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HENRY McMASTER
ATTORNEY GENERAL

September 29, 2006

The Honorable Jeffrey D. Duncan
Member, House of Representatives
Post Office Box 721
Clinton, South Carolina 29325

Dear Representative Duncan:

We received your request for an opinion concerning section 58-27-640 of the South Carolina Code. You state:

Specifically, I would like you to address the definition of the line in that paragraph that says, "The Commission shall make assignments of areas in accordance with public convenience and necessity considering among other things the location of existing lines and facilities of electric suppliers and the adequacy and dependability of the services of electric suppliers, but not considering rate deferential among electric suppliers." Specifically, I can find no definition of what dependability of service means.

Law/Analysis

"All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." South Carolina Dept. of Transp. v. First Carolina Corp. of South, 369 S.C. 150, ___, 631 S.E.2d 533, 535 (2006). Furthermore, our courts recognize "[c]lear and unambiguous words in a statute should be given their plain and ordinary meaning." Brown v. County of Berkeley, 366 S.C. 354, 360, 622 S.E.2d 533, 537 (2005).

Section 58-27-640 of the South Carolina Code (1976) is contained in article 5, chapter 27 of title 58, which governs the rights of electric suppliers to supply electricity in a given area. According to the legislative history of the provisions contained in article 5, the Legislature originally enacted these provisions in 1969 and they became effective on July 1, 1969. Section 58-27-620 of the South Carolina Code (1976) governs an electric supplier's right to operate, as well as, imposes

Request Letter

numerous restrictions on its right to operate. Section 58-27-620 specifically allows electric suppliers who served an area as of July 1, 1969 to continue to serve that area. Thus, this provision indicates the Legislature's desire to shield existing electric suppliers, who presumably made substantial investments in providing electricity to the area they serve, from some portions of this piece of legislation. Additionally, this section allows those electric suppliers, with some exceptions, to operate within three hundred feet of their established service area as of July 1, 1969. This allowance again indicates the Legislature's intent to afford certain protections to existing electric suppliers.

Section 58-27-640, of which you inquire, governs the initial assignment of service areas to electrical suppliers. This section provides:

The Public Service Commission shall assign, beginning as soon as practicable after January 1, 1970, to electric suppliers, all areas, by adequately defined boundaries which may be by reference to boundaries drawn on maps or otherwise, that are outside the corporate limits of municipalities, and that are more than three hundred feet from the lines of all electric suppliers as such lines exist on the dates of the assignments; provided, that the Commission may leave unassigned any area in which the Commission, in its discretion, determines the absence of assignment is justified by public convenience and necessity. The Commission shall make assignments of areas in accordance with public convenience and necessity considering, among other things, the location of existing lines and facilities of electric suppliers and the adequacy and dependability of the service of electric suppliers, but not considering rate differentials among electric suppliers.

Upon consolidation of the units of government within any county pursuant to the Constitution of this State, the Commission shall initially assign the areas that were within the corporate limits of the municipality merged into the consolidated political subdivision and that are more than three hundred feet from the lines of all electric suppliers as such lines exist on the date of the consolidation to the electric supplier including any existing municipal systems then serving within such areas, subject to the power of the Commission to leave any area unassigned or to reassign any area and subject to §§ 58-27-20, 58-27-630 and 58-27-650.

In reading section 58-27-640, we gather the intent of the Legislature in enacting these provisions was to allow the PSC to establish service areas and to assign particular electric suppliers to those areas not served by an electric supplier at the time of the Legislature's enactment of article 5. Section 58-27-640 appears to favor the existing providers by stating these assignments shall be made considering "public convenience," and in particular, "the location of existing lines and facilities of electric suppliers" However, the Legislature instructs the PSC also to consider "the adequacy and dependability of the service of electric suppliers" Thus, indicating the Legislature's desire for the PSC to also consider whether existing electric suppliers have the ability and capacity to support the service area's needs.

With this understanding of the Legislature's intent in mind, we consider specifically the term "dependability" as used in section 58-27-640. Although section 58-27-610 of the South Carolina Code (1976) contains a list of defined terms applicable to article 5, this list does not contain a definition of dependability. We note the use of the term dependability in several other provisions contained in article 5 with regard to electric services. See S.C. Code §§ 58-27-650, -660. However, these provisions also do not provide a definition or explanation of the term. Id. Thus, we look to the common and ordinary meaning of this term. Webster's New World Dictionary defines "dependable" as "that can be depended on; trustworthy; reliable." Webster's New Word Dictionary 378 (2d College ed. 1976). The American Heritage Dictionary of the English Language defines "dependable" as "capable of being depended upon; trustworthy." The American Heritage Dictionary of the English Language 354 (New College ed. 1980).

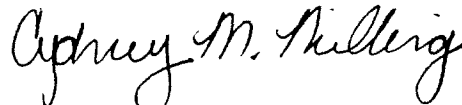
While mindful the intent of the Legislature with regard to section 58-27-640 and employing the plain and ordinary meaning of the term, we believe dependability means the reliability of the electric service provided. In other words, this factor is concerned with the electric supplier's ability to provide continuous service to its existing customers. This definition accords with the Legislature's intent of ensuring that the PSC assigns service areas to electric suppliers that have the ability to provide sufficient service to their customers.

From the language of the statute, the Legislature gave authority to the PSC to determine whether such service is dependable. As the Supreme Court in Nucor Steel, a Division of Nucor Corp. v. South Carolina Public Service Commission, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992) noted: "We have traditionally given the PSC, just as any other agency, respectful consideration in their interpretation of a statute. Where an agency is charged with the execution of a statute, the agency's interpretation should not be overruled without cogent reason." Thus, just as a court would defer to the PSC's determination of whether an electric supplier provides dependable service, so do we. Accordingly, whether or not a particular electric supplier is dependable, is best addressed by the PSC. Furthermore, because the PSC's decision as to whether a particular electric supplier is dependable involves a question of fact, the PSC's determination in this regard is only reviewable by

The Honorable Jeffrey D. Duncan
Page 4
September 29, 2006

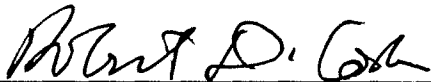
a court and not this Office. Op. S.C. Atty. Gen., June 27, 2006 (stating “we cannot sit as a court, investigating and determining the facts”).

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General