

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

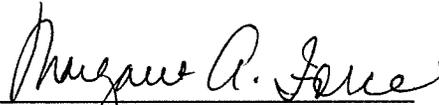
Docket No. M-100, Sub 138

In the Matter of )  
Implementation of House Bill 998—An Act ) ATTORNEY GENERAL'S  
To Simplify the North Carolina Tax ) NOTICE OF INTERVENTION  
Structure and to Reduce Individual and )  
Business Tax Rates )

NOW COMES Roy Cooper, Attorney General, by and through the undersigned attorney and gives this notice of intervention in the above-captioned docket on behalf of the using and consuming public pursuant to G.S. § 62-20 for the reason that the above matter is of significant interest to the members of the using and consuming public.

Respectfully submitted, this the 16<sup>th</sup> day of December, 2013.

ROY COOPER  
Attorney General

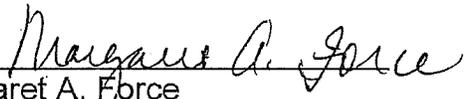


Margaret A. Force  
Assistant Attorney General  
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CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing ATTORNEY GENERAL'S NOTICE OF INTERVENTION upon the parties of record in this proceeding and their attorneys by hand delivery or by depositing a copy thereof in an official depository of the United States Postal Service.

This the 16<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
Margaret A. Force  
Assistant Attorney General

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

Docket No. M-100, Sub 138

In the Matter of )  
Implementation of House Bill 998—An Act ) ATTORNEY GENERAL'S  
To Simplify the North Carolina Tax ) REPLY COMMENTS  
Structure and to Reduce Individual and )  
Business Tax Rates )

The North Carolina Attorney General's Office respectfully submits these reply comments in response to the North Carolina Utilities Commission ("the Commission") *Order Initiating Generic Proceeding and Requesting Comments* concerning the effect on utility rates of recent changes to state tax rates that will occur under implementation of House Bill 998 (Session Law 2013-316).

As is evident in the Commission's order and initial comments filed by parties, a number of changes will occur in the state taxes applicable to utilities in North Carolina as a result of Session Law 2013-316 beginning in January 2014, with some changes taking effect in July 2014 and later. Among other things, Session Law 2013-316 reduces the state income tax rate (to 6% for tax years beginning after January 1, 2014 and to 5% for tax years beginning on January 1, 2015); repeals the gross receipt taxes by paid by electric, water, and sewer utilities; increases the effective tax rate paid on sales of electricity (from 3% to an effective sales tax of 7%); and requires electric, gas, water and sewer utilities that conduct business as corporations to pay the corporate franchise tax.

The Commission is expressly required by Session Law 2013-316 to make corresponding changes in rates to reflect some of the tax changes. (See section 4.2(a) of Session Law 2013-316 which directs the Commission to, among other

things, adjust the rates of electric and gas utilities to take into account the provisions that affect the liability of those utilities with regard to the gross receipt taxes, corporate franchise taxes, and effective sales taxes.) Session Law 2013-316 is silent with respect to the income tax changes for all utilities and the effect of the gross receipt tax and corporate franchise tax changes on water and sewer utilities. However, even absent an express mandate in Session Law 2013-316, the Commission has authority to flow through the effect of tax changes to consumers in the form of rate reductions by ordering appropriate adjustments in this rulemaking. *State ex rel. Utilities Com'n v. Nantahala Power & Light Co.*, 326 N.C. 190, 388 S.E.2d 118 (1990).

In general, the Attorney General's Office recommends that the Commission, in its exercise of its rulemaking authority, consider the impact on Session Law 2013-316 in totality and with an eye towards utilizing any tax reductions as a benefit to consumers in the form of rate decreases so that utility rates for consumers are as low as possible, and flowing through such reductions to consumers as soon as reasonably possible.

It is important for utility customers to receive the full benefit of the tax reductions occurring from Session Law 2013-316 through reductions in rates, especially given the challenging economy in recent years. Thus, in determining appropriate rate adjustments for consumers, the Commission should exercise its authority to include the effect of the income tax rate reductions for utilities; it would seem inequitable to, for example, increase customer rates for the

corporate franchise tax that will apply to certain utilities given that this increase will be offset by the reduction in the income tax paid by those utilities.

The Commission should also take into account that some customers will see a significant increase in the effective sales taxes that they pay starting in July 2014. The effective tax rate applicable to sales of electric and gas service, for example, will increase from 3% to 7% for most customers after July 2014, and will be reflected on bills as a separate line item. Thus, for example, an electric utility customer who is charged \$100 for utility service in a particular month would see an effective increase from \$3 to \$7 as a result of the tax changes adopted in Session Law 2013-316.

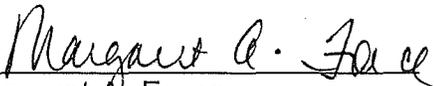
If the Commission does not adjust utility rates to reflect the new, lower income tax rates, the utilities will be collecting taxes from ratepayers at the higher state income tax rates approved in each utility's most recent rate case. Utility rates were set in those rate cases based on the assumption that the utility will pay a 6.9% state income tax rate, when now that tax rate will be lower.

Likewise, the Commission should exercise its authority to adjust the rates of all water and sewer utilities to take into account the repeal of the gross receipt tax. This reduction should be passed through to consumers, instead of simply allowing the utilities to benefit from the reduction.

In sum, the Commission should consider the impact on Session Law 2013-316 in totality and with an eye towards utilizing any tax reductions as benefits to consumers in the form of rate decreases so that rates for consumers are set as low as possible.

Respectfully submitted, this the 16<sup>th</sup> day of December, 2013.

ROY COOPER  
Attorney General

  
Margaret A. Force  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that she has served a copy of the foregoing ATTORNEY GENERAL'S REPLY COMMENTS upon the parties of record in this proceeding and their attorneys by hand delivery or by depositing a copy thereof in an official depository of the United States Postal Service.

This the 16<sup>th</sup> day of December, 2013.

  
Margaret A. Force  
Assistant Attorney General



## State of North Carolina

ROY COOPER  
ATTORNEY GENERAL

Department of Justice **REPLY TO: PEGGY FORCE**  
PO Box 629 UTILITIES UNIT  
Raleigh, North Carolina TELEPHONE NO: 919-716-6053  
27602 FAX NO. 919-716-6757

December 17, 2013

Ms. Gail Mount, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, NC 27699-4325

re: Docket No. M-100, Sub 138  
Implementation of H.B. 998 (Tax Simplification)

Dear Ms. Mount:

Yesterday, the Attorney General's Office filed reply comments in this docket and I am filing this letter to correct a typographical error. In the first full paragraph on page 2, the word "on" should be replaced with the word "of" so that the sentence begins, "In general, the Attorney General's Office recommends that the Commission, in its exercise of its rulemaking authority, consider the impact of Session Law 2013-316 in totality ...." Again in the last paragraph on page 3, the word "on" should be replaced with the word "of" so that the sentence begins, "In sum, the Commission should consider the impact of Session Law 2013-316 in totality ...." Please note the correction.

Very truly yours,

A handwritten signature in cursive script that reads "Margaret Force".

Margaret A. Force  
Assistant Attorney General

C: Parties of record