g) of this section, the electric suppliers shall submit their territorial dispute to a member of the Public Staff of the North Carolina Utilities Commission who shall have the authority to issue an opinion resolving the territorial dispute that is binding on the parties. If the parties do not agree on the selection of a member of the Public Staff, the

Executive Director of the Public Staff shall appoint a member of the Public Staff to hear the territorial dispute and render an opinion. The opinion resolving the dispute shall be considered in the nature of an arbitrator's award and may be enforced in the same manner as an arbitration award under G.S. 1-569.25.

(j) Time Periods Tolloed. – Time periods relating to the filing of a claim or the taking of other action with respect to a territorial dispute, including any applicable statutes of limitations, shall be tolloed upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (g) of this section.

(k) Agreements Approved. – Any agreement reached as a result of mediation pursuant to this section that involves or relates to an electric supplier subject to the territorial jurisdiction of the North Carolina Utilities Commission shall be subject to the approval of the Commission under G.S. 160A-331.2. (2005-150, s. 8.)

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