SIXTIETH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1970, through December 31, 1970

Harry T. Westcott, Chairman

John W. McDevitt, Commissioner

Marvin R. Wooten, Commissioner

Hugh A. Wells, Commissioner

Miles H. Rhyne,* Commissioner

NORTH CAROLINA UTILITIES COMMISSION

Office of the Chief Clerk

Mrs. Mary Laurens Richardson
Post Office Box 991
Raleigh, North Carolina 27602

The Statistical and Analytical Report of the North Carolina Utilities Commission is printed separately from the volume of Orders and Decisions and will be available from the Office of the Chief Clerk of the North Carolina Utilities Commission upon order.

*Miles H. Rhyne, appointed July 1, 1970

LETTER OF TRANSMITTAL

December 31, 1970

The Governor of North Carolina
Raleigh, North Carolina

Sir:

Pursuant to the provisions of Section 62-17 (b) of the General Statutes of North Carolina, providing for the annual publication of the final decisions of the Utilities Commission on and after January 1, 1970, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1970, and ending December 31, 1970.

The additional report provided under G.S. 62-17(a), comprising the statistical and analytical report of the Commission, is printed separately from the volume and will be transmitted immediately upon completion of printing.

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Harry T. Westcott, Chairman

John W. McDevitt, Commissioner

Marvin R. Wooten, Commissioner

Miles H. Rhyne, Commissioner

Hugh A. Wells, Commissioner

Mary Laurens Richardson, Chief Clerk

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GENERAL ORDERS

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DOCKET NO. D-1, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Interstate Commerce Commission	) GENERAL ORDER ADOPTING
Transport Mobilization Orders	) ICC ORDERS TM-1 THROUGH
TM-1 through TM-13	) TM-13 AS AMENDED
	) JULY 31, 1969

BY THE COMMISSION: The Interstate Commerce Commission has been assigned by Executive Order 11005 the responsibility for developing non-military preparedness plans and programs for domestic surface transportation, to be put into effect in the event of a national emergency. Pursuant thereto, said Commission has issued a group of stand-by or self-triggering emergency priority and control orders, which shall become effective only upon the proclamation of the existence of a state of civil defense emergency by the President or by concurrent resolution of the Congress. The Orders, as amended July 31, 1969, are numbered and captioned as follows:

GENERAL ORDER ICC TM-1 - Preference and Priority for the Transportation by Carriers for Hire of United States Military Personnel, Accredited Civil Defense Workers and United States Mail.

GENERAL ORDER ICC TM-2 - Rail Freight Embargo - Appointment of Permit Agent.

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GENERAL ORDER ICC TM-10 - Control of Motor Transport Vehicles.

GENERAL ORDER ICC TM-11 - Control of Freight Shipments to or Within Port or Storage Areas.

GENERAL ORDER ICC TM-12 - Inventory and Disposition of Shipments of Food and Medical Supplies Requisitioned by Government in Possession of Railroad and Motor Carriers.

PROCEDURAL ORDER ICC TM-11-PO-1 - Procedures and Delegations of Authority under General Order ICC TM-11 For Rail Shipments.

GENERAL ORDER ICC TM-13 - Control of Liquid Transport Vessels.

Upon consideration thereof, it is deemed necessary in the public interest that the above described orders also be made applicable to intrastate commerce within the State of North Carolina; accordingly,

IT IS ORDERED:

That Interstate Commerce Commission General Orders ICC TM-1 through TM-13, as amended July 31, 1969, shall apply to all motor carriers authorized by the North Carolina Utilities Commission to operate in North Carolina.

BY ORDER OF THE COMMISSION.

This the 19th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Amendment to Commission Rule R4-2) ORDER
Governing the Construction and Filing of) APPROVING
Transportation Tariff Schedules) RULE

PLACE: The Hearing Room of the Commission, Raleigh, North Carolina, on January 29, 1970

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Commission Staff:

Mr. Larry G. Ford
Ruffin Building
1 West Morgan Street
Raleigh, North Carolina

No Protestants or Intervenors.

BY THE COMMISSION: By Order dated November 5, 1969, the Commission assigned for consideration in its Hearing Room, Raleigh, North Carolina, on January 29, 1970, the adoption of an amendment to its Rule R4-2, said amendment reading:

"Rule R4-2(d). Requirements as to size, form, identification and filing of tariffs.

(5) Except as may be otherwise provided in these rules, a tariff of six (6) pages or less may not have in effect at any time more than two (2) supplements; not more than three (3) supplements may be in effect at any time to a tariff containing seven (7) and not more than sixteen (16) pages; not more than four (4) supplements may be in effect at any time to a tariff containing seventeen (17) and not more than eighty (80) pages; not more than five (5) supplements may be in effect at any time to a tariff containing eighty-one (81) and not more than two hundred (200) pages, and not more than six (6) supplements may be in effect at any time to a tariff containing more than two hundred (200) pages. The supplemental matter hereinabove mentioned may in the aggregate be not more than thirty-three and one-third (33-1/3) percent of the number of pages in the involved tariff including the title page thereof, except it may exceed the volume authorized only to the extent necessary to complete the page of supplemental matter when the tariff is not evenly divisible to equal thirty-three and one-third (33-1/3) per cent. For example, a tariff with twenty (20) pages, title page inclusive, may not have in effect at any time more than four (4) supplements thereto or an aggregate of seven (7) pages of supplemental matter. Except further, that suspension supplements and supplements containing only suspended matter and issued as a result of an order of the North Carolina Utilities Commission shall not be included in the number of supplements or aggregate of pages of supplemental matter as hereinabove enumerated. Except further, that the title page of no supplement shall be included in the aggregate of the supplemental matter."

and the incorporation of same in Chapter 4, of its Tariff Publication Rules and Regulations.

The Order of the Commission in this matter dated November 5, 1969, was served by first class mail upon all parties named in Exhibit "B" attached thereto and a part thereof. Further, a copy of this order including Exhibits "A" (proposed amendment to rule) and "B" (list of parties) a part thereof, was attached to the Calendar of Truck Hearings of November 17, 1969.

The second decretal paragraph of the order provided that any comments, objections, or suggestions in respect to the proposed amendment to involved rule be submitted in writing (10 copies) to the Commission on or before January 15, 1970.

Several letters offering comment, suggestions and objections were received.

The matter was called for hearing and consideration at the captioned time and place.

Before any testimony was offered, Counsel for the Commission Staff introduced into the record as Staff Exhibits Nos. 1 and 2, a letter from the North Carolina Movers and Warehousemen's Association signed by Mr. P. L. Wyche, Publishing Agent, and a letter from National Bus Traffic Association, Inc., signed by Mr. P. J. Campbell, Chairman, respectively, stating that they have no objection to this proposed rule change.

The Commission Assistant Director of Traffic offered a revised Exhibit "A" (amendment to involved rule) and testimony and an exhibit in support of the proposed amendment to Rule R4-2. Revised Exhibit "A" offered by Mr. Hinton, Assistant Director of Traffic, reads:

EXHIBIT A

"RULE R4-2(d)

(5) Except as may be otherwise provided in these rules, a tariff of six (6) pages or less may not have in effect at any time more than two (2) supplements; not more than three (3) supplements may be in effect at any time to a tariff containing seven (7) and not more than sixteen (16) pages; not more than four (4) supplements may be in effect at any time to a tariff containing seventeen (17) and not more than eighty (80) pages; not more than five (5) supplements may be in effect at any time to a tariff containing eighty-one (81) and not more than two hundred (200) pages, and not more than six (6) supplements may be in effect at any time to a tariff containing more than two hundred (200) pages. The supplemental matter hereinabove mentioned may in the aggregate be not more than fifty (50) per cent of the number of pages in the involved tariff including the title page thereof, except it may exceed the volume authorized only to the extent necessary to complete the page of supplemental matter when the tariff is not evenly divisible to equal fifty (50) percent. For example, a tariff with nineteen (19) pages, title page inclusive, may not have in effect at any time more than four (4) supplements thereto or an aggregate of ten (10) pages of supplemental matter. Except further, that suspension supplements and supplements containing only suspended matter and issued as a result of an order of the North Carolina Utilities Commission shall not be included in the number of supplements or aggregate of pages of supplemental matter as hereinabove enumerated. Except further, that the title page of no supplement shall be included in the aggregate of the supplemental matter."

Mr. L.E. Forrest, Traffic Manager, North Carolina Motor Carriers Association, Inc., Agent, offered testimony in

opposition to the proposed amendment to Rule R4-2 insofar as it relates to his organization's Participating Carrier Tariff and Scope Tariff. He testified that neither of these tariffs contained any rates; that the Participating Carrier Tariff contains only the names of the carriers, their addresses, and the names and numbers of the tariffs in which they participate; that the Scope of Operations Tariff contains the names of the carriers, their addresses, and their operating authority as issued by this Commission, and that this is the only purpose of these tariffs.

Mr. Forrest's testimony disclosed that these tariffs were amended frequently, depending upon new authorities, changed authorities, or change in name of parties or authority granted by this Commission.

His testimony further reflected that the aggregate of pages of supplemental matter to be allowed should equal 75 percent of the number of pages in the tariffs when they are printed and 50 percent of the number of pages in tariffs that are typewritten.

A filing in this matter by Mr. A. P. Leland, Tariff Publishing Officer, Station List Publishing Company, Agent, states that his tariff publication (Open and Prepay Station List) is reissued approximately every twelve months, and should be exempted from the provisions of the proposed rule, as amended.

The filing in this matter by Mr. L. Vernon Farriba, Chief of Tariff Bureau, Southern Motor Carriers Rate Conference, interposes no opposition to the amendment as set forth in Revised Exhibit "A" offered by Mr. Hinton.

The filing of Mr. B.F. Moffitt, Chief of Tariff Bureau, Motor Carriers Traffic Association, Inc., suggests that the proposed amendment relating to supplemental matter to tariff schedules be deferred for a period of at least twelve (12) months, and that it may be possible that the matter could be handled on an informal basis without imposing said rule.

Upon consideration of the testimony and evidence adduced and the record in this matter as a whole, the Commission finds and concludes that approval of the proposed amendment to Rule R4-2, as revised, is in the public interest and that same should be adopted and incorporated in Chapter 4 of its Rules and Regulations governing the construction and filing of transportation tariff schedules.

IT IS THEREFORE ORDERED:

1. That the proposed rule, as set forth in Exhibit "A" attached hereto and made a part hereof, be, and the same is hereby adopted, and the same shall be incorporated in Chapter 4 of the Rules and Regulations governing the construction and filing of transportation tariff schedules.

2. That the Open and Prepay Station List, issued by Station List Publishing Company, Agent, A.P. Leland, Tariff Publishing Officer, 915 Olive Street, St. Louis, Missouri 63101, and North Carolina Motor Carriers Association, Inc., Agent, Participating Carrier Tariff No. 9, Series, and Scope of Operating Rights Tariff No. 14, Series, issued by Mr. J.T. Outlaw, Chief of Tariff Bureau, P.O. Box 2977, Raleigh, North Carolina 27602, be, and the same are hereby, made not subject to Rule R4-2(d)(5) until further order of the Commission.

3. That the amended rule as hereinabove adopted shall be in full force and effect from and after October 15, 1970.

BY ORDER OF THE COMMISSION.

This the 20th day of April, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

EXHIBIT A

RULE R4-2(d)

(5) Except as may be otherwise provided in these rules, a tariff of six (6) pages or less may not have in effect at any time more than two (2) supplements; not more than three (3) supplements may be in effect at any time to a tariff containing seven (7) and not more than sixteen (16) pages; not more than four (4) supplements may be in effect at any time to a tariff containing seventeen (17) and not more than eighty (80) pages; not more than five (5) supplements may be in effect at any time to a tariff containing eighty-one (81) and not more than two hundred (200) pages, and not more than six (6) supplements may be in effect at any time to a tariff containing more than two hundred (200) pages. The supplemental matter hereinabove mentioned may in the aggregate be not more than fifty (50) percent of the number of pages in the involved tariff including the title page thereof, except it may exceed the volume authorized only to the extent necessary to complete the page of supplemental matter when the tariff is not evenly divisible to equal fifty (50) percent. For example, a tariff with nineteen (19) pages, title page inclusive, may not have in effect at any time more than four (4) supplements thereto or an aggregate of ten (10) pages of supplemental matter. Except further, that suspension supplements and supplements containing only suspended matter and issued as a result of an order of the North Carolina Utilities Commission shall not be included in the number of supplements or aggregate of pages of supplemental matter as hereinabove enumerated. Except further, that the title page of no supplement shall be included in the aggregate of the supplemental matter.

DOCKET NO. M-100, SUB 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Addition to the Motor Carrier Rules and Regulations of the North Carolina Utilities Commission) ORDER APPROVING RULE

PLACE: The Courtroom of the Commission, Raleigh, North Carolina, on January 9, 1970

BEFORE: Chairman Harry T. Westcott, Presiding, Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Commission Staff:

Commission Attorney
Ruffin Building
Raleigh, North Carolina

No Protestants or Intervenors.

BY THE COMMISSION: By Order dated November 3, 1969, the Commission assigned for consideration in its Courtroom, Raleigh, North Carolina, on January 9, 1970, the adoption of a Rule reading:

"Rule R2-20.1. Misrouting of Shipments.

When a carrier having appropriate interstate and intrastate operating authority transports a shipment between two points in the State via its interstate rather than its intrastate route as a matter of operating convenience the carrier subjects itself to liability for misrouting.

Where the charge on a shipment handled via an interstate route for operating convenience is greater than it would have been had the same shipment been transported in North Carolina intrastate commerce, the misrouting carrier shall upon demand, refund to the freight payer the difference between the higher interstate charge and the lower intrastate charge."

and the incorporation of same in Chapter 2 of its Motor Carrier Rules and Regulations.

The Order of the Commission was served by certified mail on Motor Carriers Traffic Association, Inc., Agent, Greensboro, North Carolina; North Carolina Motor Carriers Association, Inc., Agent, Raleigh, North Carolina, and Southern Motor Carriers Rate Conference, Agent, Atlanta, Georgia, for and on behalf of their member motor common

carriers. In addition, a copy of the order was attached to the Calendar of Truck Hearings issued on November 17, 1969. The decretal paragraph of the order provided "That any comment, objections or other pleadings in connection with the proposed rule must be submitted in writing (10 copies) to the Commission on or before December 29, 1969." None were received.

The matter was called for consideration at the time and place hereinbefore set forth when the Commission Director of Traffic offered testimony in support of the proposed rule.

The testimony offered discloses that this matter has its origin in a proceeding and Order of the Interstate Commerce Commission in Docket No. 35050, dated October 13, 1969. In that proceeding the Interstate Commerce Commission found, inter alia, that less-than-truckload shipments between points in the same State but moved over routes through points in another State are interstate traffic and that the interstate rates must be charged thereon. However, the order of the I.C.C. also comments on the decision using the following language: "...The law requires that the carriers must charge the applicable interstate rates on considered movements even though they could be liable for misrouting when they convert, an intrastate shipment into an interstate shipment by moving it over an interstate route..."

The proposed rule does no violence to the decision of the Interstate Commerce Commission in Docket No. 35050. If approved and incorporated in the Rules it will merely provide a way for shippers tendering traffic to a carrier in intrastate commerce to easily recover any charges they may be assessed in excess of the lawfully applicable intrastate charge by reason of a carrier transporting normally intrastate traffic over a higher rated interstate route for its own operating convenience.

Upon consideration of the testimony and evidence adduced and the record in this matter as a whole, the Commission finds and concludes that approval of the proposed rule is in the public interest and that the same should be adopted and incorporated in Chapter 2 of its Motor Carrier Rules and Regulations.

IT IS THEREFORE ORDERED:

That the proposed rule, as set forth in Exhibit "A" attached, be, and the same is hereby, adopted, and the same shall be incorporated in Chapter 2 of the Motor Carrier Rules and Regulations as Rule R2-20.1.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

EXHIBIT A RULE R2-20.1 MISROUTING OF SHIPMENTS

When a carrier having appropriate interstate and intrastate operating authority transports a shipment between two points in the State via its interstate rather than its intrastate route as a matter of operating convenience the carrier subjects itself to liability for misrouting.

Where the charge on a shipment handled via an interstate route for operating convenience is greater than it would have been had the same shipment been transported in North Carolina intrastate commerce, the misrouting carrier shall, upon demand, refund to the freight payer the difference between the higher interstate charge and the lower intrastate charge.

DOCKET NO. M-100, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-making Proceeding for the Adoption of Uniform Rules for Collection of Customer Deposits for Utility Services.	) ORDER ADOPTING UNIFORM) RULES FOR COLLECTION) OF CUSTOMER DEPOSITS)

Upon consideration of the record herein, including the Commission's Order entered November 20, 1969, establishing this rule-making proceeding and giving notice of certain proposed uniform rules for collection of customer deposits for utility services under consideration by the Commission, and giving notice and opportunity to file comments, suggestions or objections to said proposed rules, and setting said proposed rules and all such comments for consideration at a public meeting of the Commission on Wednesday, January 21, 1970; and upon consideration of written responses, suggestions, comments and protests to said proposed uniform rules filed by 19 public utility companies and the North Carolina Electric Membership Corporation; and upon consideration of the oral statements and contentions made at the public meeting herein on January 21, 1970, attended by representatives of 19 public utility companies, the North Carolina Electric Membership Corporation, and representatives of the Attorney General's office for and on behalf of the using and consuming public; and it appearing to the Commission that there is a public need for reasonable and uniform rules for collection of customer deposits by utility companies in North Carolina and that the existing variations in the respective company tariffs for customer deposits no longer serve the public interest, and that the proposed rules published in this Docket in the original rule-making Order entered herein on November 20, 1969, are justified by the record in this proceeding, including the written comments and the public hearing thereon, with certain modifications to meet reasonable and justified objections and problems in

connection with administration of such rules for all utility companies in North Carolina, including modifications to provide that interest shall be payable on deposits retained more than 90 days and until tendered back to the customer, modification to provide for exceptional circumstances in the case of discontinuance of service for failure to pay utility bills, deletion of credit cards as appropriate evidence of credit, limitation of real estate as appropriate evidence of credit to real estate owned by the customer in the same county, and modification of the provision for refund of such deposits after one year to provide that such refund may be made at one calendar date each year of eligible deposits held more than one year; and the Commission being of the opinion that said proposed uniform rules and regulations for the collection of customer deposits for utility services as modified herein are just and reasonable and are in the public interest,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the rules and regulations of the North Carolina Utilities Commission are hereby amended by adding at the end thereof a new Chapter entitled "Chapter 11, Rules Establishing Requirements for Customer Deposits for Utility Services," as more fully set out in Appendix A attached hereto and incorporated herein by reference to said Appendix A attached hereto, to be applicable to all public utilities holding franchises in North Carolina for furnishing of electric, telephone, water, gas, sewer and mobile radio common carrier service and any other utility requiring a deposit for rendering of utility service, said Chapter being adopted for the purpose of establishing uniform rules for requiring customer deposits, the amounts thereof, the receipts therefor, the interest on such deposits, the records of such deposits, appeals from such deposits, and discontinuance of service for nonpayment of bills.

2. That all existing provisions of rules and regulations of the Utilities Commission relating to the collection of customer deposits for utility services, including but not limited to Rule R6-13, Customer Deposits for Natural Gas Companies; Rule R6-16(8), Reasons for Denying Service for Nonpayment of Bill by Natural Gas Company; Rule R6-16(9) relating to deposits for natural gas service; Rule R7-18, Deposits from Customers of Water Companies; Rule R7-20(e) Discontinuance of Service for Nonpayment of Bill to Water Company, are hereby rescinded and superseded by the adoption of said Chapter 11.

3. That all rules and regulations contained in the tariffs of public utility companies in North Carolina relating to the collection of customer deposits for utility services which are in conflict with the rules adopted herein are hereby disapproved and any such rules for customer deposits in company tariffs in conflict with the rules adopted herein shall be deleted from such utility company tariffs, and amended tariffs shall be filed with the

Commission providing that the company rules for collection of customer deposits shall be as provided in Chapter 11 of the rules and regulations of the Utilities Commission establishing uniform rules for all public utilities for the collection of customer deposits.

4. The rules adopted herein shall be effective on all customer deposits made or required to be made on and after July 1, 1970.

ISSUED BY ORDER OF THE COMMISSION.

This 6th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A
NORTH CAROLINA UTILITIES COMMISSION

CHAPTER 11
CUSTOMER DEPOSITS FOR UTILITY SERVICES

Rule R11-1. Declaration of public policy.-- The Utilities Commission, hereinafter referred to as the "Commission," declares that it is in the public interest that any utility requiring a deposit from its customer shall fairly and indiscriminately administer a reasonable policy reflected by written regulations, in accord with these Rules, for the requirement of a deposit for connecting utility service, or for an existing customer to continue or to reconnect service. A cash deposit to establish, maintain or re-establish service shall be required only in compliance with these Rules, and to avoid, to the extent practicable, the creation of a burden arising from uncollectible bills which would have to be borne ultimately by all the utility's ratepayers. Any utility requiring a deposit shall apply a deposit policy in accord with these Rules in an equitable and nondiscriminatory manner to all applicants for service and to all customers throughout the service area without any different application in any part thereof, and such deposit policy shall be predicated upon the credit risk of the individual without regard to the area in which he lives.

Rule R11-2. Deposits from customers.-- (a) Each utility may require an applicant for service to satisfactorily establish credit which will be deemed established if:

(i) The applicant owns the premises to be served or other real estate within the county, unless the applicant is an unsatisfactory credit risk; or

(ii) The applicant demonstrates that he is a satisfactory credit risk by appropriate means including, but not limited to, references which may be quickly and inexpensively checked by the utility; or

(iii) The applicant has been a customer of the utility for a similar type of service within a period of twenty-four consecutive billings preceding the date of application and during the last twelve consecutive billings for that prior service has not had service discontinued for non-payment of bill or had more than two occasions in which a bill was not paid when it became due; provided, that the average periodic bill for such previous service was equal to at least fifty per centum of that estimated for the new service; and provided further, that the credit of the applicant is unimpaired; or

(iv) The applicant furnishes a satisfactory guarantor to secure payment of bills for the service requested in a specified amount not to exceed the amount of the cash deposit prescribed in Rule R11-4 of these Rules; or

(v) The applicant makes a cash deposit to secure payment of bills for service as prescribed in Rule R11-4 of these Rules.

(b) The establishment of credit under the provisions of this Section, or the re-establishment of credit under the provisions of Rule R11-3 of these Rules, shall not relieve the applicant for service or customer from compliance with the reasonable regulations of the utility including, but not limited to, the prompt payment of bills and the Rules for discontinuance of service for the nonpayment of bills due for service furnished.

Rule R11-3. Re-establishment of Service.-- (a) An applicant for service who previously has been a customer of the utility and whose service has been discontinued by the utility during the last twelve months of that prior service, because of non-payment of bills, may be required to re-establish credit in accordance with Rule R11-2 of these Rules; except that an applicant for residential service shall not be denied service for failure to pay such bills for classes of non-residential service.

(b) A customer who fails to pay a bill within a reasonable period after it becomes due and who further fails to pay such bill within five (5) days after presentation of a discontinuance of service notice for non-payment of bill (regardless of whether or not service was discontinued for such non-payment) may be required to pay such bill, together with a reasonable reconnection charge, if service was disconnected after notice as provided in Rule R11-8, and re-establish his credit by depositing the amount prescribed in Rule R11-4 of these Rules.

(c) A customer may be required to re-establish his credit in accordance with Rule R11-2 of these Rules in case the

conditions of service or basis on which credit was originally established have materially changed.

Rule R11-4. Deposit; Amount; Receipt; Interest.-- (a) No utility shall require a cash deposit to establish or re-establish service in an amount in excess of two-twelfths of the estimated charge for the service for the ensuing twelve months; and, in the case of seasonal service, in an amount in excess of one-half of the estimated charge for the service for the season involved. Each utility, upon request, shall furnish a copy of these Rules to the applicant for service or customer from whom a deposit is required, and such copy shall contain the name, address, and telephone number of the Commission.

(b) Upon receiving a cash deposit, the utility shall furnish to the applicant for service or customer, a receipt showing: (i) the date thereof; (ii) the name of the applicant or customer and the address of the premises to be served or served; (iii) the service to be furnished or furnished; and (iv) the amount of the deposit and the rate of interest to be paid thereon.

(c) Each utility shall pay interest on any deposit held more than ninety (90) days at the rate of six per centum per annum. Interest on a deposit shall accrue annually and, if requested, shall be annually credited to the customer by deducting such interest from the amount of the next bill for service following the accrual date. A utility shall pay interest on a deposit beginning with the 91st day after it is collected and continuing until such deposit is lawfully tendered back to the customer by first class mail, or to his legal representative or until it escheats to the State, with accrued interest.

Rule R11-5. Refund of deposit.-- (a) Upon discontinuance of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest, or the balance, if any, in excess of the unpaid bills for service furnished by the utility. A transfer of service from one premises to another within the service area of the utility shall not be deemed a discontinuance within the meaning of these Rules.

(b) On one stated date each calendar year, each utility company shall review its customer deposit accounts and shall automatically refund the deposit of any customer who has paid his bills for service for the preceding twelve consecutive bills without having had service discontinued for non-payment of bill or had more than two occasions in which a bill was not paid when it became due, and the customer is not then delinquent in the payment of his bills.

(c) The utility shall promptly return the deposit, plus accrued interest, at any time upon request, if the customer's credit has been otherwise established in accordance with Rule R11-2 of these Rules.

(d) At the option of the utility, a deposit, plus accrued interest, may be refunded, in whole or in part, at any time earlier than the times hereinabove prescribed in this Rule.

Rule R11-6. Record of deposit.-- Each utility holding a cash deposit shall keep a record thereof until the deposit is refunded. The record shall show: (a) the name and current billing address of each depositor; (b) the amount and date of the deposit; and (c) each transaction concerning the deposit.

Rule R11-7. Appeal by applicant or customer.-- Each utility shall direct its personnel engaged in initial contact with an applicant for service or customer, seeking to establish or re-establish credit under the provisions of these Rules, to inform him, if he expresses dissatisfaction with the decision of such personnel, of his right to have the problem considered and acted upon by supervisory personnel of the utility. Each utility shall further direct such supervisory personnel to inform such an applicant or customer, who expresses dissatisfaction with the decision of such supervisory personnel and requests governmental review, of his right to have the problem reviewed by the Commission and shall furnish him the name of the Commission official to be contacted and his address and telephone number. Any customer who is not satisfied as to his deposit requirement by informal complaint to the Commission may file a written complaint with the Commission to be served on the utility under the procedure of Rule R1-9.

Rule R11-8. Discontinuance of service for non-payment.-- No utility shall discontinue service to a customer for non-payment of bill without first having diligently tried to induce the customer to pay the same and until after at least five (5) calendar days' written notice of discontinuance of service to the customer. The written notice may be given by first class mail, or by other delivery to the premises served, or by other legal means of service of process, and the five (5) days' notice period shall begin to run from the day following deposit of the notice in the post office or from the day of otherwise delivery of the notice to the premises served, or from the day of other legal service. Provided, however, that in the case of any customer who has a record of abuse of or excessive use of metered or toll service for which the customer's deposit would not furnish security for such five (5) days' notice period, service may be discontinued after 24-hour notice. A report of all such service disconnections made on such 24-hour notice under this proviso shall be filed with the Utilities Commission within thirty (30) days after the discontinuance of service.

DOCKET NO. M-100, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rule-making Proceeding for the Adop-	) STATEMENT OF POSITION
tion of Uniform Rules for Collection	) RELATING TO ELECTRIC
of Customer Deposits for Utility	) MEMBERSHIP
Services	) CORPORATIONS

Upon consideration of the record herein and the Order of the Commission entered on May 6, 1970, adopting uniform rules for collection of customer deposits for utility services, and the Petition for Clarification filed herein on May 18, 1970, by the North Carolina Electric Membership Corporation requesting a statement by the Commission as to whether the Commission considers that electric membership corporations are subject to and obligated to comply with said uniform rules adopted in said Order of the Commission of May 6, 1970, and the Commission having considered the provisions of the North Carolina Public Utilities Act with respect to regulation of public utilities, and specifically the provisions of G.S. 62-3(23)d. providing that a "public utility" as defined in said Act shall not include an electric membership corporation, and the provisions of G.S. 62-140(c) bringing electric membership corporations under the provisions of the Public Utilities Act with respect to certain discriminatory practices as defined therein, and G.S. 62-42(c) making certain requirements as to extensions of service and facilities applicable to electric membership corporations, and the Commission being of the opinion that the rules for collection of customer deposits adopted in this proceeding contain certain administrative and general provisions which are applicable only to fully regulated public utilities, but that such rules also establish certain general principals relating to customer deposits which have a bearing upon non-discriminatory practices and extensions of service of regulated public utilities and electric membership corporations, and that while such rules are not applicable in all their specific terms and details to electric membership corporations, they should be considered as guidelines for determining matters of discrimination and extensions of service and facilities by electric membership corporations,

IT IS, THEREFORE, DECLARED to be the policy of the Utilities Commission that the uniform rules for collection of customer deposits for utility services as adopted in this proceeding by Order of the Commission on May 6, 1970, shall not be applicable in specific terms and details to electric membership corporations, but that the principals stated in said rules for uniform non-discriminatory use of customer deposits for utility services shall be considered as appropriate guidelines for determining any matters of discrimination or extensions of service and facilities under G.S. 62-140(c) and G.S. 62-42(c), respectively, which might come before the Utilities Commission relating to electric

membership corporations or persons receiving electric service from electric membership corporations.

ISSUED BY ORDER OF THE COMMISSION.

This 4th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. M-100, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-making Proceeding to Amend Rule R1-17 to Provide for Denial of Rate Increase for Failure to File Material Contents of Rate Increase Application and Rule R1-24 to Require Filing of Exhibits of Expert Witnesses in Rate Cases 60 Days Prior to Hearing	) ORDER ADOPTING AMENDMENTS TO) RULE R1-17 TO PROVIDE FOR) DENIAL OF RATE INCREASE FOR) FAILURE TO FILE MATERIAL) CONTENTS OF APPLICATION, AND) RULE R1-24 TO REQUIRE) FILING OF EXPERT TESTIMONY) BY APPLICANTS FOR RATE) INCREASES 60 DAYS PRIOR) TO HEARING AND STAFF) TESTIMONY 20 DAYS PRIOR) TO HEARING

Upon consideration of the record herein, including the Commission Order entered November 20, 1969, giving notice of this rule-making proceeding and publishing proposed amendments to Rule R1-17 to provide for denial of rate increases for failure to file material information and exhibits required by said Rule for rate applications, and a proposed amendment to Rule R1-24 to require the filing of exhibits of expert witnesses of the applicant in rate cases 60 days prior to the hearing, and giving notice and opportunity to file comments, suggestions and objections to said proposed Rules, and setting said proposed Rules for consideration in a public meeting on Wednesday, January 21, 1970; and upon consideration of suggestions, comments and objections filed in writing by 18 utility companies or associations of utility companies, and the oral comments, suggestions and contentions made at the public meeting of the Commission on January 21, 1970, including the appearances and statements of representatives of 15 utility companies or associations of utility companies and representatives of the Attorney General of North Carolina for the using and consuming public of North Carolina, and the Commission being of the opinion, based upon said proposed Rules and the written comments and oral contentions and statements made in connection therewith at said public meeting, that there is a public need for establishing procedures to secure the filing of all material data and information required for proper consideration of

applications for rate increases by utility companies in North Carolina, including the data and information and exhibits required by Rule R1-17 of the Commission's Rules and Regulations, and for the filing of expert testimony 60 days prior to hearing in lieu of the present 30 days prior to hearing, in order to give adequate time to investigate and review said expert testimony by all parties to such proceeding, and that the proposed Rule published in this proceeding on November 20, 1969, is supported by the record herein and the findings of the Commission of the need for such Rule, with certain modifications to said Rule found reasonable and supported by said written comments and oral statements at the public meeting herein, including changes to require that any motion for additional evidence be filed within 30 days after filing of the tariff increase rather than 60 days as originally proposed, in order to expedite such rate hearings a change to provide that the utility must be given a hearing on any such motion for additional evidence within 20 days after the filing thereof, a provision that any order to show cause why said filing or application should not be dismissed under said Rule shall specify all alleged deficiencies and shall allow the company time to correct such deficiencies at any time prior to or at the hearing set to show cause why the application should not be dismissed for such deficiencies, and thus satisfy the show cause order, an addition to provide that the Commission shall review rate filings and tariff filings and notify the applicant as soon as practicable of any additional information needed and endeavor to secure such information by direct request and compliance therewith prior to issuance of such show cause order, in all cases where such prior request is possible, a change to delete the last sentence of said proposed Rule R1-17(f) as unnecessary and subject to conflicting interpretations, and a change to require that Staff reports be filed 20 days prior to said rate hearings; and the Commission being of the opinion that such amendments, as modified herein, are just and reasonable and in the public interest and supported by the record and the public hearing herein,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Rules and Regulations of the Commission are hereby amended by adding a new subsection at the end of Rule R1-17 to be designated as paragraph (f), to read as follows:

"Rule R1-17. Filing of increased rates; application for authority to adjust rates....

"(f) Denial of Filing or Application for Failure to Include Material Contents.

(1) The Commission on its own motion or at the request of the Commission Staff or any party in interest in any general rate case shall review the filing or application within 15 days after such filing and notify the applicant by letter of any additional

information needed to complete the filing under Rule R1-17, and give notice to the applicant of the remedy provided by this Rule for securing such information, and give the applicant 5 days to file such additional information in satisfaction of said letter request.

(2) If any material data or information required by Rule R1-17(b) is not filed with the tariff or application for rate increase and is not secured after informal request as provided in Rule R1-17(f)(1) above, the Commission on its own motion or on motion of the Commission Staff or motion of any party having an interest in the proceeding made within 30 days after the filing said tariff or application, may order the utility to appear and show cause within a period of 20 days after issuance of said order why said filing or application should not be denied for failure to comply with any material provision of this Rule, including the filing of the contents of said application as prescribed under subsection (b) above.

(3) Such order to appear and show cause why the tariff filing or application should not be dismissed for failure to file material contents thereof shall specify with particularity the alleged deficiency or deficiencies in said tariff filing or application.

(4) Any utility company served with such a show cause order shall have the right to file all of the data and information and exhibits alleged as deficiencies in said show cause order at any time prior to the hearing on said show cause order or at the hearing on said show cause order, and thus satisfy the show cause order, whereupon such show cause order shall be dismissed before or at the hearing set thereon, and the proceeding on the tariff filing or rate application shall proceed as in the case of a properly filed tariff or application for a general rate increase.

(5) If the Commission shall find after notice and hearing that the filing or application is incomplete and does not contain material portions of the contents required under subsection (b) necessary for complete determination of the justness and reasonableness of the rates filed or applied for, and that the applicant has failed to file said material data and information necessary for determination of the justness and reasonableness of said rates after notice and opportunity to complete said filing as provided herein, the Commission shall deny said application or dismiss said tariff filing, without prejudice to the refiling of said application or tariff filing with the complete contents prescribed herein.

(6) The Commission shall make its determination on such show cause order within ten (10) days after the show cause hearing provided in this paragraph, and shall issue an order thereon dismissing the show cause proceeding where such deficiencies are satisfied and continuing the investigation of the application, or dismissing the filing or application for material and unsatisfied deficiencies therein as provided in this paragraph."

2. That the Rules and Regulations of the Commission are hereby amended by rewriting the first sentence of Rule R1-24(g)(2), to read as follows:

"Rule R1-24. Evidence - ...

"(g) Exhibits by Expert Witnesses ...

(2) Time of Filing. - The testimony for the applicant of such expert witnesses shall be filed with the Commission at least sixty (60) days prior to the date set for the hearing in general rate cases, and at least thirty (30) days prior to the date set for the hearing in all other cases.."..

3. That the Rules and Regulations of the Commission are hereby amended by rewriting Rule R1-21(f)(1), to read as follows:

"Rule R1-21. Conduct of Hearings and Investigations ...

"(f) Testimony by Commission Staff.

(1) Investigations made by the Commission's Staff in any pending proceeding shall be reported to the Commission in writing, a true and correct copy of which shall be filed with the official records of the proceeding at least twenty (20) days prior to the hearing of the cause, and may be inspected by any party to the proceeding or by any other person."

4. The amendments adopted herein shall be applicable to all tariffs and applications for rate increases filed on and after June 1, 1970.

ISSUED BY ORDER OF THE COMMISSION.

This 6th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-making Proceeding to Amend Rule R1-17 to Provide for Denial of Rate Increase for Failure to File Material Contents of Rate Increase Application and Rule R1-24 to Require Filing of Exhibits of Expert Witnesses in Rate Cases 60 Days Prior to Hearing	) ORDER ESTABLISHING) SCHEDULE OF) EXHIBITS FOR) RAILROAD RATE) APPLICATIONS)

Upon consideration of the record herein and the Petition filed herein on June 24, 1970, by railroads operating in the State of North Carolina seeking an amendment to Rule R1-17(b) to establish a separate schedule of exhibits, documents, data and other materials to be filed by railroads with rate applications, and it appearing that said Petition sets forth in appropriate form a schedule of the exhibits, documents, data and other materials heretofore required with the filing of rate increase applications by rail carriers in North Carolina, and that said amendment to Rule R1-17(b) properly presents the schedule of such exhibits, documents, data and materials required for proper consideration of rail rate cases under the Public Utilities Act, and good cause being shown for the amendment of Rule R1-17(b) to prescribe such schedule of exhibits, documents, data and other materials to be filed by railroads with rate increase cases in North Carolina,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Rule R1-17(b) of the Commission's Rules and Regulations as set forth in the 1970 Edition of the North Carolina Public Utilities Law Annotated and Rules and Regulations of the Utilities Commission is hereby amended by adding a new subparagraph (12) at the end of said subsection R1-17(b) to read as follows:

"(12) Applications by railroads for general rate increases shall be supported by the following material in lieu of paragraphs (1) through (11) above, to be furnished by the principal Class I railroads operating in the State:

a. Present and proposed charges - A statement showing the percentage or other increase proposed to be added to the present rates or, where varying commodity groups are proposed to be treated differently, a description of such groups and the increases proposed for each group.

b. Miles of road operated - A statement of miles of line of railroad operated as of the end of the last available year, by both Class I and Class II railroads operating in the State of North Carolina, together with a showing of what portion of such

mileage is operated within the State of North Carolina.

c. Investment in property and rate of return - A statement of investment in railway transportation property and rate of return.

d. Ratio of net to gross - A statement of the ratio of net railway operating income to gross income.

e. Condensed income account - A condensed income account.

f. Traffic and income - A statement showing traffic and income.

g. Separation of intrastate revenues and expenses - Where the applicant or group of applicants operate in this State and also in other States, a separation of revenues and expenses showing those approximately attributable to intrastate operation within this State, based on the separation formula heretofore approved by this Commission and by the Supreme Court of North Carolina.

h. Changes in long-term debt - A statement showing changes in long-term debt.

i. Equipment obligations - A statement showing equipment obligations outstanding as of the end of the last available year, with amounts maturing each of the succeeding five years.

j. Capital Expenditures and sources of funds - A statement showing capital expenditures and sources of funds.

k. Ratio of assets to liabilities - A statement showing current assets, current liabilities, net working capital, material and supplies, and the ratio of current assets, excluding materials and supplies, to current liabilities.

l. Employee compensation - A statement showing trends in employee compensation.

m. Prices of materials and supplies - A statement showing trends in prices of materials and supplies."

2. This Order shall be effective from and after the date of issue.

ISSUED BY ORDER OF THE COMMISSION.
This 11th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. M-100, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R2-36 of the Motor Carrier Rules and Regulations of the North Carolina Utilities Commission) ORDER

BY THE COMMISSION: The North Carolina Utilities Commission, acting under the power and authority delegated to it by law for the promulgation of rules and regulations for the enforcement of the Public Utilities Act, directed a notice to all regulated motor freight carriers operating in intrastate commerce in North Carolina, of a proposed rule making proceeding for May 7, 1970, involving proposed changes in Rule R2-36 of the Commission's motor carrier regulations. A number of motor carriers offered written comments, most of which were favorable to the proposed amendment, but no protest was filed and no one appeared at the hearing in opposition thereto.

Upon consideration thereof, the Commission is of the opinion that the proposed revision in Rule R2-36 is in the public interest and should be approved.

IT IS, THEREFORE, ORDERED:

(1) That paragraphs (d) and (e) of Rule R2-36 of the Commission's Rules and Regulations be, and the same are, hereby amended to read as follows:

(d) In addition to the foregoing insurance, all common carriers of property shall provide cargo security to compensate shippers or consignees for loss of or damage to property belonging to shippers or consignees and coming into the possession of motor common carriers in connection with their transportation service, in not less than the following amounts: (1) for loss of or damage to property carried on any one motor vehicle - $2,500; (2) for loss of or damage to or aggregate of losses or damages of or to property occurring at any one time and place - $5,000. The policy shall have attached thereto Endorsement Form NCMC 26 or a facsimile thereof and as evidence of such insurance there shall be filed with the Commission Certificate of Insurance Form NCMC 27 or a facsimile thereof. Contract carriers of property and passenger carriers are not required to carry cargo insurance.

(e) No insurance policy, endorsement, rider or certificate of insurance issued by any insurance company, covering the liability of any motor carrier authorized to operate in North Carolina under a certificate or permit or certificate of exemption issued by the North Carolina Utilities Commission, will be accepted by said Commission for filing, unless the same is signed by an officer of the insurance company or by a North Carolina resident agent of

the insurance company duly licensed by the Insurance Commissioner of the State of North Carolina.

(2) That this order be made effective as of July 1, 1970.

Issued BY ORDER OF THE COMMISSION.

This the 25th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of General Investigation of Accelerated Depreciation by Utility Companies Under the 1969 Federal Tax Reform Act	) ORDER ADOPTING RULE FOR) USE OF ACCELERATED) DEPRECIATION

Upon consideration of the record herein, including the Commission Order entered March 27, 1970, giving notice of this rule-making proceeding for consideration of a Rule for use of accelerated depreciation under Section 441 of the Federal Tax Reform Act of 1969 enacted by the Congress in December of 1969, and giving notice and opportunity to file a proposed Rule relating to the use of accelerated depreciation and such authorization as is deemed advisable for normalization of such accelerated depreciation within the meaning of the 1969 Federal Tax Reform Act, Section 441, and setting said proposed Rules for consideration in a public meeting on Tuesday, April 28, 1970; and upon consideration of proposed Rules filed by 16 respondents, and the oral comments, suggestions and contentions made at the public meeting of the Commission on April 28, 1970, including the appearances and statements of representatives of 6 utility companies and representative of the Attorney General of North Carolina for the using and consuming public of North Carolina; and the Commission being of the opinion, based upon said proposed Rules and the written comments and oral contentions and suggestions made in connection therewith at said public meeting, that the proposed Rule, as modified to refer to State income taxes in accordance with the suggestions filed, is just and reasonable and in the public interest,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Rules and Regulations of the Commission are hereby amended by adding a new Rule at the end of Chapter 1 of said Rules, to read as follows:

"Rule R1-35. Use of accelerated depreciation by electric, water, sewer, gas and telephone utility companies under Federal Tax Reform Act of 1969. (a) Electric, water, sewer, gas and telephone utility companies operating in North Carolina are hereby authorized, but not required, to use liberalized or accelerated depreciation and are authorized to normalize the difference between the Federal and State income taxes due with the use of accelerated depreciation and the Federal and State income tax which would be due with the use of various straight-line depreciation methods for their regular books of account and for rate-making purposes, to the extent such accelerated depreciation and normalization thereof is authorized by Section 441 of the Federal Tax Reform Act of 1969 as enacted by Congress in December of 1969, subject to the terms and conditions provided in this Rule.

"(b) The accelerated depreciation and normalization of the results thereof for accounting and rate-making purposes shall be authorized on all utility property which qualifies for accelerated depreciation under Section 441 of the Federal Tax Reform Act of 1969.

"(c) Utility companies using accelerated depreciation and normalization thereof under this Rule shall record deferred operating Federal income taxes in a temporary income account to be designated as 'Operating Federal income taxes deferred - accelerated tax depreciation'; deferred operating State income taxes in an account designated 'Other operating taxes'; deferred non-operating Federal income taxes in an account designated 'Federal income taxes - non-operating taxes'; and deferred non-operating State income taxes in an account designated 'Other non-operating taxes'; and contra credits shall be made to corresponding subdivisions of a temporary balance sheet account to be designated 'Reserve for accumulated deferred income taxes - accelerated tax depreciation'.

"(d) The deferred Federal and State income tax funds made available temporarily by the adoption of such accelerated depreciation and normalization thereof on the utility company books should be utilized by said utility company for construction of utility plant, and in no event shall the same be transferred to earned surplus.

"(e) Any utility company which has used accelerated depreciation with flow-through methods of accounting as defined in Section 441 of the Federal Tax Reform Act of 1969 is authorized, but not required, to continue such flow-through methods of accounting to the full extent allowed under said Section 441 of the Federal Tax Reform Act of 1969."

2. This Rule shall be effective in accordance with the provisions set forth in the above adopted Rule R1-35.

ISSUED BY ORDER OF THE COMMISSION.

This 28th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. M-100, SUB 33

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R1-14 to Require Notice of) ORDER
Abandonment Hearings, and Amend Rule R1-14(d)) APPROVING
to Delete Separate Express Hearing) RULE CHANGES

HEARD IN: The Commission Courtroom, Ruffin Building, Raleigh, North Carolina, on June 4, 1970

BEFORE: Chairman Harry T. Westcott (Presiding), and Commissioners John W. McDevitt, Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Protestant:

John R. Jordan, Jr.
Jordan, Morris & Hoke
Attorneys at Law
P.O. Box 1606, Raleigh, North Carolina
For: Western Union Telegraph Company

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P.O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: These proceedings began on April 7, 1970, when upon consideration of the provisions of G.S. 62-118 and Rule R1-14(b) of the Rules of Practice and on its own motion, the Commission caused Notice of Rule-Making Proceeding to issue in this docket for the purpose of considering the amendment of Rule R1-14 by adding to said rule a new subparagraph to be designated subparagraph (f), same to read:

"(f) Notice of Hearing - In the event applications or petitions filed under this rule are assigned for formal hearing, applicant shall arrange for the publication of a notice in regard thereto in a newspaper having general circulation in the involved area giving the time, date and purpose of said hearing, same to be published not more than fifteen (15) nor less than five (5) days prior to the date of the hearing."

and for the further purpose of giving consideration to amending Rule R1-14(d) by rewriting the last sentence of subsection (d) to read:

"In the event such express and telegraph companies desire authority to discontinue their service at said station, they shall file a motion in the cause that the Commission consider the discontinuance of such express or telegraph service in the same proceeding in which the railroad company has applied to reclassify or close said station, setting out in the said motion the provisions proposed by said express or telegraph company for future handling of the express or telegraphic service theretofore available at said station, and the Commission shall thereupon consider and determine the motion to discontinue express or telegraphic service in the same hearing and in the same Order in which it considers and determines the application relating to the railroad station."

The Notice provided that the proposed amendments to Rule R1-14 would be considered and disposed of by the Commission in a public proceeding to be conducted in the Hearing Room of the Commission on June 4, 1970, at 2:00 o'clock p.m., and further, that any suggestions, comments, protests, or objections in favor of or against the proposed rule changes must be submitted to the Commission in writing on or before May 29, 1970.

Western Union Telegraph Company by and through its counsel, John R. Jordan, Jr., of the law firm of Jordan, Morris and Hoke, Raleigh, North Carolina, filed its comment to the proposed rule changes on May 29, 1970, wherein it contended that this Commission is without jurisdiction to consider the matter of discontinuance of telegraphic service, for that same lies solely with the Federal Communications Commission pursuant to Section 214 of the Communications Act of 1934, as amended.

By letter received in the offices of the Commission on May 21, 1970, Railway Express Agency (REA) advised through counsel, R.N. Simms, Jr., Simms & Simms, Raleigh, North Carolina, that while it feels the proposed rule changes will be helpful and supports same, it will not be its purpose to appear and participate in the public proceeding assigned for June 4, 1970.

This matter came on for consideration by the Commission at the aforesaid time and place.

Western Union Telegraph Company (Western Union) was present and represented by counsel. The Staff of the Commission was present and represented by the Commission Attorney.

Mr. John R. Jordan, Jr., counsel for Western Union, stated that the position of his client was as set forth in its filing in this docket of May 29, 1970. Mr. Jordan said

further that Western Union is concerned with that portion of the Notice of Rule-Making Proceeding dated April 7, 1970, insofar as same relates to telegraphic service in the proposed rewriting of Rule R1-14(d) and argued on behalf of his client that this Commission is without jurisdiction to consider the matter of discontinuance of telegraphic service since same is vested in The Federal Communications Commission pursuant to Section 214 of the Communications Act of 1934, as amended.

Mr. Edward B. Hipp, Commission Attorney, stated that he had read and carefully considered the filing of Western Union in this matter, the decisions of the courts cited therein, and had conducted some research on his own without being able to find error in the position of Western Union.

Based on the record in this proceeding and the records of the Commission, we make the following

FINDINGS OF FACT

(1) That the proposed rule changes, as hereinafter amended, relate to the regulation of facilities and services of utilities subject to the jurisdiction of the North Carolina Utilities Commission, that this matter is properly before this Commission and that the Commission has the jurisdictional power to approve or prescribe such reasonable rules as the circumstances surrounding its duties may require.

(2) That the proposed rule changes, if adopted, will result in the giving of more complete and adequate notice to the using and consuming public of proceedings involving the proposed abandonment of facilities or a reduction in services of the rail carriers and express companies.

(3) That the proposed change in Rule R1-14 will facilitate compliance by express companies with statutory provisions where the proposed action of a railroad affects an agency or service of an express company.

(4) The record tends to show that jurisdiction to consider the matter of discontinuance of telegraphic service is vested in the Federal Communications Commission.

CONCLUSIONS

Based on the foregoing findings of fact and the record in this proceeding as a whole, we conclude that the proposed rule changes, amended to eliminate all reference to telegraph or telegraphic service from Rule R1-14(d), should be approved.

IT IS ACCORDINGLY ORDERED:

(1) That the proposed rule changes, amended by the Commission on its own motion by deleting reference to

"telegraph" or "telegraphic" service from Rule R1-14(d), as set forth in Appendix "A" attached hereto and a part hereof, be, and the same are hereby, adopted, and shall be incorporated in Chapter 1 of the Commission's Rules of Practice.

(2) That the provisions of this Order shall become effective on the date same is issued as hereinafter shown.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. M-100, SUB 33
APPENDIX "A"
APPROVED RULE CHANGES

Add the following subparagraph to Rule R1-14:

"(f) Notice of Hearing - In the event applications or petitions filed under this rule are assigned for formal hearing, applicant shall arrange for the publication of a notice in regard thereto in a newspaper having general circulation in the involved area giving the time, date and purpose of said hearing, same to be published not more than fifteen (15) nor less than five (5) days prior to the date of the hearing."

Amend Rule R1-14(d) by rewriting the last sentence of said subparagraph to read:

"In the event such express companies desire authority to discontinue their service at said station, they shall file a motion in the cause that the Commission consider the discontinuance of such express service in the same proceeding in which the railroad company has applied to reclassify or close said station, setting out in the said motion the provisions proposed by said express company for future handling of the express service theretofore available at said station, and the Commission shall thereupon consider and determine the motion to discontinue express service in the same hearing and in the same Order in which it considers and determines the application relating to the railroad station."

DOCKET NO. M-100, SUB 34

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R2-10 of the Motor Carrier Rules and Regulations of the North Carolina Utilities Commission) ORDER

BY THE COMMISSION: The North Carolina Utilities Commission, acting under the power and authority delegated to it by law for the promulgation of rules and regulations for the enforcement of the Public Utilities Act, directed a notice to all interested regulated motor freight carriers operating in intrastate commerce in North Carolina, of a proposed rule-making proceeding for May 15, 1970, involving proposed changes in Rule R2-10 of the Commission's motor carrier regulations. Comments by carriers were favorable to the proposed amendment and no protest was filed and no one appeared at the hearing in opposition thereto.

Upon consideration thereof, the Commission is of the opinion that the proposed revision in Rule R2-10 is in the public interest and should be approved.

IT IS, THEREFORE, ORDERED:

(1) That paragraph (d) of Rule R2-10 of the Commission's Rules and Regulations be, and the same is, hereby amended to read as follows:

(d) In the case of contract carriers of passengers, and contract carriers of human blood, exposed and processed film, and commercial papers and documents between banking institutions and other points incidental to such bank transportation, the names of all contract parties will be incorporated in the permit by reference to the contracts on file with the Commission, which shall not be subject to the limitation in the number of contract parties as set forth in subsection (c) above.

(2) That this order be made effective as of June 1, 1970.

BY ORDER OF THE COMMISSION.

This the 4th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. E-100, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Report of Impending Emergencies, Load Reduction, and/or Service Interruptions in Bulk Electric Power Supply and Related Power Supply Facilities	) ORDER ADOPTING) RULE R8-40))

BY THE COMMISSION: On September 15, 1970, the North Carolina Utilities Commission issued a Notice of Rulemaking Procedure proposing a rule for reporting impending emergencies, load reductions, and/or service interruptions in bulk power supply and related power facilities. This

rule requires reports to the Commission of service interruptions from all public utilities and Electric Membership Corporations engaged in the generation or transmission of electric energy subject to the jurisdiction of the Commission. The rule would further define the power interruptions to be reported, the time requirements and procedures for reporting and require information on certain operating conditions that do not necessarily result in interruptions of customer loads.

The proposed rule is in essence a formalization of a voluntary reporting procedure now in effect between the Commission and the major electric utility companies operating in the State. Comments were invited from interested persons to be submitted by November 2, 1970, to the Commission with the provision that if no objections were received by November 2, 1970, the Commission would consider adoption of the proposed Rule without hearing. The Commission Order further provided that if objections and requests for hearing were received, the matter would be set for hearing. No requests for hearing were received. Subsequent to this notice the North Carolina Electric Membership Corporation (North Carolina EMC) moved for an additional sixty days in which to file its comments. The Commission, being of the opinion that the nature of this matter should require that the Commission give the earliest possible consideration to it, ordered an extension based on its opinion that in fairness to North Carolina EMC, movant should be granted an extension of 15 days within which to file such statement as it wishes to make and that after completion of the movant's engineering studies the movant should not be precluded from filing a further statement.

In response to the proposed rule, the Commission received comments from four sources, North Carolina EMC, Duke Power Company, Virginia Electric and Power Company, and Carolina Power & Light Company. All four of these respondents made remarks concerning Section (b), Subsection 5, Paragraphs 5 (i) and 5 (ii).

The concensus of these objections and remarks are presented below under the headings of the pertinent sections in which objections were raised.

Responses to Proposed Paragraph 5 (i) The reporting of the loss of 10% of a utility's capacity could be caused by each loss of one large generating unit or by the loss of two smaller units with aggregate capacities comprising 10% of the system's capacity. It is further maintained by the investor owned utility respondents that losses of this magnitude (10% of system capacity) of capacity would not seriously affect a system's ability to provide adequate reserves as there are sufficient interconnections to enable a system to obtain necessary reserves through contractual arrangements with neighboring utility companies. All respondents believe that this rule would cause unnecessary reporting.

Responses to Proposed Paragraph 5 (ii) The respondents contend the exclusion of purchased power in computing reserve is misleading as many of these purchases are made on firm basis and may be considered as generating capacity in computing reserve. They further contend that these reports would lead to erroneous conclusions and unnecessary reporting.

Evaluating these objections and reconsidering the purpose of Section (b), Subsection (5), it appears that the intent of Paragraphs (i) and (ii) will be better served by revising Subsection (5) and eliminating Paragraphs (i) and (ii).

The North Carolina EMC in their Response on the Proposed Rule R8-40 also suggested an amendment to the Paragraph (a) on definitions. The recommendation made was to modify the last portion of the first sentence with the words, "or used in the supply of sales for resale." The North Carolina EMC apparently is desirous of having all unplanned outages to resale customers reported, including feeders, substation and transmission outages, without regard to the magnitude of supply voltage or load. This type information is not inferred nor presumed by this rule and would cause reporting not in accord with sub-regional of State level emergencies and, therefore, is not included in this rule.

The Commission finds that the proposed rule with amendments adopted in regard to comments filed in response to Rulemaking Docket E-100, Sub 8 is necessary and appropriate for the reporting of impending emergencies, load reductions and/or service interruptions in the bulk power supply and related power supply facilities.

IT IS, THEREFORE, ORDERED that the Rules and Regulations of the North Carolina Utilities Commission setting forth rules for reporting impending emergencies, load reductions and/or service interruptions in bulk electric power supply and related power supply facilities as set forth in Appendix A attached hereto is adopted as Rule R8-40 and applies to any public electric utility or Electric Membership Corporation engaged in the generation or transmission of electric energy. It is further ordered that this Rule is to become effective January 1, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This 30th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX A
NORTH CAROLINA UTILITIES COMMISSION

CHAPTER 8

RULE ESTABLISHING REQUIREMENTS FOR REPORTS OF BULK POWER INTERRUPTIONS

ARTICLE 7. POWER RELIABILITY.

RULE R8-40. REPORT OF IMPENDING EMERGENCIES, LOAD REDUCTIONS, AND/OR SERVICE INTERRUPTIONS IN BULK ELECTRIC POWER SUPPLY AND RELATED POWER SUPPLY FACILITIES

(a) Definitions. For the purpose of this rule, a bulk electric power supply interruption shall be any interruption or loss of service to customers of any public electric utility, or Electric Membership Corporation engaged in the generation or transmission of electric energy caused by or involving an outage of any generating unit or of electric facilities operating at a nominal voltage of 69 KV or higher. In determining the aggregate of loads which are interrupted, any load which is interrupted in accordance with the provisions of contracts permitting interruptions in service shall not be included.

(b) Telephonic reports. Every public electric utility and Electric Membership Corporation engaged in the generation or transmission of electric energy shall report promptly (Monday - Friday, during regular work hours) to the Electrical Division of the North Carolina Utilities Commission by telephone any event as described below in subparagraphs (b) 1, (b) 2, (b) 3, (b) 4, or (b) 5:

(1) Any decision to issue a public request for reduction in use of electricity.

(2) Any action to reduce firm customer loads by reduction of voltage for reasons of maintaining adequacy of bulk electric power supply.

(3) Any action to reduce firm customer loads by manual switching, operation of automatic load-shedding devices, or any other means for reasons of maintaining adequacy of bulk electric power supply.

(4) Any loss in service for 15 minutes or more of bulk electric power supply to aggregate loads in excess of 200,000 KW.

(5) Any outage in bulk power supply facilities, accident to system facilities, delays in construction, or substantial

delays in making repairs following unscheduled outages that are of consequence on a sub-regional or State basis, or which may constitute an unusual hazard to the reliability of electric service.

(c) Telegraphic or telephonic reports. Every public electric utility and Electric Membership Corporation engaged in the generation or transmission of electric energy shall report any event as described below to the Electrical Division of the North Carolina Utilities Commission by telephone or telegram addressed to the Director, Utilities Engineering Department, Raleigh, North Carolina.

These reports are to be made no later than the beginning of the Commission's next regular work day (Monday - Friday) after the interruption occurred. Events requiring a report are as follows:

Any loss in service for 15 minutes or more of bulk electric power supply to aggregate loads exceeding the lesser of 100,000 KW or half of the current annual system peak load, and not required to be reported under paragraph (b). See paragraph (d) for information to be reported.

(d) Information to be reported. The information supplied in the initial report should include at least the approximate territory affected by the interruption, the time of occurrence, the duration of an apprisal of the likely duration if service is still interrupted. An estimate of the number of customers and amount of load involved, and whether any known critical services, such as hospitals, pumping stations, traffic control systems, etc., were interrupted. To the extent known or suspected, the report desirably will include a description of the initial incident resulting in the interruption. The Commission or its representative may require further reports during or after the period of interruption and restoration of service, such reports to be made by telephone, telegraph or letter, as required.

(e) Special Investigations and reports.

(1) If so directed by the Commission, an entity experiencing a condition, as described in Sections (b) and (c), shall submit a full report of the circumstances surrounding such occurrence and the conclusions the entity has drawn therefrom. The report shall be filed at such time subsequent to the submittal of the

initial report by telephone or telegraph as may be directed by the Commission.

(2) The report shall be prepared in such detail as may be appropriate to the severity and complexity of the incident experienced and should include an account understandable to the informed layman in addition to the following technical and other information:

(i) The cause or causes of the incident clearly described, including the manner in which it was initiated.

(ii) A description of any operating conditions of an unusual nature preceding the initiation of the incident.

(iii) If the incident was an interruption and geographically widespread, an enumeration of the sequence of events contributing to its spread.

(iv) An account of the measures taken which prevented further spreading in the loss of service, e.g., manual or automatic load shedding, unit isolation, or system sectionalization. These actions and all chronicled events should be keyed to a record of the coincident frequencies which occurred.

(v) A description of the measures taken to restore service with particular evaluation of the availability of start-up power and the ease or difficulty of restoration.

(vi) A statement of the capacity of the transmission lines into the area of load interruption, the generating capacity in operation in the area at the beginning of the disturbance, and the actual loading on the generating units and, where available, the loading on the lines at that time. When actual loadings are not available, estimate the line loadings at the time to the extent possible.

(vii) A summary description of any equipment damage and the status of its repair.

(viii) A description of the impact of any load reduction or interruption on people and industries in the affected area, including a copy of materials in the printed news media indicative of the impact.

(ix) Information on the steps taken, being taken, or planned by the utility, to prevent recurrence of conditions of a similar nature, to ease problems of service restoration, and to minimize impacts on the public and the customers of any future conditions of a similar nature.

DOCKET NO. G-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Piedmont Natural Gas Company, Inc., for Modification of Order of the North Carolina Utilities Commission Entered on January 14, 1963, in Docket No. G-100, Sub 5, Pertaining to Accounting Procedure to be Followed by Gas Companies in Accounting for the Incentive/Investment Tax Credit Arising from the Revenue Act of 1962	SUPPLEMENTAL ORDER

BY THE COMMISSION: On February 20, 1970, Piedmont Natural Gas Company, Inc., filed a Petition in which it requested a modification, as it applies to the Petitioner, of an Order of this Commission issued in this docket on January 14, 1963.

The 1963 Order prescribed the accounting procedure to be followed by gas utilities subject to our jurisdiction in accounting for the Incentive/Investment Tax Credit enacted by the Congress in the Revenue Act of 1962, as amended.

The essential provisions of our Order of January 14, 1963, provided for the amortization of each annual tax credit through twenty-five (25) equal annual entries beginning with the year of the credit. Reduced to its essentials, the present Petition seeks authority for Petitioner to amortize the credits over a five (5) year period beginning January 1, 1970, rather than the twenty-five (25) year period as provided in our earlier Order.

Based on the facts presented in the Petition and on the financial statements and other records and information on file with the Commission with respect to the Petitioner's financial condition and operations, the Commission makes the follcwing

FINDINGS OF FACT

1. The Petitioner is a public utility engaged in the distribution and sale of natural gas in its franchised area and as such is to the jurisdiction of this Commission, including jurisdiction over the accounting procedures of the Petitioner.

2. By an order issued in this docket January 14, 1963, the Commission prescribed the accounting treatment to be employed by gas utilities operating under its jurisdiction in accounting for the effect of the so-called Incentive/Investment Tax Credit arising under the provisions of the Revenue Act of 1962. The Petitioner has adopted and used such accounting procedures effective with the closing of the books of account for the year 1962 and at all times thereafter.

3. The rapid increases experienced by the Petitioner in the cost of capital, wages, taxes, materials and gas purchased compel the Petitioner, in its opinion, to request that its investment tax credit be amortized over a five-year period thereby providing immediate income to partially offset the current problem of rising costs.

4. The modification requested by the Petitioner is reasonably appropriate to accomplish the purposes of the Petitioner in improving its level of earnings and is consistent with sound accounting principles.

CONCLUSIONS

The Commission finds and concludes that the modification of the Order entered herein on January 14, 1963, as requested by the Petitioner, is reasonable and consistent with the public interest and should be authorized.

IT IS, THEREFORE, ORDERED that the Order of the Commission issued in this docket on January 14, 1963, be modified, as it applies to the Petitioner, so that the portion of said Order providing for the accounting treatment of the Incentive/Investment Tax Credit shall read as follows:

1. Tax expense and accrued taxes shall first be reduced by the amount of the reduction in tax expense due to the Incentive Tax Credit.

2. Tax expense shall then be increased by the amount of the Incentive Tax Credit by debiting Investment Tax Credit Adjustments (Net).

3. Accumulated Deferred Investment Tax Credits shall be credited with the same amount of the Incentive Tax Credit as "2" above.

4. The balance in Accumulated Deferred Investment Tax Credits as of December 31, 1969, shall be amortized

over five (5) years beginning January 1, 1970, to Investment Tax Credit Adjustments (Net).

5. The amount of the Incentive Tax credited each year (beginning with the year commencing January 1, 1970) to Accumulated Deferred Investment Tax Credits, shall be amortized annually to the account, Investment Tax Credit Adjustments (Net), through five (5) equal annual entries beginning with the year of the Incentive Tax Credit.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. G-100, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing Gas Leak Reports with the North Carolina Utilities Commission and the U.S. Department of Transportation, Office of Pipeline Safety	) ORDER ESTABLISHING) LEAK REPORTING) REQUIREMENTS)

BY THE COMMISSION: The Office of Pipeline Safety of the U.S. Department of Transportation has promulgated requirements for the reporting of gas leaks by gas operators, Federal Register, Volume 35, No. 5.

The requirements provide that written gas leak reports for intrastate facilities, subject to the jurisdiction of a State Commission pursuant to certification under Section 5(a) of the Natural Gas Pipeline Safety Act, may be submitted in duplicate to the state agency for further transmittal of one copy to the Office of Pipeline Safety.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That all gas utilities subject to the jurisdiction of the North Carolina Utilities Commission serving 100,000 customers or more shall submit two (2) copies of each report called for in Part 191 of Title 49, Code of Federal Regulations, to the Commission. The Secretary of the North Carolina Utilities Commission is hereby authorized to transmit one (1) copy of each such report to the U.S. Department of Transportation, Office of Pipeline Safety.

ISSUED BY ORDER OF THE COMMISSION.

This 5th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. G-100, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Minimum Federal Safety Standards for Pipeline Facilities and Transportation of Gas under Natural Gas Pipeline Safety Act as Codified in 49 USC 1671, et seq.	))))	ORDER ADOPTING FEDERAL NATURAL GAS PIPELINE MINIMUM SAFETY STANDARDS

BY THE COMMISSION: The Office of Pipeline Safety of the U. S. Department of Transportation has promulgated minimum safety standards for pipeline facilities and the transportation of gas in 49 CFR, Part 192.

The minimum federal standards hereinabove referred to apply to all facilities under the jurisdiction of the Department of Transportation and in such states in which no such standards are in effect. Under the provisions of 49 USC 1671, et seq., any state regulatory agency having jurisdiction over the transportation of gas and pipeline facilities in such state may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission.

Under the provisions of G. S. 62-50, the North Carolina Utilities Commission has jurisdiction over portions of intrastate natural gas pipelines within North Carolina and has authority over interstate natural gas companies to the extent therein stated and intrastate natural gas utilities.

The Commission is of the opinion that in many instances state safety standards under North Carolina law under the authority of this Commission exceed minimum federal safety standards. However, the Commission concludes that in the interest of cooperative regulation with appropriate federal agencies and in view of the specific legislative mandate under the provisions of G.S. 62-2 and G.S. 62-50, that the minimum federal standards for natural gas pipeline safety as adopted by the Department of Transportation in 49 CFR, Part 192, should be adopted and made applicable to such gas pipeline facilities and facilities for transportation of natural gas under the jurisdiction of this Commission. Accordingly, under authority of G.S. 62-31,

IT IS, THEREFORE, ORDERED as follows:

(1) That the minimum federal standards pertaining to gas pipeline safety and the transportation of natural gas as adopted in 49 CFR, Part 192, as are in effect as of the date of this Order, be, and the same hereby are, adopted by this Commission to be applicable to all natural gas facilities under its jurisdiction as an amendment to Rule R6-39(b) of the Commission's Rules and Regulations, except as to those requirements of North Carolina law which exceed or are more

stringent than the standards set forth in the above mentioned federal enactment, and further with the exception of any subsequent modification or amendments to the North Carolina safety standards.

(2) That a copy of this Order be mailed to all natural gas utilities under the jurisdiction of this Commission.

(3) That a copy of this Order be transmitted to the Department of Transportation, Washington, D. C.

ISSUED BY ORDER OF THE COMMISSION.

This 30th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. E-7, SUB 123

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Duke Power Company - Application for Authority to Enter Into a Lease Arrangement Covering Certain Combustion Turbine Units	) ORDER GRANTING) AUTHORITY TO ENTER) INTO LEASE) ARRANGEMENT

HEARD: In the Commission Hearing Room, Raleigh, North Carolina, on November 25, 1970, at 9:00 o'clock a.m.

BEFORE: Chairman Harry T. Westcott, and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Applicant:

Carl Horn, Jr.
General Counsel, Duke Power Company
422 S. Church Street
Charlotte, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

This proceeding is before the Commission upon an Application of Duke Power Company (hereafter called "Duke") filed November 13, 1970, as amended by an Amendment to Application filed November 20, 1970, wherein approval of the Commission is sought to enter into an arrangement for transfer and lease with respect to twenty-five (25) combustion turbine generating units.

Based on the evidence of record herein, the records of the Commission, and the verified representations in the Application, the Commission makes the following

FINDINGS OF FACT

1. Duke is a corporation duly organized and existing under the laws of the State of North Carolina. It is duly authorized to engage in the business of generating, transmitting, distributing and selling electric power and energy and in the business of operating water supply systems and urban transportation systems. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on the business above mentioned in both states. It is a public utility under the laws of this State and in its operations in this State is subject to the jurisdiction

of this Commission. It is a public utility under the laws of the State of South Carolina and under the Federal Power Act.

2. At October 31, 1970, Duke's short-term obligations amounted to $97,533,500 and are expected to reach about $184,000,000 by January 31, 1971, which funds have been or will be expended in continuing Duke's construction program of substantial additions to its electric generation, transmission and distribution facilities in order to meet the continuing increase in demand for electric service.

3. During 1969, expenditures for Duke's construction program were $282,806,000, and are estimated to be $358,000,000 in 1970.

4. Duke proposes to enter into the lease arrangement described below for the purpose of obtaining funds to finance the cost of construction of additions to its electric plant facilities, including the repayment of a substantial amount of outstanding short-term obligations (bank loans and commercial paper) incurred for its construction program.

5. In the conduct of its utility business, Duke owns and has placed in service or has under order for service prior to its anticipated 1971 summer peak twenty-five (25) combustion turbine generating units (the "Equipment") which are described in Schedule A of Exhibit J attached to and made a part of the Application.

6. The proposed lease arrangement, which is described in the Application, as amended, is as follows:

(a) The Equipment is proposed to be sold by Duke (or by the manufacturer in the case of Equipment not yet received by or titled in Duke) to one or more commercial banks (hereinafter singly or collectively referred to as the "Lessor") for a total price of approximately $65,500,000. With respect to Equipment heretofore purchased, such price is the book cost less depreciation as of the date of closing. With respect to the Equipment under order, such price includes the estimated purchase cost. Such purchase price also includes interest on the Notes hereinafter referred to from date of issuance to October 14, 1971, and all other expenses estimated to be incurred in this transaction.

(b) The Lessor will lease the Equipment to Duke for an interim term which will expire on October 15, 1971, and for an initial lease term of twenty-five (25) years which will expire on October 15, 1996, plus three (3) optional three-year renewal terms under the terms and conditions substantially as described in a proposed Lease Agreement, a copy of which is attached to the Application as Exhibit J (the "Lease").

(c) Rent will be payable semi-annually in arrears in an amount sufficient to pay interest only on the cost of the Equipment during the interim term and the first ten (10) years of the initial lease term and to amortize, with interest, the total capitalized cost of the Equipment over the remaining fifteen (15) years of the initial term.

(d) The Lease will be noncancellable by Duke, except in the event of condemnation or casualty, during the first ten (10) years of the initial lease term. Thereafter, commencing in the eleventh (11) year and ending in the twenty-third (23) year, Duke shall have the right to terminate the Lease and purchase the Equipment at its then unamortized cost plus a premium which shall be approximately 5.8% in the eleventh (11) year and declining in each succeeding year to approximately .77% in the twenty-third (23) year. In addition, if, after the tenth (10) year of the initial lease term, Duke should determine that the continued use of the Equipment is no longer economically practicable, it may terminate the Lease after thirty (30) days' notice and upon payment of the then unamortized cost of the Equipment. In such case, Duke would be required to discontinue use of the Equipment but could dispose of it by sale or otherwise to third parties.

(e) The Lease will be a net Lease in that Duke will pay as additional rent all expenses in connection with the Equipment, including taxes, charges in lieu of taxes, assessments, insurance premiums, all costs of operation, repair, maintenance and rebuilding and any other charges related to its use.

(f) The Lessor will obtain the funds to purchase the Equipment by issuing its Certificate(s) of Interest to DPC Equipment, Inc. ("DPC"), a Delaware corporation, all of whose stock will be owned by employees of Goldman, Sachs & Co. (an investment banking firm with its principal offices located at 55 Broad Street, New York, New York) or a nominee of Goldman, Sachs & Co. Such Certificate(s) shall acknowledge receipt of the funds and provide for their repayment out of and only to the extent of rent and other payments received by the Lessor under the Lease. The Certificate(s) of Interest will be secured by a security interest in favor of DPC and, if necessary or desirable, Duke will acknowledge an obligation to DPC to perform its duties under the Lease.

(g) DPC will obtain the funds to acquire the Certificate(s) of Interest by issuing its secured notes (the "Notes") to one or more lenders at private sale. The Notes shall be secured by an assignment by DPC to Irving Trust Company and an individual, as Trustees, of DPC's rights in the Certificate(s) of Interest and its security interest in the Equipment.

(h) The interest rate to be borne by the Notes (which interest rate will, in effect, determine the level of rent

to be paid by Duke) will be negotiated by Duke with Goldman, Sachs & Co., subject to approval of the Commission. Said firm will then undertake to market the Notes on a "best efforts" basis to private lenders. Duke represents that it is advised and believes that the interest rate required to market the Notes will be approximately the equivalent of the rate that would be demanded in the private placement market for a debenture issue by Duke of comparable amount.

(i) Duke will have the absolute and uncontrolled right to use the Equipment in its electric utility operations, subject only to the conditions of the Lease; and Duke will exercise the same measure of control over the operation and management of the Equipment as it exercises or would exercise as owner. The Lease will not, therefore, impair Duke's ability to perform its services to the public as an electric utility, nor shall it relieve Duke of any of its responsibilities as an electric utility with respect to the operation or maintenance of the Equipment, or otherwise.

(j) The Lessor shall not at any time exercise any measure of control or direction over the performance by Duke of its service as a public utility; nor shall the lessor have any economic interest in or liability with respect to the Equipment or the Lease, except that at the time the Lease terminates (either at the end of the initial lease term or any renewal term) it shall be entitled to the residual value of the Equipment unless Duke shall have exercised its right, hereinbefore mentioned, to terminate the Lease and acquire the Equipment. The Lessor shall not, therefore, render any service to the public as a utility or exercise any of the rights, privileges, duties or obligations of a public utility. It shall derive no compensation or bear any risk of loss as owner or lessor of the Equipment, except that Duke proposes to reimburse the Lessor for its reasonable costs incurred in performing the services described in the Application. Duke shall assume full public utility responsibility with respect to the Equipment, including without limitation, the obtaining and maintaining of any permits and certificates and the filing of any reports which might from time to time be required in connection with its ownership or operation. Duke has, as required by law, previously obtained Certificates of Public Convenience and Necessity with respect to the installation and operation of the Equipment.

7. Duke shall not agree on the final interest rate without further approval of this Commission.

8. No fee for services (other than attorneys, accountants, rating services and fees for similar technical services) in connection with the negotiation or consummation of the lease transaction or for services in securing investors in the Notes (other than fees to be paid the aforesaid investment banking firm as set forth below) will be paid in connection with the transaction. The fee to be paid Goldman, Sachs & Co. will be 1/2% of the first

$20,000,000 of Equipment involved, 3/8% of the next $30,000,000 and 1.4% of all over $50,000,000. The other expenses to be incurred by Duke in connection with the transaction are not expected to exceed $100,000.

CONCLUSIONS

From a review and study of the Application, its supporting data and other information in the Commission's files, and from evidence presented at the hearing on November 25, 1970, the Commission is of the opinion and so concludes that the transaction herein proposed is:

(a) For a lawful object within the corporate purposes of Duke;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Duke of its service to the public and will not impair its ability to perform that service;

(d) Reasonably necessary and appropriate for such purposes;

IT IS, THEREFORE, ORDERED that Duke Power Company be, and it is hereby authorized, empowered and permitted, subject to the limitations contained in paragraph 3 below:

1. To enter into the net lease financing transaction described in this Order and in the Application, as amended, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transaction.

2. To enter into negotiations with Goldman, Sachs & Co. for the sale of the $65,500,000 Notes at an interest rate to be agreed upon as provided in paragraph 3 below.

3. The issuance and sale of the Notes shall not be consummated until the results of negotiations with the underwriter has been made a matter of record in this proceeding and a supplemental order entered by this Commission approving the interest rate to be borne by the Notes.

4. The proceeds to be derived from the lease transaction shall be devoted to the purposes set forth in the Application.

5. Duke shall file with this Commission, within thirty (30) days after the lease transaction is consummated, a report setting forth the final terms of such transaction (including the price received by Duke for the Equipment, and the expenses of the transaction), and within such time Duke shall file with this Commission a copy of the Lease and all

other instruments, documents and agreements entered into by Duke that are material to the transaction in the final form in which the same are executed.

6. That this proceeding be, and the same is, continued on the docket of the Commission, without day, for the purpose of receiving the aforementioned documents and the terminal results of the lease transaction, as hereinabove provided, and nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law or to relieve Duke from compliance with any provision of law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.
This 25th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. E-7, SUB 123

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Duke Power Company - Application for Authority to Enter Into a Lease Arrangement Covering Certain Combustion Turbine Units	))))	SUPPLEMENTAL ORDER APPROVING INTEREST RATE

By Order dated November 25, 1970, the Commission authorized Duke Power Company to enter into a net lease financing transaction, as described in said Order, under which Duke would transfer and sell certain combustion turbine generating units to one or more commercial banks for a total sale price of approximately $65,500,000 and to lease said equipment under lease agreements as approved in said Order, the lease payments to be determined by the interest rate on notes to be issued by DPC Equipment, Inc., and to negotiate with Goldman, Sachs & Co. for the interest rate on said notes, subject to the approval of the North Carolina Utilities Commission, as set out in said Order of November 25, 1970.

On December 2, 1970, Duke Power Company informed the Commission by telephone and telegraph that it had negotiated with Goldman, Sachs & Co. an interest rate not to exceed 9% with respect to said approximately $65,500,000 of secured notes, subject to approval of the Utilities Commission, and it appearing to the Commission, on the basis of interest rates charged for securities of comparable quality during the period immediately preceding said negotiations on December 2, 1970, that said interest rate not to exceed 9% is just and reasonable and in compliance with the requirements of the North Carolina Public Utilities Act on the basis of the record herein,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the interest rate not to exceed 9% per annum with respect to approximately $65,500,000 of secured notes proposed to be issued in connection with the net lease financing transaction approved herein be, and the same is, hereby approved.

2. That Duke Power Company be, and is hereby, authorized, empowered and permitted to consummate said transaction as set forth in the Order entered herein on November 25, 1970.

3. That this proceeding be, and the same is, continued on the docket of the Commission to receive the final reports of consummation of said transaction as provided and required under the Order entered herein on November 25, 1970.

ISSUED BY ORDER OF THE COMMISSION.

This 2nd day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing by Duke Power Company of Fuel Cost Adjustment Clause Resulting in Increases in Bills for Electric Service in an Amount Ranging from .9% to 5.5%	ORDER DENYING FUEL COST ADJUSTMENT CLAUSE

HEARD: Hearing Room of the Utilities Commission, Raleigh, North Carolina

DATE: February 17, 18, 19, 1970

BEFORE: Chairman H. T. Westcott, Presiding; Commissioners John W. McDevitt, Marvin R. Wooten and Miles Rhyne

APPEARANCES:

For the Applicant-Respondent:

Carl Horn, Jr.
George W. Ferguson, Jr.
Steve C. Griffith, Jr.
422 S. Church Street
Charlotte, N. C. 28201
For: Duke Power Company

For the Intervenors:

J. O. Tally, Jr.
Tally, Tally & Bouknight
P. O. Drawer 1660, Fayetteville, N. C.
For: ElectriCities of North Carolina, and the Cities of Statesville, et al.

William T. Crisp
Crisp & Twiggs
613 Branch Bank Building
Raleigh, N. C.
For: North Carolina Electric Membership Corporation and Piedmont Electric Membership Corporation

Richard S. Clark
Clark, Huffman & Griffin
Monroe, North Carolina
For: N.C. Consumers Council

For the Public:

Maurice W. Horne, Special Assistant
Department of Justice
Room 124, Ruffin Building
Raleigh, N. C. 27602
For: The Using and Consuming Public of North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
217 Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On July 24, 1969, Duke Power Company (Duke) filed with the Commission its "Fuel Cost Adjustment Clause" (hereinafter called Fuel Clause) by which the company proposed to adjust monthly electric bills by an amount based upon increases or decreases in the cost of fossil fuels burned in the company's generating stations to go into effect on bills rendered on and after September 1, 1969.

The Fuel Clause filed by Duke was accompanied by a written statement setting forth the increases which would result in the customers' bills based on estimates of fuel costs applicable under the Fuel Clause from 1970 to 1973, varying in accordance with the increase in the cost of fuel, the BTU content of the fuel, and the number of kilowatt-hours consumed by each customer.

During 1970, the increases in electric bills estimated under the proposed Fuel Clause would range from .9% to 2.5% for residential customers, from .8% to 4.3% for a general

service customer, and from 3.9% to 5.5% for industrial customers. The total amount of increases in customers' bills estimated for 1970 under the Fuel Clause would be $13,000,000.

The Fuel Clause proposed by Duke is based upon the cost of fossil fuel at any given time in the future as compared with the base price adopted for the Fuel Clause of 28 cents per million BTU of fuel based on 1968 fuel prices, as follows:

FUEL COST ADJUSTMENT CLAUSE

"Applicability

This clause is applicable to and is a part of all of the Company's rate schedules for the billing of electric energy, the same as if written into each schedule.

"Adjustment of Bill

Current net monthly bills shall be increased or decreased, per kilowatt-hour billed, by an amount, to the nearest one ten thousandths of a cent, equal to the product of (a) that portion of the average cost, in cents per million BTU, which is above 28.00 cents or below 26.00 cents, of fossil fuels burned in the Company's own generating stations during the second month preceding the current billing month, and (b) the number of millions of BTU in such fuels, divided by the total sales of energy, in kilowatt-hours, during the same month.

The fuel cost adjustment set forth herein is net and it shall become a part of the net bill rendered. If the adjustment is a charge, it shall be added to the minimum monthly bill stated in the Company's rate schedules, but if it is a credit it shall not be subtracted from such minimum monthly bill."

The Fuel Clause is proposed to be a part of all of the company's rate schedules in North Carolina, except street lighting, rates for certain energy supplied pursuant to contract with the Southeastern Electric Power Administration, rates for Yadkin, Inc., and rates for the Carolinas-Virginia power pool (CARVA) agreement.

The Fuel Clause is thus proposed to apply to all of the company's retail customers in North Carolina, including residential customers, general service customers, and industrial customers under all of the company's rate schedules for the billing of electric energy.

The written statement attached to the filing of the Fuel Clause estimates the following increases in company revenue resulting from application of the Fuel Clause based on the estimated cost of fuel in the future, as follows:

YEAR	INCREASED REVENUE	INCREASE IN CUSTOMERS' RATES
1970	$13,000,000	.0385 cents KWH
1971	$16,000,000	.0403 cents KWH
1972	$17,000,000	.0396 cents KWH
1973	$18,000,000	.0375 cents KWH

On August 12, 1969, the Commission entered its Order suspending the proposed rate increases under the Fuel Cost Adjustment Clause, declaring the Fuel Clause to be a general rate case to be determined under G.S. 62-133, ordering Duke to file all of the data and information required for general rate cases, and establishing provision for public notice and protests and intervention in the investigation and setting public hearing on the Fuel Clause.

Interventions were allowed for ElectriCities of North Carolina, the City of Statesville, North Carolina Electric Membership Corporation, Piedmont Electric Membership Corporation, N. C. Consumers Council, and by the Attorney General on behalf of the using and consuming public of North Carolina. The protestants and intervenors filed motions to dismiss the Fuel Clause for grounds set forth in the Motions and Petitions, based primarily on the contention that a Fuel Cost Adjustment Clause of the type filed by Duke was an improper and unlawful method of increasing utility rates under the North Carolina Public Utilities Act and under the Constitution of North Carolina and under the Constitution of the United States.

The Fuel Clause was set for public hearing and was heard in public hearing in Raleigh, North Carolina, from February 17, 1970, through February 19, 1970.

Duke contends primarily in support of the Fuel Clause that the cost of fuel for electric generation comprises 31% of the total operating expenses of the company, and the Fuel Clause is introduced to offset the rise in the price of coal, as the major component of operating expenses. Under the filing and the supplement subsequently filed by Duke and under the pleadings and statements in oral argument of counsel, Duke contended that the Fuel Clause was not intended to secure a general increase in its rate of return as in the case of a general increase in utility rates, but was designed to serve in a measure to protect Duke from the increased cost of fossil fuels known and estimated in the future by passing on such increase fuel costs directly to its customers through the Fuel Clause and thus maintain its rate of return without the necessity of constant repeated applications for rate increases each time the increased cost of fuel would result in lowered earnings for Duke.

The Commission ordered a full hearing on all earning data of Duke to determine if Duke was already earning a fair rate of return, irrespective of the cost of fuel, to determine if

any increase was justified in fixing just and reasonable rates under the North Carolina Public Utilities Act.

At the public hearing, Duke offered testimony and exhibits as follows:

Duke Vice President and Rate Engineer, Glen A. Coan, offered data and information in testimony and exhibits as to the effect and results of the proposed Fuel Clause;

Testimony and exhibits of the manager of fuel purchases of its subsidiary, Mill Power Supply Company, Mr. William T. Robinson, Jr., setting forth the purchasing practices of Duke in buying coal and the recent increases in the cost of coal and the transportation of coal, the shortages of coal supplies predicted in the future and recent action of Duke in agreeing to furnish preferred stock capital for a coal mine in order to open new mines to help insure a continued adequate supply of coal for Duke's steam generators;

Testimony and exhibits of its Treasurer, Robert E. Frazier, setting forth the present financial condition of Duke, including its earnings, its rate of return, its needs for financing of capital expansion program in construction of $1,000,000,000 of additional electric generation capacity in the next seven years, to assure adequate supply of electric power in North Carolina in the future;

Testimony and exhibits of an expert security analyst, Henry J. Bingham of Spenser Trask & Company of New York, giving opinion testimony as to reasonable rate of return on capital investment and the rate of return required to attract additional capital in the form of bonds and stocks by Duke Power Company to finance capital construction in the future years;

Testimony of B. U. Ratchford, expert economist, relating to the rate of return and the need for an increase in the rate of return of Duke Power Company to attract additional capital for capital construction in North Carolina for needed electric power in the future;

Testimony of John B. Gillett, professional engineer, giving evidence and opinion as to the trended cost of Duke plant in North Carolina as a factor in fixing the fair value of the Duke plant devoted to public service in North Carolina.

The Commission Staff offered the testimony of the following:

Stewart J. Painter, Director of Accounting, showing the results of Staff audit of Duke's books and certain adjustments in Duke's books to show full revenues and expenses and reasonable costs at the end of the period of net investment;

Robert K. Koger, Director of Engineering, with testimony and exhibits as to the allocation of Duke's electric plant in North Carolina between its retail customers and wholesale customers for determination of the plant serving the retail customers subjection to the proposed Fuel Clause;

Testimony and exhibits of J. W. Smith, Director of Economics & Planning for the Utilities Commission Staff, showing the cost of money on the present capital money market including debt capital and equity capital and exhibits showing the fair rate of return and the effect of the proposed Fuel Clause on Duke's rate of return.

The protestants offered testimony of D. Franklin Rogers, professional engineer and expert in electrical utility rates, including testimony and exhibits contending that Duke's Fuel Clause is not a valid basis for measuring Duke's cost of service to customers in North Carolina and would not produce equitable increases in rates for Duke.

Based upon the testimony and exhibits of record, the verified pleadings and the written statements filed by Duke with the tariff filed herein, the Commission makes the following

FINDINGS OF FACT

(1) Duke Power Company is a regulated public utility operating in North Carolina under a franchise issued by the North Carolina Utilities Commission and has on file with the Utilities Commission its rates and charges for retail electric service subject to regulation under the North Carolina Public Utilities Act.

(2) Duke has electric service in North Carolina and South Carolina and the plant devoted to service in North Carolina can be separated from the plant devoted to service in South Carolina on reasonably recognized accounting and engineering principles, and based upon the testimony of expert engineers making such allocations, the net investment of Duke in its electric plant devoted to public use in North Carolina at the end of the test period June 30, 1969, was $839,052,538.

(3) Duke Power Company sells electric power at both wholesale and retail in North Carolina and its retail rates are fixed by the Utilities Commission and its wholesale rates are fixed by the Federal Power Commission.

(4) The electric plant of Duke in North Carolina devoted to public service can be allocated according to recognized engineering and accounting principles between the plant devoted to retail and the plant devoted to wholesale services, and based upon expert studies and allocations, the net investments of Duke in its electric plant devoted to retail electric service in North Carolina at the end of the test period on June 30, 1969, was $759,247,352.

(5) The Fuel Adjustment Clause provision proposed by Duke in this proceeding becomes operative and increases the rate per kilowatt-hour of electric current to its customers immediately upon going into effect and automatically increases electric rates to Duke customers irrespective of the overall cost of service of Duke, and would produce rate increases for Duke irrespective of whether increases in Duke's thermal efficiency and plant utilization offset the increases in cost of fossil fuel.

(6) The Duke Fuel Clause would place in the hands of Duke and its suppliers of fuel the power to increase all retail electric rates in North Carolina by private contracts increasing the price of fuel per BTU, without regard to whether said rates were just and reasonable under the North Carolina Public Utilities Act, and without hearing, proof, or evidence of all elements of cost and the rate of return of Duke, and without proper findings of the Commission as to the need or justification of such increase in all retail rates and without any findings as to whether such increase in all retail rates is just and reasonable.

(7) The Fuel Clause takes into account only 30% of Duke's cost in providing electric service and fails to account for the effect of improvements or changes in other major costs, including labor costs, transmission costs, distribution costs, capital construction costs, interest costs, taxes, cost of equity capital, and such increases cannot be granted without proper consideration of all costs of service.

(8) Duke's proposed Fuel Clause could produce increases in Duke's electric rates in North Carolina without any opportunity of the Duke customers or the public to be heard, and without any opportunity to examine said rate increases to determine if they are just and reasonable and non-discriminatory and without any opportunity to determine the fair rate of return or fair value of Duke's property during said time in the future, and any rate increase so imposed under the Fuel Clause, together with the Fuel Clause itself, is therefore considered by the Commission to be unjust and unreasonable.

CONCLUSIONS

The North Carolina Public Utilities Act requires that the Utilities Commission fix rates which are just and reasonable in accordance with the statutory formula prescribed in G.S. 62-133, based upon rates which are fair to Duke and fair to the customers in accordance with such formula for determining a fair rate of return to Duke on the fair value of its property devoted to public service in North Carolina.

The Fuel Clause proposed by Duke would provide automatic increases in its electric rates for all its retail customers in North Carolina each time that the cost of fossil fuel to Duke would rise above the base price of 28 cents per million BTU. Duke has made certain estimates of what it believes

would be the cost of coal in the next 5 years and admits on each estimate that an increase over present rates would be imposed by the Fuel Clause appearing in each of said years. The estimates must be accepted as estimates only, as during a time of inflation no one can predict accurately the exact and precise cost of fossil fuel and the amount of rate increases which would be produced by the Fuel Clause.

Duke has made substantial improvements in the heat rate of its steam generating plants in recent years and has under construction at the present time substantial additional plant for generation of electricity by nuclear energy. Each of these factors would have a bearing upon the necessity for imposing the Fuel Clause, based upon present fossil fuel costs, upon all of Duke's retail rates.

The Commission set the investigation in this proceeding as a general rate case because the Fuel Clause would increase rates to all of Duke's retail customers in North Carolina, and because the approval of a Fuel Clause would require first a finding that an increase in rates was just and reasonable at the present time in order for the Fuel Clause to be allowed as an increase in rates.

Because the Utilities Commission has found in this proceeding that the Fuel Clause proposed by Duke Power Company is unjust and unreasonable, it is not necessary in this instance to determine if Duke is presently earning a fair rate of return on the fair value of its plant devoted to retail electric service in North Carolina.

The evidence is conclusive that Duke must construct large additional generation, transmission and distribution capacities to satisfy the increased demands for electric power in North Carolina. The undisputed testimony in this proceeding shows that Duke will have to double the present size of its generating capacity in the next 4 years by construction of new generating transmission and distribution plant at a cost of $1,241,800,000.

The testimony further discloses that $379,700,000 of this money will be available from retained earnings and depreciation reserves, and the remaining $862,100,000 must be raised in the capital market by the sale of bonds and stock.

Inasmuch as the Commission finds in this proceeding that the Fuel Clause is unjust and unreasonable, it does not answer the question as to whether Duke's present rates are just and reasonable.

The Duke retail customers in North Carolina have a vital interest in knowing that Duke will be financially able to raise the necessary additional capital to complete expansion of its plant and the provision of additional electric power in its service area.

Duke is advertent to the provisions of the North Carolina Utilities Act in the event the expansion and construction of additional generating capacity should affect its ability to raise capital and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors. G.S. 62-133(b)(4).

A determination is not made in this proceeding as to the adequacy of Duke's earnings. The initial scope of the present hearing was to determine the justness and reasonableness of the Fuel Clause which has been found unjust and unreasonable and is denied. Duke customers have not had notice and opportunity to be heard in this filing and on this record as to any other alternatives to the Fuel Clause, if the record should show that present earnings are not adequate to compete in the capital market for funds for the needed plant expansion. If and when evidence should be presented to this Commission as to the reasonableness and justness of Duke's rates in another proceeding, the customer affected by such proceeding would have notice of the proposed method of adjusting rates and an opportunity to be heard on such proposal.

IT IS, THEREFORE, ORDERED that the filing and use of the Fuel Cost Adjustment Clause by Duke Power Company proposed in this proceeding be, and the same is, hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This 24th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

Commissioner Wells did not participate in the consideration or decision of this proceeding.

DOCKET NO. E-7, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing by Duke Power Company of Fuel Cost Adjustment Clause Resulting in Increases in Bills for Electric Service in an Amount Ranging from .9% to 5.5%	ORDER OVERRULING EXCEPTIONS AND AFFIRMING ORDER OF MARCH 24, 1970

HEARD: Hearing Room of the Utilities Commission, Raleigh, North Carolina

DATE: June 23, 1970

BEFORE: Chairman H. T. Westcott, Presiding; Commissioners John W. McDevitt, Marvin R. Wooten, and Miles H. Rhyne

APPEARANCES:

For the Applicant:

Carl Horn, Jr.
General Counsel
Duke Power Company
Charlotte, N. C.

George Ferguson, Jr.
and Steve Griffith, Jr.
Assistant Counsel
Duke Power Company
Charlotte, N. C.

Clawson L. Williams, Jr.
Attorney at Law
1004 BB&T Building
Raleigh, N. C.

For the Protestants:

Lon Bouknight
Tally, Tally & Bouknight
Box 1660, Fayetteville, N. C.
For: ElectriCities and Municipal Intervenors

Thomas J. Bolch
Crisp & Twiggs
P. O. Box 1549, Raleigh, N. C.
For: North Carolina Electric Membership
Corporation and Piedmont
Electric Membership Corporation

For the Public:

Maurice W. Horne
Special Assistant
Office of Attorney General
Box 629, Raleigh, N. C.
For: The Using and Consuming Public
of North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
217 Ruffin Building
Raleigh, N. C.

BY THE COMMISSION: This procedure was instituted on July 24, 1969, with the filing by Duke Power Company of its "Fuel Cost Adjustment Clause" (hereinafter called "Fuel Clause").

The Fuel Clause was set for public hearing and was heard by the Full Commission in Raleigh, North Carolina, on

February 17, 1970, through February 19, 1970, and on March 24, 1970, the Commission entered its Order denying the Fuel Clause on the merits of the filing and the interventions filed in the proceeding, on the grounds set forth in said Order.

On April 23, 1970, Duke Power Company filed Notice of Appeal and Exceptions to the Order of March 24, 1970, together with its Petition for Further Hearing on the Exceptions. By Order of May 25, 1970, the Commission set the Exceptions for hearing on June 23, 1970, and extended time for perfecting an appeal in the proceeding until thirty (30) days following the Commission's ruling on said Exceptions, subject, however, to the rules of the North Carolina Court of Appeals relating to such extension of time for perfecting such appeal. The proceeding came on for hearing as scheduled on June 23, 1970, before the Full Commission in Raleigh, North Carolina, and the applicant Duke Power Company was heard in oral argument by its counsel of record, Carl Horn, Jr.; and the protestants were heard through their respective counsel of record, Lon Bouknight and Thomas J. Bolch; and the Attorney General for the using and consuming public was heard by Maurice W. Horne; and all counsel of record having ably argued the Exceptions of Duke Power Company, and the Commission, having considered all of the Exceptions of Duke Power Company as filed herein on April 23, 1970, and having considered the record herein as argued on such Exceptions to the Order of March 24, 1970, and the entire record in this proceeding, is of the opinion that said Exceptions, and each and every one thereof, including Exceptions Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are without merit and should be overruled, and the Order of March 24, 1970, denying the Fuel Clause should be affirmed for the reason that all of the portions of said Order and the signing thereof, to which Exceptions are taken, are found to be supported by the record and by the laws of North Carolina; and that said portions of said Order of March 24, 1970, to which said Exceptions are taken, are reaffirmed for the reasons set forth in said Order of March 24, 1970, and the Commission finds and hereby reaffirms its findings that said Fuel Clause is unjust and unreasonable, for the reasons set forth in said Order of March 24, 1970, and in the Findings of Fact and Conclusions set out in said Order, and said Exceptions to said Order are without merit and should be denied.

The Commission further finds that the evidence of record in this proceeding is sufficient to warrant and support all of the Findings of Fact, Conclusions, and Order of the Commission in said Order of March 24, 1970, and that said Order is hereby reaffirmed.

IT IS, THEREFORE, ORDERED that Exceptions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and each of them, are hereby overruled and denied, and the Findings of Fact, Conclusions and Order entered in this proceeding on March 24, 1970, to which said Exceptions relate, are hereby reaffirmed as the

Order of the Commission as of the date issued of March 24, 1970, and the appellant Duke Power Company is given thirty (30) days after the issuance of this Order in which to perfect its appeal, subject to the maximum time for docketing appeals under the rules of the North Carolina Court of Appeals.

ISSUED BY ORDER OF THE COMMISSION.

This 24th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. E-2, SUB 197

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Power & Light Company – Application for Authority to Issue and Sell Securities	)	ORDER GRANTING AUTHORITY TO ISSUE AND SELL SECURITIES

On September 16, 1970, Carolina Power & Light Company (Company), filed an Application for authority to issue and sell not to exceed 1,250,000 additional shares of common stock, without par value, to Underwriters in accordance with the provisions of an Underwriting Agreement, under the terms of which the Underwriters propose promptly to make a public offering of such shares of common stock. A draft of the proposed Underwriting Agreement was presented with the Application as Exhibit A.

From a review of the Application, together with exhibits attached thereto, and the records on file with the Commission with respect to the Company's financial condition and operations, the Commission makes the following

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 336 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in generating, transmitting, delivering and furnishing electricity to the public for compensation.

2. The Company proposes to negotiate on October 13, 1970, the sale of not to exceed 1,250,000 additional shares of common stock, without par value, to a group of Underwriters represented by Merrill Lynch, Pierce, Fenner & Smith, Incorporated, in accordance with the provisions of an Underwriting Agreement substantially in the form annexed as Exhibit A to the Application herein. The price per share to be paid to the Company for such shares of common stock will

be determined through such negotiations; but the Company represents that it will negotiate a price therefor not less than 93% of the last sale price of the Company's common stock on the New York Stock Exchange on October 13, 1970.

3. In the past the Company has negotiated upon favorable terms and conditions the sale of both common stock and Serial Preferred Stock to Underwriters in accordance with the provisions of underwriting agreements similar to the proposed agreement which is attached to its application. The Company is of the opinion that its proposed negotiated sale of not to exceed 1,250,000 additional shares of common stock will result in the best price to the Company for such securities under present market conditions.

4. The Company proposes to apply the net proceeds from the sale of the additional shares of common stock to the repayment in part of outstanding short-term loans incurred by the Company in connection with financing the cost of construction of additional electric plant facilities, which short-term loans totaled $72,703,691 at July 31, 1970, were reduced to $34,504,000 on August 7, 1970, following the sale of $50,000,000 First Mortgage Bonds, 8-3/4% Series due August 1, 2000, and are expected to approximate $62,000,000 at the time of the sale of the additional shares of common stock.

CONCLUSIONS

The Commission finds and concludes that as a public service corporation the Company is subject to regulation by this Commission as to rates, service and security issues; that the Company's capital structure is such that it is appropriate and reasonable to issue additional shares of common stock; that the issuance and sale of not to exceed 1,250,000 additional shares of common stock, as proposed by the Company, are for a lawful object within the corporate purposes of the Company, are compatible with the public interest, are necessary and appropriate for and consistent with the proper performance by the Company of its service to the public as a utility, and will not impair its ability to perform the service, and are reasonably necessary and appropriate for such purposes; and that the proposed transaction should be approved and authorized;

IT IS, THEREFORE, ORDERED, That Carolina Power & Light Company be, and it is hereby authorized, empowered and permitted under the terms and conditions set forth in its application:

1. To issue and sell not to exceed 1,250,000 additional shares of common stock, without par value, to Underwriters, pursuant to an Underwriting Agreement substantially in the form of Exhibit A attached to its Application in this proceeding, at a price per share not less than 93% of the last sale price of the Company's common stock on the New York Stock Exchange on October 13, 1970;

2. To apply the net proceeds to be derived from the issuance and sale of said additional shares of Common Stock to the purposes set forth in the Application;

3. To file with this Commission, when available in final form, one copy each of the Underwriting Agreement and the Prospectus;

4. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

5. To file with this Commission, in the future, a notice of negotiations of short-term notes setting forth the principal amount thereof, the rate of interest and the date of maturity.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. E-7, SUB 119

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authorization Under North Carolina General Statute 62-161 to Issue and Sell Common Stock and First and Refunding Mortgage Bonds	))) ORDER)

On January 2, 1970, Duke Power Company (Company) filed an application with this Commission for authority to issue and sell (a) $75,000,000 principal amount of a new series of its First and Refunding Mortgage Bonds (the "Bonds"), to be created and issued under its First and Refunding Mortgage dated December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), as Trustee, as heretofore supplemented and to be further supplemented and amended by a Supplemental Indenture to be executed in connection with the issuance of the Bonds and, (b) a maximum of 2,500,000 shares of the Company's common stock without nominal or par value (the "Stock"). The Company proposes to issue and sell the Bonds and the Stock at some time between January 1, 1970 and March 31, 1970 for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of short-term obligations incurred for such purpose.

The Company represents that the Bonds will be thirty-year bonds; that they will bear interest at an annual rate to be specified in any bid which may be accepted by the Company for the sale of the Bonds; and that interest will be payable semiannually. It is further represented that the Bonds will be subject to all the provisions of the First and Refunding Mortgage dated December 1, 1927, referred to above, as supplemented, and as to be further supplemented by a Supplemental Indenture to be executed in connection with their issuance, and by virtue of said First and Refunding Mortgage will constitute (together with the Company's outstanding First and Refunding Mortgage Bonds) a first lien on substantially all of the Company's fixed property and franchises.

The Company further represents that the Bonds will be sold through competitive bidding, which will determine the interest rate to be borne by the Bonds and the price to be paid to the Company for the Bonds. It is further represented that the Company will reserve the right to reject all bids and that any bid accepted will be that which will result in the lowest annual cost of money for the Bonds. It is further represented that the Bonds will be nonrefundable at a lower cost of money for a period of five years from date of issuance; that the holders of the Bonds will have no voting privileges; that the Bonds will be in fully registered form; and that provision will be made for free transfers or exchanges or registered pieces.

The Company further represents that no fee for services (other than attorneys, accountants, mortgage trustee and fees for similar technical services) in connection with the negotiation or sale of the Bonds or for services in securing underwriters or purchasers thereof (other than the fees included in any accepted competitive bid) will be paid in connection with the issue and sale of the Bonds.

The Company represents that the Stock, upon payment of the full consideration therefor, and upon issue thereof, will be fully paid and non-assessable; that the Stock will in all respects rank equally with the outstanding shares of the Company's common stock, so that the holders thereof will participate in dividends equally with the holders of the outstanding shares and will have the same voting rights and liquidation rights; and that each holder of the Company's common stock is entitled to one vote for each share of such stock held by him at any meeting of, or election by, the stockholders, except that in certain instances in the election of directors cumulative voting is authorized. It is further represented that the holders of the Company's common stock have no fixed dividend rights and that dividends may be declared and paid on the Company's common stock only after the full dividends on the preferred stock and on the preference stock at the time outstanding for all past dividend periods and for the then current dividend period shall have been paid, or declared and a sum sufficient for the payment thereof set apart; that in the

event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, after payment in full has been made to the holders of the preferred stock and to the holders of the preference stock of the amounts to which they are respectively entitled, or sufficient sums have been set apart for the payment thereof, the holders of the common stock shall be entitled to receive ratably any and all assets of the Company remaining to be paid or distributed; and that the holders of the Company's outstanding shares of common stock do not have preemptive rights to purchase additional shares of such stock.

The Company proposes to offer the Stock directly to the public rather than to the then existing holders of the Company's common stock for subscription on a rights basis. The Company further proposes to enter negotiations with a group of investment banking firms, to be managed by The First Boston Corporation and Morgan Stanley & Co., to act as underwriters for the public offering of the Stock for cash at a negotiated price that would not be lower than 75¢ per share under the last sale or bid price, whichever is lower, for the Company's common stock on the New York Stock Exchange on the day the price is negotiated. It is represented that the underwriters' fees to be negotiated in connection with the sale would not exceed 4% of the total initial offering price of the Stock.

The Company asserts that it believes that a negotiated public sale of the Stock would be more favorable than a sale at competitive bidding for the following reasons:

(a) The Company has not sold new shares of its common stock, except pursuant to its Stock Purchase-Savings Program for Employees, since 1961. Of its 23,230,231 shares of common stock outstanding, a total of 15,055,152 (64.8%) are held by two shareholders, and the remaining 8,175,079 shares outstanding are held by approximately 12,650 shareholders, a relatively small number for a corporation the Company's size. The Company believes that, as a result, its common stock is more thinly traded than the stock of most comparable utility companies, and is not widely held by institutional investors. The Company states that because of these conditions, it believes that it would be highly desirable to conduct an intensive presale program to develop investor interest in the Stock, and the Company asserts that a negotiated sale is much better suited to such a program than is a sale by competitive bidding, as it would afford a greater opportunity for the Company and the underwriters to meet with and advise securities dealers and investors concerning the Company and the Stock. In this connection, the Company asserts that it plans to hold information meetings for large groups of underwriters and institutional investors at its Keowee-Toxaway project site in South Carolina and also in some of the larger financial centers of the United States.

(b) Based upon experiences that other corporations have had in common stock offerings over the past few years, the selling pressures which normally affect common stock prices prior to the offering date of a new issue would be less in a negotiated sale than in a competitive sale and, consequently, would result in a higher price to the Company for the proposed stock. The Company states that it further believes that the underwriting commissions for a negotiated sale would be approximately the same as for a competitive sale.

The Company represents that the net proceeds from the sale of the bonds and the stock will be applied and used by the Company for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of outstanding short-term obligations incurred for that purpose. It represents that it is continuing its construction program of substantial additions to its electric generation, transmission, and distribution facilities in order to meet an increase in demand for electric service, which it expects to continue, and to maintain a margin of reserve generating capacity. The Company further represents that at October 31, 1969, its outstanding commercial paper and bank loan obligations amounted to $86,150,750, and are expected to reach about $150,000,000 by February 28, 1970. The Company estimates that its construction expenditures for 1969 will be about $274,000,000 and that expenditures for year 1970 are estimated to be about $348,700,000; and it asserts that long-term financing of its construction program is essential if the Company is to continue to be able to meet its obligations to the public to provide adequate and reliable electric service.

Upon the review and study of the application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so finds that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues and that the proposed issuance of the Stock and Bonds by the Company is:

(a) For a lawful object within the corporate purposes of the Company;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED THAT:

1. Duke Power Company be, and it hereby is authorized, empowered and permitted, upon the terms and conditions set forth in its application (a) to issue and sell at competitive bidding $75,000,000 principal amount of a new series of its First and Refunding Mortgage Bonds to be created and issued under its First and Refunding Mortgage dated December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), as Trustee, as heretofore supplemented and to be further supplemented and amended by a Supplemental Indenture to be executed in connection with the issuance of the Bonds, and (b) to issue and sell at negotiated public sale to a group of underwriters to be managed jointly by The First Boston Corporation and Morgan Stanley & Co., a maximum of 2,500,000 shares of the Company's common stock without nominal or par value.

2. The Bonds and the Stock may be sold at anytime prior to March 31, 1970.

3. The Stock shall not be sold at a price lower than 75¢ per share under the last sale or bid price, whichever is lower, for the Company's common stock on the day the price is negotiated; and the underwriters' fees for the sale of the stock shall not exceed 4% of the total initial offering price of the Stock.

4. The net proceeds to be derived from the issuance and sale of the Bonds and Stock shall be used for the purpose set forth in the application.

5. Within thirty (30) days after the sale of the Bonds is consummated, the Company shall report to the Commission the sale of the Bonds (including the interest rate to be borne by them, the price received by the company for them and the expenses of sale), and within such time the Company shall file with the Commission a copy of the Supplemental Indenture to be executed and delivered in connection with the issuance of the Bonds, in the final form in which it is executed.

6. Within thirty (30) days after the sale of the Stock is consummated, the Company shall report to the Commission the sale of the Stock (including the offering price, the price received by the Company for it and the expenses of sale), and within such time the Company shall file with the Commission a copy of the Underwriting Agreement in final form.

IT IS FURTHER ORDERED, That this proceeding be, and the same is, continued on the docket of the Commission without day for the purpose of receiving the Supplemental Indenture and the Underwriting Agreement in final form and the terminal results of the sale of the Bonds and the Stock, as hereinabove provided, and nothing in this order shall be

construed to deprive this Commission of its regulatory authority under law or to relieve the company from compliance with any provision of law or the Commission's Regulations.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. EC-68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Transfer of Assets of Davie Electric	) ORDER
Membership Corporation and Cornelius	) TRANSFERRING
Electric Membership Corporation to Crescent	) ELECTRIC
Electric Membership Corporation	) SERVICE AREAS

Upon consideration of the record herein for the transfer of electric service areas filed by Davie Electric Membership Corporation, Cornelius Electric Membership Corporation, and Crescent Electric Membership Corporation on June 10, 1970, showing to the Commission, upon verified statements, that Davie Electric Membership Corporation, Cornelius Electric Membership Corporation, and subsequently Crescent Electric Membership Corporation, entered into a Plan of Reorganization for Davie Electric Membership Corporation and Cornelius Electric Membership Corporation dated April 10, 1969, filed as "Exhibit A" to said application under the terms of which the Directors of Davie Electric Membership Corporation and Cornelius Electric Membership Corporation were to cause a new corporation to be formed known as Crescent Electric Membership Corporation, and that Davie Electric Membership Corporation and Cornelius Electric Membership Corporation are to convey and assign their respective electric distribution systems, together with all of their assets of every nature and kind, to Crescent Electric Membership Corporation (except for sufficient funds for liquidation and dissolution), and Crescent Electric Membership Corporation is to assume all the liabilities of Davie Electric Membership Corporation and Cornelius Electric Membership Corporation and that Crescent Electric Membership Corporation shall then continue an electrical distribution system in the service areas heretofore assigned to Davie Electric Membership Corporation and Cornelius Electric Membership Corporation; and it further appearing from the Petition and the Certificate of Incorporation of Crescent Electric Membership Corporation filed as "Exhibit B" to said Petition that Crescent Electric Membership Corporation has been duly formed under Chapter 117 of the General Statutes of North Carolina with the permission and authorization of the North Carolina Rural Electrification Authority; it further appearing that Davie Electric Membership Corporation

and Cornelius Electric Membership Corporation are to transfer their respective assets to Crescent Electric Membership Corporation on June 30, 1970, and that Crescent Electric Membership Corporation will commence operating the electrical distribution facilities on July 1, 1970, in the territory heretofore assigned to Davie Electric Membership Corporation and Cornelius Electric Membership Corporation; that the Commission having heretofore assigned to Cornelius Electric Membership Corporation certain electric service areas in Cabarrus, Catawba, Gaston, Iredell, Lincoln, Mecklenburg, and Rowan Counties by Order entered in Docket No. ES-24 dated December 6, 1968, and the Commission having heretofore assigned to Davie Electric Membership Corporation certain electric service areas in Alexander, Davie, Iredell, Rowan, Wilkes, and Yadkin Counties by Order entered in Docket No. ES-9 dated April 5, 1968, and it appearing from said Plan of Reorganization and Certificate of Incorporation of Crescent Electric Membership Corporation that Crescent Electric Membership Corporation will on and after July 1, 1970, serve the electric service areas heretofore assigned to Davie Electric Membership Corporation and Cornelius Electric Membership Corporation and that the assignment of said electric service areas should be transferred on the records of the Utilities Commission.

IT IS, THEREFORE, ORDERED:

1. That the application for the transfer of electric service areas filed by Davie Electric Membership Corporation, Cornelius Electric Membership Corporation, and Crescent Electric Membership Corporation on June 10, 1970, is hereby approved, and that the maps on file with the Commission and electric service area assignment Docket Numbers ES-24 and ES-9 are hereby amended to show that the electric service areas heretofore assigned to Davie Electric Membership Corporation and Cornelius Electric Membership Corporation are hereafter assigned to Crescent Electric Membership Corporation, and the books and records of the Utilities Commission shall hereinafter be amended to show that all electric service areas heretofore assigned to Davie Electric Membership Corporation and Cornelius Electric Membership Corporation are from July 1, 1970, and thereafter assigned to Crescent Electric Membership Corporation.

2. The effective date of the transfer of assignment of service areas herein shall be July 1, 1970, provided however, if the assets of Davie Electric Membership Corporation and Cornelius Electric Membership Corporation shall be transferred to Crescent Electric Membership Corporation at a later date, then such later date shall be the effective date of the transfer of assignment of said service areas.

3. That the Petitioners file a report with the Utilities Commission upon the transfer of assets by Davie Electric Membership Corporation and Cornelius Electric Membership

Corporation to Crescent Electric Membership Corporation, showing the date of transfer.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. ES-17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Edgecombe-Martin County Electric Membership Corporation, Halifax Electric Membership Corporation and Virginia Electric and Power Company for Assignment of Areas in Martin County	) ORDER ON REMAND

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on March 23, 1970, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicants:

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For: Virginia Electric and Power Company

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For the Intervenors:

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Williamston, North Carolina 27892
For: Martin County, Martin County Economic Development Commission and Town of Robersonville

Paul D. Roberson
Attorney at Law
Robersonville, North Carolina 27871
For: Town of Robersonville

WOOTEN, COMMISSIONER: This matter originally arose from the joint application filed by Edgecombe-Martin County Electric Membership Corporation (hereinafter referred to as Edgecombe-Martin), Halifax Electric Membership Corporation (hereinafter referred to as Halifax), and Virginia Electric and Power Company (hereinafter referred to as VEPCO), on May 9, 1968, seeking assignment of electric distribution territories in Martin County among the supplier applicants in accordance with negotiated agreements among the parties pursuant to G.S. 62-110.2(c) and the rules of the Commission pursuant thereto.

Certain interventions were filed and the Commission scheduled the matter for public hearing and the same was heard before the Full Commission beginning on October 22, 1968, at 10:00 a.m. As a result of the hearings in the said case and the record made therein, the Commission did on January 13, 1969, issue its order making the assignment of electric distribution territories in Martin County among the supplier applicants as it deemed appropriate in the public interest.

Subsequent thereto and in apt time, the above order of the Commission was appealed by Edgecombe-Martin to the North Carolina Court of Appeals, which said Court, in Utilities Commission vs. Electric Membership Corporation, 5 N.C. App. 680 (1970), reversed and remanded the cause to this Commission for such further proceedings as may be appropriate in accord with the Court's opinion rendered therein.

Upon remand of this case by the North Carolina Court of Appeals to this Commission, the Commission issued its Order dated March 6, 1970, assigning the matter for prehearing conference upon remand after appeal, said conference being held on March 23, 1970, at 2:00 p.m. All parties of record were represented at the said prehearing conference as set out in the caption.

Edgecombe-Martin contended and moved the Commission that the matter be reopened for the receiving of additional

testimony, which said course of action was objected to and opposed by the other parties of record.

After carefully considering the entire record in this case, the opinion of the North Carolina Court of Appeals herein in Utilities Commission vs. Electric Membership Corporation, 5 N.C. App. 680, the opinion of the North Carolina Court of Appeals in Utilities Commission vs. Electric Membership Corporation, 5 N.C. App. 663, the opinion of the North Carolina Supreme Court in Utilities Commission vs. Electric Membership Corporation, 276, N.C. 108, and the able arguments of counsel for the movants and other parties of record, the Commission is of the opinion that the record heretofore made in this case is sufficient to enable the Commission to appropriately make proper findings of fact and conclusions upon which to base an appropriate order assigning electric distribution territories in Martin County among the suppliers in accordance with the General Statutes and the opinion of the North Carolina Court of Appeals in Utilities Commission vs. Electric Membership Corporation, 5 N.C. App. 680, and therefore denies the motion of Edgecombe-Martin County Electric Membership Corporation that the matter be reopened for the receiving of additional evidence.

It is deemed appropriate to point out that any party in this case may file before this Commission a petition for reassignment of the territory here in question at such time as such party concludes that sufficient reason and cause exist to justify such change under the appropriate General Statutes.

From the application and the evidence adduced at the hearing, and from the entire record of this matter, the Commission makes the following

FINDINGS OF FACT

1. VEPCO is a corporation duly organized and existing under the laws of the State of Virginia, with its principal office and place of business at 7th and Franklin Streets, Richmond, Virginia, which is duly authorized to do business in North Carolina as a public utility and maintains as its registered agent in North Carolina Mr. A. L. Jameson, whose address is P. O. Box 508, Williamston, North Carolina. Edgecombe-Martin is an electric membership corporation duly organized and existing under the laws of the State of North Carolina, with its principal office and place of business in Tarboro, North Carolina. Halifax is an electric membership corporation duly organized and existing under the laws of the State of North Carolina with its principal office and place of business in Enfield, North Carolina. Halifax makes no claim or request for assignment of the area in controversy in this proceeding and described in Exhibit 1 attached hereto.

2. Both of the above-named applicants are "electric suppliers" as defined in Section 62-110.2(a)(3) of the General Statutes of North Carolina, and as such are authorized to apply to the Commission for assignments of service areas in accordance with public convenience and necessity pursuant to Section 62-110.2(c) of the General Statutes of North Carolina.

3. VEPCO and Edgecombe-Martin are authorized to operate and do operate in Martin County, and are, and for many years have been, rendering electric service to numerous customers in this county.

4. No other electric supplier as defined in G.S. 62-110.2(a)(3) operates in the areas in Martin County covered by this application and no electric suppliers serving in other areas of this and adjacent counties assert any claim for assignment to them by the Commission of any of the areas covered by this application.

5. VEPCO and Edgecombe-Martin conducted extended negotiations with respect to Martin County and the designation of assigned and unassigned areas therein, as contemplated under Chapter 287, Public Laws 1965, now codified in Chapter 62 of the General Statutes of North Carolina. As a result of these negotiations, a joint agreement was reached between the applicants covering areas in the county which are outside the corporate limits of municipalities and more than three hundred (300) feet from the lines of any electric supplier and which may be subject to assignment by this Commission under Section 62-110.2(c) of the General Statutes of North Carolina.

6. A map of Martin County was filed as Exhibit A to the application, said map, through appropriate symbols and legends, designating the areas which applicants request the Commission to assign to VEPCO and to Edgecombe-Martin and to Halifax and also designating certain areas requested to be unassigned as to any electric supplier, and also designating certain areas which are not covered by the application. Exhibit A was signed by representatives of all the applicants and shows the lines of all suppliers in Martin County as set out on the official Mylar map of such county filed with the Commission.

7. The Commission finds and concludes that the assignment of areas designated by appropriate symbols and legends on the map filed with this application as Exhibit A is in accordance with public convenience and necessity, with the exception of the area protested and described in Exhibit 1 hereto attached.

8. Both VEPCO and Edgecombe-Martin are capable of supplying, and do supply, good, adequate and dependable electric service for the requirements of their existing customers and members, respectively, in the areas mentioned.

9. The North Carolina Utilities Commission has extensive jurisdiction over the rates, services, and level of earnings of VEPCO; it has limited jurisdiction over Edgecombe-Martin relating primarily to the assignment of territory, preventing or relieving promotional rebates, preferences, and unjust discriminations in service and rates, compelling efficient, adequate and dependable service, and the licensing of generating plants.

10. Intervenors have no objection to the assignment of the areas of Martin County to the respective suppliers as shown on Exhibit A of the application, except that they do protest the assignment of the approximately one mile square area lying east of the Town of Robersonville, which is more particularly described in Exhibit 1 hereto attached, for the reason that intervenors are greatly interested in obtaining industrial development within said protested area as a means of increasing the economic growth, prosperity, and well-being of the Town of Robersonville and Martin County.

11. There are virtually no distribution facilities of any electric supplier other than Edgecombe-Martin in the protested area. The customers served by Edgecombe-Martin in the protested area are residential customers with relatively small kilowatt demands, and Edgecombe-Martin does not serve any customer in the protested area with contract demands in excess of 150 kw.

12. Industrial and manufacturing concerns tend to locate on and demand the services of VEPCO as opposed to Edgecombe-Martin. There are many reasons for this. Some industries are philosophically opposed to, and wary of, becoming members in cooperatives where they have no more protection than a single vote in rate and policy matters; i.e., they prefer the regulation of the State Commission to the regulation of the cooperatives' membership and the REA. Others base their preference on the electric utility's financial strength and its ability to supply operational expertise, specialized equipment, alternate and emergency supplies of energy and many others. VEPCO has a number of very large power users in this and other states. It has a permanent staff of experts engaged in promoting industrial development and attending to complex power supply and load requirements. Edgecombe-Martin does not serve any customer within the disputed area with contract demands greater than 150 kw, and although it does have customers located elsewhere within its exclusive service area which have greater contract demands, such customers are not classed as permanent industrial customers in that the same are wholesale, temporary or seasonal. The majority of industrial concerns which locate in the area would thus tend to prefer and choose the public utility, VEPCO, for loads greater than 150 kw. Many industrial concerns, if they cannot obtain VEPCO service for loads greater than 150 kw, would tend not to locate in the area, and this would be against the public convenience and necessity, which includes consideration of the interest of Edgecombe-Martin in serving

the residential loads which will accompany industrial development in the area as assigned.

13. The area involved in the approximately one square mile area lies east of the Town of Robersonville, North Carolina, which is more particularly described in Exhibit 1 hereto attached, and is one of heavy industrial promotion and one which is of great industrial potential for development.

14. Intervenors, through their respective officials and others, have worked to attract suitable industries to the protested areas and have discussed the possibility of locating in that area with a number of industrial prospects. Said protested area contains the most suitable industrial sites near the Town of Robersonville. It is located approximately one mile east of the town limits of Robersonville, and is crossed by the Seaboard Coast Line Railway, U. S. Highways 13 and 64. The area is within three miles of an airport, under construction at the time of the hearing, and extension of sewer and water line facilities from the Town of Robersonville to the area is feasible.

15. The contemplated industrial development, as revealed by the record, will require the use of equipment and installation resulting in a demand above 150 kw. If the industrial concerns do not have a choice of supplier above the load of 150 kw demand, the great majority will choose other areas to the disadvantage of the public, VEPCO, and Edgecombe-Martin, in the areas affected.

16. On analysis of the record, it is found that Edgecombe-Martin has not served a load greater than 150 kw in the protested area, and has not served a load greater than 150 kw demand in other areas of Martin County except in the case of a limited number of customers, who in the main are not industrial customers of the type herein found to require choice of service, to wit, permanent industrial customers.

17. The fact that, in a few isolated cases, Edgecombe-Martin has served loads greater than 150 kw outside the protested area was contemplated if not recited in our previous order. A few isolated instances of Edgecombe-Martin loads greater than 150 kw outside the protested area were not considered sufficient to determine the public convenience and necessity within the protested area, particularly in view of the fact that such customers are overwhelmingly wholesale, temporary, or seasonal, and we find that permanent industrial customers and the public convenience and necessity within the protested area will be better served if such customers have a choice of supplier for loads over 150 kw. The overwhelming majority of all of Edgecombe-Martin's customers are well below 150 kw demand and it is on this norm that we base the delineation point.

18. The public convenience and necessity can best be served by the assignment of the protested area, as shown in Exhibit 1 attached hereto, to Edgecombe-Martin for purposes up to 150 kw demand, and all those with contract demands of 150 kw or greater should be assigned jointly to VEPCO and Edgecombe-Martin, subject to the consumer's choice of suppliers, according to the procedure hereinafter outlined.

Pursuant to the foregoing findings of fact, the Commission reaches the following

CONCLUSIONS

The Commission finds and concludes that the assignment of the area designated by appropriate symbols and legends on the map filed with the joint application as Exhibit A is in accord with public convenience and necessity in the area involved, with the exception of the protested area described in Exhibit 1 hereto attached.

The joint assignment of this area will give industrial consumers a choice as to suppliers in the area involved. In reaching this conclusion, the Commission has given due consideration to those factors specifically set forth in the Order of December 18, 1968, in Docket No. EC-59, Sub 2 and E-2, Sub 97 as to the factors to be considered in making territorial assignments.

The Commission further concludes that the joint assignment referred to in the next preceding paragraph will not deprive any present or future customers, whether residential, wholesale or industrial, of Edgecombe-Martin's service at any level, provided they prefer Edgecombe-Martin's service. Edgecombe-Martin is not deprived of any customer by the 150 kw delineation. The only thing we have done is to give the customer in the protested area a right to choose his supplier when his load is above a level which has been normally and historically served by Edgecombe-Martin.

The Commission further concludes that the assignment herein does not take from the cooperative any right previously enjoyed by it, does not impose upon the cooperative the duty to serve any user it did not request permission to serve, and the service to potential users by the cooperative under said assignment would not be unprofitable or burdensome. The overriding purpose of G.S. 62-110.2(c)(1), which authorizes the Utilities Commission to assign rural service territory to electric suppliers, is to promote the public interest, not the business of the electric membership cooperative or that of the investor-owned utility, and we conclude that the assignment herein promotes the interest of the public, the cooperative and the investor-owned utility.

We have been urged to reopen the proceedings to take further evidence tending to show that industrial concerns with a much greater demand than 150 kw now prefer Edgecombe-Martin service. Such evidence would be of no material

assistance in deciding this case on remand for the reason that under our order and the decisions in the Woodstock and Edgecombe-Martin cases (supra) by both the North Carolina Court of Appeals and the North Carolina Supreme Court, any such customer is already entirely free to obtain service from Edgecombe-Martin, if it desires. Such evidence may be helpful in future cases, if produced, on a question of reassignment of this or any other area; however, we conclude it to be appropriate in this case to bring the same to a final conclusion based upon the record heretofore made.

ACCORDINGLY, IT IS ORDERED:

1. That with the exception of the protested area described in Exhibit 1 hereto attached, the application of VEPCO and Edgecombe-Martin and Halifax for area assignment be, and the same hereby is, approved. The areas in Martin County situated more than three hundred feet from the lines of any electric supplier and outside the corporate limits of any municipality are assigned to the respective applicants or designated as unassigned, all as shown on Exhibit A attached to the application, incorporated herein by reference, with the exception of the protested area described in Exhibit 1 hereto attached.

2. The protested area described in Exhibit 1, hereto attached, is assigned to Edgecombe-Martin for purposes of loads up to 150 kw demand; all loads with contract demand of 150 kw or greater are assigned jointly to VEPCO and Edgecombe-Martin, subject to the consumer's reasonable choice of supplier, said choice to be exercised as follows: The consumer shall make the load for which he will be willing to contract, and his choice of supplier with which he chooses to contract, known in writing to each supplier, with simultaneous copy to the Commission prior to contracting for service and prior to the beginning of construction for any service to him by either supplier. The supplier so chosen may proceed to contract with the consumer and render the service required unless otherwise notified by the Commission within ten days from the Commission's receipt of the notice of choice. Neither supplier shall be obligated, however, to serve the consumer so choosing it, except after notice and opportunity to be heard. Grounds for refusal by a chosen supplier to serve such a load may be an economic infeasibility, gross duplication of facilities, circuitous routing, the customer's refusal to comply with the supplier's service regulations, or other factual and reasonable grounds which would result in burdensome, oppressive, or discriminatory practices against its respective customers, stockholders, or members. In constructing to serve a customer who chooses the supplier under the conditions herein set out, the supplier shall construct on the most reasonably direct, feasible and economical route with a view to a minimum of duplication of facilities of any other supplier of electricity; it being further provided that all such construction shall be subject to such further reasonable, special or individual project or

territorial conditions as the Commission may, after notice and opportunity for hearing, impose either on complaint or on the Commission's own motion.

3. Edgecombe-Martin and VEPCO are directed to prepare and file with the Commission within 45 days of the date of this order a further composite or joint map showing the territories herein assigned to each of them severally and jointly, by appropriate legend. The Commission reserves the right to require metes and bounds narrative descriptions of the territories herein assigned and the complete or partial location of all boundaries on the ground should the same, in its discretion, become necessary or appropriate.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

EXHIBIT NO. 1

In Martin County, North Carolina, lying approximately 1 mile east of the Town of Robersonville, beginning at a point, this point being further described as being 3120' from the center of the intersection of State Road No. 1401 and No. 1159 on a line heading N 73°05' W from the center of this intersection, this point also being approximately 1625' due north from the center line of U. S. Highway No. 64; thence in a straight line 6390' on a heading of N 81°20' E to a point further described as being approximately 3827' N 60°10' E from the center of the intersection of State Road No. 1401 and No. 1159, this point also being approximately 2000' due north from the center line of the Seaboard Coast Line Railroad track running from Robersonville to Williamston; thence in a straight line heading S 9°30' W 3050' to the eastern right-of-way of State Road No. 1152 at its intersection with U. S. Highway No. 64; thence in a generally southwesterly direction along the eastern right-of-way of State Road No. 1152, approximately 6505' along this right-of-way to its point of intersection with the western right-of-way of State Road No. 1151 at its intersection with State Road No. 1152; thence in a straight line heading approximately N 20°15' W approximately 6825' to the point and place of beginning. All directions described are based on true North. Being all of that certain area containing approximately 1 square mile and shown and delineated within the red lines on that certain map filed with the North Carolina Utilities Commission and identified as Cooperatives' Exhibit No. 4 in Docket No. ES-17.

DOCKET NO. ES-17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Application of Edgecombe-Martin County Electric Membership Corporation, Halifax Electric Membership Corporation and Virginia Electric and Power Company for Assignment of Areas in Martin County	))))	AMENDED ORDER UPON REMAND, REASSIGNING SERVICE AREA

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on October 15, 1970, at 4:00 o'clock p.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicants:

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For: Edgecombe-Martin County Electric Membership Corporation

For the Intervenors:

Paul D. Roberson
Attorney at Law
Robersonville, North Carolina
For: Town of Robersonville, Martin County Economic Development Commission, County of Martin

BY THE COMMISSION: This proceeding is before the Commission on the joint pleading filed herein by Martin County, the Town of Robersonville and Martin County Economic

Development Commission, all parties of record to this proceeding, on October 1, 1970, entitled "Withdrawal of Protest to Assignment to Edgecombe-Martin County Electric Membership Corporation and Motion in the Cause."

The above captioned Withdrawal of Protest and Motion in the Cause was assigned for hearing before the Commission on October 15, 1970, by Order of the Commission, and at said time all parties appeared before the Commission through appearances as above set forth and offered evidence and argument in support of said Withdrawal of Protest and Motion in the Cause.

Virginia Electric and Power Company offered testimony and evidence that there had been a material change in the circumstances relating to electric service in the one square mile service area involved in this proceeding and that Virginia Electric and Power Company was now providing wholesale service to Edgecombe-Martin County Electric Membership Corporation at a new substation built in the area providing 12,500 volt service to Edgecombe-Martin County Electric Membership Corporation at this point.

Edgecombe-Martin County Electric Membership Corporation offered testimony and evidence that it had assisted Virginia Electric and Power Company in securing the site of the new substation and had invested approximately $100,000 in standby transformers and in construction of a new 12,500 volt distribution system serving 1,000 kw load for the Robersonville Products Company within the one square mile service area and a 750 kw load for Blue Ridge Shoe Company beyond the boundary of the one square mile service area.

By stipulation of counsel of record, the Town of Robersonville, Martin County, and Martin County Economic Development Commission stated that said parties now desire to withdraw their protest in this proceeding and stated that they have successfully promoted economic development of the area involved by securing the location of two industries served by Edgecombe-Martin County Electric Membership Corporation and that the service area involved was adequately served by Edgecombe-Martin County Electric Membership Corporation.

Further testimony and evidence of all parties of record indicates that there are no further desirable industrial sites in the area to be served by any other supplier than Edgecombe-Martin County Electric Membership Corporation and that it would no longer be advantageous to provide dual assignments for loads over 150 kw to Virginia Electric and Power Company and Edgecombe-Martin County Electric Membership Corporation as heretofore provided in the Commission's Order herein of January 13, 1969, and in its original Order on Remand from the Court of Appeals issued on May 27, 1970.

The above evidence and testimony discloses a substantial change of conditions from conditions presented to the Commission at the hearing on remand conducted on March 23, 1970, and based upon said change of conditions the Commission hereby amends its original Order on Remand entered May 27, 1970, by deleting therefrom all Findings of Fact and Conclusions relating to joint assignment of the territory involved to Edgecombe-Martin County Electric Membership Corporation and Virginia Electric and Power Company, and based upon the new evidence received at the hearing on October 15, 1970, makes the following

FINDINGS OF FACT

1. That a change of conditions has taken place since the hearing in this proceeding on remand on March 23, 1970, and that Edgecombe-Martin County Electric Membership Corporation has now provided adequate electric service for industrial loads of 750 kw and 1,000 kw in the area and has constructed over $100,000 of distribution plant for 12,500 volt service from the stepdown transformer from Virginia Electric and Power Company's 115 kv transmission line in the area, and Edgecombe-Martin County Electric Membership Corporation now provides adequate service for the industrial loads now involved.

2. There are no further suitable industrial sites in the area involved beyond 300 feet from the present distribution lines of Edgecombe-Martin County Electric Membership Corporation and no useful purpose would be served by making a joint assignment of the area involved to Edgecombe-Martin County Electric Membership Corporation and Virginia Electric and Power Company.

3. The industrial development interest of Martin County, the Town of Robersonville, and Martin County Economic Development Commission have now been accomplished and industries have located within the area involved and are being successfully served by Edgecombe-Martin County Electric Membership Corporation.

CONCLUSIONS

Based on the above Findings of Fact, the Commission concludes that its Order on Remand entered herein on May 27, 1970, should be amended to delete all Findings of Fact as to the need for joint assignment of said territory involved to Edgecombe-Martin County Electric Membership Corporation and Virginia Electric and Power Company, and to delete said portions of said Order making such joint assignment, and that this Amended Order should be entered reassigning the service area involved to Edgecombe-Martin County Electric Membership Corporation as originally applied for in the application filed herein on May 9, 1968.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Withdrawal of Protest to Assignment filed by Martin County, the Town of Robersonville and Martin County Economic Development Commission, intervenors in this proceeding, is hereby allowed.

2. That the Order on Remand entered herein on May 27, 1970, is amended to delete all Findings of Fact relating to the need for joint assignment of the service area in Martin County described in said Order and to delete the joint assignment of said territory to Edgecombe-Martin County Electric Membership Corporation and Virginia Electric and Power Company for service of loads of 150 kw and greater.

3. That said area in Martin County, as described in the Order entered herein on January 13, 1969, and in the Order on Remand entered on May 27, 1970, is hereby reassigned to Edgecombe-Martin County Electric Membership Corporation for all electric loads.

ISSUED BY ORDER OF THE COMMISSION.
This 28th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

Commissioner Wells did not participate in this proceeding.

DOCKET NO. ES-55

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Carolina Power & Light Company and Brunswick Electric Membership Corporation for Assignment of Areas in Brunswick County, North Carolina	) ORDER) ASSIGNING) SERVICE AREAS

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on April 7, 1970, at 10 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Applicants:

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For the Intervenors:

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Davis C. Herring
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For: National Development Corporation, Long Beach, N. C.; Lincoln Construction Co., Inc., Wilmington, N. C.

BY THE COMMISSION: This matter arises from joint application filed by Carolina Power & Light Company (CP&L) and Brunswick Electric Membership Corporation (Brunswick) on July 25, 1969, seeking assignment of electric distribution territories in Brunswick County among the supplier applicants in accordance with negotiated agreements among the parties pursuant to G.S. 62-110.2(a)(3) of the General Statutes of North Carolina and the rules and regulations pursuant thereto.

By order of the Commission entered on the 5th day of August, 1969, the Commission prescribed notice to be given to the public, requiring that such notice be published in the Brunswick County Courthouse, Southport, North Carolina, the office of Carolina Power & Light Company, Wilmington, North Carolina, and the office of Brunswick Electric Membership Corporation, Shallotte, North Carolina; and, further, that the time, purpose and place of the hearing be published in a newspaper having general circulation in the area affected by said application. The affidavit of publication in the files of the Commission indicates that notice was given in the STAR-NEWS NEWSPAPERS, INC., in New Hanover County, North Carolina, on August 20 and 27 and September 3 and 10, 1969. Said notice further provided that anyone desiring to intervene in the matter or desiring to protest the proposed assignment of territory be required to file such intervention or protest with the North Carolina Utilities Commission at least ten days prior to the date of hearing set forth in the notice; and, further, that in the event no one intervened or filed any protest to the application, the Commission would determine the application on the facts set forth therein and the public records available to it in the Commission's files without holding public hearing.

Motion was made for extension of time within which to file protest. Motion was granted. The Commission received motion from the two intervenors named in the caption and motion to intervene was granted.

For good cause shown, the hearing date originally announced was continued to April 7, 1970, on which date the matter was formally heard. Applicants and intervenors were present and represented by counsel.

At the hearing, Applicants' Exhibit 1 (Exhibit A attached to application) was explained by Applicants' Witness Barney Snowden, a consulting engineer.

Intervenor National Development Corporation and Lincoln Construction Company, Inc., through Witnesses Templeton and Sneeden offered testimony to the effect that a certain portion of the area proposed to be assigned to Brunswick should be assigned to CP&L for that it was contemplated that the area would be used for an industrial park; however, no specific agreements or contracts with any industrial firm are in evidence in this proceeding, and Witness Sneeden, who holds an option to purchase the land in question from National Development Corporation, stated in open court that he would exercise the option and attempt to develop the industrial park whether the area was assigned to CP&L or Brunswick.

Intervenor City of Southport sought to have the Commission assign to it an area which the applicants in this case have agreed to leave unassigned, for that there is a commingling of the lines of CP&L, Brunswick and the City of Southport.

Applicant Brunswick offered rebuttal testimony and documentary evidence which tend to show its ability to serve the area for which it seeks assignment and its plans for any future development of this particular area.

Based upon the evidence offered, both oral and documentary, the Commission makes the following

FINDINGS OF FACT

(1) That Brunswick is an electric membership corporation duly organized and existing under the laws of the State of North Carolina, with its principal office at Shallotte, North Carolina.

(2) That CP&L is a corporation duly organized and existing under the laws of the State of North Carolina as a public utility, with its principal office and place of business in Raleigh, North Carolina.

(3) That the City of Southport is a municipal corporation organized and existing under the laws of the State of North Carolina and is furnishing electric service, retail, within

its corporate limits and to slightly more than one hundred customers outside said corporate limits.

(4) That National Development Corporation purchased a parcel of land of approximately 757 acres in December, 1969, at private sale and thereafter granted Lincoln Construction Company, Inc., an option to purchase this parcel of land, which option had not been exercised at the time of the hearing of this cause.

(5) That Brunswick and CP&L are electric suppliers as defined in Section 62-110.2(a)(3) of the General Statutes of North Carolina and as such are authorized to apply to the North Carolina Utilities Commission for assignment of service areas in accordance with public convenience and necessity pursuant to Section 62-110.2(c) of the General Statutes of North Carolina, and are authorized to operate, and do operate, in the rendition of electric service in Brunswick County, North Carolina.

(6) That CP&L and Brunswick for many years have been rendering reliable and adequate electric service to retail customers in Brunswick County, and each of the applicants owns, maintains and operates electric facilities of various kinds in Brunswick County, with CP&L rendering wholesale electric service to the City of Southport, North Carolina, who in turn distributes electric power at retail.

(7) That CP&L and Brunswick have been negotiating over a period of several months concerning Brunswick County, and as a result of these negotiations a joint agreement has been reached by both applicants covering all the areas of Brunswick County which lie outside the corporate limits of the City of Southport except that portion which the applicants request be left unassigned as set forth in Exhibit 1 of this proceeding (Exhibit A attached to the application).

(8) That applicants have prepared a map of Brunswick County, which through appropriate legends designates the area that the applicants have agreed to under the joint agreement, designates the areas that are requested to be unassigned, and also designates the areas in Brunswick County which are not in any respect involved in the instant application (Exhibit A attached to the application and Exhibit 1 of this proceeding).

(9) That the assignment of service areas and unassigned service areas as provided for in Exhibit A (map attached to application) will serve public convenience and necessity.

(10) That the lands now belonging to National Development Corporation as described in this proceeding and now under option to Lincoln Construction Company can be adequately served by either Brunswick or CP&L, and that the area agreed upon by the applicants for assignment purposes should not be disturbed.

(11) That the Commission is without legal authority to grant the request of the City of Southport for assignment of areas of Brunswick County outside the city limits of the City of Southport.

CONCLUSIONS

The North Carolina General Assembly in 1965 enacted General Statute 62-110.2, of which section (c)(1) reads as follows:

"In order to avoid unnecessary duplication of electric facilities, the Commission is authorized and directed to assign, as soon as practicable after January 1, 1966, to electric suppliers all areas, by adequately defined boundaries, that are outside the corporate limits of municipalities and that are more than 300 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 that the existing lines of two or more electric suppliers are in such close proximity that no substantial avoidance of duplication of facilities would be accomplished by assignment of such area. 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."

The evidence in this proceeding tends to show that applicants have negotiated with great care in an effort to reach the proposed assignment in Brunswick County, which assignment provides the maximum of efficient and dependable service in the areas based upon the public convenience and necessity. The evidence further tends to show that the applicants have followed statutory provisions in reaching this agreement and in the filing of a joint application. The Commission is authorized and directed to assign, as soon as practicable, to electric suppliers as defined by Statute, areas by adequately defined boundaries that are outside the corporate limits of municipalities and that are more than three hundred (300) feet from the lines of all electric suppliers as such lines exist on the dates of assignment. We therefore conclude that Applicants' Exhibit A attached to and made a part of the application should be accepted by the Commission as accurately defining the service area boundaries as described in said exhibit.

IT IS, THEREFORE, ORDERED:

That the application of Carolina Power & Light Company and Brunswick Electric Membership Corporation for area assignment be, and the same hereby is, approved, and the areas in Brunswick County situated more than three hundred

(300) feet from the lines of any electric supplier and outside the corporate limits of any municipality are assigned to applicants in the manner set forth and described on Exhibit A incorporated herein by reference and made a part of this order as fully as if set out herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service Company of North Carolina, Inc., for an Adjustment in Rates and Charges	) ORDER APPROVING) INCREASE IN RATES) AND CHARGES

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on July 14 and 15, 1970

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina

J. Mack Holland
Mullen, Holland & Harvell
Attorneys at Law
313 South Street
P. O. Box 488, Gastonia, North Carolina

For the Intervenor:

Claude V. Jones
Attorney at Law
111 Corcoran Street
Durham, North Carolina
For: City of Durham

For the Commission's Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WESTCOTT, CHAIRMAN: On February 18, 1970, Public Service Company of North Carolina, Inc., hereinafter referred to as "applicant," filed with the Commission an application for authority to adjust and increase its rates and charges for natural gas service which applicant supplies to retail customers in its North Carolina service area. In said filing, applicant proposed to increase all of its rate schedules in the amount of 1 cent per Mcf which represents an increase in its cost of purchased gas, which said increase was approved by the Federal Power Commission in Docket No. RP70-18 and made effective January 1, 1970. The applicant also proposed to adjust its rates and charges by

an amount equal to an appropriate adjustment in the 6% gross state receipts tax applicable to the 1 cent per Mcf increase heretofore mentioned. Applicant proposed to institute the above-mentioned increase on March 21, 1970.

On March 13, 1970, the Commission, being of the opinion that the increases requested by the applicant affected the interest of all of its retail customers, declared the proceeding to be a general rate case in accordance with G.S. 62-137 and ordered that the matter be suspended and set for investigation and hearing on June 30, 1970, and that Notice to the Public be published as provided by law. By order of March 17, 1970, the hearing was continued until July 14, 1970.

Applicant filed a Reply on March 18, 1970, requesting that the Commission modify its Order of March 13, 1970, so as to eliminate the provision suspending the schedule of rates filed by the applicant. On March 27, 1970, the Commission entered an Order denying the requested modification of its Order of Suspension of March 13, 1970, without prejudice to the right of the applicant to invoke the provisions of G.S. 62-135 to place its requested rate increase into effect under bond or undertaking as provided by law.

On March 18, 1970, the applicant filed with the Commission an undertaking under the provisions of G.S. 62-135, whereby the applicant agreed to refund to its customers, together with interest at the rate of 6% per annum, any amounts collected by it which are not finally approved by the Commission in this proceeding. On March 27, 1970, the Commission entered an Order approving said undertaking.

On June 22, 1970, the City of Durham filed an application for intervention as a municipal corporation on its own behalf and on behalf of its residents who are customers of the applicant. On July 1, 1970, the Commission entered an Order permitting intervention by the City of Durham.

The evidence of the applicant in this proceeding indicates that the Federal Power Commission in Docket No. RP70-18 approved a natural gas rate increase of 1 cent per Mcf upon the request of Transcontinental Gas Pipe Line Corporation, applicant's sole supplier, effective January 1, 1970, and that the purpose of this application filed in this proceeding is to increase applicant's rates only by an amount equal to the increased cost of its purchased gas and the related gross receipts tax. The evidence of the applicant further tends to indicate that the cost of purchased gas experienced by it in the calendar year 1969 was $15,356,038, amounting to approximately 50% of the applicant's gross operating revenues.

It further appears from applicant's evidence that its existing rate structure produced for the applicant for the calendar year ending December 31, 1969, gross operating revenues in the amount of $31,173,942; that operating

expenses relating to purchased gas, operation and maintenance, depreciation and state and federal income tax provisions resulted in a net operating income for return, including interest during construction, of $4,597,269, and when related to end-of-period rate base of $65,318,071 consisting of plant investment, materials and supplies and cash working capital, the applicant earned a rate of return of 7.04%.

The evidence presented by the applicant further tends to show that after making pro forma adjustments the proposed rates would produce gross operating revenues for the test period of $31,626,022; operating expenses of $27,249,662 and net income of $4,376,360 and after inclusion of interest during construction of $107,201 would result in a net operating income for return of $4,483,561 and produce on the applicant's net investment at the end of the test period a rate of return of 6.85%; that value of applicant's plant and properties stated at current costs less estimated depreciation amounts to $88,577,567 and taking into consideration adjustments for contributions in aid of construction, materials and supplies, and cash working capital, results in a total fair value rate base of $91,430,598; that when related to applicant's net operating income of $4,597,269, results in a rate of return of 5.03%; that after making pro forma adjustments relating primarily to applicant's expenses of purchased gas and related gross receipts tax which result in net operating income for return of $4,483,561, a rate of return on the fair value of applicant's property of 4.90% would result; that utilizing the same net operating income for return applied to the original cost rate base of $65,318,071 when applied to applicant's end-of-period net investment before pro forma adjustments, a rate of return of 7.04% would result under applicant's existing rates for the test period, and after pro forma adjustments to the original cost rate base a rate of return of 6.85% would result under applicant's proposed rates.

At the direction of the Commission, the Accounting Staff of the Commission made an examination of the books and records of the applicant. The examination covered the 12-month test period ending December 31, 1969, the same test period utilized by the applicant in this proceeding. The evidence derived from the investigation made by the Commission Staff tends to show for the test period that applicant's gross revenues amounted to $31,173,942; that total operating expenses amounted to $26,683,874, resulting in net operating income of $4,490,068, and when taking into account a customer growth factor of 3.77% and interest during construction, resulted in a net operating income for return of $4,766,589; that applicant's net investment in utility plant plus allowance for working capital amounted to $64,953,863, resulting in a rate of return on net investment of 7.34%. The Commission Staff evidence further tends to indicate after adjustments for applicant's proposed rates that applicant's gross revenues for the same period would

have amounted to $30,968,023; that the Staff's expense adjustments differ from the applicant's because applicant made no provision for the uncollectible provision, liability insurance, gas used by the Company, unaccounted for gas or variations in stored gas; that such adjustments were considered by the Staff in making adjustments for applicant's proposed rates; that taking said adjustments into consideration, applicant's total operating expenses would have been $26,547,638, resulting in net operating income for return of $4,694,278; and when considering applicant's investment in plant, less reserves and contributions, and taking into consideration allowance for working capital, applicant's net investment in plant would have been $65,059,805 and would have resulted in a rate of return on net investment of 7.22%. It appeared from the Commission Staff's investigation that applicant would have experienced for the test period an increase in operating expense of $451,814 with respect to the increase of 1 cent per Mcf and $26,870 as a result of the corresponding increase in gross receipts tax.

In consideration of the record herein and the evidence adduced at the hearing in this proceeding, briefly summarized above, the Commission enters the following

FINDINGS OF FACT

(1) Applicant, Public Service Company of North Carolina, Inc., is a duly franchised and operating public utility under the laws of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission for the purpose of fixing its rates and charges.

(2) That applicant experienced an increase in its cost of purchased gas of 1 cent per Mcf resulting from an increase allowed to its supplier by the Federal Power Commission in Docket No. RP70-18 which was made effective January 1, 1970, and further experienced as a related expense an increase in the 6% gross receipts tax applicable to the increase heretofore mentioned.

(3) In considering applicant's operating revenues and expenses for the test period, applicant would have experienced as a result of the increase of 1 cent per Mcf an increase in its operating expenses relating to the cost of purchased gas of $451,814 and $26,870 with respect to the gross receipts tax applicable to said increase.

(4) That the fair value of the applicant utility's property used and useful in providing the service it renders to the public within this State is not less than $72,000,000.

(5) That under applicant's existing rate structure for the 12-month period ending December 31, 1969, applicant realized operating revenues in the amount of $31,173,942,

thereby permitting applicant to earn a rate of return on net book investment of 7.34%.

(6) That under the rates proposed by applicant in this proceeding and with respect to the test period, applicant would realize operating revenues of $30,968,023 which would permit applicant to earn a rate of return on net book investment of 7.22%.

(7) That under its existing rate structure, applicant experienced for the test period operating expenses amounting to $26,683,874.

(8) That under the rates proposed by applicant in this proceeding, it would experience operating expenses in the amount of $26,547,638.

(9) That to require applicant to absorb an increase of 1 cent per Mcf as a result of the increase imposed upon it by its supplier, Transcontinental Gas Pipe Line Corporation, would result in the applicant being required to operate at a rate of return that would be less than just and reasonable or sufficient under the applicant's operations as a public utility.

(10) That under applicant's existing rate structure with respect to the test period, it was permitted to earn a rate of return on the fair value of its property of 6.81%.

(11) That under the rates proposed by the applicant, it would be permitted to earn a rate of return of 6.71% on the fair value of its property.

(12) That the rates proposed by applicant are just and reasonable and will not more than offset the increased cost of purchased gas imposed upon it by its supplier, and the corresponding increase in gross receipts tax applicable to said increase.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission is of the opinion that to require applicant to absorb the increase of 1 cent per Mcf imposed upon it by its supplier, having been approved by the Federal Power Commission, results in additional operating expenses which it should be allowed to recover in this particular case.

As a public utility, applicant is entitled to a just and reasonable rate of return based upon the fair value of its properties used and useful in rendering the service for which the rate is established.

The Commission does not regard the allowance of this increase in rates experienced by the applicant as an

indication that the granting of such an increase should be construed as a precedent by this Company or any other utility that all increases imposed upon its supplier by the Federal Power Commission will necessarily result in that utility receiving a corresponding increase in rates granted by this Commission upon application by such utility.

The Commission is of the opinion that the rates in this proceeding filed by applicant are just and reasonable under the operating conditions which applicant is now experiencing, and that the increase under applicant's proposed rates will result in a just and reasonable rate of return, thereby permitting applicant to realize sufficient earnings to enable it to provide adequate service to its customers.

Based upon the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED as follows:

(1) That the schedule of rates filed by applicant in this proceeding be, and the same hereby is, approved as being just and reasonable.

(2) That approval of applicant's proposed rates as being just and reasonable has the effect of satisfying the conditions of the undertaking filed by the applicant in this proceeding under G.S. 62-135, and approved by the Commission on March 27, 1970, and, therefore, no refunds will be necessary under the provisions of the undertaking filed by the applicant.

(3) That the Order of Suspension issued by the Commission in this proceeding on March 13, 1970, be, and the same hereby is, vacated and set aside.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. G-21, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of North Carolina Natural Gas	)
Corporation for Authority to Issue and	) ORDER
Sell 12,500 Shares of its Common Stock,	) AUTHORIZING
$2.50 Par Value, to Certain Officers of	) ISSUANCE AND
North Carolina Natural Gas Corporation,	) SALE OF
Pursuant to Qualified Stock Option Plans	) COMMON STOCK

BY THE COMMISSION: On October 9, 1970, North Carolina Natural Gas Corporation filed with this Commission an

application for approval of the issuance and sale of 12,500 shares of common stock, currently held in reserve for issuance under the employees' qualified stock option plan, as follows:

Officer	Shares
Frank Barragan, Jr., President	5,000
Willard P. Baldwin, Vice President	2,500
Howard L. Ford, Vice-President and Treasurer	2,500
W. G. Hill, Vice-President, Sales	2,500
Total	12,500

The Directors of the company, at their meeting held on January 10, 1967, resolved that certain officers of the company, as named above, be granted options to purchase the common stock of the company pursuant to the terms of certain option agreements. The 12,500 shares reserved for the options granted to these officers represents less than 1% of the company's outstanding common stock. The option price of each share was set at $5.50 per share, which represented 12 1/2¢ above 100% of the mean between the highest and lowest price per shares represented by the public transactions in buying and selling North Carolina Natural's common stock, $2.50 par value, on the date the option agreements were approved by the Directors of North Carolina Natural Gas Corporation. The stock option plan was approved by the stockholders at their annual meeting on January 9, 1968. The proceeds of $58,750 to be realized from the sale of the stock will be contributed to the general funds of the company. There will be no expense incurred by the company in issuing such securities.

The Commission is of the opinion, and so concludes, that the proposed issuance and sale of securities is not incompatible with the public interest, is not inconsistent with the proper performance by North Carolina Natural Gas Corporation of its service to the public, and will not impair that corporation's ability to perform such service.

IT IS, THEREFORE, ORDERED that the applicant North Carolina Natural Gas Corporation is authorized to issue and sell 12,500 shares of its common stock, $2.50 par value, to certain officers of North Carolina Natural Gas Corporation, pursuant to the qualified stock option plan detailed above.

ISSUED BY ORDER OF THE COMMISSION.

This 16th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Piedmont Natural Gas Company, Inc. - Application for Authority to Issue and Sell Securities	) ORDER GRANTING) AUTHORITY TO ISSUE) AND SELL SECURITIES

This cause comes before the Commission upon an Application of Piedmont Natural Gas Company, Inc. (Company), filed under date of May 19, 1970, through its Counsel, McLendon, Brim, Brooks, Pierce & Daniels, Greensboro, North Carolina, wherein approval of the Commission is sought as follows:

1. To issue 200,000 shares of its Common Stock, par value $.50 per share, and to offer said shares to the public through a group of underwriters; and

2. To enter into an Underwriting Agreement with a group of underwriters represented by White, Weld & Co., Incorporated.

FINDINGS OF FACT

1. The company is incorporated under the laws of the State of New York and is duly qualified to transact business as a foreign corporation in the State of North Carolina, as well as in South Carolina, with its general office and principal place of business located in Charlotte, North Carolina, and is a gas distribution company owning and operating facilities in its authorized territory, including 42 cities located in 14 counties in North Carolina.

2. In order to meet the increasing demands for gas and to facilitate, improve and extend its services, the company spent some $8,500,000 ($6,216,000 in North Carolina) during the period May 1, 1969 (the date of latest permanent financing), through March 31, 1970, and proposes to spend some $10,000,000 during 1970.

3. In order to finance the construction program, the company has borrowed approximately $6,000,000 in short-term bank notes, the proceeds of which have been applied to the program.

4. The company proposes, subject to approval of the appropriate regulatory agencies, to issue and sell 200,000 shares of its Common Stock to the public and that such sale will be underwritten by a group of underwriters represented by White, Weld & Co., Incorporated.

5. The initial public offering price will be a fixed price not higher than the last asked price of the shares on the New York Stock Exchange immediately prior to the agreement between the company and the representative of the underwriters, and the purchase price per share to be paid to

the company will be an amount equal to the initial public offering price less an amount per share to be determined by agreement between the company and the representative.

6. The expenses of the issue and sale of the shares will be approximately $40,000 and the underwriters' commission will be approximately $200,000.

7. The net from the sale of the shares will be applied toward the payment of short-term loans owing to banks.

CONCLUSIONS

From a review and study of the application, its supporting data, and other information in the Commission's files, the Commission is of the opinion and so concludes that the transaction herein proposed is:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Piedmont Natural Gas Company, Inc., be, and it is hereby authorized, empowered and permitted under the terms and conditions set forth in the application:

1. To issue 200,000 shares of its Common Stock, par value $.50 per share, and to offer said shares to the public through a group of underwriters;

2. To enter into an Underwriting Agreement with a group of underwriters represented by White, Weld & Co., Incorporated;

3. To devote the proceeds to be derived from the issuance and sale of the securities described herein to the purposes set forth in the Application;

4. To file with this Commission, when available in final form, one copy of the Underwriting Agreement;

5. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

6. To file with this Commission, in the future, a notice of negotiations of short-term bank notes setting forth the principal amount thereof, the rate of interest and the date of maturity.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Deputy Clerk

(SEAL)

DOCKET NO. G-9, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Piedmont Natural Gas Company, Inc. - Application for Authority to Issue and Sell $11,000,000 Principal Amount of First Mortgage Bonds	)	ORDER APPROVING ISSUE AND SALE OF BONDS

This cause comes before the Commission upon an Application of Piedmont Natural Gas Company, Inc. (Company), filed under date of June 8, 1970, through its Counsel, McLendon, Brim, Brooks, Pierce and Daniels, Greensboro, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell $11,000,000 aggregate principal amount of First Mortgage Bonds ____% Series due 1995 (the New Bonds); and

2. To execute and deliver a Thirteenth Supplemental Indenture, dated as of July 1, 1970, to an original indenture to secure payment of said Bonds.

FINDINGS OF FACT

1. The company is incorporated under the laws of the State of New York; is duly domesticated under the laws of the State of North Carolina; is engaged in the business of transporting, distributing and selling natural gas in the States of North Carolina and South Carolina; is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina; and its operations in this State are subject to the jurisdiction of the North Carolina Utilities Commission.

2. This Commission has previously granted the company a Certificate of Convenience and Necessity authorizing it to acquire certain gas franchises and properties in the State of North Carolina, and the company now holds franchises and is furnishing natural gas to customers in 42 cities and towns located in 14 counties in North Carolina.

3. The company in order to meet the increasing demands for gas and to facilitate, improve and extend its services has spent $8,590,077 ($6,215,974 in North Carolina) during the period May 1, 1969 through March 31, 1970 and proposes to spend approximately $10,000,000 during 1970.

4. On June 2, 1970, the company sold 200,000 shares of its Common Stock at a price of $17 per share and approximately $3,000,000 of such proceeds will be applied to the partial payment of outstanding short-term notes.

5. The company proposes to issue and sell the New Bonds through negotiations with White, Weld & Co., Incorporated (the representative). The representative will make a public offering of the New Bonds at a price to be agreed upon with the company.

6. The New Bonds are to be issued under the Mortgage and Deed of Trust, dated as of March 1, 1951, as heretofore supplemented and modified. The interest rate, price to the company and the underwiting commission will be determined in negotiation with the representative.

7. A portion of the proceeds from the sale of the New Bonds will be used to retire credit notes which are expected to aggregate $6,500,000 at the time of closing and were incurred to meet construction costs in 1969 and 1970. The balance of the proceeds will be applied to the remainder of the 1970 construction program.

CONCLUSIONS

From a review and study of the Application, its supporting data and other information on file with the Commission, the Commission is of the opinion and so concludes that the issuance and sale of the securities herein proposed under the terms and conditions set forth is:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS THEREFORE ORDERED, that Piedmont Natural Gas Company, Inc., be and it is hereby authorized, empowered and permitted, subject to the limitations contained in paragraph 5 below:

1. To enter into negotiations with White, Weld & Co., Incorporated, for the sale of eleven million dollars ($11,000,000) principal amount of First Mortgage Bonds ____% Series due 1995;

2. To execute and deliver to the Trustees a Thirteenth Supplemental Indenture to an Original Indenture for payment of the Bonds;

3. To devote the proceeds to be derived from the issuance and sale of the securities described herein to the purposes set forth in the Application;

4. To file with the Commission, when available in final form, one copy each of the Thirteenth Supplemental Indenture and the Underwriting Agreement;

5. Except that the sale of the New Bonds shall not be consummated until the results of negotiations with underwriters and a showing that such results and the underwriters' compensation connected with the proposed sale are reasonable, have been made a matter of record in this proceeding and a supplemental order entered by this Commission approving the price to be paid to the company, the interest rate to be borne by the New Bonds and the public offering price.

6. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

7. To file with this Commission, in the future, a notice of negotiations of short-term bank notes setting forth the principal amount thereof, rate of interest and maturity date.

IT IS FURTHER ORDERED, That this proceeding be and the same is continued on the docket of the Commission, for the purpose of the Commission taking such further action as it may deem appropriate when the company shall have made a matter of record in this proceeding, the price paid to the company, the interest rate and the public offering price; and nothing in this order shall be construed to deprive this Commission of its regulatory authority under the law.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. G-9, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Piedmont Natural Gas Company, Inc. - Application for Authority to Issue and Sell $11,000,000 Principal Amount of First Mortgage Bonds	)) SUPPLEMENTAL ORDER) GRANTING AUTHORITY) TO ISSUE AND SELL) BONDS

Under date of June 19, 1970, in the above subject matter and docket number, this Commission issued its Order authorizing Piedmont Natural Gas Company, Inc., to issue and sell $11,000,000 aggregate principal amount of First Mortgage Bonds ____% Series due 1995 (the New Bonds), through negotiations with underwriters headed by White, Weld & Co., Incorporated. The sale of the New Bonds, however, was not to be consummated until the results of the negotiated sale shall have been made a matter of record and a Supplemental Order issued by this Commission approving the price to be paid to the company, the interest rate to be borne by the New Bonds and the public offering price.

On June 23, 1970, the company informed the Commission by telephone and telegraph of the results of the negotiated sale of the New Bonds as follows:

1.	Coupon rate	10.25%
2.	Public offering price	100.45%
3.	Price to be paid to the company	99.325%
4.	Underwriters' commission	1.125%

It appears to the Commission that this information complies with all of the requirements of Article 8 of Chapter 62 of the General Statutes of North Carolina pertaining thereto, and the Commission concludes that the issuance and sale of the New Bonds should be approved.

THEREFORE, IT IS ORDERED:

1. The coupon rate of 10.25% to be borne by the New Bonds, the public offering price of 100.45%, the price to be paid to the company of 99.325%, and the underwriters' commission of 1.125% be and the same are hereby approved;

2. That the company be, and it is hereby authorized, empowered and permitted to consummate the sale of the New Bonds; and

3. That the company, within a period of thirty (30) days following the consummation of the authority granted in this docket, shall file with this Commission, in duplicate, a verified report setting forth the terminal results as recorded on its general books of account.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Public Service Company of North Carolina, Incorporated - Application for Authority to Issue and Sell Securities	) ORDER GRANTING) AUTHORITY TO) ISSUE AND SELL) SECURITIES

This cause comes before the Commission upon an Application of Public Service Company of North Carolina, Incorporated (Company), filed under date of September 4, 1970, through its Counsel, Mullen, Holland & Harrell, Gastonia, North Carolina, wherein approval of the Commission is sought as follows:

> To issue and sell 160,000 shares of its Cumulative Preference Stock ____% Convertible Series B having the par value of $25 per share (the Series B Preference Stock), together with such number of shares of Common Stock and scrip certificates for fractional interests as may be required from time to time upon conversion of said 160,000 shares of Cumulative Preference Stock ____% Convertible Series B.

FINDINGS OF FACT

1. The Company is a North Carolina corporation owning and operating in North Carolina gas transmission lines, distribution systems, services and other facilities necessary and proper for furnishing and delivering natural gas to the public within the territories authorized by this Commission; is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina; and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. As of the date of filing of the Application, the Company had $9,000,000 principal amount of short-term notes outstanding to banks for money required for construction of lines, systems, services and facilities. This outstanding balance includes $4,000,000 which was still outstanding at July 31, 1969, subsequent to applying the proceeds of the Company's last permanent financing authorized by this Commission. The balance of the short-term indebtedness plus the internally generated funds were applied to the construction program for the twelve-month period ended June 30, 1970, aggregating $6,544,232, per the Application.

3. During 1969 the Company expended $7,072,052 for its construction program and proposes to expend approximately $6,000,000 during 1970.

4. The Company now proposes, subject to approval of this Commission, to issue and sell the Series B Preference Stock for the purpose of paying, retiring and discharging in part said $9,000,000 principal amount of short-term notes now outstanding to banks.

5. The Company proposes to file in the Office of the Secretary of State of North Carolina a statement of classification of shares (the Statement of Classification of Shares) establishing the Series B Preference Stock and fixing the relative rights and preference of the Series B Preference Stock in respect of which the shares of such series may vary from the shares of other series of its Cumulative Preference Stock, including those shares of the Cumulative Preference Stock 4.40% Convertible Series A heretofore issued and now outstanding. A draft of the proposed Statement of Classification of Shares to be filed with the Secretary of State of North Carolina was presented with the Application as Exhibit C.

6. The Company proposes to enter into an agreement with Underwriters for the sale to such Underwriters at a price per share to be negotiated and fixed in an Underwriting Agreement in the form presented with the Application as Exhibit E, and at the same time, the price at which the Series B Preference Stock will be offered to the public by the Underwriters will be agreed upon between the Company and the Underwriters. The Company proposes to reserve and continue to reserve out of its authorized Common Stock such number of shares of its Common Stock as may be required from time to time for conversion of the Series B Preference Stock. The Company also proposes that fractional shares of its Common Stock are not to be issued upon conversion, but in lieu thereof, the Company shall have the option to either issue scrip certificates or pay a cash adjustment based upon the market price.

7. The Company estimates that expenses to be incurred in connection with the issuance and sale of the shares will amount to approximately $75,000, not including underwriting discounts.

CONCLUSIONS

From a review and study of the Application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Public Service Company of North Carolina, Incorporated, be, and it is hereby authorized, empowered and permitted under the terms and conditions set forth in the Application:

1. To issue 160,000 shares of its authorized but unissued Cumulative Preference Stock ____% Convertible Series B of the par value of $25 per share, and of the aggregate par value of $4,000,000, and having preferences, limitations and relative rights as more fully set forth in the Charter of the Company and the Statement of Classification of Shares to be filed with the Secretary of State of North Carolina and with this Commission (substantially in the form filed as Exhibit C to the Application) and to sell such shares to Underwriters for cash at a price to be negotiated and fixed in an Underwriting Agreement (substantially in the form filed as Exhibit E to the Application) to be entered into by the Company with the Underwriters of such shares, and to issue such number of shares of Common Shares and scrip certificates as may be required from time to time for conversion of said 160,000 shares of the Series B Preference Stock;

2. To incur the underwriting discounts, referred to in the Application, and pay the expenses in connection with the issue, registration and sale of said shares of Series B Preference Stock;

3. To devote the proceeds to be derived from the issuance and sale of the securities described herein to the purposes set forth in the Application;

4. To file with this Commission, when available in final form, one copy each of the Statement of Classification of Shares, the Prospectus and the Underwriting Agreement;

5. To consummate the issuance and sale of the Series B Preference Stock after (a) the Statement of Classification of Shares shall have been filed with the Secretary of State of North Carolina and with this Commission as a matter of record in this proceeding; (b) the price to be paid to the Company, public offering price and the dividend rate for the shares shall have been negotiated and made a record in this proceeding; and (c) a supplemental order entered by this Commission approving such of the terms as are fixed by the negotiations;

6. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

7. To file with this Commission, in the future, a notice of negotiations of short-term bank notes setting forth the principal amount thereof, rate of interest and date of maturity.

IT IS FURTHER ORDERED, That this proceeding be, and the same is continued on the docket of the Commission for the purpose of the Commission taking such further action as it may deem appropriate when the Company shall have made a matter of record in this proceeding, the dividend rate, price to the Company and public offering price agreed upon in negotiations with the underwriters and for the purpose of receiving the Statement of Classification of Shares, the Prospectus and Underwriting Agreement and the terminal results of the sale as may thereafter be authorized, and nothing in this order shall be construed to deprive this Commission of any of its regulatory authority under the law.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Public Service Company of North Carolina, Incorporated - Application for Authority to Issue and Sell Securities	) SUPPLEMENTAL ORDER GRANTING AUTHORITY TO ISSUE AND SELL SECURITIES

By Order dated September 18, 1970, this Commission authorized Public Service Company of North Carolina, Incorporated (the Company), to issue and sell 160,000 shares of its Cumulative Preference Stock ____% Convertible Series B (the Series B Preference Stock) subject to the conditions that such sale not be consummated until (i) the Statement of Classification of Shares with respect thereto had been filed with the Secretary of State of North Carolina and with this Commission as a matter of record in this proceeding, (ii) the price to be paid to the Company for said 160,000 shares of Series B Preference Stock had been negotiated and made a matter of record in this proceeding, and (iii) a supplemental order had been entered by this Commission approving such of the terms of the Series B Preference Stock

as were fixed by the Statement of Classification of Shares and approving the price to be paid the Company for said 160,000 shares of Series B Preference Stock.

This cause again comes before this Commission upon an Amendment To Application of the Company filed this date wherein a Supplemental Order of this Commission is sought:

1. Acknowledging the filing with this Commission of the Statement of Classification of Shares as filed with the Secretary of State of North Carolina and approving the terms of the Series B Preference Stock of the Company as fixed by said Statement of Classification of Shares; and

2. Approving the price per share to be paid by the underwriters to the Company for the 160,000 shares of the Series B Preference Stock as negotiated with underwriters and as reported in the Amendment To Application; and

3. Authorizing the Company to consummate the issue and sale of the 160,000 shares of Series B Preference Stock to underwriters at such price per share.

FINDINGS OF FACT

1. The Company has this date filed with the Secretary of State of North Carolina a Statement of Classification of Shares with respect to the subject securities establishing a series of the Cumulative Preference Stock of the Company to consist of 160,000 shares of the par value of $25 per share and designated as "Cumulative Preference Stock, 8% Convertible Series B," and fixing the terms and the relative rights and preferences of the shares of said Series B Preference Stock. In accordance with the Commission's Order dated September 18, 1970, one copy of said Statement of Classification of Shares in final form as filed in the office of said Secretary of State has been filed with this Commission and designated as Exhibit H.

2. The Company has negotiated a sale of the 160,000 shares of the Series B Preference Stock to underwriters represented by The First Boston Corporation at $24.00 per share and proposes on October 21, 1970, to enter into an Underwriting Agreement (substantially in the form presented with the Application as Exhibit E) with such underwriters represented by The First Boston Corporation for the issue and sale by the Company and the purchase by the several underwriters of the 160,000 shares of the Series B Preference Stock at $24.00 per share (aggregate proceeds to the Company, $3,840,000.00), by the terms of which it is understood the underwriters propose to make a public offering of such shares. The proposed initial public offering price of the 160,000 shares of the Series B Preference Stock is $25.00 per share.

CONCLUSIONS

From a review and study of the Amendment To Application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that:

(a) The terms of the Series B Preference Stock as contained in the Statement of Classification of Shares (Presented with the Amendment To Application as Exhibit H) and the price to be paid to the Company for the 160,000 shares of the Series B Preference Stock are reasonable and that said terms and price and the transactions herein proposed to be consummated should be approved; and

(b) The transactions herein proposed are for a lawful object within the corporate purposes of the Company, compatible with the public interest, necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service, and reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED:

1. The terms of the Series B Preference Stock as fixed and contained in the Statement of Classification of Shares (Exhibit H herein) and the price of $24.00 per share (aggregate proceeds to Company, $3,840,000.00), to be paid to the Company by the underwriters for the 160,000 shares of Series B Preference Stock are approved.

2. The Company is authorized to consummate the issue and sale of the 160,000 shares of Series B Preference Stock to underwriters represented by The First Boston Corporation at such price per share to be paid by the underwriters to the Company and pursuant to the terms of an Underwriting Agreement substantially in the form presented with the Application as Exhibit E and, after such issue and sale is consummated, to issue such number of shares of the Common Stock and scrip certificates for fractional interests as may be required from time to time upon conversion of said 160,000 shares of Series B Preference Stock.

3. The net proceeds to be derived from the issuance and sale of the 160,000 shares of Series B Preference Stock shall be used for the purposes set forth in the Application.

4. The Company shall file with this Commission in the future a notice of negotiations of short-term bank notes setting forth the date of issue, date of maturity, rate of interest and principal amount thereof.

5. Within thirty (30) days after the consummation of the sale of the 160,000 shares of Series B Preference Stock, the

Company shall file with this Commission a report setting forth the terminal results of the sale of the 160,000 shares of Series B Preference Stock, as a Supplemental Exhibit in this proceeding.

IT IS FURTHER ORDERED, That this proceeding be, and the same is, continued on the docket of this Commission, without day, for the purpose of receiving the Supplemental Exhibits as ordered by this Commission in its Order dated September 18, 1970, and as hereby ordered to be filed, and nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law or to relieve the Company from compliance with any provisions of law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 76

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Public Service Company of North Carolina, Incorporated - Application for Authority to Issue and Sell $7,000,000 Principal Amount of Its First Mortgage Bonds, 9-7/8% Series H, Due 1995	) ORDER GRANTING AUTHORITY TO ISSUE AND SELL FIRST MORTGAGE BONDS

This cause comes before the Commission upon an Application of Public Service Company of North Carolina, Incorporated (Company), filed under date of November 30, 1970, through its Counsel, Mullen, Holland & Harrell, Gastonia, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell $7,000,000 principal amount of First Mortgage Bonds, 9-7/8% Series H, due 1995, to institutional investors for cash at 98.852% of the principal amount thereof, plus accrued interest from December 1, 1970, to the time of delivery of said bonds; and

2. To execute and deliver to a certain Trustee an Eighth Supplemental Indenture dated as of December 1, 1970, to an amended original Indenture of Mortgage dated as of January 1, 1952, to secure payment of said Series H Bonds.

FINDINGS OF FACT

1. The Company is a North Carolina corporation owning and operating in North Carolina gas transmission lines, distribution systems, services and other facilities necessary and proper for furnishing and delivering natural gas to the public within the territories authorized by this Commission; is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina, and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. As of the date of filing of the Application, the Company had $7,000,000 principal amount of short-term notes outstanding to banks for money required for construction of lines, systems, services and facilities, and other proper purposes. This outstanding balance includes $6,000,000 which was still outstanding on October 29, 1970, after applying the proceeds of the Company's last permanent financing authorized by this Commission plus other funds generated internally, and also the additional sums of $500,000 borrowed on said date and $500,000 borrowed on November 19, 1970, on additional short-term bank Notes. Of the $7,000,000 short-term indebtedness, $6,306,288 was applied to the Company's construction program and the balance toward sinking fund retirements of long-term debt during the twelve-month period ending October 31, 1970, per the Application.

3. During 1969, the Company expended $7,072,052 for its construction program and proposes to expend approximately $6,000,000 during 1970.

4. The Company now proposes to issue and sell $7,000,000 principal amount of First Mortgage Bonds, 9-7/8% Series H, due 1995, (the Series H Bonds) by means of an already negotiated transaction to eight institutional investors to be delivered and the purchase thereof consummated on or about December 15, 1970, (but not later than December 30, 1970) for cash at 98.852% of the principal amount thereof or at $988.52 for each $1,000 denomination of the Series H Bonds (aggregate proceeds to the Company, $6,919,640), plus accrued interest from December 1, 1970, to the date of delivery; and further, in connection with said proposed issuance and sale to execute and enter into with each of the eight institutional purchasers a Bond Purchase Agreement substantially in the form presented with the Application as Exhibit D.

5. The Company proposes that the Series H Bonds will be created and issued under the Company's Indenture of Mortgage dated as of January 1, 1952, by and between the Company and The Marine Midland Trust Company of New York (now Marine Midland Bank - New York), as Trustee, as heretofore amended and supplemented and as to be further amended and supplemented by an Eighth Supplemental Indenture dated as of December 1, 1970, to be executed and delivered substantially

in the form presented with the Application as Exhibit C, and to thereby and to the extent as stated therein to pledge its faith, credit, properties, rights, privileges and franchises to secure payment of the Series H Bonds.

6. The Company represents that the Series H Bonds will be substantially in the form and contain the terms and provisions as set forth in said Eighth Supplemental Indenture, will be registered Bonds without coupons of the denomination of $1,000 or any multiple thereof, will be dated as provided in Section 3.05 of the Indenture dated as of January 1, 1952, will mature December 1, 1995, and will bear interest at the rate of 9-7/8% per annum, payable semiannually on June 1 and December 1 in each year.

7. The Company estimates that expenses to be incurred in connection with the issuance and sale of the Series H Bonds will amount to approximately $70,000.

CONCLUSIONS

From a review and study of the Application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Public Service Company of North Carolina, Incorporated, be, and it is hereby authorized, empowered and directed under the terms and conditions set forth in the Application:

1. To issue and sell $7,000,000 principal amount of its First Mortgage Bonds, 9-7/8% Series H, due 1995, by means of a negotiated transaction to eight institutional investors on or about December 15, 1970, (but not later than December 30, 1970) for cash at 98.852% of the principal amount thereof or at $988.52 for each $1,000 denomination of the Series H Bonds (aggregate proceeds to the Company, $6,919,640), plus accrued interest from December 1, 1970;

2. To make, execute and deliver an Eighth Supplemental Indenture in connection with the issuance and sale of said Series H Bonds substantially in the form presented with the Application as Exhibit C, and thereby and to the extent as

stated therein to pledge its faith, credit, properties, rights, privileges and franchises to secure payment of said Series H Bonds for the benefit of the holders of said Bonds;

3. To pay the expenses in connection with the issue and sale of said Series H Bonds, which are estimated in the Application, and to amortize such expenses by appropriate annual charges over the life of the Series H Bonds;

4. To devote the proceeds to be derived from the issuance and sale of said Series H Bonds described herein to the purposes set forth in the Application;

5. To file with this Commission, when available in final form, one copy each of the Bond Purchase Agreements and the Eighth Supplemental Indenture as Supplemental Exhibits in this proceeding;

6. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

7. To file with this Commission, in the future, a notice of negotiations of short-term bank notes setting forth the principal amount thereof, rate of interest and date of maturity.

IT IS FURTHER ORDERED, That this proceeding be, and the same is continued on the docket of the Commission for the purpose of receiving the above-named Supplemental Exhibits and report ordered to be filed herein, and nothing in this order shall be construed to deprive this Commission of any of its regulatory authority under the law.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-1, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
United Cities Gas Company -	)	ORDER GRANTING
Application for Authority to	)	AUTHORITY TO ISSUE
Issue and Sell Securities	)	AND SELL SECURITIES

This cause comes before the Commission upon an Application of United Cities Gas Company (Company), filed under date of June 5, 1970, through its Counsel, Vaughan S. Winborne and

John H. Parker, Raleigh, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell to institutional investors for cash at 100% of the principal amount thereof, plus accrued interest, if any, $3,300,000 principal amount of its First Mortgage Bonds, Series E, 10-3/8%, dated September 1, 1970;

2. To execute and deliver a Seventh Supplemental Indenture dated as of August 1, 1970, to an original Indenture, to secure payment of the Series E Bonds;

3. To issue and sell to institutional investors for cash at par 10,000 shares of Cumulative Preferred Stock, 10-1/2%, 1971 Series, having a par value of $100 per share; and

4. To issue and sell to investment banking firms (underwriters), 75,000 shares of Common Stock having a par value of $3.33-1/3 per share at a price whereby the net proceeds will be not less than $8.00 per share.

FINDINGS OF FACT

1. The Company is duly organized and existing under the laws of the States of Illinois and Virginia with its principal office in the City of Nashville, Tennessee; is engaged in the distribution and sale of natural gas in Hendersonville, North Carolina, and in various municipalities in the States of Georgia, Illinois, South Carolina, Tennessee and Virginia; is a public utility as defined in Article I of Chapter 62 General Statutes (G.S. 62-1 G.S. 62-4) of North Carolina; and its operations in this State are subject to the jurisdiction of the North Carolina Utilities Commission.

2. The Company had outstanding, at December 31, 1969, short-term bank notes in the amount of $6,250,000, which funds had been expended for the acquisition of property or construction, extension or improvement of, or additions to, its facilities, as set forth in Exhibit I attached to the Application.

3. The Company proposes to issue and sell to institutional investors for cash at 100% of the principal amount thereof $3,300,000 of its First Mortgage Bonds, Series E, 10-3/8%, dated September 1, 1970.

4. The bonds will be secured by a Seventh Supplemental Indenture, expressed to mature in twenty-five years and be subject to a 2-1/2% annual sinking fund beginning one year after date of issuance.

5. The Company proposes to issue and sell to institutional investors 10,000 shares of Cumulative

Preferred Stock, 10-1/2%, 1971 Series, having a par value of $100 per share. The shares are subject to a call provision of par plus a premium and also provide for a sinking fund beginning one year after date of issuance.

6. The Company also proposes to issue and sell, to investment banking firms (Underwriters), 75,000 shares of Common Stock having a par value of $3.33-1/3 per share. The Underwriters will make a public offering of such shares. The price to be negotiated will be approximately the bid price per share on the last day prior to the public offering on which there was a quotation of such price on the over-the-counter market. The proceeds to the Company will be the total offering price less a fee of 8% of such price. It is anticipated that the net proceeds will be not less than $8.00 per share.

7. The proceeds from the sale of the Bonds, Preferred Stock and Common Stock will be applied to the reduction of outstanding short-term bank loans. The expenses to be incurred in the issuance and sale of the securities is approximately $93,629.

CONCLUSIONS

From a review and study of the Application, its supporting data and other information on file with the Commission, the Commission is of the opinion and so concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS THEREFORE ORDERED, That United Cities Gas Company be, and it is hereby, authorized, empowered and permitted under the terms and conditions set forth in the Application:

1. To issue and sell to institutional investors, for cash at 100% of the principal amount thereof, plus accrued interest, if any, $3,300,000 principal amount of its First Mortgage Bonds, Series E, 10-3/8%, dated September 1, 1970.

2. To execute and deliver to the Trustees, a Seventh Supplemental Indenture dated as of August 1, 1970, to an original Indenture to secure payment of the Series E Bonds.

3. To issue and sell to institutional investors for cash at par 10,000 shares of Cumulative Preferred Stock, 10-1/2%, 1971 Series, having a par value of $100 per share.

4. To issue and sell to investment banking firms 75,000 shares of Common Stock having a par value of $3.33-1/3 per share, at a price whereby the net proceeds will be not less than $8.00 per share.

5. To devote the proceeds to be derived from the issuance and sale of the securities described herein to the purposes set forth in the Application.

6. To file with the Commission, when available in final form, one (1) copy each of the Seventh Supplemental Indenture and the Underwriting Agreement.

7. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated, including copies of recording journal entries, pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein.

8. To file with this Commission, in the future, a notice of negotiations of short-term bank notes setting forth the principal amount thereof, rate of interest and maturity date.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 49

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Filing by Piedmont Natural Gas Company, Inc.,	)	ORDER
of a Report Entitled "Annual Depreciation	)	APPROVING
Accrual Study" as of January 1, 1969	)	DEPRECIATION
	)	RATES

The Commission, pursuant to G. S. 62-35(c) established Rule R6-80, "Requirements for Depreciation Study" in which it directed that all natural gas utilities not having filed depreciation rates for approval with this Commission shall make depreciation studies and file a schedule of depreciation rates for approval in 1967, and if said utility had gross depreciable plant of $10,000,000, or more, it should file depreciation studies every third year thereafter. Pursuant to that rule, Piedmont Natural Gas

Company, Inc., on January 5, 1970, filed with this Commission a report entitled "Annual Depreciation Accrual Study" as of January 1, 1969, and requests that the rates determined by this report as shown on Page 10, Table B under Column 10 entitled "Annual Depreciation Accrual Study" should be approved and authorized pursuant to its Rule R6-80. The report shows a reduction in the composite annual depreciation rate from 2.67 percent to 2.64 percent or an annual reduction of $23,327.00 for the test year ending January 1, 1969.

After full consideration of the detailed report as filed by Piedmont Natural Gas Company, Inc., the Commission is of the opinion that the rates set forth on Table B, Column 10 entitled "Annual Depreciation Accrual Study" should be approved and authorized pursuant to its Rule R6-80.

IT IS, THEREFORE, ORDERED That the depreciation rates set forth on Table B, Column 10 entitled "Annual Depreciation Accrual Study" as contained in the study entitled "Piedmont Natural Gas Company, Inc., Report on Annual Depreciation Accrual Study" as of January 1, 1969, as prepared by Drazen Associates, Inc., be and is hereby approved and authorized for use by Piedmont Natural Gas Company, Inc., pursuant to Rule R6-80.

ISSUED BY ORDER OF THIS COMMISSION.
This the 5th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. G-9, SUB 77

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Piedmont Natural Gas Company, Inc., Periodic Depreciation Studies Scheduling Rule R6-80) ORDER CHANGING DEPRECIATION STUDY PERIOD TO FIVE-YEAR BASIS

BY THE COMMISSION: Chapter 6 entitled "Natural Gas," Article 11, of the Rules and Regulations of the North Carolina Utilities Commission states as follows:

Rule R6-80. Requirements for depreciation studies. - "Each natural gas utility having gross depreciable plant of $10,000,000 or more shall make depreciation studies at least once every third year; utilities with less than $10,000,000 of gross depreciable plant shall make depreciation studies at least once every five years. Depreciation rates determined as a result of these studies shall be submitted to the Commission for its approval."

Piedmont Natural Gas Company has followed Rule R6-80 since its adoption on March 23, 1967. Piedmont Natural Gas

Company on December 31, 1969, requested the Commission to waiver Rule R6-80 so that Piedmont could file its Depreciation Studies every five (5) years instead of every three (3) years. In support thereof, Piedmont states that its depreciable properties are of such a nature and the Depreciation Rates are sufficiently stable to justify a review on a five-year basis rather than on a three-year basis. However, if an individual account changes substantially to justify a review of that account, such review can be made at an immediate date.

The results of the three studies filed and approved by the Commission indicate as follows:

Years	Composite Rates
1962	2.79 percent
1966	2.66 percent
1969	2.65 percent

It appears to the Commission, that the studies filed by Piedmont show that the accounting and record keeping procedures now established are adequate to determine average service lives from the records on a reasonably accurate basis.

It further appears to the Commission, that the Depreciation properties of Piedmont Natural Gas Company as indicated by the Depreciation Studies is stable plant and not subject to the factors which would cause serious variations in Depreciation Rates.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That Piedmont Natural Gas Company, Inc., be and is hereby authorized and required to submit a Depreciation Study every five (5) years rather than the three (3) years now provided for in Rule R6-80 of Chapter 6 entitled "Natural Gas."

(2) That no changes be made in the Depreciation Rates now approved by the Commission without further authorization.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 70

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Filing by Public Service Company of North Carolina, Inc., of a report entitled "Study of Depreciation Rates" as of December 31, 1968	))))	ORDER APPROVING DEPRECIATION RATES

The Commission, pursuant to G. S. 62-35(c) established Rule R6-80, "Requirements for Depreciation Study" in which it directed that all natural gas utilities not having filed depreciation rates for approval with this Commission shall make depreciation studies and file a schedule of depreciation rates for approval in 1967, and if said utility had gross depreciable plant of $10,000,000, or more, it should file depreciation studies every third year thereafter. Pursuant to that rule, Public Service Company of North Carolina, Inc., on December 3, 1969, filed with this Commission a report entitled "Public Service Company of North Carolina, Inc., Report on Study of Depreciation Rates" as of December 31, 1968, and requests that the rates determined by this report as shown on Table 1, Column 11 entitled "Proposed Annual Rate Percent" should be approved and authorized pursuant to its Rule R6-80. The report shows a reduction in the composite annual depreciation rate from 3.02 to 2.95 percent or an annual reduction of $45,923 for the test year ending December 31, 1968.

After full consideration of the detailed report as filed by Public Service Company of North Carolina, Inc., the Commission is of the opinion that the rates set forth on Table 1, Column 11 entitled "Proposed Annual Rate Percent" should be approved and authorized pursuant to its Rule R6-80.

IT IS, THEREFORE, ORDERED That the depreciation rates set forth on Table 1, Column 11 entitled "Proposed Annual Rate Percent" as contained in the study entitled "Public Service Company of North Carolina, Inc., Report on Study of Depreciation Rates" as of December 31, 1968, as prepared by American Appraisal Company be and is hereby approved and authorized for use by Public Service Company of North Carolina, Inc., pursuant to Rule R6-80.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 74

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Filing by Public Service Company of North Carolina, Inc., of Rules and Regulations	)))	ORDER ALLOWING RULES AND REGULATIONS TO GO INTO EFFECT

BY THE COMMISSION: On June 23, 1970, the North Carolina Utilities Commission received proposed Rules and Regulations filed by Public Service Company of North Carolina, Inc., which were to become effective on July 25, 1970.

The Commission on July 16, 1970, suspended these proposed Rules and Regulations for the reason that the proposed Rules and Regulations contained provisions for the curtailment and reduction of natural gas service by Public Service Company within its service area and that the Commission was in the process of instituting a rulemaking proceeding (G-100, Sub 12) statewide involving the question of curtailment or reduction in gas service by the various gas utilities subject to its jurisdiction. The Commission's Order suspended the proposed Rules and Regulations for 180 days from July 25, 1970.

The Commission held a public hearing in Docket No. G-100, Sub 12 on September 15, 1970, in which it inquired in the question of the curtailment or restrictions of gas service proposed by gas utilities in North Carolina.

On September 30, 1970, Public Service Company of North Carolina filed a Motion in which it requested that the Commission rescind its Order of Suspension dated July 16, 1970, and permit the Rules and Regulations filed by Public Service to become effective on October 30, 1970, subject to such order that the Commission might issue with respect to uniform rules in regard to gas restrictions for all gas companies in North Carolina as contemplated in Docket No. G-100, Sub 12.

The Commission, after due consideration of the proposed Rules and Regulations filed, and the Motion of Public Service, is of the opinion that the Motion should be allowed and the Rules and Regulations except those involving restrictions, curtailment or reduction of gas service filed by Public Service to become effective on October 30, 1970, should be allowed and further that the Order of Suspension issued by the Commission on September 16, 1970, be vacated.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Commission's Order of Suspension dated July 16, 1970, be and is hereby vacated.

2. That the Rules and Regulations filed by Public Service Company on September 30, 1970, as revised to become

effective on October 30, 1970, be allowed to go into effect as filed except those provisions being considered by the Commission in Docket No. G-100, Sub 12 relating to the establishment of uniform rules in regard to gas restrictions, curtailment, or reduction of gas service.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. H-8, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the Housing Authority of the City of Greensboro for an Amendment to its Certificate of Public Convenience and Necessity to include the establishment of 2,750 additional units of low-income housing	)	ORDER GRANTING APPLICATION

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on October 15, 1970, at 2:00 p.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), Miles H. Rhyne and John W. McDevitt

APPEARANCES:

For the Applicant:

James R. Turner, Esq.
Dameron & Turner
Attorneys and Counsellors at Law
Box 1762, Greensboro, North Carolina 27402

No Protestants.

WELLS, COMMISSIONER: This matter is before the Commission upon application of the Housing Authority of the City of Greensboro, North Carolina, for an amendment to its Certificate of Public Convenience and Necessity (granted by the Commission on December 10, 1941) to include the establishment of 2,750 additional units of low-income housing, and for authority to exercise the right of eminent domain for acquisition of property for said project.

By order dated August 28, 1970, the Commission set the application for public hearing at the above captioned time and place, and ordered that the notice of the hearing be published in a newspaper of general circulation in the area of Greensboro once each week for two successive weeks prior to the date for filing protests.

No protests to the application were filed with the Commission and no one appeared in intervention or opposition to the application.

At the hearing applicant caused to be introduced into evidence its verified application and various exhibits attached thereto and the affidavit of publication of the notice of the hearing. In addition applicant offered the testimony of Mr. William C. Gordon, Executive Secretary of the Greensboro Housing Authority.

Based upon the evidence the Commission makes the following

FINDINGS OF FACT

1. The Housing Authority of the City of Greensboro is a duly created and existing body corporate pursuant to the Housing Authority Law as set forth in Chapter 157 of the North Carolina General Statutes.

2. The Housing Authority caused its application to be properly filed with the Commission on August 21, 1970, in which it applied for an amendment to its Certificate of Public Convenience and Necessity heretofore issued by the Commission on December 10, 1941, to include the establishment of 2,750 additional units of low-income housing. On August 28, 1970, the Commission issued notice to the public of the application, setting the application for hearing at the above captioned time and place and requiring that the Commission's notice be published in a newspaper of general circulation in the Greensboro area. Said notice was published in the Greensboro Daily News on September 11 and September 18, 1970.

3. By resolutions properly adopted by the Commissioners of the Housing Authority of the City of Greensboro, the application of the Housing Authority has been approved by the City of Greensboro.

4. By agreements entered into between the Housing Authority and the United States of America, Department of Housing and Urban Development, a preliminary loan contract has been approved for funds to establish all of the additional units asked for in this application except 1,250 units, and application for approval of a preliminary loan contract for these units is awaiting approval by the Department of Housing and Urban Development.

5. The Housing Authority has constructed the 800 units authorized in its Certificate granted by this Commission and 1,030 other units on land acquired without use of the power of eminent domain. However, this does not fill the expanding need for low-income housing in the City of Greensboro.

6. The Housing Authority has taken all steps required by law to enable it to duly make this application and to put itself in a position to establish and develop 2,750 additional units of low-rent housing.

7. There is a public need in the City of Greensboro for the establishment and operation of at least the number of additional low-rent public housing units applied for by the Housing Authority.

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Housing Authority Commissioners and the City Council the City of Greensboro, North Carolina, have met the quirements of law with respect to the construction, intenance and operation of 2,750 additional units of low- nt public housing in the community.

IT IS, THEREFORE, ORDERED that the Housing Authority of e City of Greensboro, North Carolina, be, and hereby is, anted an amendment to its Certificate of Public nvenience and Necessity for the establishment, struction, maintenance and operation of 2,750 additional ts of low-rent public housing and that this order shall stitute such amendment to said Certificate.

SSUED BY ORDER OF THE COMMISSION.
his the 21st day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
AL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. H-30, SUB 1

ORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of lication of the Housing Authority of the City) High Point, High Point, North Carolina, for a) tificate of Public Convenience and Necessity) the Construction, Maintenance and Establish-) t of an Additional 462 Low-Rent Dwelling) ts in the City of High Point)	ORDER GRANTING AUTHORITY

RD IN: The Commission's Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 10, 1970, at 11:00 a.m.

ORE: Commissioners Miles H. Rhyne, Hugh A. Wells and Marvin R. Wooten (Presiding)

EARANCES:

For the Applicant:

Charles W. McAnally
Attorney at Law
North Carolina National Bank Building
High Point, North Carolina

No Protestants.

OOTEN, COMMISSIONER: On June 10, 1970, the Housing hority of the City of High Point, High Point, North olina, filed an application for a Certificate of Public venience and Necessity for the establishment,

development, maintenance and operation of 462 additional low-rent dwelling units in the City of High Point, North Carolina, in order that it might acquire the necessary property to be used in the construction of said low-rent housing units in the City of High Point, North Carolina.

By order dated June 22, 1970, the matter was set for public hearing before the Commission, and it was ordered that public notice be published in a newspaper of general circulation in the area once each week for two successive weeks prior to the date for the filing of protests, which was July 7, 1970. Said notice was published in accord with the Commission order, and no protests or interventions were filed and no one appeared in opposition to the granting of the certificate in this case.

The applicant presented the testimony of Mr. Walter R. Green, Jr., Assistant Executive Director of the Housing Authority of the City of High Point, and Mr. F. C. Morehead, Chairman of the Housing Authority of the City of High Point; the Affidavit of Publication in the local newspaper; the application heretofore filed in this matter and the several exhibits attached thereto, including pertinent excerpts from the minutes of the meeting of the City Council of the City of High Point; Notice of Public Hearing before the City Council; the Certificate of Incorporation of the Housing Authority of the City of High Point; and presented exhibits A through P substantiating its application in this case, as well as its Exhibit I which was the Affidavit of Publication.

Based upon the evidence and exhibits, the Commission makes the following

FINDINGS OF FACT

1. The Housing Authority of the City of High Point, High Point, North Carolina, is a duly created and existing body corporate under the Housing Authority Law, Chapter 157 of the General Statutes of North Carolina.

2. That on the 8th day of December, 1964, this Commission issued an order and certificate in which it was ordered that the ordering certificate issued the Housing Authority of the City of High Point, High Point, North Carolina, pursuant to hearing on August 1, 1940, be, and the same was to be amended and supplemented by the granting of additional authority to said applicant for the development, construction, maintenance and operation of 400 low-cost dwelling units in addition to those already being operated by said Housing Authority.

3. That on May 30, 1968, the Housing Authority of the City of High Point duly adopted a resolution that there is a need for low-rent housing in the City of High Point and the need is not being adequately met by private enterprise, and directed that application be made to the Public Housing

Administration of the Department of Housing and Urban Development for financial assistance and for a preliminary loan in the amount of $46,800 for 462 additional low-rent housing units.

4. That the City Council of the City of High Point on October 3, 1968, passed a resolution to the effect that there exists in the City of High Point a need for low-rent housing, and approved the application of the Housing Authority for a preliminary loan for the establishment of 462 additional dwelling units.

5. That on February 4, 1969, the Housing Authority of the City of High Point duly adopted a resolution authorizing execution of an amendment to the Cooperation Agreement dated October 18, 1962, between the City and the Housing Authority, which said amended Cooperation Agreement provides for the local cooperation necessary for the development and administration of 462 additional units.

6. That on the 20th day of February, 1969, the City Council of the City of High Point adopted a resolution duly authorizing the execution of the amended Cooperation Agreement referred to in the paragraph next preceding.

7. That on March 1, 1969, the City and the Housing Authority executed the amended Cooperation Agreement referred to in the next two preceding paragraphs.

8. That the application of the Housing Authority for a preliminary loan for the development of 462 additional units has been approved by the Department of Housing and Urban Development and a Preliminary Loan Contract was entered into as of the 16th day of May, 1969.

9. That the Department of Housing and Urban Development by letter dated April 14, 1969, approved a Program Reservation No. NC6-C of 462 housing units for low-rent people in High Point, North Carolina.

10. That the Housing Authority of the City of High Point is ready, willing and able and otherwise fit to carry out the lawful purposes in connection with the establishment of the additional proposed low-rent housing project.

11. That the Housing Authority of the City of High Point has complied with all necessary requirements to acquire the property and to construct the dwelling units and is entitled to a Certificate of Public Convenience and Necessity from this Commission.

The Commission, therefore, reaches the following

CONCLUSIONS

The City Council of the City of High Point and the Housing Authority of the City of High Point have met the requirements of law with respect to the construction, maintenance and operation of additional low-rent housing units. Surveys of housing facilities show an urgent need for additional low-rent housing units and this need cannot be met by private capital.

IT IS, THEREFORE, ORDERED:

That the Housing Authority of the City of High Point, High Point, North Carolina be, and it is, hereby granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance and operation of 462 additional units of low-rent housing in the City of High Point and in the area within the jurisdiction of the Housing Authority of the City of High Point.

IT IS FURTHER ORDERED:

That this order shall constitute this Commission's Certificate of Public Convenience and Necessity issued to and to be used by the Housing Authority of the City of High Point in connection with its development, construction, maintenance and operation of 462 additional low-rent dwelling units in the City of High Point and within the area within the jurisdiction of the Housing Authority of the City of High Point.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. H-58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of the Waynesville Housing Authority for a Certificate of Public Convenience and Necessity for the Establishment of 100 Dwelling Units of Low-Rent Public Housing) ORDER GRANTING CERTIFICATE

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on December 9, 1970, at 3:00 p.m.

BEFORE: Commissioners Marvin R. Wooten, Miles H. Rhyne, and Hugh A. Wells (Presiding)

APPEARANCES:

For the Applicant:

William I. Millar, Esq.
Millar, Alley & Killian.
P. O. Box 1018, Waynesville, North Carolina

No Protestants.

WELLS, COMMISSIONER: This matter is before the Commission upon application of the Housing Authority of the Town of Waynesville, North Carolina, for a Certificate of Public Convenience and Necessity for the establishment, construction and maintenance of 100 dwelling units of low-rent public housing.

By order dated October 13, 1970, the Commission set the application for public hearing on November 24, 1970, and ordered that the notice of the hearing be published in a newspaper having general circulation in the area of Waynesville once each week for two successive weeks. On November 24, 1970, counsel for the applicant requested that the hearing be continued. Subsequently the hearing was continued and held at the above captioned time and place.

No protests to the application were filed with the Commission and no one appeared in opposition to the application.

Upon the opening of the hearing applicant caused to be introduced into evidence its verified application and various exhibits attached thereto and the affidavit of publication of the notice of the hearing. In addition, applicant offered the testimony of R. Lee Davis, Executive Director of the Waynesville Housing Authority.

Based upon the evidence the Commission makes the following

FINDINGS OF FACT

1. The Housing Authority of the Town of Waynesville is a duly created and existing body corporate pursuant to the Housing Authority Law as set forth in Chapter 157 of the North Carolina General Statutes.

2. The Housing Authority caused its application to be properly filed with the Commission on September 23, 1970, in which it applied for a Certificate of Public Convenience and Necessity for the establishment of 100 dwelling units of low-rent housing. On October 13, 1970, the Commission issued notice to the public of the application, setting the time, date and place of the hearing, and requiring that the Commission's notice be published in a newspaper having general circulation in the Waynesville, North Carolina, area, for two successive weeks prior to the date for filing

protests. Said notice was published in The Waynesville Mountaineer on November 9 and 16, 1970.

3. The Mayor and Aldermen of the Town of Waynesville by resolution have determined that there exists in the Town of Waynesville, a need for low-rent public housing, and gave approval of establishing the Housing Authority, and therefore authorized on December 14, 1966, that an application to be entered for 175 dwelling units, requiring a preliminary loan of $27,500.00; and that upon application to the Federal Department of Housing and Urban Development, a plan for 100 dwelling units was developed, and is now being pursued.

4. On December 6, 1966, the Waynesville Housing Authority directed the Secretary of said authority to prepare an application for monies to fund said project; application was made to the Federal Department of Housing and Urban Development. The application was approved and the preliminary funds have been received.

5. A need for low-rent public housing in the area of the Town of Waynesville has been established.

6. The private sector of the residential construction industry in and around the Town of Waynesville is not meeting the need for new standard dwelling units for low income families in the area.

7. The Waynesville Housing Authority has taken all steps required by law to enable it to duly make this application and to put itself in a position to establish and develop 100 units of low-rent public housing.

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

The Housing Authority of the Town of Waynesville, Waynesville, North Carolina, has met the requirements of law with respect to the construction, maintenance and operation of 100 units of low-rent public housing and it has demonstrated a need for said additional housing in the community.

IT IS, THEREFORE, ORDERED that the Housing Authority of the Town of Waynesville, Waynesville, North Carolina, be, and hereby is, granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance and operation of 100 units of low-rent public housing and that this order shall constitute such Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. B-272, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Garland L. Gordon, d/b/a Appalachian Coach Company, Galax, Virginia, for authority to discontinue daily operations and operate on Sunday only over its route from the North Carolina-Virginia State Line to Boone and return	) RECOMMENDED ORDER

HEARD IN: The Alleghany County Courthouse, Sparta, North Carolina, on September 3, 1970, at 10 a.m.

BEFORE: John W. McDevitt, Hearing Commissioner

APPEARANCES:

For the Applicant:

Garland L. Gordon
201 North Jefferson Street
Galax, Virginia
For: Himself

For the Protestants:

Edmund I. Adams
Attorney at Law
P. O. Box 506, Sparta, North Carolina
For: The Sparta Merchants Association

McDEVITT, HEARING COMMISSIONER: On August 6, 1970, Commissioner Marvin R. Wooten issued a Recommended Order based upon evidence in a public hearing on July 24, 1970, disallowing and disapproving the Petitioner's application for authority to discontinue daily operations and operate on Sundays only over its route from the North Carolina-Virginia State Line to Boone and return. Commissioner Wooten concluded that the Petitioner had failed to carry the burden of proof in that he was unable to supply anything other than the most meager or uncorroborated financial information to establish a loss operation presently or prospectively.

On August 11, 1970, Garland L. Gordon, d/b/a Appalachian Coach Company, filed petitions containing financial and statistical information in further support of his application, which, upon consideration by the full Commission, appeared to justify reopening the matter for the taking of additional evidence. Accordingly, by order of the Commission issued August 21, 1970, the matter was set for further public hearing as captioned and notice thereof was required to be posted in buses serving said route and in bus stations and in other prominent places along said route. Public hearing was held as captioned, during which testimony was offered by Garland L. Gordon, the Petitioner, H. W. Wilcox, operator of the bus terminal in Boone, North

Carolina, and James Poole, operator of the Sparta Restaurant and Bus Station.

The testimony of Mr. Gordon was based upon a statistical summary of income and expenditures for the calendar year 1969, a breakdown of source of income and expenses for the calendar year 1969, and a summary of income from the Boone-Galax run for the first seven months of the calendar year 1970, which tend to show that the Galax to Boone revenue per bus mile for the calendar year 1969 was 12.21 cents whereas operating expense per bus mile was 30.59 cents; that the revenue per bus mile for the first seven months of the calendar year 1970, January through July, was 14.7 cents; that the Petitioner has incurred and is incurring a loss of approximately 18 cents per bus mile on the Galax-Boone service; that the company has survived only because of its interstate and charter revenue; that the intrastate authority of the Petitioner provides charter service at lower rates than those of interstate carriers; that during the month of July, 1970, an average of 2.6 passengers per trip were transported on the Boone-Galax run.

The testimony of Mr. James Poole, who operates the Sparta Restaurant and Bus Station, tends to show that he receives ten percent of the express which amounts to $10 to $15 per month, most of the express going to local truck and auto parts businesses.

Mr. H. W. Wilcox, who has operated the bus terminal in Boone, North Carolina, for many years, testified that the Petitioner picks up two or three passengers per week at the Boone bus station; that in his opinion the Petitioner is suffering financially from the operation in Boone.

Counsel for the Sparta Merchants Association asked the Commission to consider evidence in the prior hearing, stating further that his client is interested in maintaining the present service.

Based upon the evidence adduced in the resumed hearing, which by reference includes the evidence adduced in the initial public hearing on July 24, 1970, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That Petitioner operates as a common carrier of passengers by motor vehicle under certificate issued by the North Carolina Utilities Commission and is subject to the jurisdiction thereof; that his application for authority to change the schedule of its service between Boone, North Carolina, and the North Carolina-Virginia State Line, via West Jefferson and Sparta, by discontinuing service except on Sunday is properly before this Commission.

2. That Petitioner's total revenue for passengers transported over the North Carolina portion of the Boone-

Galax route during the year 1969 totaled $4,882.08 for 1,684 passengers, averaging 2.3 passengers per trip; that revenue per bus mile was 12.21 cents based upon 57,304 miles traveled; that systemwide operating expense per bus mile for the year 1969 was 30.59 cents which, related to revenue per bus mile of 12.21 cents, reflects a loss on operations of 18.38 cents per bus mile.

3. That Petitioner's total revenue from the North Carolina portion of the Boone-Galax route for the period January-July, 1970, was $4,954.40, of which $3,329.31 represents passenger fares and $1,625.27 represents express receipts; that revenue per bus mile for the period was 14.07 cents based upon 33,693 miles traveled; that 1,099 passengers were transported during the 7-month period, resulting in an average of 2.6 passengers per trip; that the per bus mile revenue of 14.07 cents when related to systemwide operating expense of 30.59 cents per mile reflects a loss on operations of 15.89 cents per bus mile.

4. That the 1969 average of 2.3 passengers per trip, the 1970 average of 2.6 passengers per trip, and the average monthly express revenue of $195 do not reflect substantial general public use and need for the daily service which has been provided by the Petitioner.

CONCLUSIONS

The Petitioner submitted evidence to clearly show that he has experienced substantial financial loss on the operation of passenger and express service between Boone, North Carolina, and the North Carolina-Virginia State Line and that general public use of the service is far below the level required to justify and sustain the existing level of service. It is concluded that the Petitioner has borne the burden of proof of a loss operation, presently and prospectively, because of lack of public patronage which is not attributable to his management or service, and that it should be permitted to discontinue service as proposed and should be required to maintain service one day weekly.

IT IS THEREFORE ORDERED that the Petitioner's Schedule No. M.P.-N.C.U.C. No. 9 filed by Petitioner in this case on July 2, 1970, with effective date of August 1, 1970, be, and the same is hereby, allowed to become effective on the date this Recommended Order becomes a final order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-298

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
William S. Melton, RFD 1, Sylva, North Carolina - Application for a Certificate to Operate as a Passenger Common Carrier by Motor Vehicle	))))	RECOMMENDED ORDER GRANTING A CERTIFICATE

HEARD IN: The Jackson County Courthouse, Sylva, North Carolina, on September 2, 1970, at 10:00 a.m.

BEFORE: Commissioner John W. McDevitt

APPEARANCES:

For the Applicant:

R. Phillip Haire
Hall, Holt & Haire
Attorneys at Law
Box 248, Sylva, North Carolina 28779

For the Protestants: None

McDEVITT, HEARING COMMISSIONER: Application was filed by William S. Melton, RFD 1, Sylva, North Carolina, on August 3, 1970, for a certificate to operate as a common carrier of passengers and their baggage over the following route:

Beginning at the bus station in the Town of Sylva, North Carolina, over North Carolina Highway 107, approximately 7 miles to the intersection of N. C. 1001; thence over N. C. rural paved road through the Western Carolina University Campus approximately one mile to the intersection of N. C. rural paved road 1325; thence over N. C. rural paved road to approximately one-tenth of a mile from said intersection to the Reid Gymnasium and return over the same route.

By order of the Utilities Commission issued August 6, 1970, public notice was given and the application was set for hearing. The applicant was required to publish notice of the application in a newspaper having general circulation in the area to be served. Public hearing was held as captioned, no protests were filed and no one appeared at the hearing in opposition to the application. The applicant, Mr. William S. Melton, who is employed by B. & P. Trucking Company as a driver, was not present, having been unavoidably delayed in returning from a business trip for his employer.

Eleven witnesses testified in support of the application. Mr. James Gray, Publisher of the Sylva Herald, represented the Sylva Chamber of Commerce and the Sylva Merchants

Association and testified that they feel that the proposed service is necessary and will be beneficial to the community and to the students of Western Carolina University and that the applicant is fit and qualified to perform the proposed service. Mr. Doug Reed, Director of Public Information at Western Carolina University, testified that the absence of regular bus service between Sylva and Cullowhee causes problems for travelers to and from the University community; that students have no means of public transportation between the University campus and Sylva; that the University supports the application for regular bus service between Sylva and Cullowhee, provided, it does not restrict the present level of charter bus service required to meet the transportation needs of the University; and that student enrollement of the University is approximately 5500.

Mr. L. D. Hyde, Assistant to the President of Western Carolina University, testified that the proposed service would fulfill a real need in the community, and corroborated the testimony of Mr. Reed. Mr. George B. Sloan, Chairman of the Board of Jackson County Commissioners and a resident of Cullowhee, testified that the proposed service is greatly needed by University students and residents in the area. Mr. Marion V. Jones, Drivers License Examiner for the North Carolina Department of Motor Vehicles stationed in Sylva, testified that the proposed service is needed from the standpoint of safety and to fulfill the need of unlicensed drivers and persons who do not own or have access to an automobile.

Mr. Fred B. Holcombe, Sheriff of Jackson County, testified that there is need for a bus service between Sylva and Cullowhee; that the proposed service would eliminate accidents, solve parking problems, and provide public transportation for people who do not have their own cars; and that he knows William S. Melton to be a man of good character and reputation in the community. Mr. E. J. Nicholson, Town Manager for the Town of Sylva, testified that the proposed service would fulfill a real need of students who do not have automobiles and would help the traffic situation, both in Sylva and Cullowhee; and that the only public transportation between Sylva and Cullowhee is by taxi. Mr. R. Guy Sutton, Postmaster at Sylva, North Carolina, testified that he has known William S. Melton for his entire life; that he is married, has five children, is a Baptist preacher, painter and has had experience as a bus driver and in building construction; that he has never been charged with a violation of the law and is a responsible citizen in the community; that he believes Mr. Melton capable of operating the proposed service in an acceptable manner; and that there is need for public transportation between the communities of Sylva and Cullowhee.

Mr. Thomas Guy Jones, Deputy Sheriff of Jackson County, testified that he has known Mr. William S. Melton for many years as a responsible citizen capable of operating the proposed bus service between Sylva and Cullowhee; that there

is need for the proposed service; that he knows of Mr. Melton's experience as a Trailways bus driver and as a driver of tractor-trailers and similar equipment and believes him to be trustworthy, sober and of excellent character; and that Mr. Melton has never had an accident. Mr. Charles M. Davis, of Sylva, testified that many employees in Sylva and Cullowhee need public transportation to commute to their places of employment. Mrs. William S. Melton testified that Mr. Melton is a truck driver and hauls furniture from Hazelwood, North Carolina, to various places throughout the State and elsewhere; that he is thirty-two (32) years of age and was born and reared in Jackson County; that he completed the ninth grade in public school and served in the National Guard for two years; that he drove a bus for Continental Trailways for about three years, during which he did not have an accident; that he has made arrangements to purchase and finance a bus to use in the proposed service; and that they own their home which is valued at about $11,000.00.

Based upon the evidence adduced, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That public convenience and necessity require the proposed service in addition to existing authorized service, and

2. The applicant, William S. Melton, is fit, willing and able to perform the proposed service, and

3. The applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

The testimony of eleven public witnesses clearly shows that there is no form of public common carrier transportation between the Town of Sylva, North Carolina, which is the County Seat of Jackson County, and the unincorporated community of Cullowhee, the location of Western Carolina University, which has approximately 5500 students and 500 employees and several hundred residents not associated with the University. The University has substantial need for public transportation and charter passenger bus service and should not be restricted in obtaining charter service from common carriers which have heretofore served the University. It is concluded that the applicant has borne the burden of proof and that a certificate should be granted for the proposed service.

IT IS, THEREFORE, ORDERED:

That William S. Melton, Route 1, Sylva, North Carolina, be, and he hereby is, authorized to engage in the intrastate transportation of passengers, their baggage and light

express in the same vehicle by motor vehicle as particularly described in Exhibit A attached hereto and made a part hereof.

IT IS FURTHER ORDERED:

That applicant begin operations only after fully complying with the Commission's rules and regulations relating to the filing of a tariff of fares and charges, evidence of the required insurance, registration of equipment and designation of a process agent and begins the service herein authorized not later than December 1, 1970.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-298 William S. Melton
RFD 1
Sylva, North Carolina

EXHIBIT A To transport passengers, their baggage and light express in the same vehicle over the following routes between the following points:

Beginning at the bus station in the Town of Sylva, North Carolina, over N. C. Highway 107, approximately 7 miles to the intersection of N. C. Highway 1001; thence over N. C. rural paved road through the Western Carolina University campus, approximately 1 mile to the intersection of N. C. rural paved road 1325; thence over N. C. rural paved road to approximately one-tenth of a mile from said intersection to the Reid Gymnasium and return over the same route.

DOCKET NO. B-242, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Charlotte City Coach Lines, Inc., Suspension and Investigation of Proposed Increased Bus Passenger Fares Scheduled to become Effective June 20, 1970	) ORDER ALLOWING) CERTAIN INCREASES) IN FARES AND CHARGES))

HEARD: Mecklenburg County Courthouse, Charlotte, North Carolina, on August 6, 1970

BEFORE: Commissioners H. T. Westcott (Chairman), Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Respondent:

Thomas W. Steed, Jr.
Attorney at Law
Post Office Box 2058, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Post Office Box 991, Raleigh, North Carolina

Maurice W. Horne
Assistant Commission Attorney
Post Office Box 991, Raleigh, North Carolina

No Protestants.

WELLS, COMMISSIONER: On May 20, 1970, Charlotte City Coach Lines, Inc. (Respondent), 707 North Brevard Street, Charlotte, North Carolina, filed with the Commission local passenger tariff No. 1-C, NCUC No. 9, proposing the following changes to be effective June 20, 1970, in adult and children passenger fares and charges:

(a) ADULT FARES:

Single Adult Cash Fare	30 cents
Ticket or Token Rate	7 for $2.00

(b) SCHOOL FARES:

Single Student Cash Fare	15 cents
Ticket or Token Rate	8 for $1.00

Transfers will be issued upon request at the time a fare is collected. A charge of 10 cents will be made at the time a transfer is used.

Special coaches for educational and athletic purposes may also be provided to transport school children attending first to twelfth grades, inclusive, at fifteen cents per one-way ride per child.

By order of May 26, 1970, the Commission suspended the effective date of the tariff schedule and ordered that an investigation be instituted into the justness and reasonableness of the proposed increases in Respondent's fares and charges and set the matter for hearing on August 6, 1970, in Courtroom No. 3, Mecklenburg County Courthouse, Charlotte, North Carolina. The Commission's Order named Charlotte City Coach Lines, Inc. as Respondent

and placed upon it the burden of proving that the proposed increases are just, reasonable and otherwise lawful.

By letter of June 1, 1970, treated as a motion by the Commission, the Respondent requested that the matter be advanced for hearing at an earlier date and reassigned for hearing in Raleigh, North Carolina. Upon consideration of the motion made by the Respondent, the Commission, by Order of June 3, 1970, denied the motion, both with respect to the advancement of the hearing date and reassignment of hearing location and ordered that the hearing set for August 6, 1970, be held on that date in Charlotte, North Carolina, in accordance with the Commission's Order of May 26, 1970.

The Commission received only one letter of protest to the proposed increases in fares and charges which was unsigned. No formal intervention was filed and no one appeared at the hearing to oppose the application.

Notice of the proposed increases in fares and charges was published by Respondent as required by law in a newspaper having general circulation in the Charlotte area and also placed in Respondent's buses.

Respondent presented evidence which tended to show that since its existing fares and charges were made effective on February 1, 1969, by Order of the Commission dated January 28, 1969, in Docket No. B-242, Sub 13, it has experienced increased costs with respect to its operations. Specifically, the evidence tends to show the following:

For the 12-month period ending June 30, 1970, Respondent's operating revenues were $2,298,099 and its total operating expenses were $2,337,912, resulting in a net operating revenue loss of $39,813 and an operating ratio of 101.73%.

Projected operating revenues for the 12-month period ending June 30, 1971, under the existing fare structure, were $2,285,070. Total operating expenses projected for the same period were $2,397,575, reflecting a net operating revenue loss of $112,505 and an operating ratio of 104.92%.

For the 12-month period ending June 30, 1971, under the proposed increases in fares and charges, Respondent's operating revenues were projected to be $2,638,552, and total operating expenses to be $2,516,877, reflecting net operating revenues of $121,675, and an operating ratio of 95.39%.

Respondent presented evidence tending to show increased wage costs on a trended basis, indicating projected 12-month increases ending June 30, 1971, totaling $141,821, and further indicating related increased labor costs resulting from the last labor contract negotiated on October 17, 1968.

The Respondent introduced evidence which tended to show that the ticket and change booth to be erected at

Independence Square in Charlotte, pursuant to the Commission's Order in Docket No. B-105, Sub 27, would be virtually impossible to erect because of an existing local ordinance. The Commission, upon considering such evidence, is of the opinion that the requirement that Respondent erect a ticket and change booth pursuant to the Commission's Order of February 18, 1970, in Docket No. B-105, Sub 27, should be eliminated.

Upon consideration of the record and evidence in this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) Charlotte City Coach Lines, Inc., a wholly owned subsidiary of City Coach Lines, Inc., of Jacksonville, Florida, is a fully franchised and operating intracity carrier of passengers by motor vehicle for the City of Charlotte and vicinity, and is subject to the jurisdiction of the North Carolina Utilities Commission for the purpose of fixing its rates and charges.

(2) Under its present tariff, Respondent is authorized to charge an adult cash fare of 25 cents, adult ticket fare of 5 for $1.00, and adult transfer fee of 10 cents. Respondent proposes to increase adult cash fare to 30 cents, adult ticket fare of 7 for $2.00, and proposes no change with respect to the 10 cents transfer fee.

(3) Under its present tariff, Respondent is authorized to charge student cash fare of 10 cents, student ticket fare of 10 for $1.00, and charges no transfer fee to students. Respondent proposes to increase its student cash fare to 15 cents, student ticket fare to 8 for $1.00, and for the first time to impose a 10 cents student transfer fee.

(4) Respondent has experienced significant increases in its costs of operation.

(5) Respondent sustained a net operating loss of $39,813 for the 12-month period ending June 30, 1970, resulting in an operating ratio of 101.73%.

(6) Respondent's employees received a wage increase of 25 cents per hour effective October 17, 1968, an additional increase of 12 cents per hour October 12, 1969, a 3 cents per hour increase effective February, 1970, and Respondent estimates increases of $74,630 for the period October 18, 1970, to June 30, 1971. The existing labor contract expires October 17, 1970. Other related employee costs have correspondingly increased.

(7) Respondent's projections under existing fares and charges for the 12-month period ending June 30, 1971, indicate a net operating loss of $112,505 reflecting an operating ratio of 104.92% after taxes. Respondent's projections for the same period ending June 30, 1971, under

the proposed fares and charges indicate net operating income of $121,675, reflecting an operating ratio of 95.39% after taxes.

(8) Projected adjustments for the period June 30, 1971, taking into account a 5 cent student transfer fee rather than a 10 cent student transfer fee, and considering all other increases requested as being allowed, would yield total operating revenues of $2,630,352 and total operating expenses of $2,512,614 reflecting net operating income of $117,738 and an operating ratio of 95.53%.

(9) The increases in Respondent's fares and charges as modified to reduce the student transfer fee from 10 cents to 5 cents are necessary to enable the carrier to provide and maintain adequate public transportation service and earn a reasonable return upon property devoted to public use.

(10) Notice to public of Respondent's increases was published as required by law and was placed in Respondent's buses.

(11) The evidence tends to indicate that Respondent has encountered substantial obstacles to the erection of a ticket and change booth at Independence Square at Charlotte, such requirement appearing in Docket No. B-105, Sub 27, in the Order of the Commission dated February 18, 1970.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

(1) The Commission concludes that the proposed increases in fares and charges with respect to single adult cash fare from 25 to 30 cents; adult ticket fare from 5 for $1.00 to 7 for $2.00; and student cash fare from 10 to 15 cents and student ticket fare from 10 for $1.00 to 8 for $1.00, are just and reasonable and should be authorized to become effective.

(2) The Commission further concludes that the proposed increase of 10 cents with respect to student transfer charges is unjust and unreasonable and should not be permitted. No transfer charge for students has previously been authorized.

(3) The Commission, however, concludes that a transfer fee of 5 cents for students is just and reasonable and should be authorized to become effective.

(4) The requirement that Respondent complete a ticket and change booth to be erected in Independence Square in Charlotte, by Order of the Commission of February 18, 1970, in Docket No. B-105, Sub 27, be, and the same hereby is, eliminated, thereby permitting Respondent to institute

payment of exact fares as set forth in Appendix A of the Order of the Commission dated February 18, 1970.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Order of Suspension entered in this Docket on May 26, 1970, be, and the same hereby is, vacated and set aside, except as hereinafter provided.

(2) That Charlotte City Coach Lines, Inc., be, and the same hereby is, authorized to increase its fares and charges under local passenger tariff No. 1-C, NCUC No. 9, to allow for increases in fares and charges as shown in Appendix A attached hereto, said increases in fares and charges to be made effective September 1, 1970.

(3) That Charlotte City Coach Lines, Inc., be, and the same hereby is, authorized to issue supplement to its tariff to reflect the increases allowed in this Order. Such publication may be made effective on seven days' notice to the Commission and the public, but in all other respects publication shall comply with the rules of the Commission governing the construction, posting and filing of tariff schedule.

(4) That the requirement that Respondent complete a ticket and change booth to be erected in Independence Square in Charlotte, by Order of the Commission of February 18, 1970, in Docket No. B-105, Sub 27, be, and the same hereby is, eliminated, thereby permitting Respondent to institute payment of exact fares as set forth in Appendix A of the Order of the Commission dated February 18, 1970.

ISSUED BY ORDER OF THE COMMISSION.
This 14th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A

SCHEDULE OF FARES

(A)	ADULT FARES:		
	Single Adult Cash Fare		30 cents
	Ticket or Token Rate		7 for $2.00
(B)	SCHOOL FARES:		
	Single Student Cash Fare		15 cents
	Ticket or Token Rate		8 for $1.00

Transfers will be issued upon request at the time a fare is collected. A charge of 5 cents will be made at the time a transfer is used.

Special coaches for educational and athletic purposes may also be provided to transport school children

attending first to twelfth grades, inclusive, at fifteen cents per one-way ride per child.

DOCKET NO. B-260, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Raleigh City Coach Lines, Inc. - Suspension and Investigation of Proposed Increased Bus Passenger Fares and Rule Change, Scheduled to Become Effective June 20, 1970	) ORDER APPROVING) RATES AND RULE) CHANGE))

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on August 13, 1970, at 9:30 a.m.

BEFORE: Chairman H. T. Westcott (Presiding) and Commissioners Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Respondent:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Intervenor:

Broxie J. Nelson
The City Attorney's Office
P. O. Box 590, Raleigh, North Carolina
For: The City of Raleigh

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: This investigation was instituted by the Commission following the filing on statutory notice by Raleigh City Coach Lines, Inc., 121 North West Street, Raleigh, North Carolina (Respondent), of its Local Passenger Tariff No. 1-E, N.C.U.C. No. 7, which proposes the following increases and changes:

(1) Single adult cash fare increased from 25 cents to 30 cents.

(2) Adult ticket rate increased from 4 for 90 cents to 7 for $2.00.

(3) Single student cash fare increased from 10 cents to 15 cents.

(4) Student ticket rate increased from 10 for $1.00 to 8 for $1.00.

(5) A new transfer charge of 10 cents is imposed upon school fares.

(6) Charter or special bus rate for special coaches for educational and athletic purposes increased from 10 cents per one-way ride per child to 15 cents per one-way ride per child; and

(7) A new rule 13 is added to Section A, Rules and Regulations, providing for an "exact fare" requirement identical to that approved by the Commission in Docket No. B-105, Sub 27, for Charlotte City Coach Lines, Inc.

The Commission concluded that the interest of the public was involved and by order dated May 26, 1970, suspended and deferred application of the hereinabove described tariff schedule, instituted an investigation into the justness, reasonableness and lawfulness of the proposed increased fares, charges, and rule addition, and assigned the matter for hearing on August 13, 1970, at 9:30 A. M. The order named Raleigh City Coach Lines, Inc., as Respondent and placed upon it the burden of proving the proposed increases, practices in connection therewith, and proposed new rule are just, reasonable and otherwise lawful.

The Commission received a letter of protest from Mr. M. A. Pogleman, 3605 Rock Creek Road, Raleigh, North Carolina, on May 27, 1970. The City of Raleigh, North Carolina, filed its protest and leave to intervene in this matter on July 24, 1970, and by order of the Commission dated July 29, 1970, said intervention was allowed. Under date of June 1, 1970, the Respondent filed its request of this Commission by letter that the hearing date previously set be advanced, which request was denied by the Commission by order dated June 3, 1970.

Notice of the proposed increases in fares and charges and the "exact fare" rule addition was published by the Respondent as required by law in a newspaper having general circulation in the Raleigh area and also placed in the Respondent's buses. The Respondent presented evidence which tended to show that since its existing fares and charges were made effective March 3, 1969, by order of the Commission dated February 27, 1969, in Docket No. B-260, Sub 5, it has experienced increased cost with respect to its operation. The Respondent's evidence indicated that its operating ratio for the twelve months ending March 30, 1970, was 103.82%, and that such operating ratio projected for a

twelve-month period ending June 30, 1971, under presently existing rates would be 105.73%, which results in losses during those periods of $28,740 and $43,147, respectively. The Respondent's evidence further tended to show a projected operating ratio for the twelve-month period ending June 30, 1971, after adjustments to allow for the proposed increase in rates herein requested, of 96.65%.

The evidence for the Respondent was presented through its Witness Charles T. Hornbuckle, Vice President - Finance, City Coach Lines, Inc., and Raleigh City Coach Lines, Inc., Jacksonville, Florida. Mr. Hornbuckle also testified regarding the proposed "exact fare" rule, explained its application in detail, and testified, that with the rising crime rate nationally, such a rule was needed as a safety measure and a precaution in the prevention of armed robberies, injuries, losses and damages to the company, its employees and customers, and finally that the company's experience with such a rule in other cities in this and other states indicates public acceptance with little or no resultant inconvenience to the public.

Robert L. Deaton, Operations Manager for the Respondent, in Raleigh, North Carolina, was called by the Intervenor, the City of Raleigh, for cross-examination as an adverse party and testified under examination regarding service and service policies of the Respondent and the Respondent's extension of service policies.

The intervenor also offered the testimony of Mr. Thomas Bradshaw, 5401 Emerson Drive, Raleigh, North Carolina, a member of the Raleigh City Council, who testified regarding his desire to see improvement in service. This witness' testimony related in the main to service and needed service improvement rather than to opposition to the rates as applied for, though he questioned the appropriateness of such requested increases. His testimony further advised that further proceedings before the City Council regarding service complaints would be handled in the future under applicable law, beginning with the City Council which has original jurisdiction in service matters, and following the procedure outlined in the statute with reference thereto.

Members of the public testifying in their own behalf included Mr. C. F. Brannon, Mr. Raymond Jeffreys, Jr., J. Eddie Brown and Mrs. Bud C. Tullis. The testimony of these witnesses related in the main to the need for improved service and pointed out the lack of express buses, the lack of special buses, poor routing and no advertisement. There was also a request to provide half fare service for senior citizens during the period from 9:00 a.m. to 3:00 p.m., classified by the witnesses as non-peak traffic periods. These witnesses also pointed out the many varied problems and difficulties with transportation experienced by senior citizens from physical as well as financial viewpoints. Others of the witnesses testified regarding their desire to see the bus company extend service into the areas which they

were not presently routing buses regularly. The witnesses acknowledged that they had not placed their complaints regarding service before the City Council, but that they intended to do so.

Based upon the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. Raleigh City Coach Lines, Inc., is a wholly owned subsidiary of City Coach Lines, Inc., Jacksonville, Florida, is a duly franchised and operating intracity carrier of passengers in the City of Raleigh and vicinity, and is subject to the jurisdiction of the North Carolina Utilities Commission for the purposes of fixing its rates and charges and approving its rules.

2. Under its present tariff, Raleigh City Coach Lines, Inc., is authorized to charge adult fares of 25 cents per passenger, adult ticket rate of 4 for 90 cents and 10 cents for transfers. It proposes to increase its adult fares to 30 cents per passenger, adult tickets to 7 for $2.00 with adult transfers to remain at 10 cents; it also proposes to increase its student rates from 10 cents per passenger to 15 cents per passenger and to increase its student ticket rates from 10 for $1.00 to 8 for $1.00 and to establish a new student transfer charge of 10 cents.

3. Raleigh City Coach Lines, Inc., has experienced significant increases in its cost of operation.

4. The present fare structure for the twelve-month period ending March 31, 1970, resulted in a net operating loss of $28,740 and an operating ratio of 103.82%.

5. Anticipated revenues under the present fare structure and operating expenses for the twelve-month period ending June 30, 1971, will produce an operating ratio of 105.73%, reflecting an operating loss of $43,147. The operating ratios based upon the proposed fare structure for the twelve-month period ending June 30, 1971, is projected to be 96.65%, reflecting a profit of $28,159.

6. The proposed increases are necessary to enable the Respondent to provide and maintain adequate transportation service and maintain a reasonable, fair and lawful operating ratio.

7. Employees of Raleigh City Coach Lines, Inc., received wage increases effective December 1, 1968, as a result of new labor contract, which in addition thereto provided for cost of living increases beginning June 1, 1969, and annually thereafter.

Other related employee costs have correspondingly increased.

8. The increases in the Respondent's fares and charges as applied for, when modified to reduce the student transfer fee from 10 cents to 5 cents, will produce the necessary funds to enable the carrier to provide and maintain adequate public transportation service and will produce a reasonable operating ratio; projected adjustments for the period ending June 30, 1971, taking into account a 5 cent student transfer fee rather than a 10 cent student transfer fee, and considering all other increases requested as being allowed, would yield total operating revenues of $840,214.00 and total operating expenses of $812,741.00, thereby reflecting a net operating income of $27,473.00, and an operating ratio of 96.73%.

9. That public convenience and necessity requires and demands that the sale of tickets be made available to the public through the drivers of the respective buses of the Respondent.

10. That a new Rule 13 proposing to add to Section A, Rules and Regulations, providing for an "exact fare" requirement identical to that heretofore approved by the Commission in Docket No. B-105, Sub 27, for Charlotte City Coach Lines, Inc., is just, fair, reasonable, and, therefore, lawful.

11. That the proposed "exact fare" rule addition is just, fair and reasonable, and would serve as a safety measure and a precaution in the prevention of armed robberies, injuries, losses and damages to the Respondent, its employees and customers, and that the same is in the public interest.

CONCLUSIONS

1. In considering the record in this proceeding as a whole and the evidence adduced at the hearing, we conclude that the proposed increase in fares and charges and practices in connection therewith are just and reasonable and should be authorized to become effective, except for that portion of said proposed increase which proposes the initial establishment of a 10 cents charge with respect to student transfers, which said increase the Commission concludes to be unjust and unreasonable and, therefore, that the same should not be permitted to become effective. No charge for student transfers has previously been authorized by this Commission.

2. The Commission, however, concludes that a student transfer fee in the amount of 5 cents is just and reasonable and should be authorized to become effective.

3. That a reasonable rule regarding "exact fare" requirements should be approved in that the same would serve as a safety measure and a precaution in the prevention of armed robberies, injuries, losses, and damages; that the rule as proposed in this connection by the Respondent is just and reasonable and in the public interest; and that

said "exact fare" rule should be allowed to become effective, in that said rule is just, reasonable and, therefore, lawful.

IT IS, THEREFORE, ORDERED:

1. That the order of suspension entered in this docket on May 26, 1970, be, and the same hereby is, vacated and set aside, except as hereinafter provided.

2. That Raleigh City Coach Lines, Inc., be, and the same hereby is, authorized to increase its fares and charges under Local Passenger Tariff No. 1-E, N.C.U.C. No. 7, issued on May 20, 1970, to allow for increases in fares and charges as shown in Appendix A attached hereto, said increases in fares and charges to be made effective September 1, 1970.

3. That the Raleigh City Coach Lines, Inc., be, and the same hereby is, authorized to issue supplement to its tariff to reflect the increases allowed in this order. Such publication may be made with not less than one day's notice to the Commission and public, to be effective September 1, 1970, but in all other respects publication shall comply with the rules of the Commission governing the construction, posting and filing of tariff schedules.

4. That the Raleigh City Coach Lines, Inc., be, and the same hereby is, authorized to add a new Rule 13 to Section A, Rules and Regulations, providing for an "exact fare" requirement identical to that approved by the Commission in Docket No. B-105, Sub 27, for Charlotte City Coach Lines, Inc., as proposed by said Respondent in this case, the same to become effective upon not less than thirty (30) days' notice to the Commission and the public, which said publication shall in all respects comply with the tariff publication rules of this Commission.

5. That the Respondent shall provide large and conspicuous posters on all of its buses for a period of thirty (30) days prior to the effective date of its "exact fare" rule advising the using public regarding the rule, its requirements, and effective date.

6. That the "exact fare" rule shall, as it does, not limit the period of time for redemption of change vouchers or receipts and shall provide for the redemption of such vouchers or receipts in person at the company office or by mail to the company office.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A

SCHEDULE OF FARES FOR RALEIGH, NORTH CAROLINA, AND VICINITY

(A) ADULT FARES:

Single Adult Cash Fare	30 cents
Ticket or Token Rate	7 for $2.00

Transfers will be issued upon request at the time a fare is collected. A charge of 10 cents will be made at the time a transfer is used.

(B) SCHOOL FARES:

Single Student Cash Fare	15 cents
Ticket or Token Rate	8 for $1.00

Transfers will be issued upon request at the time a fare is collected. A charge of 5 cents will be made at the time a transfer is used.

The school fare will be available to school children attending public, private or parochial, elementary or high schools in grades between the first and twelfth grades, both inclusive, for the transportation of such school children between their homes and such schools, between the hours of 7:30 A. M., and 4:30 P. M., on regular school days during the regular nine months' school term.

School identification cards, provided by the company and issued by the school authorities to properly identify each student as specified on identification, will be required in order to enjoy the reduced student rate. Without proper identification card, the adult fare must be paid.

(C) CHARTER OR SPECIAL BUS RATES:

Buses With a Seating Capacity of 45 Passengers or More	$10 for the first hour $10 for each additional hour
Buses With a Seating Capacity of 35 or More Passengers, but Less Than 45 Passengers	$15 for the first hour $ 9 for each additional hour

(D) Special coaches for educational and athletic purposes may also be provided to transport school children attending first to twelfth grades, inclusive at fifteen cents (15¢) per one-way ride per child.

(E) Section A, Rules and Regulations, is amended by adding new Rule 13, to read as follows:

"13. Passengers will be transported by the company only upon payment of the exact cash fare, upon payment of the exact transfer fee and presentation of a valid transfer, or upon presentation of a valid ticket, token or transfer fee, and no cash change will be given to any passenger. Passengers not having the exact fare may purchase from the bus operator tickets or tokens in multiples of $1.00, or may request from the bus operator a receipt in lieu of cash change, which receipt shall be redeemable in cash at any time thereafter upon presentation at the office of the company either in person or by mail (provided accompanied by self-addressed, stamped envelope)."

. DOCKET NO. B-78, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Safeway Transit Company - Suspension and Investigation of Proposed Increased Bus Passenger Fares Scheduled to Become Effective October 15, 1970	) ORDER ALLOWING CERTAIN) INCREASES IN FARES AND) CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on November 24, 1970, at 11:00 a.m.

BEFORE: Commissioners John W. McDevitt (Presiding), Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicant:

Mr. R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Post Office Box 109
Raleigh, North Carolina 27602

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Post Office Box 991
Raleigh, North Carolina 27602

BY THE COMMISSION: On September 15, 1970, Safeway Transit Company, Wilmington, North Carolina, filed with the Commission Local Passenger Tariff No. 6-C, NCUC No. 11,

proposing certain increases in fares and charges to be effective October 15, 1970.

On September 22, 1970, the Commission, being of the opinion that this matter affects the public interest, entered an Order suspending the effective date of said requested increases and set the matter for hearing, said hearing to be held on November 24, 1970, at 11:00 a.m. The Commission's Order further required that Respondent cause to be published notice of hearing.

The Respondent's filed tariff No. 6-C, NCUC No. 11, generally requests adult passenger fares be increased by 5 cents for all scheduled fares and 5 cents per ride on the commutation fare of Wilmington-Wrightsville Beach and did not propose to increase childrens' school fares.

The hearing was held at the time and place specified in the Commission's Order of September 22, 1970. No one appeared at the hearing to protest Respondent's request in this proceeding.

Respondent presented evidence which tends to show that for the 12 months' period ending August 31, 1970, its gross operating revenues amounted to $272,352 and that for the same period, its expenses including operating expenses and depreciation amounted to $260,714, resulting in a net operating income before taxes of $11,638, reflecting an operating ratio of 95.7%.

Respondent further presented evidence which indicates that the annual additional gross revenues it expects to receive if the increases applied for in this proceeding are permitted, would amount to $35,166, resulting in anticipated operating ratio of 89%.

Respondent's Exhibit 4 indicates certain projections made by comparing to the test period 12 months ending August 31, 1970, annualized increases in drivers wage costs under increases which became effective May 22, 1970, and known increases relating to wage contract of May 22, 1971. Respondent's projections tend to indicate increases in drivers costs and bus parts costs of approximately $12,197.

Upon consideration of the evidence adduced at the hearing and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

(1) Safeway Transit Company, a wholly-owned subsidiary of Continental Trailways of Charlotte, North Carolina, is a fully franchised and operating intracity carrier of passengers by motor vehicles for the City of Wilmington and vicinity, and is subject to the jurisdiction of the North Carolina Utilities Commission for the purpose of fixing its rates and charges.

(2) The Respondent's present Local Passenger Tariff No. 6-B, NCUC No. 10, which became effective on August 15, 1968, authorizes one-way adult fares that are basically 25 cents for intracity trip with a graduated fare increase as shown in said tariff up to 50 cents on its extended schedule to Wrightsville Beach.

(3) Respondent proposes to increase its fares and charges as reflected in Local Passenger Tariff, No. 6-C, NCUC No. 11, to increase its adult passenger fares as reflected in said tariff by 5 cents per ride on one-way adult fare and 5 cents per ride on the commutation fare of Wilmington-Wrightsville Beach.

(4) Respondent's gross operating revenues for 12 months' period ending August 31, 1970, amounted to $272,352 and for the same period, its operating expenses amounted to $260,714, resulting in net operating income before taxes of $11,638.

(5) Respondent's operating ratio for the test period ending August 31, 1970 was 95.7%.

(6) Respondent projects additional gross revenues amounting to $35,166 under the proposed increases requested in this proceeding.

(7) Respondent's projections for known increases in drivers wage costs and increases in regard to bus parts show that Respondent anticipates annual increases in view of new labor contract and increases for bus parts of approximately $12,197.

(8) Respondent would experience an operating ratio of 89% under proposed increases.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission concludes that the proposed increases filed by Respondent in Local Passenger Tariff No. 6-C, NCUC No. 11, amounting generally to an increase of 5 cents per ride on one-way adult fares and 5 cents per ride on the commutation fare of Wilmington-Wrightsville Beach, are just and reasonable and should be authorized to become effective.

The Respondent's evidence indicates that it has experienced significant increases with respect to its operating expenses and, in particular, with respect to wage increases under May 22, 1970 wage contract and wage contract to become effective May 22, 1971, and in regard to bus parts costs.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Order of Suspension in this Docket dated September 22, 1970, be, and the same hereby is, vacated and set aside except as hereinafter provided.

(2) That Safeway Transit Company be, and the same hereby is, authorized to increase its fares and charges in accordance with Local Passenger Tariff No. 6-C, NCUC No. 11.

(3) That Safeway Transit Company be, and the same hereby is, authorized to issue supplement to its tariff to reflect the increases allowed in this Order. Such publication may be made and said tariff made effective on one days' notice to the Commission and the public, but in all other respects the publication should comply with the rules of the Commission governing the construction, posting and filing of tariff schedules.

ISSUED BY ORDER OF THE COMMISSION.
This 18th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. B-103, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Wilkes Transportation Company, Inc. - Application for Authority to Increase Its Bus Passenger Fares	) RECOMMENDED) ORDER GRANTING) APPLICATION

HEARD IN: The Conference Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on September 24, 1970

BEFORE: Commissioner Hugh A. Wells

APPEARANCES:

For the Applicant:

H. P. Eller, President
Wilkes Transportation Company, Inc.
P. O. Box 1022
North Wilkesboro, North Carolina 28659

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WELLS, COMMISSIONER: On July 17, 1970, Wilkes Transportation Company, Inc., filed with the Commission an application for authority to increase its one-way adult bus

passenger fares which now reflect 3.5 cents per mile to 3.85 cents per mile and to base its adult round-trip fares on 190 percent of the one-way fares in lieu of 180 percent of the one-way fares. Upon consideration of same the Commission concluded that the interest of the public was involved and accordingly issued its order of July 22, 1970, assigning the filing for public hearing in the Hearing Room of the Commission, Raleigh, North Carolina, on September 24, 1970. The order required applicant to publish notice of the hearing in a newspaper having general circulation in the involved area.

The provisions of G.S. 62-75 place upon applicant the burden of proving that the proposed fare increases are just, reasonable and lawful. No protests were received by the Commission and no protestants or other public witnesses appeared at the hearing.

The only witness for the applicant was its President, H. P. Eller, who testified with respect to the steadily escalating costs of operation without any appreciable increase in revenues. The witness introduced an exhibit showing operating revenues and expenses for the calendar year 1969 and an estimate of same for the year 1970. Mr. Eller also introduced an exhibit showing that notice of the hearing was published in the September 17, 1970, issue of The Journal Patriot of North Wilkesboro, and he testified that the notice of his proposed fare increases were duly posted in his passenger buses on or about September 17, 1970.

The witness further testified that he anticipates the proposed increase in fares, as shown in his application, will result in approximately $2,200 in additional revenue; that for the year 1969 his operating revenue was $58,377, and operating expenses $51,648, resulting in net operating revenue of $6,729. Mr. Eller stated that he has four employees other than himself; that he spends most of his time helping in the operation of his buses; that he does not pay himself a salary but that his compensation is derived from such profits as his company may earn, and that he needs the increase in fares as sought in his application in order to have a viable operation and be in a position to continue to serve the public.

Based upon the evidence the Commission makes the following

FINDINGS OF FACT

1. That Wilkes Transportation Company, Inc., is a duly franchised carrier of passengers, baggage and express between Winston-Salem and North Wilkesboro, Morganton and North Wilkesboro, and intermediate points, is subject to the jurisdiction of the Commission and is properly before the Commission in this proceeding.

2. During recent years Applicant has experienced significant increases in its cost of operation without any substantial increase in revenues. Based upon its present fare structure, operating income for the calendar year 1970 was projected at $59,400, with operating expenses as $54,500.

3. The application filed by Applicant shows a projected income of $61,600, expenses of $58,447 and an operating ratio of 94.9 percent.

4. The proposed fare increases are necessary to enable the Applicant to provide and maintain its existing transportation service in its certificated area.

5. Applicant posted notice of the proposed increase in fares in its buses and also gave notice to the public in regard thereto by publication of an appropriate notice in a newspaper having general circulation in the involved area.

6. The proposed fares of Applicant reflect the same basis (3.85 cents per mile) as approved by the Commission in its Order of January 29, 1970, in Docket No. B-105, Sub 23, for use by Queen City Coach Company and Greyhound Lines in constructing the increased fares published by those bus passenger carriers that became effective February 4, 1970.

CONCLUSIONS

Based upon the evidence adduced and the foregoing Findings of Fact, the Hearing Commissioner concludes that the proposed fare increases as set forth in Applicant's filing hereinabove enumerated and described are just, reasonable and lawful, and should be allowed to become effective.

IT IS THEREFORE ORDERED:

1. That the application of Wilkes Transportation Company, Inc., filed in this docket on July 17, 1970, be, and the same is hereby, approved.

2. That Applicant be, and hereby is, authorized to make an appropriate tariff filing reflecting the fares described and set forth in its application.

3. That the publication hereby authorized may be made effective upon five (5) days' notice to the Commission and to the public, but shall otherwise comply in all respects with the rules and regulations of the Commission pertaining to the construction, posting and filing, of transportation tariff schedules.

4. That the proceeding in this matter is discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-105, SUB 26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of a Proposed Bus Rule)
Requiring Passengers to Have Their Exact Fare) ORDER
Before Riding Buses, Scheduled to Become Effective)
January 4, 1970)

HEARD IN: Courtroom C, Gaston County Courthouse, Gastonia, North Carolina, on January 7, 1970, at 2:00 p.m.

BEFORE: Commissioners John W. McDevitt, Miles H. Rhyne, and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Respondents:

Basil L. Whitener
Whitener & Mitchum
Attorneys at Law
Gastonia, North Carolina

For the Commission Staff:

Larry G. Ford
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina

No Protestants.

WOOTEN, COMMISSIONER: The matter in this docket arises upon the filing with this Commission by City Coach Company, Inc., Gaston-Lincoln Transit, Inc., and Gastonia Transit Company, Inc., of tariff schedules proposing the following rule:

> "Exact Fares: All passengers boarding buses must have their own exact fare and must drop their fare into the fare box. Drivers are not allowed to make change. No passengers are allowed to ride on credit."

said publications being scheduled to become effective on January 4, 1970, and designated as follows:

"Rule No. 12 of Supplement No. 1 to City Coach Company, Inc., Local Passenger Tariff No. 1-D, N.C.U.C. No. 7,

"Rule No. 11 of Supplement No. 1 to Gaston-Lincoln Transit, Inc., Local Passenger Tariff No. 1, N.C.U.C. No. 1,

"Rule No. 11 of Supplement No. 4 to Gastonia Transit Company, Inc., Local Passenger Tariff No. 3-B, N.C.U.C. No. 5."

The Commission being of the opinion that the proposed rule, and practices in connection therewith, was a matter affecting the public interest, by Order dated December 16, 1969, suspended the tariff schedules, instituted an investigation into and concerning the lawfulness of the tariff schedules, and assigned the matter for public hearing at the time and place in the caption, with the requirement that public notice be given by the Respondents.

When the matter was called for hearing, the Respondents, City Coach Company, Inc., Gaston-Lincoln Transit, Inc., and Gastonia Transit Company, Inc., presented their Comptroller, Mr. William Ray Rhyne, Jr., who testified that it was the desire of the Respondents to implement this rule as a safety measure and precaution in the prevention of armed robberies, injuries, losses and damages. He further testified that the Respondents desired this protection rule in the light of growing crime and violence throughout the country, though pointing out that no driver had in the past been robbed while driving one of the Respondents' buses.

The Respondents also presented two of their bus drivers, a Mr. Starnes and a Mr. Crouse, who stated that they considered the rule a good one in the light of their many years of experience in the driving of buses. All of the witnesses pointed out to the Commission that they had initiated a "trial run" similar to this rule through which they had encouraged their customers to have exact change and advised that no customer had required change during the previous two weeks on any of their buses.

After considering and reviewing this matter in its entirety, and in the light of the absence of protests, and the experience of the Respondents with their "trial run," the Commission is of the opinion that the suspension heretofore entered should be vacated and the investigation heretofore ordered should be discontinued, and that the tariff schedules as filed should be allowed to become effective upon ten (10) days' notice to the public and this Commission, subject to complaint and further hearing.

IT IS, THEREFORE, ORDERED:

That the Order of Suspension in this case dated December 16, 1969, be, and the same is, hereby cancelled and vacated.

IT IS FURTHER ORDERED:

That the investigation heretofore instituted by Order of this Commission dated December 16, 1969, be, and the same is, hereby discontinued.

IT IS FURTHER ORDERED:

That the tariff schedules in this matter be, and the same are, hereby allowed to become effective upon ten (10) days' notice to the Commission and the public, subject to complaint and further hearing.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. B-105, SUB 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of a Proposed Bus Rule Requiring Passengers to Have their Exact Fare Before Riding Buses, Scheduled to Become Effective February 16, 1970) ORDER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on February 12, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott (Presiding) and Commissioners John W. McDevitt, Miles H. Rhyne, Hugh A. Wells and Marvin R. Wooten

APPEARANCES:

For the Respondent:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

For the Protestants:

W. W. Gunter
305 Hawthorne Street
Hamlet, North Carolina 28345
(Representing himself and the United Transportation Union)

A. R. Campbell
Y. A. Sustar, and
A. F. Warlick
Charlotte, North Carolina
(Individually and for themselves)

WOOTEN, COMMISSIONER: The matter in this docket arises upon the filing with the Commission by Charlotte City Coach Lines, Inc., Charlotte, North Carolina, of a tariff schedule proposing the following rule:

"Rule 13. Passengers will be transported by the Company only upon payment of the exact cash fare, upon payment of the exact transfer fee and presentation of a valid transfer, or upon presentation of a valid ticket, token or free transfer, and no cash change will be given to any passenger. Passengers not having the exact fare may purchase from the bus operator tickets or tokens in multiples of $1.00, or may request from the bus operator a receipt in lieu of cash change which receipt shall be redeemable in cash upon presentation at the office of the Company within sixty (60) days thereafter."

said publication being scheduled to become effective February 16, 1970, and designated as follows:

"Rule No. 13 of Supplement No. 3 to Charlotte City Coach Lines, Inc., Local Tariff No. 1-B, N.C.U.C. No. 8."

The Commission being of the opinion that the proposed rule and practices in connection therewith was a matter affecting the public interest, by order dated January 26, 1970, suspended the tariff schedule, instituted an investigation into and concerning the lawfulness of the tariff schedule, and assigned the matter for public hearing at the time and place indicated in the caption, with the requirement that public notice be given by Respondent.

When the matter was called for hearing, the Respondent, Charlotte City Coach Lines, Inc., presented two witnesses, Mr. Robert L. Deaton, 2019 Reaves Drive, Raleigh, North Carolina, who is Assistant General Manager of the Respondent, and Mr. Charles T. Hornbuckle, Jacksonville, Florida, Vice-President-Finance, of the Respondent. Both witnesses testified that it was the desire of the Respondent

to implement this rule as a safety measure and precaution in the prevention of armed robberies, injuries, losses, and damages. They further testified that the Respondent desires this protection rule in the light of growing crime and violence throughout the country as well as their experience with robberies and assaults in their Charlotte, North Carolina, franchised area. These witnesses likewise testified that their company had implemented this same rule in Jacksonville, Florida, with little or no complaint and complete success with reference to its objectives. Mr. Deaton further testified that the Mayor, City Council and City Manager of the City of Charlotte favored this exact fare plan; that the Respondent planned to build a ticket and change booth located so as to be accessible to its customers at its main point of operation at Independence Square in the City of Charlotte, North Carolina; that the adverse program which they have heretofore carried on in connection with this program has indicated public acceptance of the same in that most passengers now have exact change upon boarding their buses; that prior to installing their advertisement campaign, $3,000 per day for change was required for their drivers and that in a period of three weeks that figure had dropped to approximately $800 per day; and that the company desires to place this rule into effect as soon as is possible after their ticket and change booth has been constructed, erected and is in place. Both of the witnesses testified in detail as to the method of operation of the exact fare plan.

The protestants offered testimony through Mr. W. W. Gunter and Mr. A. R. Campbell and tendered Mr. Y. A. Sustar and Mr. A. P. Warlick for cross-examination. Mr. Campbell and Mr. Gunter testified in substance that they supported and approved the basic rule in this case but objected to the bus driver being required to handle and sell tickets since it was their opinion that robberies would continue to occur and that the desired result to be protected by the rule could not and would not become a reality without also eliminating the sale of tickets; these witnesses admitted that certain inconveniences would be incurred by members of the public desiring to purchase tickets whose transfer would not take them past the company office or the ticket and change booth to be located in the center of town.

Based upon the evidence and exhibits in this case and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. That Charlotte City Coach Lines, Inc., is a corporation organized and existing under and by virtue of the laws of the State of North Carolina; that said corporation is a public utility offering passenger bus service in the area of Charlotte, North Carolina; that the Respondent is subject to regulation by the North Carolina Utilities Commission; and that the filing in this docket is

properly before this Commission and is a matter over which this Commission has appropriate jurisdiction.

2. That public convenience and necessity requires and demands that the sale of tickets be made available to the public through the drivers of the respective buses of the Respondent.

3. That the rule as here proposed by the Respondent is not just and reasonable in all respects and, therefore, is found to be unjust and unreasonable and as a consequence unlawful.

4. That a rule similar to that proposed by the Respondent which would delete the sixty day redemption provision and provide for presentment for redemption by mail would be and is just, fair, reasonable, and, therefore, lawful.

A review of this entire matter by the Commission supports the following

CONCLUSIONS

That a reasonable rule similar to that proposed by the Respondent in this case which would serve as a safety measure and a precaution in the prevention of armed robberies, injuries, losses and damages would be in the public interest; that such reasonable rule should not limit the period of time for the redemption of change vouchers or receipts and should provide for the redemption of such vouchers or receipts in person to the company office or by mail to the company office.

In the light of the above, the Commission concludes that the Respondent has failed to carry the burden of proof placed upon it by its order of January 26, 1970, to establish the lawfulness of the rule as proposed, and that the rule as proposed should not be allowed to become effective, but on the contrary should be cancelled.

The Commission further concludes that it should approve an amendment to the rules and regulations of the Respondent under Section A thereof by adding a new rule, on Page 3 thereof, to read as follows:

"13. Passengers will be transported by the company only upon payment of the exact cash fare, upon payment of the exact transfer fee and presentation of a valid transfer, or upon presentation of a valid ticket, token or transfer fee, and no cash change will be given to any passenger. Passengers not having the exact fare may purchase from the bus operator tickets or tokens in multiples of $1.00, or may request from the bus operator a receipt in lieu of cash change, which receipt shall be redeemable in cash at any time thereafter upon presentation at the office of the company, either in person or by mail (provided accompanied by self-addressed, stamped envelope)."

which said rule the Commission concludes to be just, reasonable and, therefore, lawful.

The Commission finally concludes that the Respondent should be permitted to use the present change receipt which it has heretofore had printed and presented as its Exhibit 8 until such time as the present supply is exhausted; and that upon exhaustion of the present supply of said receipts, the same should be amended to substitute the following words at the bottom thereof: "SHOULD BE REDEEMED WITHIN SIXTY DAYS FROM DATE OF ISSUE," and to delete the words: "NOT REDEEMABLE AFTER SIXTY DAYS FROM DATE OF ISSUE."

IT IS, THEREFORE, ORDERED:

1. That the order of suspension in this docket dated January 26, 1970, be, and the same is, hereby vacated and set aside for the purpose of allowing publication hereinafter ordered to be made effective.

2. That Charlotte City Coach Lines, Inc., be, and the same is, hereby directed to cancel in its entirety Supplement No. 3 to its Local Passenger Tariff No. 1-B, N.C.U.C. No. 8 and the suspension supplement to said tariff and to publish in lieu thereof the rule requiring the payment of exact fares as set forth in Appendix A attached, which said rule shall become effective after appropriate notice to the public following the completion of its ticket and change booth to be erected at Independence Square in Charlotte.

3. That the publication authorized hereby may be on one day's notice, but shall in all other respects comply with the tariff publication rules of this Commission.

4. That upon publication having been made as herein ordered, this proceeding be discontinued and same is hereby considered as discontinued and the matter dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. B-105, SUB 27
APPENDIX A
Charlotte City Coach Lines, Inc.

Section A, Rules and Regulations, is amended by adding new Rule 13, on page 3 thereof, to read as follows:

"13. Passengers will be transported by the company only upon payment of the exact cash fare, upon payment of the exact transfer fee and presentation of a valid transfer, or upon presentation of a valid ticket, token or transfer fee, and no cash change will be given to any passenger.

Passengers not having the exact fare may purchase from the bus operator tickets or tokens in multiples of $1.00, or may request from the bus operator a receipt in lieu of cash change, which receipt shall be redeemable in cash at any time thereafter upon presentation at the office of the company, either in person or by mail (provided accompanied by self-addressed, stamped envelope)."

DOCKET NO. B-105, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Lawrence C. Stoker, d/b/a Suburban Coach Company - Suspension and Investigation of Proposed Increase in Bus Passenger Fares) ORDER

HEARD IN: Community Meeting Room, Morganton Savings & Loan Association Building, Morganton, North Carolina, on April 8, 1970, at 10 a.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Marvin R. Wooten

APPEARANCES:

For the Applicant:

Lawrence C. Stoker, Esq.
Crawford and Stoker
Attorneys at Law
Legal Building
Asheville, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney

No Protestants.

WELLS, COMMISSIONER: On March 3, 1970, applicant caused to be filed with the Commission Supplement No. 1 to N.C.U.C. No. 2 to its passenger fare tariffs, said supplement to be effective March 16, 1970. Upon consideration of said filing the Commission issued an order on March 10, 1970, denying applicant's request for short notice authority for the proposed tariff changes to become effective on March 16, 1970, suspending the use of said tariffs and assigning the filing for investigation by the Commission. In a supplemental order issued on March 18, 1970, the Commission set this matter for public hearing in Morganton, North Carolina, at 10:00 a.m., on April 8, 1970, and ordered applicant to publish notice of the hearing in a newspaper of general circulation in the Morganton area and to post notice

of the proposed tariff changes in all of its passenger buses.

Pursuant to the provisions of G.S. 62-75 the Commission's order placed upon the applicant the burden of proof of showing the proposed fare increases to be just, reasonable and lawful. No protests were received by the Commission and no protestants or other public witnesses appeared at the hearing. The sole witness for the applicant was its owner, Lawrence C. Stoker. Mr. Stoker testified as to steadily escalating cost of operation and steadily diminishing passenger revenues. He also introduced certain exhibits tending to illustrate and substantiate his testimony. Mr. Stoker introduced an exhibit to show that the notice of hearing was published in the Morganton News-Herald on April 2 and 3, 1970, and he testified that the notice of the proposed fare increases was duly posted in all of his passenger buses for approximately one month prior to the date of the hearing.

Based upon the evidence the Commission makes the following

FINDINGS OF FACT

1. Lawrence C. Stoker, d/b/a Suburban Coach Company, is a duly franchised and operating carrier of passengers providing intracity service in the City of Morganton and intercity service between Morganton and other communities in Burke County and is subject to the jurisdiction of the Commission for the purpose of fixing its rates and fares, and notice of hearing was properly given and published.

2. During recent years applicant has experienced significant increases in its cost of operation and at the same time has experienced significant decreases in its gross income derived from such operation. During the calendar year 1969 the company had total operating revenues of $39,357 and experienced total reasonable operating expenses in the sum of $61,050 for a net operating loss of $21,693, disclosing an operating ratio of 155.12 percent. Based upon its present fare structure, operating income for the calendar year 1970 was projected at $35,879, with operating expenses amounting to $66,588, showing a projected operating loss of $30,709 and an operating ratio of 185.59 percent.

3. The amended tariffs filed by applicant show a projected income of $47,102, with operating expenses of $68,933, resulting in a projected operating loss of $21,831 and an operating ratio of 146.35 percent.

4. The proposed fare increases are necessary to enable the applicant to provide and maintain its existing transportation service in its certificated area and to earn a reasonable rate of return upon its property devoted to providing said service.

CONCLUSIONS

Based upon the foregoing Findings of Fact we conclude that the proposed fare increases as set forth in applicant's filing hereinbefore referred to are just, reasonable and lawful and that the suspended tariff should be and hereby is allowed to become effective upon one day's notice.

IT IS, THEREFORE, ORDERED:

1. That the order of suspension in this docket hereinbefore referred to be and the same hereby is vacated and set aside.

2. That applicant be and hereby is authorized to issue appropriate supplement to its existing tariffs for the purpose of allowing the proposed increases in fares as shown in Exhibit A hereto attached and made a part hereof.

3. That the publication hereby authorized may be made effective upon one day's notice to the Commission and the public and that the applicant shall comply in all other respects to all of the rules and regulations of the Commission regarding filing and posting of tariff schedules.

4. That the investigation in this matter is hereby closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of April, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

EXHIBIT A

Docket No. B-105, Sub 28

Suburban Coach Company
Lawrence C. Stoker, d/b/a
Morganton, North Carolina

Supplement No. 2
N.C.U.C. No. 2

One Way Adult Fares

Morganton, N.C. - Rutherford College, N.C. - Lake James, N.C.

Between And	Morganton N. C.	Aiken's Store N. C.	Drexel N. C.	Valdese N. C.
Aiken's Store, N.C.	$ .35	$	$	$
Drexel, N.C.	.40	.35		
Valdese, N.C.	.45	.40	.35	
Rutherford College, N.C.	.50	.45	.40	.35

Between	Morganton, N.C.	Canoe Creek, N.C.	Oak Hill Road, N.C.	3-Way Supply, N.C.	Bon's place, N.C.
And					
Cance Creek, N.C.	$ .30	$	$	$	$
Oak Hill Road, N.C.	.35	.30			
3-Way Supply, N.C.	.40	.35	.30		
Bon's Place, N.C.	.45	.40	.35	.30	
Lake James, N.C.	.50	.45	.40	.35	.30

Morganton, N.C. - Hice's Store, N.C. - Zion Hill Church, N.C.

Between	Morganton, N.C.	Carbon City, N.C.	Glen Alpine, N.C.	Tip Top, N.C.
And				
Carbon City, N.C.	$ .35	$	$	$
Glen Alpine, N.C.	.40	.35		
Tip Top, N.C.	.45	.40	.35	
Hice's Store, N.C.	.50	.45	.40	.35

Between	Morganton, N.C.	Order's Store, N.C.
And		
Order's Store, N.C.	$ .35	$
Zion Hill Church, N.C.	.40	.35

Between	Morganton, N.C.
And	
Morganton, N.C.	$ .25

DOCKET NO. T-1507

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Raymond Ludwell Hale, DBA Bargain Motors, Raeford, North Carolina, for Common Carrier Authority	) ORDER DISMISSING) APPLICATION) WITHOUT PREJUDICE

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 25, 1970, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

None

For the Protestants:

Thomas R. Eller, Jr.
Cansler, Lockhart & Eller
Attorneys at Law
1111 North Carolina National Bank Building
Charlotte, North Carolina 28202
For: M. M. Smith Storage Warehouse, Inc.
Patterson Storage Warehouse Co., Inc.
Weathers Brothers Transfer Co.
Martin Transfer & Storage, Inc.
Modern Moving & Storage
Fayetteville Moving & Storage
Raleigh Bonded Warehouse, Inc.

WESTCOTT, CHAIRMAN: This cause came on for hearing pursuant to application filed on April 17, 1970, wherein the above-named applicant seeks authority to transport Group 15, Retail Store Delivery Service, and Group 18, Household Goods, each as defined in the Commission's Rules and Regulations, on a statewide basis. Notice to the public was duly given in the Calendar of Hearings issued by the Commission on April 27, 1970.

At the call of the matter for hearing, applicant did not appear and offer evidence in support of a Certificate of Convenience and Necessity as is required by statute and the rules and regulations of the North Carolina Utilities Commission. An agent of the Commission, Mr. William English, attempted without success to reach applicant at telephone No. 875-2088, his listed home telephone number, and at No. 875-4664, his listed office telephone; whereupon attorney for protestants moved that the application be dismissed for the reasons set forth in the record of this proceeding.

In consideration of the fact that the applicant failed to appear in support of his application and the motion of protestants, the Commission is of the opinion, finds and concludes that the application should be dismissed without prejudice.

IT IS, THEREFORE, ORDERED:

1. That the application of Raymond Ludwell Hale, DBA Bargain Motors, Raeford, North Carolina, in Docket No. T-1507, be, and the same is hereby, dismissed without prejudice.

2. That a copy of this order be transmitted to the applicant at his last known address and to the attorney for the protestants appearing in this cause.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1508

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Cecil Bernard Harrison, d/b/a C. B. Harrison Trucking Company - Application for authority to transport Group 21, Mobile Homes, from all points and places within Edgecombe, Nash, Wilson, Pitt, Halifax and Martin Counties to all points and places within the State of North Carolina and from all points and places within the State of North Carolina to the said named counties	)	RECOMMENDED ORDER DENYING APPLICATION

HEARD IN: The Edgecombe County Courthouse, Tarboro, North Carolina on June 26, 1970, at 10:00 a.m.

BEFORE: Commissioner John W. McDevitt

APPEARANCES:

For the Applicant:

George A. Goodwyn
Fountain and Goodwyn
Attorneys at Law
102 E. St. James Street
Tarboro, North Carolina

For the Protestants:

Charles B. Morris, Jr.
Jordan, Morris & Hoke
Attorneys at Law
Raleigh, North Carolina
For: National Trailer Convoy, Inc.

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
Eden, North Carolina
For: Morgan Drive Away, Inc.
Transit Homes, Inc.

McDEVITT, HEARING COMMISSIONER: Application was filed on April 22, 1970, by Cecil Bernard Harrison, d/b/a C. B. Harrison Trucking Company, 307 Howard Avenue, Tarboro, North Carolina, for a certificate of convenience and necessity to operate as an irregular route motor common carrier transporting mobile homes within the following territory:

"Commodity and Territory Description: Group 21- Mobile Homes, from all points and places within Edgecombe, Nash, Wilson, Pitt, Halifax and Martin Counties, to all points and places within the State of North Carolina and from all points and places within the State of North Carolina to the said named counties."

The application was scheduled for public hearing and notice thereof was published in the Calendar of Hearings issued on April 27, 1970. Protests were subsequently filed by Transit Homes, Inc., National Trailer Convoy, Inc., and Morgan Drive Away, Inc. Public hearing was held as captioned, with the applicant, protestants present and represented by counsel. Seven witnesses testified in support of the application and witnesses representing each of the protestants testified in opposition to the application.

Testimony of Applicant C. B. Harrison tends to show that he has lived in the Tarboro area all his life; that he has had experience as a truck driver and operator of heavy equipment; that he was employed by Morgan Drive Away, Inc., as a lease operator for about six weeks during which he made one trip; that his lease was terminated by Morgan Drive Away, Inc., after investigation revealed numerous violations of motor vehicle laws including drunken driving, driving without an operator's license, public drunkenness and larceny; that he owns a tractor properly equipped to tow mobile homes; that the applicant has had several requests to transport mobile homes; that he is now on an assigned risk insurance policy; that he has very limited knowledge of the mobile home business in the area for which he is requesting authority; that he received no training in driving or the transportation of mobile homes prior to the time he was authorized by Morgan Drive Away, Inc., to transport a mobile

home; that his driver's license was revoked from August 7, 1966 to April 3, 1969 which covers the period he testified that he drove a truck for Emerson L. Ethridge.

Seven witnesses appeared in support of the application. Their testimony tends to show that there is a need for common carrier transportation service for mobile homes in Edgecombe, Halifax, Pitt, and Nash Counties; that adequate service is not available within the area for which authority is sought, and frequent delays are encountered in obtaining transportation service; that authorized common carriers located in Raleigh and other distant points are reluctant to serve mobile home owners who require relatively short moves; that illegal transportation activities by "wildcatters" is prevalent in the area because of the absence of authorized common carriers.

There was significant lack of testimony as to the ability, fitness, and dependability of the applicant which would tend to show that he is able to perform the proposed service on a continuing basis.

Based on the evidence adduced, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Cecil B. Harrison, the applicant, has a long history of violations of the laws of North Carolina, including larceny, drunkenness, driving while intoxicated, driving without an operator's license, driving while his operator's license was revoked, reckless driving, and driving on the wrong side of the road. His operator's license was revoked from August 7, 1966 through April 3, 1969 for driving while intoxicated and driving after his license had been revoked. When he sought employment with Morgan Drive Away, Inc., he gave false information concerning his personal history. He does not have a record of stable employment, dependability or conduct which would warrant the granting of the proposed authority.

2. There is a substantial public need for common carrier service for the transportation of mobile homes within the area for which the proposed authority is sought.

CONCLUSIONS

The following requirements are imposed by G.S. 62-262(e) upon any person seeking a certificate of public convenience and necessity to operate as a common carrier:

"(e) If the application is for a certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission:

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the applicant is fit, willing and able to properly perform the proposed service, and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis."

It is the opinion and conclusion of the Hearing Commissioner that the Applicant has failed to bear the burden of proof that he is fit, willing and able to properly perform the proposed service. His long history of violations of the law; his unstable employment history, and the almost total absence of evidence that he is now a stable, dependable man with the business ability to responsibly operate as a common carrier does not warrant the granting of a certificate.

IT IS, THEREFORE, ORDERED That the application of Cecil Bernard Harrison, d/b/a C. B. Harrison Trucking Company be, and it is hereby, denied and dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1530

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of William Loyd Lucas, P. O. Box 287, Rich Square, North Carolina) RECOMMENDED ORDER

HEARD IN: The Library of the Commission, Raleigh, North Carolina, on October 30, 1970, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

William Loyd Lucas
Rich Square, North Carolina
Appearing for himself

No Protestants

HUGHES, EXAMINER: By application filed with the Commission on September 22, 1970, William Loyd Lucas, P. O.

Box 287, Rich Square, North Carolina, seeks a contract carrier permit to engage in the transportation of Group 21 - Fiberglass and Filters, between Henderson and Murfreesboro and between Conway and Murfreesboro.

Notice of said application was given in the Commission's Calendar of Hearings issued October 9, 1970. The application is unopposed.

When the matter came on for hearing, only the Applicant was present. He was not represented by counsel and no public witness appeared in support of his application.

The evidence tends to show that Applicant has been employed by the Fram Corporation of Murfreesboro, North Carolina, for approximately a year and that the Fram Corporation is engaged in the manufacture of filters, the processing of which requires that they be transported between the points named in the application.

It further appears that Applicant presently operates as an exempt carrier under Exemption Certificate No. E-16749 and that Applicant has entered into some sort of contract with the Fram Corporation which contract is referred to as a "lease" and assumes that Applicant is the holder of a franchise which he is allegedly leasing to Fram. It appears further that said contract is in no sense a bilateral contract between a shipper and a carrier for the transportation of property as contemplated by G.S. 62-3(9).

It further appears that Applicant knows nothing whatever about the rules and regulations of the Utilities Commission concerning insurance, safety, etc., and that he is presently under the Assigned Risk Plan of insurance.

Upon consideration of the application, the testimony of record and the evidence adduced in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) The proposed operation does not conform with the definition of a contract carrier as defined in G.S. 62-3(9), and

(2) That Applicant is not fit and able to properly perform the service proposed by reason of the fact that he knows absolutely nothing about the rules and regulations of the Commission under which he would be required to operate and would apparently be unable to provide insurance within the limits required by Rule R2-36 of the Commission's rules and regulations.

CONCLUSIONS

The Hearing Examiner concludes that Applicant has failed to bear the burden of proof required for the granting of a

contract carrier permit and that said application should be denied.

IT IS, THEREFORE, ORDERED:

That the application of William Loyd Lucas, P. O. Box 287, Rich Square, North Carolina, for a contract carrier permit, be, and the same is, hereby denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1343, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Manufacturers Bonded Warehouse and Distributing Company - Application for Certificate of Exemption	) ORDER DENYING) CERTIFICATE OF) EXEMPTION

HEARD IN: The Utilities Commission Hearing Room, Raleigh, North Carolina, on March 20, 1970, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Presiding, Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicant:

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Raleigh, North Carolina

For the Protestants:

Vaughan S. Winborne & Gilbert Swindell
Attorneys at Law
1108 Capital Club Building
Raleigh, North Carolina
For: Brandon Mullis
Forbes Transfer Company, Inc.
Edmac Trucking Company, Inc.

Bobby G. Deaver
Brown, Fox & Deaver
Attorneys at Law

109 Green Street
Fayetteville, North Carolina
For: North Carolina Food Express, Inc.

McDEVITT, COMMISSIONER: Application was filed by Manufacturers Bonded Warehouse & Distributing Company on February 4, 1970, for an Exemption Certificate. Public hearing was scheduled and held as captioned in accordance with notice published in the Calendar issued February 19, 1970. Protests were filed by Brandon Mullis, Forbes Transfer Company, Inc., Edmac Trucking Company, Inc., and North Carolina Food Express, Inc. The applicant and protestants were present and represented by counsel.

Applicant's evidence consisted of the written application and testimony of W. J. Blair, Manager and President of Manufacturers Bonded Warehouse and Distributing Company. There were no supporting public witnesses.

The application states that applicant believes itself eligible to become a private carrier as defined in G. S. 62-3(22); that it is exempt from regulation by virtue of G.S. 62-260(a)(16); that it is entitled to a Certificate of Exemption as required by G. S. 62-260(g) and Commission Rule R2-2; that applicant is a North Carolina corporation, authorized to do business as a public warehouse and is engaged only in the storage of frozen products in Wilson, North Carolina; that its total assets are in excess of $500,000; that as a service to its customers applicant proposes to acquire a refrigerated tractor-trailer in order to offer warehouse customers delivery of their products to and from its warehouse within the territory east of U. S. Highway No. 1; that applicant will not transport property for any person or purpose and will not hold itself out to the general public to engage in transportation and will not enter into any individual contract for "just the transportation of property"; that an appropriate charge for transportation will be added to the storage bill; that applicant does not seek to become a common carrier or contract carrier; that charges for handling and storage will be based upon a per hundredweight rate for a minimum period of one month; that services may include packaging, weight recording, labelling and stamping, in addition to storage; that applicant does not offer its customers a contract for continuing storage service; that applicant presently has 26 to 30 customers; that applicant formerly held North Carolina Utilities Commission contract carrier authority for transportation of general commodities which it surrendered because it was "difficult to have a contract covering just carriage of their products"; that the main reason for seeking an exemption certificate is that it is "route-bound" in Wilson, has used up its available source of customers in the area and feels that the proposed service would enable it to stretch out its base of operation and obtain new customers; that control of its own truck will increase efficiency; that it could meet customers' requirements as to time and also handle less-than-truckload lot shipments for

which service is difficult to obtain; that at the time when goods are picked up from customers and hauled to its warehouse for storage no agreement will be made with the customer for subsequent movement back to the warehouse; that the owner of goods stored in its warehouse may sell its goods while in storage, in which event the applicant would issue a warehouse receipt to the new owner and that the new owner, as a customer, may have access to the applicant's transportation service; that the proposed service is a pick up and delivery service; that charges will be made for the proposed service based upon the cost of operations; that the proposed service will be operated as a loss leader to obtain additional business; that products which it stores for its customers come from "all over" the eastern seaboard, normally arriving by truck or rail service; that under present arrangements customers control and arrange their own shipping; that applicant never takes title to goods held in storage; that goods move to and from its warehouse by common carrier, contract carrier and by trucks owned by its customers; that applicant is not in a position to know whether its customers have been unable to obtain transportation service; that applicant expects to charge less for its transportation service than common carrier rates; that applicant plans and expects to make a profit from its combined storage and transportation business; that applicant will solicit business for its storage and distribution business; that 90 percent of its business involves products for reprocessing such as imported meats and turkeys; that the proposed transportation service will be used to attract new customers; that applicant has not inquired of applicant's customers whether they want the proposed service; that it will deliver goods it does not pick up to customers; that applicant may receive goods for storage from one customer, issue a warehouse receipt to a new owner upon notice that the goods have been sold and deliver the goods for the new owner as a customer of the applicant; that applicant will deliver goods to the holder of a warehouse receipt; that the volume of business may require additional equipment but that applicant would voluntarily restrict its operation to the extent of making deliveries out of its warehouse only to the original storer and not make delivery to anyone to whom goods may have passed during storage.

Protestant Witness B. J. Forbes testified that Forbes Transfer Company, Inc., has intrastate authority for the transportation of frozen foods and has frequently hauled goods to and from applicant's warehouse for shippers which include Swift & Company and Fast Food Makers, Inc., of Rocky Mount; that he does not solicit less-than-truckload lot shipments; that the proposed operation would adversely affect his business; that he has the necessary equipment and is able to provide the proposed transportation service.

Protestant Witness Brandon L. Mullis, of Albemarle, North Carolina, testified that he has authority for the transportation of frozen foods statewide; that he has

transported less-than-truckload lot shipments into applicant's warehouse; that he makes weekly trips in the area and has had three or four shipments to or from Wilson in the last three or four months.

Protestant Witness M. C. Harkey, Vice President and General Manager of Edmac Trucking Company, testified that his company has intrastate authority for the transportation of frozen products statewide and has eleven refrigerated trailers but does not basically haul refrigerated products in less-than-truckload lots.

Based upon the evidence adduced the Commission makes the following

FINDINGS OF FACT

1. Manufacturers Bonded Warehouse and Distributing Company is a North Carolina corporation authorized to do business as a public warehouse and is currently engaged only in the storage of frozen products in Wilson, North Carolina, for 26 to 30 customers.

2. That applicant is seeking to enlarge its business and acquire additional customers by offering transportation service at rates below the common carrier rates; that there will be no established schedule of rates; that the rates will be negotiated and dependent upon a given situation. The applicant may not require a transportation charge if it is necessary to obtain and retain the customers' business.

3. That goods which are picked up and stored for one customer may change hands during the period of storage and be delivered by the applicant to one or more new owners; that the proposed transportation service does not conform to the definition of a common carrier by motor vehicle as set forth in G. S. 62-3(7) in that the applicant does not propose to hold itself out to the general public to engage in the transportation of property for compensation but will in fact serve only its customers.

4. That the proposed operation conforms significantly to the definition of a contract carrier as set forth in G.S. 62-3(9) in that agreements for the transportation of property for compensation will be made between the applicant and its customer. While it is apparent that other characteristics of the proposed transportation service which may exist conform to the definition of a contract carrier, the applicant does not desire to be certificated as a contract carrier nor is there in the record the required proof on which to grant a contract carrier permit.

5. That the proposed transportation service does not conform to the definition of a private carrier as set forth in G. S. 62-3(22) which excludes any person included in the definition of a contract carrier. The evidence further shows that a significant amount of the goods hailed to the

applicant for storage is sold while in storage and is moved to other locations than those from which it was received.

CONCLUSIONS

The primary test of whether the applicant should be granted an Exemption Certificate is whether the proposed transportation conforms to the definitions of a common carrier or contract carrier, which are as follows:

"G. S. 62-3(7) 'Common carrier by motor vehicle' means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in §62-260.

"G. S. 62-3(8) 'Contract carrier by motor vehicle' means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the Utilities Commission, engages in the transportation other than the transportation referred to in Subdivision (7) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempt in G. S. 62-260."

The evidence indicates that the applicant will not hold itself out to the general public to engage in transportation of property for compensation and it is not, therefore, a common carrier. On the other hand, the evidence shows that the applicant seeks customers and enters into agreements with them to provide storage and transportation services for compensation. The evidence further indicates that the requirements of the shippers may justify use of a contract carrier in lieu of a common carrier but there is no significant evidence that shippers are experiencing any difficulties in transporting their goods to and from the applicant's warehouse. We conclude that the proposed transportation service falls within the definition of a contract carrier and the applicant is thereby excluded from classification as a private carrier which is defined as follows:

"G. S. 62-3(22) 'Private carrier' means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation."

It is furthermore significant that the bailment of property to the applicant is for the purpose of storage,

packaging, weighing or labelling. The evidence shows that under the proposed operation property picked up from one customer at his premises may be sold, while in storage, to various other persons to whom warehouse receipts would be issued making the new owners warehouse customers and thereby eligible for the proposed transportation service. The applicant is not the owner of the property which it stores nor does it control the movement of the property and we conclude that the proposed transportation is inconsistent with the bailment contemplated in the definition of a private carrier. In addition the proposed transportation is far more than an "incidental adjunct" to the private business of the applicant, and is not consistent with the public interest and the policy declared in the Public Utilities Act.

IT IS, THEREFORE, ORDERED, That the application of Manufacturers Bonded Warehouse and Distributing Company, Inc., for a Certificate of Exemption be, and it is, hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1343, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Manufacturers Bonded Warehouse and Distributing Company - Application for Certificate of Exemption) ORDER DENYING EXCEPTIONS

HEARD IN: The Utilities Commission Hearing Room, Raleigh, North Carolina, on September 14, 1970, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, Presiding, Commissioners John W. McDevitt, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Applicant:

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For the Protestants:

Vaughan S. Winborne
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For: Brandon Mullis
Forbes Transfer Company, Inc.
Edmac Trucking Company, Inc.

BY THE COMMISSION: Upon consideration of the record herein, the Order dated July 22, 1970, entered by the Commission, the Exceptions to the Order filed by the applicant, and the able oral arguments presented by attorneys for each of the parties set forth in the caption, and a review and consideration of the matter in its entirety, the Commission concludes that sufficient justification has not been shown and does not exist to support the Exceptions filed and that the same should be denied.

IT IS NOW, THEREFORE, ORDERED:

That the Exceptions to the Order filed by the applicant, and each of them be, and the same are, disallowed and denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-380, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tidewater Transit Company, Inc. - Application for Amendment to Certificate C-317 for Authority to Transport Group 21, Liquefied Petroleum Gas, in Bulk, in Tank Trucks from all Originating Terminals to all Points and Places within the State of North Carolina) ORDER DENYING APPLICATION

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina on June 24, 1970, at 9:30 a.m.

BEFORE: Commissioners John W. McDevitt, Presiding, Hugh A. Wells and Miles H. Rhyne

APPEARANCES:

For the Applicant:

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For the Protestants:

Lucius W. Pullen
Allen, Steed & Pullen
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Raleigh, North Carolina
For: Kenan Transport Company
Eagle Transport Corporation
Southern Oil Transportation Company, Inc.
East Coast Transport Company, Inc.

MCDEVITT, COMMISSIONER: Application was filed on February 10, 1970, by Tidewater Transit Company, Inc., P. O. Box 189, Kinston, North Carolina, for an amendment to its Certificate No. C-317 under which it is authorized to transport liquefied petroleum gas, in bulk, in tank trucks from all originating terminals of such liquefied petroleum gas to points and places within 100 miles of the City of New Bern, North Carolina. Public hearing was scheduled and held as captioned in accordance with notice published in the Calendar of Hearings issued February 19, 1970.

Protests and motions for intervention were filed by Kenan Transport Company, Inc., Eagle Transport Corporation, Southern Oil Transportation Company, Inc., and East Coast Transport Company, Incorporated.

Tidewater Transit Company, Inc., offered the testimony of its Vice President and General Manager, Mr. Charles W. Smith, which tends to show that applicant is a well established common carrier of petroleum products and liquid fertilizers and has transported liquefied petroleum gas since 1962 between terminal at Apex, North Carolina, and points and places within a 100 mile radius of New Bern, North Carolina; that applicant has six trailers equipped and available for the transportation of liquefied petroleum gas; that at times some of its equipment was idle during the 1970 season; that during the winter months of the 1969-70 season, applicant was called upon to transport liquefied petroleum gas outside of its certificated territory by Suburban Propane Gas Company at a time when it had three pieces of equipment available for service; that applicant applied to the Utilities Commission for emergency authority to perform the service for Suburban Propane Gas Corporation and was granted such authority by order of the Commission dated January 12, 1970; that applicant is in position to provide

service to all points and places in the State in addition to territory presently served.

Under cross-examination, Mr. Smith testified that Tidewater moved four or five loads of liquefied petroleum gas to Swannanoa, North Carolina, during the month of January, 1970, this being the only service rendered under the emergency authority.

Mr. George C. Harper, Secretary and Treasurer of Tidewater Transit Company, Inc., testified that he prepared the balance sheet as of April 30, 1970, which tends to show that the applicant is financially able to perform the emergency authority.

Mr. John C. Cramer, Products Buying Coordinator for Suburban Propane Gas Corporation whose office is located in Whippany, New Jersey, testified that it is his responsibility to direct the distribution of gas to the districts throughout the eastern part of the country; that Suburban has 27 plants located in North Carolina with an annual volume of 26 million gallons of propane which is sold to rural consumers for heating, cooking and heating of water; that Suburban relies on truck and rail transportation for the delivery of liquefied petroleum gas to its 27 plants located throughout North Carolina; that during the month of December, 1969, and January and February of 1970, Suburban experienced a shortage of transportation to Beacon Manufacturing Company in Swannanoa, North Carolina, which is one of its largest industrial customers; that during the period of January 5 - 15, 1970, he made approximately 43 requests for deliveries and received approximately 21 deliveries for Beacon Manufacturing Company; that he contacted the North Carolina Utilities Commission on behalf of Tidewater Transit Company, Inc., for emergency authority.

On cross-examination Mr. Cramer testified that he has used the facilities of Kenan Transport Company which have been satisfactory except during January, 1970; that Kenan did not refuse to haul liquefied petroleum gas for Suburban in January of 1970; that all of Suburban's 27 North Carolina plants are not supplied from the Dixie Pipeline terminal at Apex, North Carolina; that Suburban's plants at Asheville, Albemarle, Charlotte, Hickory, Lumberton, Marion, Boone, Patterson Springs, Taylorsville and Waynesville are normally served by interstate common carriers out of terminals located at Lexington and Cheraw, South Carolina; that he is not sure whether he has used Eagle Transport Corporation (H & P Transit Company) and is not familiar with Southern Oil Transportation Company both being holders of common carrier authority to haul LP gas; that he does not personally control which carriers "we use" and it would not be his decision to choose a particular carrier; that he is told which carrier to use; that Suburban has used East Coast Transport Company, Inc., of Goldsboro and its services have been satisfactory; that Suburban has not used the services of O'Boyle Tank Lines to haul LP gas throughout North

Carolina; that Suburban's Asheville Plant and Beacon Manufacturing Company normally receive all of their liquefied petroleum gas from Lexington, South Carolina, by way of interstate motor common carriers; that Kenan delivered to Beacon Manufacturing Company seven of 12 requested loads during the month of January, 1970; that his information and statements about deliveries to Asheville and Beacon Manufacturing Company and the orders given to Kenan Transport was supplied to him by somebody in Asheville; that Suburban did not have any difficulty in obtaining common carrier transportation service to Beacon Manufacturing Company by North Carolina intrastate carriers at any time other than during January, 1970; that the need for common carrier service to Beacon Manufacturing Company is during the period November through March and that he did not know for sure whether his company in its search for common carriers during January, 1970, exhausted all of the common carriers in North Carolina who are certificated to provide service to Swannanoa; that Dixie Pipeline Terminal at Apex, North Carolina, went on allocation of liquefied petroleum gas on January 15, 1970, because of a shortage of liquefied petroleum gas; that the situation in January, 1970, was unusual in that there was an unusual demand for transportation equipment and liquefied petroleum gas; that he has been an employee of suburban for only one year and does not have personal experience of transportation and supply problems prior to his employment with Suburban; that the service which Suburban is getting from existing certificated carriers is normally good; that his presence in the instant proceeding is the first time he has been in North Carolina as a representative of his employer; that he never used Eagle Transport because he probably assumed that they were unable to do the job; that he does not know whether his company receives the tariff filings of North Carolina carriers from the North Carolina Motor Carriers Association; that Suburban has not had any emergency situations since January, 1970; that he has done nothing since the last emergency to develop relationships with certificated carriers to obtain adequate service in the future and that normally this function would be performed by his immediate superior.

Mr. Lee Shaffer, Vice President of Kenan Transportation Company testified on behalf of the protestants that the requested authority would duplicate the authority which Kenan has under its North Carolina certificate; that Kenan Transport hauled one load of liquefied petroleum gas for Suburban in the calendar year 1969 and for the year 1970 to date has handled 67 loads of liquefied petroleum gas from Apex, North Carolina, to points in North Carolina; that during the five week period from January 8 through February 13, 1970, Kenan hauled 8 loads of liquefied petroleum gas from Apex to Beacon Manufacturing Company at Swannanoa, North Carolina, for Suburban; and that Kenan did not receive any orders from Suburban which were not filled; that Kenan has not received any complaints from Suburban about its service; that he talked with Mr. Wagoner of

Suburban in Whippany, New Jersey, and also in Atlanta, Georgia, in April, 1970, about the possibility of providing equipment to satisfy Suburban's needs in North Carolina; that Kenan is ready, willing and able to transport liquefied petroleum for Suburban from Apex to any point in North Carolina, particularly in Western North Carolina; that Kenan Transport has a terminal facility at the Dixie Pipeline Company terminal point at Apex, North Carolina; that Dixie Pipeline Company was unable to furnish liquefied petroleum gas to common carriers as of January 15, 1970, in sufficient quantities to meet the demands of the shippers; that during emergency periods trucks waited up to 15 hours to load liquefied petroleum gas, a condition which was created by extremely cold weather, inadequate storage, pumping facilities and a gas shortage at the Dixie Pipeline terminal; that similar problems have existed every winter season and during the peak of the tobacco curing seasons; that the problem is created by the inability of Dixie Pipeline Company to supply and load the equipment of the common carriers during the peak periods of demand of liquefied petroleum gas; that Kenan has five licensed trucks and two additional units on order for the coming winter season; that Kenan Transport was not contacted about the awarding of emergency authority to Tidewater Transit Company; that it would object to the granting of such authority unless the carriers having the required authority are given an opportunity to fulfill the demand; that the gas shortage beginning on January 15, 1970, lasted for 13 to 15 days during which the oil companies allocated gas to shippers who in turn dispatched loads by common carrier; that Kenan did not haul any gas for Suburban between January 13 and February 9 which was the period of the emergency allocation and to his knowledge there was no gas available to Suburban from the Apex Terminal during that period; that Kenan resumed the hauling of liquefied petroleum gas for Suburban in February and thereafter met all the requests from Suburban for service to Swannanoa, North Carolina, which consisted of two loads on February 9, one load on February 11, 12 and 13 after which Beacon switched back to natural gas or to its normal supply of liquefied petroleum gas by interstate carriers out of South Carolina terminals.

Based upon the evidence adduced and official records of which the Commission takes judicial notice, we make the following

FINDINGS OF FACT

1. Tidewater Transit Company, Inc., holds North Carolina Motor Common Carrier Certificate No. C-317 authorizing transportation of petroleum, petroleum products and liquefied petroleum gas, in bulk, in tank trucks from all originating terminals of such liquefied petroleum gas to points and places within 100 miles of the City of New Bern, North Carolina, over irregular routes between all points and places within the territory.

2. Based upon representations of Suburban Propane Gas Corporation that motor carriers holding authority to transport liquefied petroleum gas from pipeline terminals in North Carolina to Swannanoa were unable to provide sufficient equipment to take care of the needs of the shippers and the consuming public, and without notice and public hearings, the Commission granted emergency authority to Tidewater Transit Company, Inc., to relieve the situation by order dated January 12, 1970, such authority expiring on January 18, 1970. The only shipper witness which offered evidence of a shortage of intrastate common carrier transportation service was Suburban's Products Buying Coordinator, Mr. John C. Cramer, whose testimony revealed that the emergency on which it based its support for Tidewater's emergency authority occurred as a result of a shortage of liquefied petroleum gas and the failure of its normal transportation service by interstate carriers from the normal sources of supply located at Cheraw and Lexington, South Carolina; that the only liquefied petroleum gas pipeline terminal in North Carolina is located at Apex and it is not the normal source of liquefied petroleum gas for Beacon Manufacturing Company and Suburban's plants in Western North Carolina; that the gas shortage in January, 1970 resulted in allocation of gas which created an abnormal and unusual situation for shippers and common carriers.

3. That official records of the Utilities Commission of which judicial notice was taken show that sixteen intrastate common carriers are certificated to transport liquefied petroleum gas between all points and places in North Carolina. Suburban's witness did not produce any documentary or otherwise substantive evidence that it had timely sought and failed to obtain reasonable service from certificated intrastate common carriers.

4. Under the emergency authority granted to Tidewater Transit Company by the Commission, it transported only four or five loads for Suburban all of which went to Beacon Manufacturing Company, Swannanoa, North Carolina, and no additional complaints or requests were received by the Commission from Suburban between the expiration date of the emergency authority on January 18, 1970, and the date on which Suburban's representative testified in this proceeding in support of Tidewater's application.

CONCLUSIONS

The requirements for granting a certificate are set forth in G. S. 62-262(d) as follows: "If the application is for certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission;

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service and

(2) That the applicant is fit, willing and able to properly perform the proposed service and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis."

The Commission concludes that the applicant is fit, willing and able financially and otherwise to perform the proposed service; that public convenience and necessity does not require the proposed service in addition to existing authorized transportation service.

The evidence of the only supporting shipper witness clearly shows that the difficulty Suburban experienced and which led to its support of emergency authority for Tidewater Transit Company was caused by an unusual gas shortage of short duration stemming from extremely cold weather, allocation or rationing of gas by the oil companies to its customers and the failure of interstate common carriers to make normal deliveries from terminals in Cheraw and Lexington, South Carolina, to Suburban's four plants in Western North Carolina and, in particular, to its largest customer, Beacon Manufacturing Company located at Swannanoa, North Carolina. We further conclude that when Suburban was faced with a gas shortage and failure of interstate carriers to obtain liquefied petroleum gas from South Carolina terminals for delivery in Western North Carolina it turned to North Carolina intrastate carriers which do not normally provide such transportation service.

The applicant failed to bear the required burden of proof and its application should be denied.

IT IS THEREFORE, ORDERED:

That the application of Tidewater Transit Company, Inc., filed February 10, 1970, for authority to transport liquefied petroleum gas, in bulk, in tank trucks from all originating terminals of such liquefied petroleum gas to all points and places within the State of North Carolina over irregular routes be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1499

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
David Closs Winstead, t/a Winstead Transfer Company, R. F. D. 1, Louisburg, N. C.) ORDER) DISMISSING) APPLICATION

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on July 9, 1970, at 9:30 a.m.

BEFORE: Commissioners John W. McDevitt, Presiding, Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For the Applicant: None

For the Protestants:

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
Box 535, Eden, North Carolina
Appearing for Morgan Drive Away, Inc. and Transit Homes, Inc.

Charles B. Morris, Jr.
Jordan, Morris & Hoke
Attorneys at Law
P. O. Box 1606, Raleigh, North Carolina
Appearing for National Trailer Convoy, Inc.

BY THE COMMISSION: Upon consideration of the record in this proceeding and the failure of Applicant or his representative to appear at the hearing before the Commission at the above time and place or otherwise communicate with the Commission concerning the matter; and good cause appearing therefor,

IT IS ORDERED:

That the application of David Closs Winstead, t/a Winstead Transfer Company, R. F. D. 1, Louisburg, North Carolina, be, and the same is, hereby dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1504

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Beasley Transport, Inc., Colerain, North Carolina, for Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, as a Contract Carrier of Property	))))	ORDER GRANTING AUTHORITY

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on May 27, 1970, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

W. L. Cooke
Pritchett, Cocke & Burch
Attorneys at Law
Windsor, North Carolina

No Protestants.

WESTCOTT, CHAIRMAN: This cause came on for hearing at the captioned time and place, at which time applicant offered oral and documentary evidence in support of its application filed on March 31, 1970, wherein authority is sought to transport petroleum and petroleum products, liquid, in bulk in tank trucks, as set forth in Group 3 of the Commission's Rule R2-37, under bilateral contracts with Beasley Oil Company, Inc., Colerain, North Carolina, and Windsor Oil Company, Inc., Windsor, North Carolina, from the Texas Oil Company Terminal at Williamston, North Carolina.

The evidence in support of the application tends to show that on many occasions in the past Beasley Oil Company, Inc., of Colerain, and Windsor Oil Company, Inc., of Windsor, have experienced difficulty in procuring common carrier transportation from the Texas Oil Company Terminal at Williamston to the bulk storage of the Windsor Oil Company, Inc., in Windsor, and the Beasley Oil Company, Inc., in Colerain, and that to assure the above-named oil companies of adequate transportation for the future, they desire the services of a contract carrier.

Filed with and made a part of the application are bilateral contracts wherein applicant agrees to furnish transportation service and Beasley Oil Company, Inc., of Colerain and Windsor Oil Company, Inc., of Windsor agree to use said service, in accordance with the provisions of the contract on file with the Commission, and at rates not less than those published and in effect for common carriers operating within the State of North Carolina. According to the application, applicant proposes to transport petroleum products from Williamston, North Carolina, to the towns of Ahoskie, Winton, Windsor and Colerain, North Carolina, and from Norfolk, Virginia, to terminals in Windsor and Colerain and to stations in Bertie and Hertford Counties, North Carolina. The testimony with respect to transportation from Virginia indicates that applicant will file an application with the Interstate Commerce Commission for the

transportation in interstate commerce, that is, from Virginia to terminals and stations in North Carolina.

In consideration of the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That the proposed operation conforms with the definition set forth in G.S. 62-262(i).

2. That the proposed operation will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

3. That the proposed service will not unreasonably impair the use of the highways by the general public.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

5. That the proposed operation will be consistent with the public interest.

CONCLUSIONS

It appears from the evidence that Beasley Oil Company, Inc., in Colerain and Windsor Oil Company, Inc., in Windsor, North Carolina, each have a need for the service of a contract carrier in the operation of their petroleum business. It further appears that the applicant, a separate corporation, has an interest in and operates the Beasley Oil Company, Inc., at Colerain and the Windsor Oil Company, Inc., at Windsor, and has, through experience, determined that in order to assure an adequate supply of petroleum products to said bulk plants and operated stations reached the conclusion that a contract carrier of the products they handle would more adequately satisfy their needs and the needs of the public they serve. We therefore conclude that applicant has carried the burden of proof as required by law and the rules of the Commission for the granting of the authority for a contract carrier permit.

IT IS, THEREFORE, ORDERED:

1. That the application of Beasley Transport, Inc., in Docket No. T-1504, be, and the same is hereby, approved, in accordance with Exhibit A hereto attached and made a part hereof.

2. That Beasley Transport, Inc., comply with all rules and regulations issued by this Commission governing the motor carrier operation hereinabove granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1504 Beasley Transport, Inc.
Colerain, North Carolina

Contract Carrier Authority

EXHIBIT A Transportation of petroleum and petroleum products, liquid, in bulk in tank trucks, as set forth in Group 3 of the Commission's Rule R2-37, from the Texas Oil Company Terminal at Williamston, North Carolina, to the bulk plants of Beasley Oil Company, Inc., Colerain, North Carolina, and Windsor Oil Company, Inc., Windsor, North Carolina, and also to other petroleum distribution facilities operated by Beasley Oil Company, Inc., and Windsor Oil Company, Inc., in Martin, Hertford and Bertie Counties, North Carolina, under bilateral contracts.

DOCKET NO. T-1502

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Bill B. Bradley, 200 Yancey)
Street, Marion, North Carolina, for Authority to) ORDER
Transport Mobile Homes (House Trailers) via) GRANTING
Routes in North Carolina Subject to Demand and) AUTHORITY
Legal With North Carolina Highway Commission)

HEARD IN: The Commission's Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on August 14, 1970, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

Hon. Paul J. Story
Attorney at Law
First Union National Bank Bldg.
Marion, North Carolina

No Protestants.

WOOTEN, COMMISSIONER: Application was filed in this matter by Bill B. Bradley, 200 Yancey Street, Marion, North Carolina (hereinafter applicant), on March 9, 1970, seeking irregular route common carrier authority to transport Group 21, Other Specific Commodities, to wit: Mobile Homes (House Trailers), in a territory described as "via routes in N. C. Subject to demand and legal with N. C. Highway Commission."

Notice of the application, giving a description of the authority applied for and setting the matter for hearing on Tuesday, June 30, 1970, was given in the April 1, 1970, issue of the Commission's Calendar of Hearings. In apt time protests were filed by National Trailer Convoy, Tulsa, Oklahoma; Transit Homes, Inc., Greenville, South Carolina; and Morgan Drive Away, Inc., Elkhart, Indiana.

Pursuant to request of applicant and on June 29, 1970, hearing was continued in this matter to this time and place. On July 27, 1970, petition to amend Exhibit B of the application, the territory description, was filed with the Commission by attorney for the applicant. On August 4, 1970, the Commission issued its order amending Exhibit B of the application in this docket reducing or limiting the territorial description therein. Subsequently, all protests were withdrawn, and no one appeared at the hearing in this matter to protest the granting of the authority requested, as amended.

The applicant testified in his own behalf and offered three other witnesses, Sherman Locke, a mobile home dealer; Hall Hollifield, Baptist Minister, and Maurice Hollifield, who is a mobile home dealer and also operates a mobile home park with 54 trailers located thereon.

Mr. Bradley (the applicant) testified that there is a great need for an additional mobile home mover in the territory applied for within North Carolina, as amended; that he owns and operates a mobile home park in addition to other business interest; that he has had experience in the movement of mobile homes, and owns equipment for the movement of same, and will acquire necessary additional equipment if authority is granted; that there are approximately 3000 mobile homes in McDowell County and 28 mobile home parks in which are located some 300 mobile homes; that he receives many calls requesting his service in the movement of mobile homes; that there are no short haul mobile home movers in McDowell County; that there are no terminals in McDowell County for mobile home movers; and that he has the finances, equipment and experience to move mobile homes in the territory requested, as an irregular route common carrier on a continuing basis.

The evidence of the other witnesses was in support of the application as amended; was in agreement with and supportive of the testimony of the applicant; and recommended the granting of the application in this case.

The applicant finally offered a number of letters, strongly worded in support of the application herein, for appropriate consideration by the Commission.

From the evidence offered, a portion of which is set out above, the Commission makes the following

FINDINGS OF FACT

1. That the applicant owns and/or has the finances to obtain the necessary equipment for the movement of mobile homes, as specified.

2. That the applicant is experienced in the movement of mobile homes and in the use of equipment for the hauling thereof for which authorization is here sought.

3. That the applicant is now engaged in limited movement of mobile homes into and out of a mobile home park operated by him.

4. That the applicant is fit, willing and financially and otherwise qualified and able to properly perform adequate service as proposed in the application as amended, and to continue such service as long as the need therefor exists.

5. That the public convenience and necessity requires the service of applicant for the hauling of mobile homes or house trailers, as specified, in addition to other existing transportation service.

6. That the public convenience and necessity requires the service of the applicant for the hauling of mobile homes or house trailers, as applied for and amended, to the extent of such amended application, in addition to other existing authorized transportation service.

CONCLUSIONS

1. It appears from the evidence that the need for transporting or hauling mobile homes or house trailers, as specified, is substantial and will probably increase: that to move such trailers from one place to another requires the use of equipment specifically designed and modified for the purpose, and also requires that the operators be trained in their work; that the applicant, with his equipment and with his helpers or employees, is qualified to render this service and to contribute materially to public need and to the safety of traffic upon the highways.

2. In view of the evidence and the law applicable, the Commission concludes that the applicant has satisfied the burden of proof required by statute and that the application, as specified herein, should be granted.

3. The testimony leads to the conclusion that there is considerable movement of mobile homes and that there is no adequate service for transportation available in the area for which authority is here sought; that the very nature of mobile homes indicates, for the most part, that the same is subject to and will be, from time to time, moved from place to place, and that its owner-occupant may very well want to move from one end of the State to the other, from the mountains to the seashore, from the Virginia line to the South Carolina line; and that such persons should not be required to seek out or wait for a distant authorized service, but should be able to use a service readily and locally available.

4. In view of the applicable law in this case and the evidence presented, the Commission concludes that the applicant has satisfied the burden of proof as required by statute and that its application, as amended, should be approved and granted.

5. It is further concluded, in the light of the withdrawal of the protests by the protestants, and all of the evidence presented, that there is a need for additional mobile home common carrier authority within the limits of the application as amended in this case in addition to that presently available through existing authorized service.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Bill B. Bradley, 200 Yancey Street, Marion, North Carolina, be, and he is, hereby granted authority as an irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto.

2. That the operations shall begin under this authority when the applicant has filed with the North Carolina Utilities Commission tariff schedule of rates and charges, adequate insurance coverage and has otherwise complied with the rules and regulations of this Commission, all of which should be done within thirty (30) days from the effective date of this order.

3. That the authorization herein shall constitute a certificate until formal certificate shall have been transmitted to the applicant authorizing the transportation herein set out.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1502

Bill B. Bradley
200 Yancey Street
Marion, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, Other Specific Commodities, to wit: mobile homes (house trailers) in the following territory:

(a) To various points within McDowell County, North Carolina over such highways as may be legally approved and permitted by the North Carolina Highway Commission.

(b) From various points in McDowell County to points and places within a radius of 150 miles of the Town of Marion, McDowell County, North Carolina, over irregular routes and over highways over which mobile homes may be transported as designated by the North Carolina Highway Commission, and in accordance with permission granted by said Commission, provided, HOWEVER, that no transportation shall be outside of the State of North Carolina if such 150 mile radius should cross any state line.

(c) From points and places within the State of North Carolina, and within the distance outlined in Paragraph (b) above, to various points and places in McDowell County, North Carolina, and over such highways as may be legally designated for transportation of mobile homes, and in accord with permission legally granted by said North Carolina Highway Commission; provided, HOWEVER, that applicant does not propose to transport mobile homes from any point outside of the State of North Carolina, or across any state line in carrying out the purposes for which this application is made.

DOCKET NO. T-1130, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Contract Carrier Permit by)
A. J. Carey Oil Company, 507 East Gordon) ORDER
Street, Kinston, North Carolina)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on Thursday, January 29, 1970, at 11:30 a.m.

BEFORE: Commissioners Hugh A. Wells, Miles H. Rhyne, and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

Dan E. Perry
Perry, Perry & Perry
Attorneys at Law
P. O. Box 792, Kinston, North Carolina

No Protestants.

WOOTEN, COMMISSIONER: By application filed with the Commission on November 19, 1969, A. J. Carey Oil Company, 507 East Gordon Street, Kinston, North Carolina, seeks a Contract Carrier Permit to transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, in the territory described as: From the terminal at Selma to the Town of Kinston via U. S. Highway 70 and then on to the Town of Trenton via N. C. Highway 58; also the territory from the terminal at Wilmington to Kinston via U. S. Highway 117 to Magnolia and N. C. Highway 11 on to Kinston; also the territory from the terminal at Wilmington to Trenton via U.S. Highway 17 to Pollocksville and N. C. Highway 58 to Trenton. The above routes pass through the following Counties: New Hanover, Pender, Onslow, Jones, Lenoir, Wayne, Johnston and Duplin. The involved territory will be under contract between A. J. Carey Oil Company and the Pure Oil Division of the Union Oil Company of California.

Notice of the application was given in the Commission's Calendar of Hearings issued on December 9, 1969, and set for hearing as captioned. No protests were received prior to the hearing and no one appeared to protest the application when the same was called for hearing.

The applicant offered the testimony of two witnesses, Wallace Lang, Kinston, North Carolina, and R. R. Harper, Raleigh, North Carolina.

Mr. Lang testified that he works for the applicant company and has been employed by said company for a period of

10 years; that he is now Manager and Secretary-Treasurer of the applicant company, which position he has occupied for the past three and one-half years; that he filed the application in this case for and on behalf of his employer; that his company presently holds a Contract Carrier Permit for the transportation of Group 3, Petroleum Products, between Wilmington and Jacksonville, North Carolina; that his company is a distributor and jobber for the Pure Oil Division of Union Oil Company; that the purpose of this application is to haul petroleum products for the said Pure Oil Division of the Union Oil Company of California, from terminals at Selma and Wilmington to the areas in which they operate as jobbers and distributors for the oil company; that his company is financially responsible and is able by experience to perform the services for which authority is here sought; and that his company has sufficient equipment on hand with which to service the authority here sought.

Mr. R. R. Harper testified that he is Area Operations Manager for Union Oil Company and has been employed by said company for 23 years; that his employer needs the service here applied for; that this service is available by common carriers, but that the common carrier service is not adequate in that his company's needs call for dedicated equipment; that his company has entered into a written contract with the applicant for the transportation of petroleum products based upon charges not less than those charged by common carriers. A copy of the contract between the parties dated January 26, 1970, was introduced into evidence after being appropriately identified.

From the evidence presented, a portion of which is briefly set out above, the Commission is of the opinion and finds the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier and will not unreasonably impair the efficient services of common carriers operating under certificates or common carriers by rail.

2. That the proposed service will not unreasonably impair the use of the highways by the public.

3. That the applicant owns equipment and has the experience necessary for the operations as specified.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier and such operations will be consistent with the public interest and the State's transportation policy as required by law.

5. That contract carrier services under bilateral written contract with Union Oil Company for the commodity and in the territory described in Exhibit A attached hereto

and made a part hereof, will be consistent with the public interest.

6. That the proposed operation will tend to effectuate the declared policy of the applicable law.

CONCLUSIONS OF LAW

That the applicant has satisfied the burden of proof required for the granting of the authority sought as described in Exhibit A attached hereto and made a part hereof and that the application as therein set forth should be approved and the authority granted.

IT IS, THEREFORE, ORDERED:

1. That A. J. Carey Oil Company, 507 East Gordon Street, Kinston, North Carolina, be, and it is, hereby granted a Contract Carrier Permit in accordance with Exhibit A attached hereto and made a part hereof.

2. That the operations herein approved be commenced only when the applicant has complied with all of the rules and regulations of the North Carolina Utilities Commission with respect to the filing of minimum rates and charges, insurance coverage, and otherwise, all of which shall be done within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1130
SUB 1

A. J. Carey Oil Company
507 East Gordon Street
Kinston, North Carolina

Contract Carrier Authority

EXHIBIT A

Transportation of Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, under bilateral contract with the Pure Oil Division of the Union Oil Company of California, in the territory described as: From the terminal at Selma to the Town of Kinston via U.S. Highway 70 and then on to the Town of Trenton via N. C. Highway 58; also the territory from the terminal at Wilmington to Kinston via U. S. Highway 117 to Magnolia and N. C. Highway 11 on to Kinston; also the territory from the terminal at

Wilmington to Trenton via U. S. Highway 17 to Pollocksville and N. C. Highway 58 to Trenton. The above routes pass through the following Counties: New Hanover, Pender, Onslow, Jones, Lenoir, Wayne, Johnston and Duplin.

DOCKET NO. T-1362, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Commercial & Package Delivery Service, Inc., Route 6, Box 53-A, Wilmington, North Carolina, for Contract Carrier Permit to Transport "Drugs, Pharmaceuticals, Patent and Proprietary Medicines and Sundries" to "All Points On and East of U.S. Highway No. 1 from the South Carolina Line to Raleigh, and South of U.S. Highway N. 64 from Raleigh to Wilson, North Carolina	ORDER GRANTING CONTRACT CARRIER OPERATING AUTHORITY

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, at 10:00 a.m. on September 10, 1970

BEFORE: Commissioners John W. McDevitt (Presiding), Hugh A. Wells and Miles H. Rhyne

APPEARANCES:

For the Applicant:

W. C. Harris, Jr.
Attorney at Law
P. O. Box 2417, Raleigh, North Carolina

By application filed with the North Carolina Utilities Commission (Commission) on July 28, 1970, Commercial & Package Delivery Service, Inc., Route 6, Box 53-A, Wilmington, North Carolina, seeks additional contract carrier authority to transport "drugs, pharmaceuticals, patent and proprietary medicines and sundries" for Bellamy Drug Company, 3808 Oleander Drive, Wilmington, North Carolina, to various hospitals and retailers in "all points on and east of U.S. Hwy. No. 1 from the South Carolina line to Raleigh and south of U.S. Hwy. No. 64 from Raleigh to Wilson, North Carolina."

The application was set to be heard beginning at 10:00 a.m. on Thursday, September 10, 1970, and notice of said hearing was given in a Calendar of Hearings issued by the Commission on August 12, 1970.

Protest was filed on August 26, 1970, by Carolina Delivery & Service Company, Inc., 1336 South Graham Street, Charlotte, North Carolina, a common carrier. The application came on for hearing at the date, time and place hereinbefore stated; applicant was present, represented by counsel and had a witness. No protestants appeared at the hearing.

Based on the evidence adduced at the hearing and the Commission's records, the Commission makes the following

FINDINGS OF FACT

(1) That applicant is a contract carrier by motor vehicle subject to the jurisdiction of this Commission and as such currently holds authority under Permit No. CP-30 for transportation of "drugs, pharmaceuticals, patent and proprietary medicines, and sundries" between the place of business of Bellamy Drug Company, Wilmington, North Carolina, and points lying on and east of U.S. Hwy. 117 to where such highway intersects U.S. Hwy. 301 near Wilson, thence points lying on and east of U.S. Hwy. 301 to the Virginia Line.

(2) That applicant also holds Contract Carrier Authority under Permit No. CP-30 for transportation of system supplies and other items used in the distribution of natural gas, and Irregular Route common carrier authority for items under Group 15 and 21.

(3) That Bellamy Drug Company, a wholesale distributor, is currently operating its own delivery service, having found the service offered by common carriers unsuitable for its delivery needs.

(4) That applicant has filed a true copy of a contract with Bellamy Drug Company to deliver the commodities as described in the application.

(5) That the applicant owns many pieces of rolling equipment, with a total value of $55,000.00; that applicant's net worth is in excess of $49,000.00.

(6) That applicant proposed to establish and maintain a terminal at Wilmington, North Carolina, and to use two econoline trucks to provide a daytime delivery service for drug shipments.

(7) That applicant is fit, willing and financially and otherwise able to perform adequate service in the territory requested in this application.

(8) That the record contains no evidence to the effect that the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or of rail carriers.

Based upon the foregoing Findings of Fact, the Commission makes the following ORDER

IT IS, THEREFORE, ORDERED that Commercial & Package Delivery Service, Inc., Route 6, Box 53-A, Wilmington, North Carolina, be and hereby is, authorized to commence its operations as a contract carrier in the manner and in the territory set forth in Exhibit A as amended and hereto attached.

IT IS FURTHER ORDERED that operations authorized hereunder be commenced only when applicant has furnished evidence of insurance coverage, has filed tariff schedules of rates and charges, and has complied with the rules and regulations of this Commission, all of which must be done not later than 30 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This 25th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1362 SUB 3 — Commercial & Package Delivery Service, Inc. Route 6, Box 53-A Wilmington, North Carolina

EXHIBIT A — Territory Contract Carrier Authority Transportation of "drugs, pharmaceuticals, patent and proprietary medicines and sundries" to all points on and east of U.S. Hwy. No. 1 from the South Carolina line to Raleigh, and south of U.S. Hwy. No. 64 to Wilson, N. C., under contract with Bellamy Drug Company, Wilmington, N.C.

DOCKET NO. T-1488

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of D & H Trucking, Inc.,)
P. O. Box 441, Siler City, North Carolina) ORDER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on January 15, 1970, at 10:00 a.m.

BEFORE: Commissioners Miles H. Rhyne, Hugh A. Wells, and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

Frank R. Liggett III
Hatch, Little, Bunn, Jones & Liggett
Attorneys at Law
327 Hillsborough Street
Raleigh, North Carolina

For the Protestant:

William Joslin
Purrington, Joslin, Culbertson & Sedberry
Attorneys at Law
402 North Carolina National Bank Building
Raleigh, North Carolina
For: Coastal Truckways, Inc.

WOOTEN, COMMISSIONER: By application filed with the Commission on October 24, 1969, D & H Trucking, Inc. (Applicant), seeks irregular route common carrier authority to transport Group 8, Dry Fertilizer and Dry Fertilizer Materials, and Group 21, Fresh ice packed poultry, in a territory described as: (a) GROUP 21 ONLY - From Chatham, Guilford and Lincoln Counties to all points and places in North Carolina and return to Chatham, Guilford and Lincoln Counties from all points and places in North Carolina. (b) GROUP 8 ONLY - From Guilford County to all points and places in North Carolina and return to Guilford County from all points and places in North Carolina. Notice of the application was published in the Commission's Calendar of Hearings issued November 17, 1969, and set for hearing.

Protest to that portion of the application involving Group 21, fresh ice packed poultry, with the exception of the Lincoln County portion thereof, was filed in the matter by Coastal Truckways, Inc., said protest being filed with the Commission on January 6, 1970.

Upon the call of the matter for hearing, the applicant moved to dismiss the protest of the protestant upon the ground that the same had been filed nine (9) days prior to the scheduled hearing and contrary to this Commission's rules requiring such filing to be made not less than ten (10) days prior to the date of hearing. The statements of counsel of record indicated that the protest was hand delivered to the applicant's attorney as well as the Commission, on the ninth day prior to the hearing. Further, it appeared that the protestant contacted its attorney prior to December 25, 1969. The Commission was of the opinion that the applicant had not been prejudiced and that good cause had been shown for allowing an extension within which to file protests and concluded that the motion should be denied. The Commission thereupon denied the motion to dismiss the protest and offered to continue the matter in the event applicant felt that it had been denied sufficient

time within which to prepare for hearing. The applicant stated that it was prepared to proceed.

The applicant called as its first witness, Mr. Harold Andrews, Siler City, North Carolina, who is Vice President of the Applicant, D & H Trucking, Inc. Mr. Andrews testified, among other things, that his company held operating authority from this Commission and the Interstate Commerce Commission for certain exempt commodities and that it was operating under a Certificate of Exemption. The witness further testified that the applicant had filed with this Commission its equipment list and financial statement; that it had a total rolling stock available or to be delivered in the immediate future of eleven tractors and sixteen trailers designed for the hauling of poultry and fertilizer; that the applicant is complying with the Commission's safety rules and regulations; that the applicant's gross revenues have been constantly increasing since it began its present business in January of 1969; that its terminal and garage facilities are located in Siler City, North Carolina; that it has adequate equipment and finances to adequately perform the services for which rights are here applied for; that it has received several requests from its present interstate exempt customers for intrastate common carrier service; that this application was made because of requests from its present customers; that the application in this case is responsive to the needs of its present customers; that they are ready, willing and able to solicit business; that the company employees have experience in both intra and interstate transportation of property for hire; that the majority of their equipment is designed to haul poultry; that the applicant had received a request from Baker Limestone to haul dry fertilizer and dry fertilizer materials within the State, complaining that they had been unable to obtain the needed service; that the witness had been in the trucking business previously under the name of Andrews Trucking Company, hauling poultry, but that the certificate in that instance died by default on account of nonuse when he was forced out of business because his son went into service; that his company is presently hauling twenty loads of poultry north per week; that each of his company's present tractors were making three trips to northern cities weekly; that all of their trucks were serviced and inspected after each trip, and that the present customers of the applicant are Carolina Poultry, Inc., Siler City, North Carolina; Hudson Poultry Processing Company, Iron Station, North Carolina; Morgan Poultry Company, Inc., Greensboro, North Carolina, and Midstate Farms Company, Siler City, North Carolina.

The next witness for the applicant was R. L. Spain, Sales Manager, Carolina Poultry, Inc., Siler City, North Carolina, who testified that his company is the selling agency for Poultry Processors, Inc.; that they move poultry intrastate and interstate; that he is familiar with the transportation needs of his company; that his company uses their own trucks which make door to door deliveries to customers in North

Carolina; that the majority of his company's intrastate business is from Salisbury, North Carolina, to the coast; that their intrastate business is delivered on their own small trucks which cannot carry large truckloads required by A & P Tea Company in Charlotte, North Carolina; that on occasions, his company needs a reliable trucker with large and properly equipped trucks to haul poultry from Siler City to Charlotte, North Carolina, for the A & P account; that his company has lost large sums of money occasioned by the fact that they had been unable to make timely and direct shipments to Charlotte to their A & P Customer; that his company's experience with the applicant, which hauls all of their interstate movements, has been very good; that his company refuses to use the protestant because of bad experience; that his company desires the service of the applicant for intrastate hauls from Siler City, North Carolina, to Charlotte, North Carolina; that his company does not have sufficient intrastate service in North Carolina, since the applicant cannot serve them; that no common carriers have solicited their business; that if the authority as applied for is granted, his company will utilize the applicant's service in North Carolina; that he has been employed by his present employer for three months; that he has not sought out other carriers to haul his intrastate movements; that his company could move a greater amount of poultry in North Carolina with greater net profits if the service here applied for was available; that the brother of the applicant's vice president is a salesman with his company; and that his company requested the applicant to file this application.

The applicant offered as its final witness, Mr. Blake Holsclaw, who is the Assistant Manager of Hudson Poultry Processing Company located at Iron Station, North Carolina (which is in Lincoln County); that he has been with his present employer for fourteen months on this term of employment and for three years on a previous term; that he is familiar with the transportation needs of his company; that his company ships three truckloads of poultry per day with one such truckload being shipped north by the applicant, another north by another carrier, and one within the State by another carrier; that his company owns and operates no trucks; that the present service afforded in interstate commerce by D & H Trucking, Inc., is excellent; that one of his carriers recently went into bankruptcy; that his North Carolina intrastate movements were presently being made by a furniture hauler who does not have sufficient or adequate equipment; that he needs and desires the service for the movement of poultry from Iron Station into Charlotte, North Carolina; that his present intrastate hauler is threatening to stop serving him; that his present transporter in intrastate commerce does not plan to expand and is contemplating the cessation of service; that he requested the applicant in this case to file this application in order that it could render intrastate service to them from Iron Station to Charlotte, North Carolina; that in his opinion his company could increase their business if

this application was granted; that he does not know of any other intrastate carrier who could render the service which he needs and has not been solicited by any such carriers; that his company will use the service of the applicant if the authority is granted; and that his present service from Iron Station to Charlotte, North Carolina, is inadequate and insufficient.

The applicant then offered the records of the Commission as they relate to the present operations of the applicant and also a financial statement marked as Exhibit I.

The Protestant, Coastal Truckways, Inc., presented as its only witness, its President, Mr. D. T. Bailey, who testified that he had been in the trucking business for thirty years; that he had been with Coastal Truckways, Inc., for two years; that their terminal is located on U. S. 70 west of Raleigh; that the rights presently held by his company were granted by the North Carolina Utilities Commission and included authority for the movement of dressed poultry, Statewide, into and out of Duplin, Moore, Wake, Chatham, Guilford, Alamance, and Durham Counties; that the rolling stock owned by his company includes thirty-five tractors and seventy-five trailers all of which are insulated and fifteen are refrigerated; that his company is presently actively exercising its rights under its certificate; that his company also moves poultry in interstate commerce as an exempt commodity; that most of his company's intrastate hauling is spasmodic; that his company serves all of their counties from the Raleigh Terminal; that it has sufficient resources to acquire such additional equipment as may be necessary in the public interest; that his company has never turned down a customer on the movement of poultry who was a regular customer; that occasionally turndowns have been made for nonregular customers when equipment was not available; that his company has been filling the needs of Carolina Poultry, Inc., without complaints except as to rates; that his company has received no complaints from any of its customers; that there are other poultry haulers located in Chatham and Guilford Counties, but he does not know the name of them; that the major portion of their business is hauling into and out of Chatham County; and that he would estimate that his company hauls approximately two loads of chickens intrastate per week.

Upon consideration of the evidence of record adduced in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That the applicant owns the necessary equipment for the movement of fresh ice packed poultry, and owns some equipment for the movement of dry fertilizer and dry fertilizer materials.

2. That the applicant, its officers and employees are experienced in the movement of poultry and in the use of equipment for the handling thereof.

3. That the applicant is now engaged in the movement of poultry as an exempt interstate carrier and has had experience in movement for hire.

4. That two shippers of fresh ice packed poultry in North Carolina are in need of additional motor transportation service from their plants to Charlotte, North Carolina; that Carolina Poultry, Inc., Siler City, North Carolina, and Hudson Poultry Processing Company, Iron Station, North Carolina, do not have sufficient common carrier service available to them for the proper movement of fresh ice packed poultry from their respective plants located in Siler City and Iron Station, North Carolina, to the A & P Tea Company distribution point in Charlotte, North Carolina.

5. That the needs referred to in 4 above can adequately and properly be met through operations which conform with the definition of a contract carrier under G.S. 62-3(8).

6. That the applicant has here filed for common carrier authority which is not supported by the evidence, and that the evidence does support the granting of contract carrier authority for the applicant's two shippers above named from their respective plants in Siler City, and Iron Station, North Carolina, to the shippers' customer, A & P Tea Company, in Charlotte, North Carolina.

7. That the proposed contract carrier service will not unreasonably impair the use of the highways by the general public.

8. That the applicant is fit, willing and able to properly perform a contract carrier service for its two above named shippers for the movement of fresh ice packed poultry.

9. That the contract carrier authority and operations favorably considered herein will be consistent with the public interest and the State policy declared in Chapter 62 of the General Statutes of North Carolina.

10. That the proposed operation out of Siler City and Iron Station, North Carolina, will not unreasonably impair the efficient service of carriers operating under certificates, or rail carriers.

11. That the public convenience and necessity does not require the service of the applicant for the hauling of dry fertilizer and dry fertilizer materials as applied for, in addition to other existing authorized transportation service.

12. That the public convenience and necessity does not require the service of the applicant for the hauling of poultry as applied for, in addition to other existing authorized transportation service.

Based upon the evidence presented in this case, the competent and pertinent records of the Commission, and the findings of fact hereinabove set out, the Commission makes the following

CONCLUSIONS

If the application is for a certificate, as in this case, the burden of proof is upon the applicant to show to the satisfaction of the Commission, among other things, that the public convenience and necessity requires the proposed service in addition to existing authorized transportation service. G.S. 62-262(e). We conclude that the applicant has failed to sustain the burden of proof as to its application for authority to transport fresh ice packed poultry and dry fertilizer and dry fertilizer materials in the territory requested as a common carrier.

In accord with Commission Rule R2-10, the Commission concludes that the applicant has not elected to accept only the type of authority set out in the application and that the Commission should grant such authority as the evidence shows the applicant is entitled to receive; and it is therefore concluded that the applicant has shown sufficient evidence under G.S. 62-262(i) to justify and require the issuance and granting to it of contract carrier authority for two shippers; to wit: Hudson Poultry Processing Company, Iron Station, North Carolina, and Carolina Poultry, Inc., Siler City, North Carolina, for the transportation of fresh ice packed poultry from the plant of said shippers to their A & P Tea Company customer in Mecklenburg County, North Carolina.

That the applicant has carried the burden of proof required of it by Commission Rule R2-15(b); and that the applicant should be permitted thirty (30) days from the date of this order within which to file with this Commission written contracts for the service above specified with its two shippers.

Upon consideration of the evidence presented herein in the light of the criteria set forth in G.S. 62-262(i), the Commission concludes that the applicant has borne the burden of proof required insofar as the granting of a Contract Carrier Permit is concerned, for the transportation by motor vehicle of fresh ice packed poultry from the plants of Hudson Poultry Processing Company at Iron Station, North Carolina, and Carolina Poultry, Inc., at Siler City, North Carolina, to the customer of said shippers located in Charlotte, Mecklenburg County, North Carolina, to wit: A & P Tea Company, and that such authority should be

granted; and that in all other respects the application should be denied.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That a Contract Carrier Permit be, and the same is, hereby issued to D & H Trucking, Inc., P. O. Box 441, Siler City, North Carolina, in accord with Exhibit A hereto attached and made a part hereof.

2. That, except to the extent granted herein, the said application be, and it is, hereby denied.

3. That the applicant shall file with this Commission written contracts with said shippers for said service, which contracts shall provide for rates not less than those charged by common carriers of similar service; the same to be filed not later than thirty (30) days from the date of this order.

4. That the applicant comply with the applicable rules and regulations of this Commission and begin operations under the authority herein granted within thirty (30) days from the filing of the contracts ordered in ordering paragraph 3 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1488	D & H Trucking, Inc. Contract Carrier of Property Siler City, North Carolina
EXHIBIT A	Transportation of fresh ice packed poultry by motor vehicle from the plants of Hudson Poultry Processing Company at Iron Station, North Carolina, and Carolina Poultry, Inc., at Siler City, North Carolina, to the customer of said shippers located in Charlotte, Mecklenburg County, North Carolina, to wit: A & P Tea Company, with no transportation for compensation on return.

DOCKET NO. T-1347, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Sam Eller, d/b/a Sam D. Eller Motor Carrier, Box 8, Sparta Road, North Wilkesboro, North Carolina	) ORDER) GRANTING) APPLICATION

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on March 24, 1970, at 10 a.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

Ralph Davis, Esq.
Attorney at Law
P. O. Box 426, North Wilkesboro, North Carolina

No Protestants.

WELLS, COMMISSIONER: This matter came on for hearing before Division III of the Commission sitting in Raleigh at the above stated time upon application of Sam Eller, d/b/a Sam D. Eller Motor Carrier, whose address is Box 8, Sparta Road, North Wilkesboro, North Carolina, for authority to operate as a common carrier over irregular routes for specified commodities under Group 21, specifically the transportation of mobile homes or house trailers within the following described territory:

Between all points and places in Watauga County and from all points and places in Watauga County to all points and places in North Carolina and from all points and places in North Carolina to all points and places in Watauga County.

Notice of the application with a description of the authority sought, together with the time and place of hearing, was published in the Commission's Calendar of Hearings issued on February 2, 1970. No protests were filed to the application.

Applicant was present at the hearing and represented by counsel and presented testimony and exhibits in support of his application.

Upon consideration of the record and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. The applicant is the holder of Common Carrier Certificate No. C-910 and has been engaged in the business of transporting mobile homes and house trailers for a number of years, and has shown that he is fit, willing and able to properly perform the service proposed in the application. Applicant has also shown that he is solvent and financially able to furnish adequate service of the type applied for on a continuing basis.

2. Applicant is not a resident of Watauga County - maintaining his principal office in North Wilkesboro - but

during the course of hearing applicant's counsel in open hearing, with consent and approval of applicant, stipulated that in the event the authority applied for be granted, applicant would advertise in the yellow pages of the Boone Telephone Directory; would accept long distance calls from Watauga County to his office in North Wilkesboro on a collect basis and would call attention to this arrangement in his advertisements in the Boone Telephone Directory.

3. The mobile home industry and the use of mobile homes, both in trailer parks and individual home sites, has grown significantly in Watauga County in the last few years. There is presently no other local common carrier service available for the moving of mobile homes into and out of Watauga County. The furnishing of the service applied for in the area affected by the application will serve a definite and growing public need, will be in the public interest and will meet the requirements of public convenience and necessity.

CONCLUSIONS

Based upon the record, the evidence and Findings of Fact it is the conclusion of the Commission that (1) public convenience and necessity require the proposed service in addition to existing authorized transportation service relating to the commodities enumerated in the application within the authority applied for, (2) the applicant is fit, willing and able to properly perform the proposed service, and (3) the applicant is solvent and financially able to furnish adequate service on a continuing basis to move and transport the commodities enumerated in the application.

IT IS, THEREFORE, ORDERED:

1. That the applicant be and he is hereby granted authority to operate as an irregular route common carrier in accordance with Exhibit B hereto attached and made a part hereof.

2. That operations shall begin under this authority when the applicant has filed with the North Carolina Utilities Commission tariff schedules of rates and charges, adequate insurance coverage and has otherwise complied with the rules and regulations of this Commission, all of which should be done within 30 days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1347 SUB 3

Sam Eller, d/b/a
Sam D. Eller Motor Carrier
Box 8, Sparta Road
North Wilkesboro, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B — Transportation of Group 21, Mobile homes or house trailers, between all points and places in Watauga County and from all points and places in Watauga County to all points and places in North Carolina and from all points and places in North Carolina to all points and places in Watauga County.

DOCKET NO. T-1503

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of E. J. Flinchum, Jr., d/b/a Flinchum Oil Company, West Street, Mount Airy, North Carolina, for contract carrier authority) ORDER

HEARD IN: The Commission's Hearing Room, Raleigh, North Carolina, on May 27, 1970, at 10:00 a.m.

BEFORE: Commissioners Hugh A. Wells, presiding, John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

E. J. Flinchum, Jr.
P. O. Box 190
Mount Airy, North Carolina
Appearing for himself

No Protestants

BY THE COMMISSION: By application filed with the Commission on March 26, 1970, as subsequently amended, E. J. Flinchum, Jr., d/b/a Flinchum Oil Company, West Street, Mount Airy, North Carolina, seeks contract carrier authority to engage in the transportation of Group 3 - Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, from Friendship, North Carolina, to Mount Airy, North Carolina.

Notice of the application reflecting the nature thereof and showing the time and place of the hearing, was given in the Commission's Calendar of Hearings issued April 1, 1970. No protests were filed and no one appeared at the hearing in opposition thereto.

The application and the evidence tend to show that Applicant is an individual; that Applicant owns a 1959 White tractor with a tank trailer having a capacity of 6,400

gallons which he will use in the proposed operation; that Applicant has net assets in the amount of $130,000 and that Applicant has had some eighteen (18) years experience in the petroleum business and understands the difference between a common carrier and a contract carrier as defined, classified and regulated by the Public Utilities Act.

In support of the application, an executed copy of a contract between Applicant and BP Oil Corporation, was received in evidence. It appears from the evidence adduced that the contract bears a date of April 1, 1970, and runs from year to year until cancelled by either party; that BP Oil Corporation is a new oil company that has recently come into this area and that in addition to the hauling of petroleum products for which authority is sought herein, Applicant engages in the retail sale of fuel oil and kerosene, in which capacity Applicant serves about one thousand (1,000) homes and several farms.

Upon consideration of the application and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

(1) That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act,

(2) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers,

(3) That the proposed service will not unreasonably impair the use of the highways by the general public,

(4) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

(5) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Commission that Applicant has borne the burden of proof required by statute and that the authority sought in the amended application should be granted.

IT IS, THEREFORE, ORDERED:

(1) That a contract carrier permit be granted E. J. Flinchum, Jr., d/b/a Flinchum Oil Company, West Street, Mount Airy, North Carolina, to engage in the transportation of Group 3 - Petroleum and Petroleum Products, as

particularly described in Exhibit A hereto attached and made a part hereof.

(2) That E. J. Flinchum, Jr., d/b/a Flinchum Oil Company, West Street, Mount Airy, North Carolina, file with this Commission bilateral written contract with shipper; schedules of minimum rates and charges, evidence of insurance coverage, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin active operations under the authority herein granted within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1503 — Flinchum Oil Company
E. J. Flinchum, Jr., d/b/a
Contract Carrier of Property
Mount Airy, North Carolina

EXHIBIT A — Transportation of Group 3 - Petroleum and petroleum products, liquid, in bulk, in tank trucks, from Friendship, North Carolina, to Mount Airy, North Carolina, under written bilateral contract with BP Oil Corporation.

DOCKET NO. T-1506

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
James Woodrow Prady, 56 West Main Street, Sylva, North Carolina - Application for Authority to Transport Group 21, Mobile Homes, as an Irregular Route Common Carrier Between Points and Places in Jackson, Macon and Swain Counties) RECOMMENDED ORDER

HEARD IN: The Jackson County Courthouse, Sylva, North Carolina, on June 17, 1970, at 10:00 a.m.

BEFORE: Commissioner John W. McDevitt, Examiner

APPEARANCES:

For the Applicant:

W. Paul Holt, Jr.
Hall, Holt & Haire
Attorneys at Law
Box 248, Sylva, North Carolina

For the Protestants: None

McDEVITT, COMMISSIONER: James Woodrow Frady filed application on April 13, 1970, for authority to transport Group 21, Mobile Homes, between points and places in Jackson, Macon and Swain Counties as an irregular route motor common carrier. Public hearing was scheduled and held as captioned with notice thereof being given in the Calendar of Hearings issued on April 27, 1970.

National Trailer Convoy, Inc., filed Protest and Motion for Intervention on June 8 and 12, 1970, respectively, to postpone the hearing and require the applicant to furnish certain information about his application. The Motion was denied and the protestant, by letter dated June 16, 1970, withdrew its protest. No one appeared at the hearing in opposition to the granting of the proposed authority.

The applicant's testimony tends to show that he resides in Sylva, North Carolina, where he owns and operates a service station; that he has had many years of experience in operating and handling heavy equipment, including mobile homes; that he owns and operates a one and one-half ton tractor properly equipped for towing mobile homes; that he has completed a course in the operation of heavy equipment; that he is solvent and financially able to operate the proposed business.

Seven public witnesses appeared in support of the application. Mr. Lex Arnold, operator of a service station in Franklin, North Carolina, testified that he receives inquiries about moving trailers but there is not an authorized mover in Macon County; that there is a need for the proposed service. Mr. Ed Cooper testified that he operates a service station and trailer park at Ela in Swain County; that there is not an authorized mobile home mover in Swain County; that mobile home owners have resorted to drastic means to get their trailers moved; that there is need for the proposed service.

Mr. Albert Patton testified that he operates a mobile home sales and motel business at Gateway near Cherokee in Jackson County; that he sells forty to fifty trailers each year and delivers them with his own equipment; that he receives requests every week and sometimes two or three times a day to move trailers; that he is unauthorized to move trailers but is aggravated by the public because of the presence of his equipment; that he believes there is sufficient number of movers to warrant the proposed authority; that to his knowledge no one in Jackson or Swain County is authorized to move mobile homes; that Greenville, South Carolina, and Asheville, North Carolina, are places called by persons seeking authorized mobile home movers; that the public needs more locally domiciled common carriers for the movement of trailers.

Mr. Luther Knowlton testified that he is a resident of Sylva in Jackson County; that he is in the real estate business and has signed a dealership contract with Connor Mobile Homes and will need the proposed service in his own business; that unless the proposed authority is granted he will be unable to properly transact his business. Mr. A. M. Taylor testified that he resides in Sylva, is in the mobile home sales business and moves the mobile homes which he sells with his own equipment; that he has frequent requests to move mobile homes for short distances; that in his opinion there is a sufficient amount of business to justify the proposed service; that he sells forty to fifty trailers each year within the area for which authority is sought; that he believes there are more than five hundred mobile homes in Jackson County.

Mr. Frank Hinsley testified that he owns a mobile home park with seventeen spaces in Cullowhee; that the services of a mobile home mover will be required on the average of once a month by his tenants who seek his help in obtaining a mover; that service is usually obtained from Asheville; that trailers are moved by farm tractor, pick-up trucks and wreckers for short distances because people are unable to get authorized service locally; that there is a public need for the proposed service; that he believes there is more than a thousand mobile homes in Jackson County.

Mrs. Viola Elliott testified that she owns a mobile home located in Bryson City and has had difficulty in the past in obtaining the services of someone to move it; that two hundred new mobile homes have been listed in 1970 by the collector of taxes for Jackson County; that the closest office of National Trailer Convoy, Inc., in relation to Sylva is Greenville, South Carolina.

Based upon the evidence adduced, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Public demand and need exists for the proposed service in addition to existing authorized service.

2. The applicant is fit, willing and able, financially and otherwise, to perform the proposed service.

3. The applicant is solvent and financially able to furnish the proposed service.

CONCLUSION

The Hearing Commissioner is of the opinion that the Applicant has carried the burden of proof required by G.S. 62-262(e) and concludes that applicant should be granted a Certificate of Public Convenience and Necessity as an irregular route motor common carrier to transport mobile

homes between points and places in Jackson, Swain and Macon Counties.

IT IS, THEREFORE, ORDERED That James Woodrow Frady, 56 West Main Street, Sylva, North Carolina, be, and he is, hereby authorized to operate as a common carrier over irregular routes in the manner and within the territory set forth in Exhibit B attached hereto.

IT IS FURTHER ORDERED That the authorization herein shall constitute a Certificate of Convenience and Necessity until a formal Certificate shall have been transmitted to the applicant authorizing transportation as herein set out.

IT IS FURTHER ORDERED That operations hereunder be commenced only when applicant has furnished evidence of insurance coverage, has filed tariff schedules of rates and charges and has complied with the rules and regulations of the North Carolina Utilities Commission, all of which must be done not later than thirty (30) days from the date this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1506 James Woodrow Frady
56 West Main Street
Sylva, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B Transportation of Group 21, Mobile Homes, as a common carrier over irregular routes as follows: between points and places in Jackson, Macon and Swain Counties, North Carolina.

DOCKET NO. T-1512

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Halls Mobile Homes, Inc., Route) RECOMMENDED
6, Lincolnton Road, Salisbury, North Carolina) ORDER

HEARD IN: The Grand Jury Room, Rowan County Courthouse, Salisbury, North Carolina, on July 23, 1970, at 10:00 a.m.

BEFORE: Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

Graham M. Carlton
Attorney at Law
109 W. Council Street
Salisbury, North Carolina

No Protestants

WOOTEN, COMMISSIONER: This matter arises upon the application filed by Halls Mobile Homes, Inc., Route 6, Lincolnton Road, Salisbury, North Carolina, on May 22, 1970, seeking irregular route common carrier authority for the transportation of Group 21, moving, mobile homes and related service, in the territory described as Rowan County.

Notice of the application setting the matter for hearing at the time and place set forth in the caption was given in the Commission's Calendar of Hearings issued June 8, 1970.

No protests to the application in this case were filed and no protestants appeared at the hearing of the matter.

The applicant presented the evidence of Mr. Richard Caldwell Hall, President of Halls Mobile Homes, Inc.; Mr. David R. Wood, American Mobile Homes, Salisbury, North Carolina; Mr. Tom A. Miller, Charlotte, North Carolina, a salesman with the applicant firm; and Mr. A. W. Huffman, Grove Supply Company, China Grove, North Carolina, all tending to show a public need for a local mobile home mover and the fitness of the applicant to supply that need.

FINDINGS OF FACT

1. That the applicant owns the necessary equipment for the movement of house trailers, as specified.

2. That the applicant and its helpers or employees are experienced in the movement of house trailers and in the use of equipment for the hauling thereof for which authorization is sought.

3. That the applicant is now engaged in the movement of house trailers under a Certificate of Exemption between points and places in the commercial zone of the City of Salisbury, North Carolina.

4. That the applicant is fit, willing and financially and otherwise qualified and able to properly perform adequate service as proposed in this application, and to continue such service as long as the need therefor exists.

5. That the public convenience and necessity requires the service of the applicant for the hauling of mobile homes or house trailers, and related services, as specified, in

addition to other existing authorized transportation service.

CONCLUSIONS

It appears from the evidence that the need for transporting or hauling mobile homes or house trailers, as specified, is substantial and will probably increase; that to move such trailers from one place to another requires the use of equipment specifically designed and modified for the purpose, and also requires that the operators be trained in their work; that the applicant, with its equipment and with its helpers or employees, is qualified to render this service and to contribute materially to public need and to the safety of traffic upon the highways.

In view of the evidence and the law applicable, the Commission concludes that the applicant has satisfied the burden of proof required by statute and that the application, as specified herein, should be granted.

It is of interest to note that national mobile home carriers with statewide intrastate authority doing business in the area involved in this application did not file protests and did not appear in opposition to the application, and neither did local movers holding such authority.

IT IS, THEREFORE, ORDERED:

That Halls Mobile Homes, Inc., Route 6, Lincolnton Road, Salisbury, North Carolina, be, and it is, hereby granted authority as an irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto.

IT IS FURTHER ORDERED:

That operations shall begin under this authority when the applicant has filed with the North Carolina Utilities Commission tariff schedules of rates and charges, adequate insurance coverage, and has otherwise complied with the rules and regulations of this Commission, all of which shall be done within thirty (30) days from the date this order becomes final.

IT IS FURTHER ORDERED:

That the authorization herein shall constitute a certificate until a formal certificate shall have been transmitted to the applicant authorizing transportation herein set out.

IT IS FURTHER ORDERED:

That the exemption certificate under which the applicant is presently operating be, and the same is, hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1512 Halls Mobile Homes, Inc.
Route 6, Lincolnton Road
Salisbury, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B Transportation of Group 21, Mobile Homes, in the following territory: Rowan County, North Carolina.

DOCKET NO. T-521, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Contract Carrier Permit by Thomas) ORDER
Oliver Harper, Jr., d/b/a Harper Trucking Com-) GRANTING
pany, Route 1, Box 306-1A, Apex, North Carolina) PERMIT

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Thursday, August 13, 1970, at 2:00 p.m.

BEFORE: Chairman H. T. Westcott and Commissioners Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

M. Alexander Biggs
Biggs, Meadows & Batts
Attorneys at Law
225 S. Franklin Street
Rocky Mount, North Carolina

For the Protestant: (Protest Withdrawn)

John D. Xanthos
Attorney at Law
303 Wachovia Bank Building
Burlington, North Carolina
For: Mid-State Delivery Service, Inc.

WOOTEN, COMMISSIONER: By application filed with the Commission on July 10, 1970, Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Route 1, Box 306-1A, Apex, North Carolina, seeks a contract carrier permit to transport Group 21, Other Specific Commodities, to wit: Automotive

parts, supplies and accessories, in the territory described as within 150 miles of Raleigh, North Carolina.

The involved territory would be under contract between the applicant and Jobbers Automotive Supply, Inc., 1007 South Church Street, Rocky Mount, North Carolina.

Notice of the application was given in the Commission's Calendar of Hearings issued July 20, 1970. In apt time protests were filed by Mid-State Delivery Service, Inc., Burlington, North Carolina, and Carolina Delivery Service Company, Inc., Charlotte, North Carolina. On the date of the hearing, the Commission was advised by telephone by Mr. Maury Johnston, Attorney for Carolina Delivery Service Company, Inc., that said protestant withdrew its protest in this matter, provided the applicant would limit the authority sought to shipments originating in Rocky Mount, North Carolina, and for a radius within 150 miles of Raleigh, North Carolina.

Upon the call of this matter for hearing, the applicant moved the Commission for authority to amend its application by amending Exhibit B on page three thereof to read as follows: "for Jobbers Automotive Supply, Inc., from Rocky Mount, North Carolina, to points and places lying within a 150 mile radius of Raleigh, North Carolina," which would be in lieu of the words "within 150 miles of Raleigh, North Carolina."

Upon the allowance of the motion to amend, the Protestant, Mid-State Delivery Service, Inc., through its Attorney, John D. Xanthos, withdrew its protest herein, thereby leaving no protests in this case. No other protests were filed prior to the hearing and no one appeared at the hearing in opposition to the granting of the contract carrier permit sought herein.

The applicant offered the testimony of himself, Thomas Oliver Harper, Jr., and Grady P. Davis II. Mr. Harper testified regarding his present trucking operations, and identified a number of exhibits; that the service which he proposes to offer under individual contract with Jobbers Automotive Supply, Inc., is a specialized service delivering automotive parts, supplies and accessories and picking the same up at times specifically designated by the shipper with guaranteed next day delivery and delivery regardless of location; that the service which he will offer also provides for the placement of items delivered inside the premises of the consignee by the use of keys to be provided, thereby providing odd hour delivery service and special service in connection therewith; and that he owns the equipment, is financially able, and has the experience necessary to provide the service required in this case.

Mr. Grady P. Davis II, 1007 South Church Street, Rocky Mount, North Carolina, testified that he is the president of Jobbers Automotive Supply, Inc., which has only one location

in Rocky Mount, North Carolina; that his company sells to wholesale outlets in North and South Carolina and Virginia with a majority of its sales in eastern North Carolina; that his customers need twenty-four hour delivery service in order to avoid long and expensive shutdowns by their customers; that the present common carrier service is too slow; that there are problems in obtaining common carrier service to many of the points to which he needs service; that the present common carrier service will not place the merchandise inside the customer's premises at odd hours; that the pickup and delivery of present common carrier service is too slow; and that his company needs nighttime pickup and delivery. This witness also testified in support of the application in this case.

From the evidence presented, a portion of which is briefly set out above, the Commission is of the opinion and finds the following

FINDINGS OF FACT

1. That the proposed operations conform to the definition of a contract carrier and will not unreasonably impair the efficient service of common carriers operating under certificates or common carriers by rail.

2. That the proposed service will not unreasonably impair the use of the highways by the public.

3. That the applicant owns equipment and has the experience necessary for the operations as specified.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier and such operations will be consistent with the public interest and the State's transportation policy as required by law.

5. That contract carrier service under bilateral written contract with Jobbers Automotive Supply, Inc., for the commodities and in the territory described in Exhibit A, attached hereto and made a part hereof, will be consistent with the public interest.

6. That the proposed operation will tend to effectuate the declared policy of the applicable law.

CONCLUSIONS

The Commission concludes that the applicant has satisfied the burden of proof required for the granting of the authority sought as described in Exhibit A, hereto attached and made a part hereof, and that the application as therein set forth should be approved and the authority granted.

IT IS, THEREFORE, ORDERED:

1. That Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Route 1, Box 306-1A, Apex, North Carolina, be, and he is, hereby granted a contract carrier permit in accordance with Exhibit A, attached hereto and made a part hereof.

2. That the operations herein approved be commenced only when the applicant has complied with all of the rules and regulations of the North Carolina Utilities Commission, all of which shall be done within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-521 SUB 4 Thomas Oliver Harper, Jr., d/b/a
Harper Trucking Company
Route 1, Box 306-1A
Apex, North Carolina

Contract Carrier Authority

EXHIBIT A Transportation of Group 21, Other Specific Commodities, to wit: Automotive parts, supplies and accessories, under bilateral contract for Jobbers Automotive Supply Company, Inc., from Rocky Mount, North Carolina, to points and places lying within a 150 mile radius of Raleigh, North Carolina.

DOCKET NO. T-1522

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Contract Carrier Permit by) ORDER
T. C. Hendrix, Jr., P. O. Box 585, Cooleemee,) GRANTING
North Carolina) PERMIT

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Tuesday, August 11, 1970, at 9:30 a.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), Miles H. Rhyne and Marvin R. Wooten

APPEARANCES:

For the Applicant:

T. C. Hendrix, Jr.
P. O. Box 585, Cooleemee, North Carolina
(Appearing for Himself)

No Protestants.

WOOTEN, COMMISSIONER: By application filed with the Commission on June 29, 1970, T. C. Hendrix, Jr., P. O. Box 585, Cooleemee, North Carolina, seeks a contract carrier permit to transport Group 21, Other Specific Commodities, to wit: synthetic fiber producing equipment and parts and other miscellaneous articles required on an emergency basis, in the territory described as: to and from Fiber Industries, Inc.'s plant in Rowan County to all points and places within Rowan, Iredell, Catawba, Lincoln, Cleveland, Gaston, Mecklenburg and Cabarrus Counties. The involved territory will be under contract between the applicant and Fiber Industries, Inc.

Notice of the application was given in the Commission's Calendar of Hearings dated July 20, 1970, and set for hearing as captioned. No protests were received prior to the hearing and no one appeared to protest the application when the same was called for hearing.

The applicant offered the testimony of himself, T. C. Hendrix, Jr., and Mr. Paul Martin and Mr. Forb Reed, both of Fiber Industries, Inc.

The applicant testified that he has been in the trucking business under contract with cities for the movement of garbage for many years; that he has nine trucks, one bulldozer and a front end loader; that he has been hauling and disposing of waste for Fiber Industries, Inc., for a number of years; that he is financially, willing and able to perform the services for which a permit is here sought; and that in his opinion there is a need for this service in addition to existing common carrier service.

Witnesses Martin and Reed testified that their company needed the services here described in that the present service afforded by common carriers was totally inadequate to serve their emergency needs, which unless satisfied would cause the shutdown of plants and the resultant loss of large sums of money; that the applicant is a man of good character and reputation, well equipped to perform the service herein contemplated and that the services herein contemplated are needed in addition to the present common carrier service available.

The applicant introduced as Exhibit 1 its contract with Fiber Industries, Inc., dated April 27, 1970, setting forth

in detail the terms and conditions of the contractual relationship.

From the evidence presented, a portion of which is briefly set out above, the Commission is of the opinion and finds the following

FINDINGS OF FACT

1. That the proposed operations conform to the definition of a contract carrier and will not unreasonably impair the efficient service of common carriers operating under certificates or common carriers by rail.

2. That the proposed service will not unreasonably impair the use of the highways by the public.

3. That the applicant owns equipment and has the experience necessary for the operations as specified.

4. That the applicant is fit, willing and able to properly perform the service proposed as a contract carrier and such operations will be consistent with the public interest and the State's transportation policy as required by law.

5. That contract carrier service under bilateral written contract with Fiber Industries, Inc., for the commodities and in the territory described in Exhibit A, attached hereto and made a part hereof, will be consistent with the public interest.

6. That the proposed operation will tend to effectuate the declared policy of the applicable law.

CONCLUSIONS

The Commission concludes that the applicant has satisfied the burden of proof required for the granting of the authority sought as described in Exhibit A, hereto attached and made a part hereof, and that the application as therein set forth should be approved and the authority granted.

IT IS, THEREFORE, ORDERED:

1. That T. C. Hendrix, Jr., P. O. Box 585, Cooleemee, North Carolina, be, and he is, hereby granted a contract carrier permit in accordance with Exhibit A, attached hereto and made a part hereof.

2. That the operations herein approved be commenced only when the applicant has complied with all of the rules and regulations of the North Carolina Utilities Commission with respect to the filing of minimum rates and charges, insurance coverage, and otherwise, all of which shall be done within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1522

T. C. Hendrix, Jr.
P. O. Box 585
Cooleemee, North Carolina

Contract Carrier Authority

EXHIBIT A

Transportation of Group 21, Other Specific Commodities, to wit: synthetic fiber producing equipment and parts and other miscellaneous articles required on an emergency basis, under bilateral contract with Fiber Industries, Inc., in the territory described as to and from Fiber Industries, Inc.'s plant in Rowan County, as required by shipper, within the Counties of Rowan, Iredell, Catawba, Lincoln, Cleveland, Gaston, Mecklenburg and Cabarrus.

DOCKET NO. T-1511

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Moses Lott Buffkin, d/b/a)
Jack's Mobile Home Service, Route 3,) RECOMMENDED
Box 199-A, Laurinburg, North Carolina) ORDER

HEARD IN: Room 31, Scotland County Courthouse, Laurinburg, North Carolina, on July 14, 1970, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602

For the Protestant:

Lowry M. Betts
Pittman, Staton & Betts

Attorneys at Law
P. O. Box 1009
Sanford, North Carolina
Appearing for Boyd Q. Douglas, t/a
Dreamland Mobile Home Park

HUGHES, EXAMINER: By application filed with the Commission on April 30, 1970, Moses Lott Buffkin, d/b/a Jack's Mobile Home Service, Route 3, Box 199-A, Laurinburg, North Carolina, seeks irregular route common carrier authority to engage in the transportation of mobile homes as follows:

"Between points in Scotland, Robeson, Hoke and Moore Counties and to and from those counties, and all points and places within the State of North Carolina."

Notice of said application, along with the time and place of hearing together with a brief description of the authority sought, was published in the Commission's Calendar of Hearings issued on June 8, 1970. Protests thereto were timely filed by National Trailer Convoy, Inc., Tulsa, Oklahoma, and Boyd Q. Douglas, t/a Dreamland Mobile Home Park, Sanford, North Carolina.

Prior to the hearing, the territorial authority applied for was clarified by Applicant through his attorney, to read as follows:

"Between points in Scotland, Robeson, Hoke and Moore Counties and to and from those counties to all points and places within the State of North Carolina."

Pursuant to the clarification of the territorial authority contained in the application, protest of National Trailer Convoy, Inc., was withdrawn.

All parties were present at the hearing and represented by counsel.

Testimony of Applicant tends to show that he is in the mobile home repair business; that he has an "interest" in a mobile home park through an arrangement or working agreement with the owner of said park, under which he furnishes certain services to the park and receives a percentage of the profits from joint undertakings, which include in addition to the repair business, the sale of parts and accessories for mobile homes, including bottled gas; that he is the owner of a tractor especially designed and suited for transporting mobile homes; that he has a net worth in the amount of some $40,000; that he has had experience in hauling mobile homes for a regulated motor carrier by whom he was employed for nine (9) months and that in addition, he has had some ten (10) years experience in hauling mobile homes as a driver for certain dealers; that he has not been charged with a traffic violation for some fifteen (15) years; that he is familiar with the safety and insurance

regulations of the Utilities Commission and that he is in a position to obtain additional equipment if and when needed.

A number of people appeared in support of the application. These included Mr. Bobby Snead of Laurinburg, who testified that he is in the service station business and in connection therewith operates a wrecker service; that because of his ownership of the wrecker, he receives several calls a week to move mobile homes and that he advises those who call that he does not have the authority to move them and refers them to the Yellow Pages of the telephone directory. The witness further testified that he knows Applicant and he is familiar with his qualifications to engage in the transportation of housetrailers.

The Applicant then presented Mr. Doyle Gay of Wagram (Scotland County), who testified that in his employment as a dispatcher for a manufacturer of mobile homes, he has received numerous calls from owners of mobile homes for information concerning the movement of said mobile homes from one location to another; that such inquiries were referred to Applicant, who until recently was in the employ of a regulated motor carrier; that he himself is the owner of a mobile home and had some difficulty in getting it transported from Hickory when he moved to Wagram in 1965; that he wanted to move on a Monday but could not find a local carrier to handle the movement and finally obtained the service of a carrier in Fayetteville who moved him on Thursday.

Mr. Raymond Hasty, who is a Motor Vehicle Inspector for the Department of Motor Vehicles, testified on behalf of Applicant to the effect that there are two (2) manufacturers of mobile homes in Robeson County and one (1) in Scotland County and that there is no regulated mobile home carrier located in Robeson County, which has resulted in a great amount of illegal hauling by dealers and other unauthorized persons.

Mr. Earl Crisp, an employee of Carolina Power & Light Company, offered testimony concerning his knowledge of the number of mobile home parks in Scotland County.

Other supporting witnesses included Mr. Joe Young, who is in the mobile home sales business in Rockingham and Laurinburg. It appears from his testimony that Mr. Young moves all of the trailers which he sells in private carriage and his testimony was more or less that of a character witness for Applicant. In addition, Mr. Richard McInnis of Laurel Hills (Scotland County), who operates the Whispering Pines Mobile Homes Park, Mr. T. D. Jones, Laurinburg (Scotland County), owner of the Mobile Homes Estate Park and Mr. Terry Lowe, Southern Pines (Moore County), manager of Roy's Mobile Home Sales, offered testimony favorable to Applicant.

Protestant, Boyd O. Douglas, testified that he holds authority from the Utilities Commission to engage in the transportation of mobile homes within the counties involved in this application and that his base of operations is in Sanford, where he also is a dealer of mobile homes and operates a mobile home park; that he advertises in the Yellow Pages of the telephone directories in Lumberton, Laurinburg-Maxton, Raeford and Southern Pines and otherwise solicits business by leaving cards in trailer parks and trailer sales places; that presently he has one (1) truck suitable for pulling mobile homes and that he does his own driving and that he can handle additional business if offered.

In addition, Protestant offered as a witness, Mr. William R. Long, a regulated carrier of Rockingham, who testified generally concerning his experience with Applicant while Applicant was in his employ and that Applicant's employment with him was terminated because of his failure to comply with the Commission's regulations relating to bills of lading and log books.

In rebuttal, Applicant gave testimony to counteract, dispute and disprove the testimony of Witness Long.

Upon consideration of the application, the record in this case, the testimony presented and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That public convenience and necessity does not require the proposed service in addition to existing authorized transportation service, between points in Hoke and Moore Counties and from these counties to all points and places within the State of North Carolina,

(2) That public convenience and necessity does require the service proposed in addition to existing authorized transportation service, between points and places in Scotland and Robeson Counties and from these counties to all points and places in the State of North Carolina and return,

(3) That the Applicant is fit, willing and able to properly perform the proposed service, and

(4) That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

It appears from the evidence that Applicant is an experienced operator and well qualified to render service in the transportation of mobile homes; that there are a considerable number of mobile homes moved within Scotland and Robeson Counties and from said counties to points and places within the State and from points and places within

the State to said counties; that there is not sufficient or adequate service for the transportation of mobile homes within the counties of Scotland and Robeson and between said counties and other sections of the State; that residents and business people of Scotland and Robeson Counties should not be required to suffer the inconvenience of making numerous telephone calls to distant points to obtain service, but should be able to obtain the required service from a qualified carrier such as Applicant when such a carrier is locally available.

The evidence insofar as it relates to Moore and Hoke Counties is insufficient to establish a public demand and need for the proposed service in addition to existing authorized service.

Upon consideration of the applicable statutes and the evidence presented in this case, the Hearing Examiner concludes that Applicant has satisfied the burden of proof required by statute for a portion of the authority sought, as specified in Exhibit B hereto attached, and to that extent, the application should be approved and granted. The Hearing Examiner further concludes that in all other respects, the application should be denied.

IT IS, THEREFORE, ORDERED:

(1) That Applicant, Moses Lott Buffkin, d/b/a Jack's Mobile Home Service, Route 3, Box 199-A, Laurinburg, North Carolina, be, and the same is, hereby granted authority to engage in the transportation of mobile homes between points and places in Scotland and Robeson Counties and from said counties to all points and places within the State of North Carolina and from points within the State of North Carolina to points in Scotland and Robeson Counties, as particularly described in Exhibit B hereto attached and made a part hereof.

(2) That the application, except to the extent granted herein, be, and the same is, hereby denied.

(3) That the Applicant file with the North Carolina Utilities Commission evidence of the required insurance, a tariff schedule of rates and charges, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin operations under the authority granted herein within a period of thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1511 Jack's Mobile Home Service
Moses Lott Buffkin, d/b/a
Irregular Route Common Carrier
Laurinburg, North Carolina

EXHIBIT B Transportation of mobile homes:

1. Between points and places within Scotland and Robeson Counties.

2. From points and places in Scotland and Robeson Counties to all points and places within the State of North Carolina.

3. From all points and places within the State of North Carolina to points in Scotland and Robeson Counties.

DOCKET NO. T-1501

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
James Enterprises, Inc., d/b/a James Supply Company, Route 4, Statesville, North Carolina - Contract Carrier Application) RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on April 9, 1970, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

N. C. James
James Enterprises, Inc., d/b/a
James Supply Company
Statesville, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on February 16, 1970, James Enterprises, Inc., d/b/a James Supply Company, Route 4, Statesville, North Carolina, seeks to engage in the transportation of manufactured animal, fish and poultry feed, insecticides, fungicides and animal medicines, and any other product manufactured by the Ralston Purina Company, on a statewide basis as a contract carrier.

Pending hearing and final determination of the application, Applicant sought temporary authority as a

contract carrier to engage in the transportation of said commodities between said points under bilateral contract with Ralston Purina Company. For good cause shown, the application for temporary authority was granted for the period during the pendency before the Commission of the permanent authority application herein.

Notice of the application, reflecting the nature thereof and showing the time and place of the hearing, was given in the Commission's Calendar of Hearings issued on February 19, 1970. No protests were filed and no one appeared at the hearing in opposition thereto.

It appears from the application and the evidence that Applicant is a corporation duly organized under the laws of the State of North Carolina; that Applicant owns three (3) International trucks which Applicant proposes to use in the operation, two (2) of which are specially designed for the transportation of bulk feed and that Applicant has net assets in the amount of $75,000.

It further appears from the evidence in the form of a communication from the Ralston Purina Company, that said shipper has an immediate need for and will use Applicant for the transportation of commodities described in the application. It further appears that Applicant is now serving Ralston Purina Company under temporary authority heretofore granted to Applicant in accordance with bilateral contract between Applicant and said shipper, which is on file with the Commission. It appears further that Applicant is in full compliance with the rules and regulations of the Commission relative to insurance, minimum rate schedules and registration of equipment.

Upon consideration of the application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act,

(2) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

(3) That the proposed service will not unreasonably impair the use of the highways by the general public,

(4) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

(5) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that Applicant has borne the burden of proof required by statute and that the authority sought should be granted.

IT IS, THEREFORE, ORDERED:

(1) That a contract carrier permit be granted to James Enterprises, Inc., d/b/a James Supply Company, Route 4, Statesville, North Carolina, to engage in the transportation of Group 21, manufactured animal, fish and poultry feed, insecticides, fungicides and animal medicines, and any other product manufactured by the Ralston Purina Company as particularly described in Exhibit A hereto attached and made a part hereof.

(2) That the temporary authority heretofore granted to Applicant in this docket, be cancelled on the date that this order becomes effective and final.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of April, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1501 — James Supply Company
James Enterprises, Inc., d/b/a
Contract Carrier of Property
Statesville, North Carolina

EXHIBIT A — Transportation of manufactured animal, fish and poultry feed, insecticides, fungicides and animal medicines, and any other products manufactured by Ralston Purina Company, on a statewide basis, under bilateral contract with said Ralston Purina Company.

DOCKET NO. T-1500

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of William Young Jones, d/b/a) ORDER
Jones Mobile Home Service, Route #3,) GRANTING
Louisburg, North Carolina) APPLICATION

HEARD IN: The Hearing Room of the Commission, 1 West Morgan Street, Raleigh, North Carolina, on Thursday, March 19, 1970, at 2:00 p.m.

BEFORE: Commissioners Marvin R. Wooten, Hugh A. Wells, and Miles H. Rhyne, Presiding

APPEARANCES:

For the Applicant:

J. P. Williamson, Jr.
Yarborough & Jolly
P. O. Box 96, Louisburg, North Carolina

No Protestants.

RHYNE, COMMISSIONER: William Young Jones, d/b/a Jones Mobile Homes Service, Route 3, Louisburg, North Carolina, filed an application with this Commission on February 10, 1970, seeking irregular route common carrier authority for the transportation of Group 21 mobile homes in the following counties: Franklin, Granville, Vance and Warren counties as shown by map marked Exhibit B attached to the application.

In this application, applicant desires classification as a common carrier over an irregular route that will include any state highway or road within the boundaries of the above-named counties.

Notice of said application was given in the Commission's Calendar of Hearings issued on February 19, 1970.

No protestants appeared and no objections were raised as both witnesses, Mr. Jones and Mrs. Burnett, appeared on behalf of the applicant, Jones, and testified as to the great need for the service of transporting mobile homes within the above-mentioned area. Mr. Jones testified that he has had several years' experience in transporting mobile homes and has also had considerable experience in the construction and management of mobile home parks. Mrs. Burnett testified as to Mr. Jones' character and reputation and also testified as to the great need for this type of service in and around Louisburg, North Carolina. Mrs. Burnett indicated that the sale of mobile homes is increasing very rapidly and that it is very difficult to locate someone capable and licensed to move mobile homes when needed.

From the evidence presented, a portion of which is set out, the Commission makes the following

FINDINGS OF FACT

1. That the applicant owns the necessary equipment for the movement of mobile house trailers.

2. That the applicant is experienced in the movement of mobile house trailers and use of equipment for the hauling thereof for which authority is sought.

3. That the applicant is fit, willing and financially able to perform adequate service as proposed in the application, and to continue such service as long as the need therefore exists.

4. That the public convenience and necessity requires the service of the applicant for the hauling of mobile homes or house trailers, as applied for.

CONCLUSIONS

In view of the applicable law in this case and the evidence presented, the Commission concludes that the applicant has satisfied the burden of proof as required by statute and that the application should be approved and granted.

It is further concluded, in the light of no protestants appearing, and all of the evidence presented, that there is a need for additional mobile home common carrier authority within the limits of the application.

(1) IT IS, THEREFORE, ORDERED, That the applicant, William Young Jones, d/b/a Jones Mobile Home Service, Route 3, Louisburg, North Carolina be, and is, hereby granted authority as an irregular route common carrier to transport mobile homes within the confines of the counties heretofore named, and more particularly described in Exhibit B, hereto attached and made a part hereof.

(2) IT IS FURTHER ORDERED, That operations shall begin under this authority when the applicant has filed with the North Carolina Utilities Commission tariff schedules of rates and charges, adequate insurance coverage and has otherwise complied with the rules and regulations of this Commission, all of which should be done within thirty (30) days from the date of this order.

(3) IT IS FINALLY ORDERED, That the authorization herein shall constitute a certificate until formal certificate shall have been transmitted to the applicant authorizing transportation herein set out.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1500 Jones Mobile Home Service
Route #3
Louisburg, North Carolina

EXHIBIT B

Irregular Route Common Carrier Authority

Transportation of Group 21 Mobile Homes over an irregular route that will include any state highway or road within the boundaries of Franklin, Granville, Vance and Warren Counties.

DOCKET NO. T-1516

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Application of Edgar L. Mabe and Claud E. Mabe, T/A Lower Creek Mobile Homes, Route 3, Box 133-A, Morganton, North Carolina 28655) RECOMMENDED ORDER APPROVING APPLICATION

HEARD IN: The Commission's Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on July 10, 1970, at 9:30 a.m.

BEFORE: Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

John H. McMurray
Riddle & McMurray
Attorneys at Law
P. O. Box 753
Morganton, North Carolina 28655

No Protestants.

WOOTEN, HEARING COMMISSIONER: This matter arises upon the application filed by Edgar L. Mabe and Claud E. Mabe, T/A Lower Creek Mobile Homes, Route 3, Box 133-A, Morganton, North Carolina 28655, for irregular route common carrier authority for the transportation of mobile homes in the territory described as "Burke and Caldwell Counties." Said application was filed with the Commission on June 5, 1970, and notice of the application setting the matter for hearing at the above time and place was given in the Commission's Calendar of Hearings issued June 8, 1970. No protests were filed and no protestants appeared at the hearing.

At the hearing the applicants offered the testimony of four (4) witnesses, including themselves. The evidence presented by the applicants tends to show that the applicants have been engaged in the service station, wrecker service, grocery store, and mobile home trailer park business for several years; that they have on occasions

assisted in difficult moves with their wrecker service in the movement of mobile homes; that they have the equipment and experience which qualifies them for the movement and transporting of mobile home trailers; that they own a considerable amount of equipment and have the financial resources with which to purchase such additional equipment as is necessary to properly conduct the operations for which authority is here sought; that they are well equipped financially and have experience to qualify them to properly conduct the business for which authority is here sought; that there is a need for additional common carrier mobile home movement service in Burke and Caldwell Counties; that there are many mobile home dealers in both counties, the number of which is growing; that there are well over three thousand (3000) house trailers in Burke County and approximately that many in Caldwell County; that sales of mobile homes and mobile home parks are constantly growing in both counties; that the present authorized carriers in these counties are not able to meet the needs of the public there; that many people are inconvenienced and delayed by the slow movement of mobile homes due to the lack of a sufficient amount of service; that there is a need for the service proposed by the applicants in addition to existing authorized transportation service; that the service applied for is requested and recommended by two public witnesses; that mobile home sales representatives receive numerous calls requesting movement of mobile homes; that the applicants have received many calls and complaints regarding the slow movement of the same; and that the population of mobile homes and the movement of the same in these two counties is great and still growing.

In addition to the applicants, Edgar L. Mabe and Claud E. Mabe, they offered the testimony of Mr. Howard Keys, a mobile home dealer in Burke County, and the testimony of Mr. V. W. Nichols, who is a mobile home dealer in Caldwell County, North Carolina, in justification of the approval of the application in this instance.

From the evidence presented, a portion of which is set out above, the Commission makes the following

FINDINGS OF FACT

1. That the applicants own or are financially able to obtain the necessary equipment for the movement of mobile home trailers as specified.

2. That the applicants and their helpers or employees have sufficient experience in the wrecker business and have sufficient equipment or are financially able to obtain the same for the hauling of house trailers for which authorization is sought.

3. That the applicants are fit, willing and financially and otherwise qualified and able to properly perform

adequate service as proposed in this application, and to continue such service as long as the need therefor exists.

4. That the public convenience and necessity requires the service of the applicants for the hauling of mobile homes or house trailers, as specified, in addition to other existing authorized transportation service.

CONCLUSIONS

It appears from the evidence that the need for transporting or hauling mobile homes or house trailers, as specified, is substantial, increasing, and will probably continue to increase; that to move such trailers from one place to another requires the use of equipment specifically designed and modified for the purpose, and also requires operators trained in their work; and we, therefore, conclude that the applicants with their experience and equipment are qualified to render this service and contribute materially to the public need and to the safety of traffic upon the highways. In view of the evidence and the law applicable, the Commission concludes that the applicants have satisfied the burden of proof required by statute and that the application, as specified herein, should be granted.

Testimony in this case leads to the conclusion that there is considerable movement of mobile homes and that there is not adequate service for transportation available in the area for which authority is here sought; that the very nature of mobile homes indicates, for the most part, that the same are subject to and will be, from time to time, moved from place to place, and that the owner-occupants may very well want to move from one section of these two adjoining counties to another, from one end to the other; and that such persons should not be required to seek out and wait for distant or overburdened authorized service, but should be able to use a service readily and locally available.

It is of interest to note in this case that neither national mobile home carriers with statewide intrastate authority, nor other carriers holding statewide authority, nor common carriers holding local authority in the area here involved filed protests in this case and neither did they appear in opposition to the application.

It is quite evident from the testimony that public convenience and necessity exists for the service sought by the applicants in this case and that the same should be granted.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Edgar L. Mabe and Claud E. Mabe, T/A Lower Creek Mobile Homes, Route 3, Box 133-A, Morganton, North Carolina 28655, be, and they are, hereby granted authority as an

irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto.

2. That operations shall begin under this authority when the applicants have filed with the North Carolina Utilities Commission tariff schedules of rates and charges, list of equipment, adequate insurance coverage, and have otherwise qualified with rules and regulations of this Commission, all of which shall be done within thirty (30) days from the effective date of this order.

3. That the authorization herein shall constitute a certificate until formal certificate shall have been transmitted to the applicants authorizing transportation herein set out.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1516 Edgar L. Mabe and Claud E. Mabe
T/A Lower Creek Mobile Homes
Route 3, Box 133-A
Morganton, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B Transportation of Group 21, Mobile Homes, to, from, between and within points in Burke and Caldwell Counties.

DOCKET NO. T-149, SUB 19

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Maybelle Transport Company,) ORDER
Lexington, North Carolina, Seeking Amend-) GRANTING
ment to its Common Carrier Authority) APPLICATION

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on September 10, 1970, at 2:00 p.m.

BEFORE: Hugh A. Wells (Presiding), Miles H. Rhyne and John W. McDevitt, Commissioners

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr., Esq.
Allen, Steed and Pullen

Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

No Protestants.

WELLS, COMMISSIONER: By application filed July 30, 1970, applicant, Maybelle Transport Company, Lexington, North Carolina (Applicant), seeks additional authority to operate as a common carrier over irregular routes in the transportation of molten aluminum in ladles on special trailers from Baden, North Carolina, to Winston-Salem, North Carolina.

Notice of the application along with the time and place of hearing and a description of the authority sought was published in the Commission's Calendar of Hearings issued August 12, 1970. There were no protests filed to the application.

Applicant was present at the hearing and represented by counsel.

Applicant presented as witnesses on behalf of the authority sought its Vice-President and General Manager James B. Swing and Mr. William T. Martin, Vice-President of R. J. Archer Company in Winston-Salem, North Carolina.

The applicant presently holds similar authority (granted in Docket No. T-149, Sub 15) to transport molten aluminum in ladles from Baden, North Carolina, to Salisbury, North Carolina.

Upon consideration of the record in the case, the testimony and exhibits offered and the evidence presented, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is an experienced common carrier operating in North Carolina. It has a considerable amount of equipment consisting of some 50 tractors and some 85 trailers. It has assets of approximately $803,000.

2. There is a need for the transportation of molten aluminum in ladles from Baden, North Carolina, to Winston-Salem, North Carolina, which need is not being presently met by other common or contract carriers. Public convenience and necessity require the service proposed in the application, in addition to existing authorized transportation service.

3. The applicant is fit, willing and able to properly perform the proposed service and is financially able to provide the proposed service on a continuing basis.

Based upon the foregoing Findings of Fact, the Commission reaches the following

CONCLUSIONS

Applicant is experienced and well qualified to provide the transportation service applied for in this docket. There is a need for such service which is not being presently provided, and it is therefore in the public interest to grant the application. The public convenience and necessity will be furthered by the granting of this authority.

IT IS THEREFORE ORDERED:

1. That Maybelle Transport Company be, and hereby is, granted authority as an irregular route common carrier to transport molten aluminum in ladles, in accordance with Exhibit B attached hereto and made a part hereof.

2. Applicant shall comply with the rules and regulations of this Commission and begin operations under the authority granted herein within a period of thirty (30) days from the date that this order becomes final. Applicant shall file with the Commission a tariff schedule of rates and charges pursuant to this authority.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-149 SUB 19 — Maybelle Transport Company, Lexington, North Carolina

Irregular Route Common Carrier

EXHIBIT B — Transportation of Molten Aluminum in Ladles on Special Trailers from Baden, North Carolina, to Winston-Salem, North Carolina.

DOCKET NO. T-1505

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Ralph E. Mitchell, d/b/a Mitchell Pick Up & Delivery, 40 Vermont Ave., W. Asheville, North Carolina, for contract carrier authority) RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on May 5, 1970, at 2:00 p.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246
Raleigh, N. C. 27602

No Protestants.

By application filed with the Commission on April 1, 1970, Ralph E. Mitchell, d/b/a Mitchell Pick Up & Delivery, 40 Vermont Avenue, West Asheville, North Carolina, seeks to engage in the transportation of auto parts, supplies and accessories from Asheville to points and places in Buncombe, Yancey, Mitchell, Haywood, Jackson and Transylvania Counties.

Notice of the application reflecting the nature thereof and showing the time and place of the hearing, was given in the Commission's Calendar of Hearings issued April 1, 1970. Protest thereto was timely filed by Carolina Delivery Service Company, Inc.

Prior to the hearing, Applicant moved to amend the application to read as follows:

"To transport auto parts, supplies, and accessories under written contract with National Automobile Parts Association (or whatever the proper name of said company may be as will be revealed at the hearing) from Asheville to Canton, Waynesville, Sylva, Spruce Pine, Burnsville, Weaverville and West Asheville."

The motion to amend was allowed and Protestant, Carolina Delivery Service Company, Inc., withdrew its objection and the application is otherwise unopposed.

The evidence tends to show that Applicant is an individual who presently holds a certificate of exemption under which intracity operations are carried on within the municipality of Asheville and its commercial zone; that Applicant owns a 1965 Chevrolet van type truck which he proposes to use in his operation; that Applicant has net assets in the amount of some $1,900 and that Applicant is experienced in the trucking business and understands the difference between a common carrier and a contract carrier as defined, classified and regulated by the Public Utilities Act.

In support of the application, Mr. David Williams, Vice President of Genuine Parts Company, testified that the service proposed is urgently needed by his company for the transportation of automobile parts from Asheville to its stores and customers located at the points named in the amended application; that shipments of automobile parts will

be transported from Charlotte to Asheville in private carriage in a truck owned by shipper; that the shipments will be transferred from shipper's truck to Applicant around 2:00 a.m. five (5) nights a week for transportation to points of delivery; that the need for the type of service which Applicant proposes to give results from the fact that many of the parts to be delivered are needed immediately for the repair of disabled motor vehicles; and that the proposed service is in the nature of an emergency type operation which is not available from common carriers.

Upon consideration of the application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act,

(2) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers,

(3) That the proposed service will not unreasonably impair the use of the highways by the general public,

(4) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

(5) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that Applicant has borne the burden of proof required by statute and that the authority sought in the amended application should be granted.

IT IS, THEREFORE, ORDERED:

(1) That a contract carrier permit be granted Ralph E. Mitchell, d/b/a Mitchell Pick Up & Delivery, 40 Vermont Avenue, West Asheville, North Carolina, to engage in the transportation of automobile parts, supplies and accessories as particularly described in Exhibit A hereto attached and made a part hereof.

(2) That Ralph E. Mitchell, d/b/a Mitchell Pick Up & Delivery, file with this Commission bilateral written contract with shipper; schedules of minimum rates and charges, evidence of insurance coverage, lists of equipment, designation of process agent and otherwise comply with the

rules and regulations of this Commission and begin active operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

(3) That Exemption Certificate No. E-16226, heretofore issued to Mitchell Pick Up & Delivery be, and the same is hereby, cancelled as of the effective date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1505 Mitchell Pick Up & Delivery
Ralph E. Mitchell, d/b/a
Contract Carrier of Property
West Asheville, North Carolina

EXHIBIT A Transportation of auto parts, supplies and accessories under bilateral written contract with Genuine Parts Company, Charlotte, North Carolina, from Asheville to Canton, Waynesville, Sylva, Spruce Pine, Burnsville, Weaverville and West Asheville.

DOCKET NO. T-1493

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of J. T. Neighbors Trucking) RECOMMENDED
Company, Inc., Route 3, Dunn, North Carolina) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on February 10, 1970, at 2:00 p.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Max E. McLeod
Attorney at Law
Dunn, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on January 9, 1970, J. T. Neighbors Trucking Company, Inc., seeks authority as an irregular route common carrier to engage in the transportation of Group 18 - Household Goods, within Harnett County. Notice of said

application, together with a description of the authority sought, along with the time and place of hearing, was published in the Commission's Calendar of Hearings issued January 12, 1970. No protests have been filed and the application is unopposed.

The evidence for Applicant, as given by its President, Mr. J. T. Neighbors, tends to show that he has been in the transportation business since the year 1949; that most of his prior operations have been in the hauling of produce in interstate commerce, generally from Florida to northern points; that in his transportation business he operates six (6) tractor-trailers and two (2) trucks; that he has had numerous requests to perform local hauling of household goods between points in Harnett County; that to his knowledge, there is not presently an authorized carrier of household goods within Harnett County; that he is familiar with the transportation of household goods and with the accessories normally used in moving such commodities and that he has a net worth in the amount of some $100,000.

The application is supported by Mr. James Whittenton, Mr. C. E. Barefoot and Mr. W. Earl Jernigan, all of Harnett County. Each of the supporting witnesses offered testimony from which it appears that they have, from time to time, needed the services of a household goods mover, which service they were unable to obtain; that to their knowledge, there is not a certificated mover of household goods domiciled in Harnett County; that Applicant is qualified and that in their opinion, there is a definite public need for the service proposed by Applicant.

Upon consideration of the application, the evidence adduced and the testimony of record, the Hearing Examiner is of the opinion and makes the following

FINDINGS OF FACT

1. That public convenience and necessity requires the service proposed in the application in addition to existing authorized transportation service, and

2. That the Applicant is fit, willing and able to properly perform the proposed service, and

3. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Upon consideration of the evidence presented and the facts found, the Hearing Examiner is of the opinion and concludes that Applicant has satisfied the burden of proof required for the granting of the authority sought and that said application should be granted.

IT IS, THEREFORE, ORDERED:

That the application of J. T. Neighbors Trucking Company, Inc., Dunn, North Carolina, be, and the same is, hereby granted and that Applicant be issued a certificate including the authority particularly described in Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED:

That J. T. Neighbors Trucking Company, Inc., file with the Commission a tariff of rates and charges, evidence of the required insurance, lists of equipment, designation of process agent, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1493 Neighbors, J. T., Trucking Company, Inc.
Irregular Route Common Carrier
Dunn, North Carolina

EXHIBIT B Transportation of personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, between all points and places in Harnett County. This authority does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants.

DOCKET NO. T-132, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Petroleum Transportation, Inc.,) ORDER
Box 399, Gastonia, North Carolina)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on April 2, 1970, at 10:00 a.m.

BEFORE: Commissioners Marvin R. Wooten, John W. McDevitt and Miles H. Rhyne, Presiding

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
P. O. Box 2246, Raleigh, North Carolina

No Protestants.

RHYNE, COMMISSIONER: By application filed with the Commission on February 3, 1970, Petroleum Transportation, Inc., Box 399, Gastonia, North Carolina (applicant), seeks authority as an irregular route common carrier to engage in the transportation of Group 21, Other Specific Commodities, to wit: Liquid Fertilizer of Group 21.

Territory description (amended) is between points and places in Henderson County and points and places within a 130-mile radius of Hendersonville, North Carolina.

Notice of the application with a description of the rights sought, along with the time and place of hearing, was published in the Commission's Calendars of Hearings issued February 19, 1970, and March 6, 1970.

No protests to the granting of the application were filed with the Commission prior to the time of the hearing.

The record and evidence in support of the application tend to show that notice was given to all interested persons engaged in intrastate commerce; that reasonable opportunity was given to all interested parties to protest and be heard; and that no protests in opposition to the granting of the authority applied for have been filed.

The applicant presented evidence tending to show that it is a corporation organized under the laws of the State of North Carolina; that it is in the transportation of petroleum and petroleum products of all kinds; that it has considerable experience in intrastate motor transportation; that it owns equipment and is financially willing and able to afford the service within the scope of the application in

this case; that there are no common carriers in North Carolina affording the service in this general area applied for; that public convenience, necessity, need and demand require the service here proposed and applied for.

The applicant, Petroleum Transportation, Inc., presented Carl L. Helms, Traffic Manager of Petroleum Transportation, Inc., and E. W. McBride, Agricultural Director of Allied Chemical Corporation of the Liquid Fertilizer Division. Both of these witnesses testified regarding the transportation needs in the western part of North Carolina of liquid fertilizer and evidence was adduced showing that the nearest terminals now available for the transfer of liquid fertilizer from tank rail cars to trucking tanks is in Troutman and Lexington, North Carolina, a distance of at least one hundred (100) miles away from where Petroleum Transportation proposes to pick up the liquid fertilizer and distribute it to other points in western North Carolina. Mr. McBride testified that his company would see to it that an adequate terminal was constructed in Hendersonville, North Carolina, so that the liquid fertilizer could be transferred from the rail cars to the trucking tanks. Financial statements of Petroleum Transportation, Inc., as of December 31, 1969, were filed and this particular balance sheet reflects a net worth of this corporation in the amount of $244,000.00. Also submitted was an up-to-date list of the equipment now owned and in use by Petroleum Transportation, Inc. Mr. Helms stated that it was their intention to acquire additional equipment for the movement of this liquid fertilizer, if and when the demand presents itself.

Upon the evidence adduced and after consideration of the entire record as a whole, the Commission makes the following

FINDINGS OF FACT

1., Petroleum Transportation, Inc., is a corporation organized and existing under the laws of the State of North Carolina; that said applicant is in the petroleum transportation business intrastate in this State.

2. That public convenience and necessity require the proposed service in addition to existing authorized transportation services now offered; that the applicant is fit, willing and able to perform properly the proposed service, and that the applicant appears to be solvent and financially able to furnish adequate service on a continuing basis.

3. That the applicant under Certificate No. C-302 holds certain irregular route common carrier authority heretofore authorized by this Commission.

CONCLUSIONS

G.S. 62-262(e) requires the applicant to carry the burden of proof to show the satisfaction of the Commission that:

1. Public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

2. That the applicant is fit, willing and able to properly perform the proposed service, and

3. That the applicant is solvent and financially able to furnish adequate service on a continuing basis, and

4. That the applicant has sustained the burden of proof placed upon it by the provisions of G.S. 62-262(e).

Accordingly, IT IS ORDERED:

1. That the application in this docket be, and it is, hereby approved and the Applicant, Petroleum Transportation, Inc., Box 399, Gastonia, North Carolina, be and it is, hereby granted the motor common carrier authority in accord with Exhibit B hereto attached.

2. This order shall operate as all necessary evidence of the authority herein granted pending the issuance of an amendment to the applicant's existing certificate by the Chief Clerk of this Commission pursuant hereto.

3. That the applicant file with the Commission a tariff of rates and charges and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of April, 1970.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-132 SUB 6

Petroleum Transportation, Inc.
Box 399
Gastonia, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, Liquid Fertilizer between points and places in Henderson County and points and places within a 130-mile radius of Hendersonville, North Carolina. (Territory description is intended to embrace all points and places in the

West beyond Hendersonville, N. C., for the convenience of the shipper.)

DOCKET NO. T-1496

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Angus Pete Phillips, d/b/a A. P. Phillips,) RECOMMENDED
Carthage Street, Cameron, North Carolina) ORDER

HEARD IN: The offices of the Commission, Raleigh, North Carolina, on April 16, 1970, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

H. M. Jackson
Attorney at Law
114 Wicker Street
Sanford, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on January 14, 1970, as amended by Motion filed with the Commission on March 4, 1970, Angus Pete Phillips, d/b/a A. P. Phillips, Carthage Street, Cameron, North Carolina, seeks irregular route common carrier authority to engage in the transportation of Group 21 - Salt and salt products, in packages and blocks; pepper in packages in mixed shipments with salt and salt products in packages; animal and poultry mineral feed mixtures, in packages and blocks, in mixed shipments with salt and salt products in packages, from Cameron, N. C., to North Carolina points and places within ninety (90) miles of Cameron, N. C.

Notice of the amended application, together with the description of the rights sought, along with the time and place of hearing, was published in the Commission's Calendar of Hearings issued March 6, 1970. The amended application is unopposed.

At the call of the case, Applicant, through his attorney, moved that the application be amended to include authority for the return of refused or rejected shipments. Inasmuch as the proposed amendment would not tend to enlarge or materially extend the scope of authority applied for, the motion to amend was allowed.

It appears from the evidence that Applicant has been engaged in the trucking business, both private and exempt for hire, for some thirty (30) years; that he presently

holds temporary emergency authority from the Interstate Commerce Commission for the interstate transportation of the commodities sought herein; that Applicant is familiar with the motor carrier business, has the necessary equipment and is experienced in the transportation of the described commodities; that Applicant has a net worth in the amount of some $265,000.00 and is qualified in all respects to provide adequate and continuous service under the authority sought.

In support of the application, Mr. Edward J. Connolly, Regional Traffic Manager of Morton Salt Company, testified that his company is engaged in the production and distribution of salt and related products and various animal and poultry feed mixtures; that said commodities will be shipped by rail to Cameron, North Carolina, in carload quantities, from which point said commodities will be distributed to customers of Morton Salt Company within the area applied for by Applicant; that Morton Salt Company maintains a sales force in the applied for territory for soliciting and processing orders for these commodities; that customers in this area are generally in the grocery trade, industrial trade and agricultural trade; that Applicant will maintain a warehouse at Cameron for the storage of said commodities pending their shipment by truck to customers in the applied for territory; that motor freight charges from Cameron to destination will be the responsibility of the customers or consignees; that Applicant is currently handling interstate shipments for his company under emergency authority held from the Interstate Commerce Commission and that the need for the proposed service by his company is such that if the application herein were denied, it would have a serious affect upon its competitive position with other distributors of similar commodities.

Upon consideration of the application, the testimony of record and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the Applicant is fit, willing and able to properly perform the proposed service, and

(3) That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that the Applicant has carried the burden of proof required for the granting of the authority sought and that the application should be granted.

IT IS, THEREFORE, ORDERED:

(1) That the application herein, as amended, be, and the same is hereby, granted and that Angus Pete Phillips, d/b/a A. P. Phillips, Carthage Street, Cameron, North Carolina, be issued a common carrier certificate containing the authority particularly described in Exhibit B hereto attached and made a part hereof.

(2) That Angus Pete Phillips, d/b/a A. P. Phillips file with the Commission evidence of insurance coverage, a tariff of rates and charges, lists of equipment, designation of process agency and otherwise comply with the rules and regulations of the Commission and begin operations within thirty (30) days from the date that this order becomes final.

(3) That Certificate of Exemption No. E-10917, heretofore issued to Angus Pete Phillips, be, and the same is, hereby cancelled effective the date that the order herein becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of April, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1496 Phillips, A. P.
Angus Pete Phillips, d/b/a
Irregular Route Common Carrier
Cameron, North Carolina

EXHIBIT B Transportation of Group 21 - Salt and salt products, in packages and blocks; pepper in packages in mixed shipments with salt and salt products in packages; animal and poultry mineral feed mixtures, in packages and blocks, in mixed shipments with salt and salt products in packages, from Cameron, N. C., to North Carolina points and places within ninety (90) miles of Cameron, N. C., with return of refused or rejected shipments.

DOCKET NO. T-1481

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Application of Planning Associates, Inc.,)
for a Certificate of Convenience and Necessity) RECOMMENDED
to Transport Group 21, Mobile Homes, as an) ORDER
Irregular Route Motor Common Carrier)

HEARD IN: Concord City Hall, Concord, North Carolina, November 26, 1969

BEFORE: Hearing Commissioner John W. McDevitt

APPEARANCES:

For the Applicant:

John R. Boger, Jr.
Williams, Willeford & Boger
Attorneys at Law
147 Union Street, South
Concord, North Carolina 28025

For the Protestants:

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
Box 535, Eden, North Carolina
For: Morgan Drive Away, Inc.
Transit Homes, Inc.

McDEVITT, HEARING COMMISSIONER: By application filed on September 18, 1969, Planning Associates, Inc. (Applicant), seeks authority as an irregular route motor common carrier to transport mobile homes, house trailers and other trailers of this type. The territory to be served will be the following counties: Cabarrus, Mecklenburg, Rowan, Davidson, Iredell, Union, Stanly and Guilford.

Public hearing was scheduled and notice was published in the Calendar of Hearings issued October 15, 1969. By order of the Commission the hearing was moved from Raleigh to Concord for the convenience of public witnesses.

Protests were filed by Morgan Drive Away, Inc., Elkhart, Indiana, and Transit Homes, Inc., Greenville, South Carolina, both holders of certificates issued by the North Carolina Utilities Commission authorizing them to transport mobile homes as irregular route motor common carriers between all points and places in North Carolina. The Protestants also hold interstate operating authority under which they transport mobile homes throughout the United States.

Public hearing was held as captioned. Applicant and Protestants were present and represented by counsel. Twenty witnesses testified in support of the application.

Eugene F. Brown, Jr. and William Earl Critz, owners of Planning Associates, Inc., testified that they operate mobile home sales lots in Concord, Kannapolis and Salisbury, have been in business since May 1968 and made a profit of $32,000 in the first nine months of operations; that they employ nine persons in the business; that they own and

operate two tractors which are equipped to transport mobile homes; that they receive many requests to transport mobile homes; that there are more than 25 trailer parks and six mobile homes sales businesses in Cabarrus County; that there are no locally domiciled common carriers to satisfy the existing demand for transportation of mobile homes.

Five employees of Planning Associates, Inc., testified that they frequently receive requests to move mobile homes; that customers and others have experienced delays and other difficulties obtaining service for common carriers.

State Representative Dwight Quinn, who has represented Cabarrus County in the Legislature for 20 years, testified that mobile homes have increased rapidly in Cabarrus, Rowan and surrounding counties; that he has received numerous requests for better transportation service; that citizens often wait a week or longer to obtain transportation service; that the population of Cabarrus County is approximately 75,000; that the area to be served is highly industrialized; that in his opinion additional transportation service is needed.

Operators of six mobile home parks located in Cabarrus County testified that they have had frequent requests to help customers obtain transportation of mobile homes to and from their parks; that the mobile homes are increasing rapidly; that there is need for additional mobile home transportation service in the area.

A garage owner testified that he is frequently called upon for wrecker service by illegal operators who have difficulties in illegally transporting mobile homes in Cabarrus County. Other witnesses testified that illegal movers (bootleggers) transport mobile homes in the area because common carriers are not readily available.

Jesse Fisher of Whiteville, North Carolina, testified that he manufactures and distributes mobile homes throughout North Carolina and has operated mobile homes parks for several years; that there are approximately 25 manufacturers of mobile homes in North Carolina; that he has a mobile home park planned for Cabarrus County; that mobile home owners experience delays in getting moving service; that existing transportation service is not adequate to meet the public need.

Ira Barnhardt testified that he is in the insurance and real estate business in Kannapolis and the surrounding area; that he insures mobile homes and has frequent inquiries from customers about moving service; that there is need for additional transportation service; that he has hired bootleggers to move trailers because local service is not available.

Glenn Wilson testified that he has been Branch Manager of Conner Mobile Homes in Albemarle, Stanly County, North

Carolina, for two and one-half years; that there is no authorized locally domiciled common carrier of mobile homes in Stanly County; that he frequently receives requests to move mobile homes and knows from experience with his customers that it is difficult to obtain service without delay from carriers located in other counties; that there is a need in Stanly County for additional transportation service for mobile homes.

Protestant witnesses testified that they have statewide authority to transport mobile homes; that they have terminals in Charlotte, Greensboro and Statesville with a total of 34 drivers; that they can handle additional business within the area; that they are listed in the yellow pages of telephone directories of certain towns and cities within the area; that they do not have offices in Rowan, Cabarrus, Union or Stanly Counties; that their drivers handle both interstate and intrastate moves; that their drivers are not required to accept trip assignments; that the Protestants do not own any trucks or tractors used in their North Carolina intrastate business and depend entirely upon leased driver-owned equipment.

Based upon the evidence adduced at the hearing, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is a corporation organized and existing under the laws of North Carolina with its principal office in Cabarrus County.

2. That Applicant owns the equipment necessary for the movement of mobile homes and employs personnel who are experienced in moving mobile homes.

3. That Applicant is engaged in the business of mobile home sales at two sales lots in Cabarrus County and one sales lot in Rowan County.

4. That the Applicant is fit, willing and able financially and otherwise to adequately perform the proposed service on a continuing basis.

5. That public convenience and necessity requires the services of the Applicant for transporting mobile homes as specified between points and places in Cabarrus, Rowan and Stanly Counties and from points and places within these counties to points and places within the State of North Carolina and from points and places within the State of North Carolina to points and places within Cabarrus, Rowan and Stanly Counties.

6. That public convenience and necessity does not require the services of the Applicant as otherwise proposed.

7. That the Protestants hold statewide authority to transport mobile homes.

CONCLUSION

Planning Associates, Inc., has borne the burden of proof required by G.S. 62-262(e) that public convenience and necessity exists for the transportation of mobile homes, house trailers and other trailers of this type between points and places in Cabarrus, Rowan and Stanly Counties and from points and places within Cabarrus, Rowan and Stanly Counties to points and places throughout the State and from points and places throughout the State to points and places within Cabarrus, Rowan and Stanly Counties in addition to existing transportation service and is entitled to a Certificate of Convenience and Necessity authorizing it to perform this service.

The evidence does not show need for the proposed service in Mecklenburg, Guilford, Iredell, Davidson and Union Counties.

The protests as they relate to public demand and need and the ability of the Applicant to provide the proposed service are without merit.

IT IS THEREFORE ORDERED That applicant, Planning Associates, Inc., be, and it is hereby, granted a Certificate to operate as an irregular route motor common carrier in accordance with the scope of authority set forth in Exhibit B hereto attached and made a part hereof. In this respect the application is approved. To the extent that the application requests authority in addition to or in conflict with the authority herein authorized the same is hereby disapproved and denied.

IT IS FURTHER ORDERED That a Certificate be issued and operations commenced only when Applicant has furnished evidence of insurance coverage, filed tariff schedules of rates and charges and otherwise complied with the rules and regulations of the Commission not later than thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1481 Planning Associates, Inc.
Highway 29
Concord, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, mobile homes, house trailers and other trailers of this type in the following territory:

Between points and places in Cabarrus, Rowan and Stanly Counties and from points and places within Cabarrus, Rowan and Stanly Counties to points and places throughout the State and from points and places throughout the State to points and places within Cabarrus, Rowan and Stanly Counties.

DOCKET NO. T-1513

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Pruitt Mobile Homes, Inc.,) ORDER GRANTING
Route 1, Lumberton, North Carolina) AUTHORITY

HEARD IN: The Hearing Room of the Commission, 1 West Morgan Street, Raleigh, North Carolina, on July 22, 1970 at 9:30 a.m.

BEFORE: Commissioners Marvin R. Wooten, Hugh A. Wells and Miles H. Rhyne, Presiding

APPEARANCES:

For the Applicant:

Fred L. Musselwhite
Musselwhite & Musselwhite
P. O. Box 1448, Lumberton, North Carolina

For the Protestants:

J. Hoyte Stultz, Jr.
Harrington & Stultz
P. O. Box 535, Eden, North Carolina 27288
For: Transit Homes, Inc.
Morgan Drive Away, Inc.

Lowry Betts
Pittman, Staton & Betts
P. O. Box 1009, Sanford, North Carolina
For: Boyd Q. Douglas, T/A
Dreamland Mobile Homes Park

Charles B. Morris, Jr.
Jordan, Morris & Hoke
P. O. Box 1606, Raleigh, North Carolina
For: National Trailer Convoy, Inc.

RHYNE, COMMISSIONER: Pruitt Mobile Homes, Inc., Route 1, Lumberton, North Carolina, filed its application with this Commission on May 28, 1970, seeking irregular route common carrier authority for the transportation of mobile homes, within a radius of 100 miles of the City of Lumberton, North Carolina.

Notice of the application containing a description of the authority applied for and setting the matter for hearing was given in the Commission's Calendar of Hearings issued June 8, 1970. Protests were filed by National Trailer Convoy, Inc., Tulsa, Oklahoma, Dreamland Mobile Home Park, Sanford, North Carolina, Morgan Drive Away, Inc., Elkhart, Indiana, and Transit Homes, Inc., Greenville, South Carolina. Mr. Musselwhite informed the Commission that Mr. Pruitt of Pruitt Mobile Homes, Inc., would like to amend his application of the territorial description and delete "within a radius of 100 miles of the City of Lumberton, North Carolina" and insert therein the following counties: Robeson County, Scotland County, Bladen County, Columbus County, Brunswick County and New Hanover County. He further stated that Mr. Pruitt would like to restrict his application to the use for secondary purposes, that the application would be restricted strictly for pulling in this particular area.

At this time all the attorneys representing the protestants withdrew their objections and so stipulated that they had no further interest in the case inasmuch as the application had been amended, as recited above.

At this point the Applicant produced several witnesses to testify, the first being Mr. William J. Long of Route 1, Lumberton, North Carolina, who is manager of Mobile Home Sales in Lumberton. Mr. Long testified his lot would sell from 13 to 15 trailers a month or about 150 to 160 units per year; in this capacity he stated he had individuals to call upon him to have their trailers moved on many occasions, that he had experienced considerable difficulty in getting short moves and getting someone to move them on short moves within a reasonable length of time. He further stated that most of them have been having to wait for a week to ten days to get someone to move them. He also stated that there is a public demand for additional service in the moving of trailers, particularly short moves. Mr. Long stated that he was acquainted with the Pruitt Mobile Homes, Inc., and that they had a good reputation for being able, fit and willing to perform the proposed services.

The next witness was Mr. L. D. West, Route 7, Lumberton, North Carolina, who stated that he owns a mobile home park in Robeson County and that right around Lumberton there are

probably 22 or 23 mobile home parks. Mr. West further stated that there are eight or nine mobile home sales lots located in and around Lumberton. Evidence was further adduced that there is a need for someone in the area of Lumberton to make short moves of house trailers as the long movers appear to take too long to get the job done.

The third witness was Mr. Charles Paul who stated that he resided at Route 7, Lumberton, North Carolina, and is a truck driver; that at one time he pulled mobile homes for Morgan Drive Away, Inc.; that in his experience as a truck driver he had had difficulty in serving this particular county. Other evidence adduced was to some degree repetitive of the first two witnesses.

The next witness was Mr. C. B. Pruitt, owner of Pruitt Mobile Homes, Inc., the Applicant. Mr. Pruitt stated that he had a 1969 Dodge 2 1/2 ton tow truck which he considered entirely adequate for his purpose in pulling mobile homes, and that he would cater primarily to short hauls within the counties aforementioned.

FINDINGS OF FACT

1. That the Applicant owns the necessary equipment for the movement of mobile house trailers.

2. That the Applicant, its officers and employees, are experienced in the movement of mobile house trailers and use of equipment for the hauling thereof for which authority is sought.

3. That the applicant is now engaged in limited movement of house trailers as a private carrier and has had experience through such movement.

4. That the Applicant is fit, willing and financially and otherwise qualified and able to perform adequate service as proposed in the application, and to continue such service as long as the need therefor exists.

5. That the public convenience and necessity requires the service of the Applicant for the hauling of mobile homes or house trailers, as applied for, to the extent of such application, in addition to other existing authorized transportation service.

CONCLUSIONS

In view of the applicable law in this case and the evidence presented, the Commission concludes that the applicant has satisfied the burden of proof as required by the statute and that its application, as amended, should be approved and granted.

It is further concluded, in the light of the withdrawal of the protests by the protestants, and all of the evidence

presented, that there is a need for additional mobile home common carrier authority within the limits of the application in this case in addition to that presently available through existing authorized service.

(1) IT IS, THEREFORE, ORDERED, That the Applicant, Pruitt Mobile Homes, Inc., Route 1, Lumberton, North Carolina, be, and it is, hereby granted authority as an irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto.

(2) IT IS FURTHER ORDERED, That operations shall begin under this authority when the Applicant has filed with the North Carolina Utilities Commission tariff schedules of rates and charges, adequate insurance coverage, and has otherwise complied with the rules and regulations of this Commission, all of which should be done within thirty (30) days from the effective date of this order.

(3) IT IS FINALLY ORDERED, That the authorization herein shall constitute a certificate until formal certificate shall have been transmitted to the Applicant authorizing transportation herein set out.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1513

Pruitt Mobile Homes, Inc.
Route 1
Lumberton, North Carolina

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 21, Mobile Homes in the following counties: Robeson County, Scotland County, Bladen County, Columbus County, Brunswick County, and New Hanover County.

DOCKET NO. T-1524

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Charlie Rice, Jr., Roanoke Rapids, North Carolina, Application for Common Carrier Authority to Transport Mobile Homes) ORDER GRANTING AUTHORITY

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, 10:00 a.m., September 16, 1970

BEFORE: Hugh A. Wells (Presiding), Miles H. Rhyne and John W. McDevitt, Commissioners

APPEARANCES:

For the Applicant:

Armistead Maupin, Esq.
Maupin, Taylor & Ellis
Attorneys at Law
Box 829, Raleigh, North Carolina

For the Protestants:

Charles B. Morris, Jr., Esq.
Jordan, Morris & Hoke
Attorneys at Law
Box 1606, Raleigh, North Carolina
Appearing for National Trailer Convoy, Inc.

Thomas S. Harrington, Esq.
Harrington & Stultz
Attorneys at Law
Box 535, Eden, North Carolina
Appearing for Morgan Drive Away, Inc., and Transit Homes, Inc.

WELLS, COMMISSIONER: This matter came on for hearing before the Commission upon the application of Charlie Rice, Jr., of Route 1, Box 436, Roanoke Rapids, North Carolina, for authority to transport as a common carrier over irregular routes Group 21, Commodities, specifically, Mobile Homes, throughout the entire State of North Carolina.

Notice of the application along with the time and place of hearing and a description of the authority sought was published in the Commission's Calendar of Hearings issued July 20, 1970. Protests to the application were filed in apt time by National Trailer Convoy, Inc., and Morgan Drive Away, Inc., and Transit Homes, Inc.

All parties were present and represented by counsel.

The applicant testified on his own behalf and also presented as witnesses Mr. Harvey Allen of Roanoke Rapids, North Carolina, who is a mobile home dealer in Roanoke Rapids, and Mr. Carey M. Turman of Roanoke Rapids who services mobile homes throughout a large area surrounding Roancke Rapids.

The testimony of applicant and his witnesses and the exhibits introduced by applicant tend to show that applicant has been residing in Durham, North Carolina, and more recently in Roanoke Rapids; that he has been engaged for many years in the construction business and is experienced in dealing with and handling large equipment; that he owns certain automotive equipment and other assets which could be

or would be used in the business he proposes to operate in the transportation of mobile homes. Applicant and his witnesses offered testimony tending to show that the need for additional mobile home moving services exists in a number of counties near and around Roanoke Rapids, North Carolina, to wit: Halifax, Hertford, Northampton, Vance and Warren Counties. These witnesses testified as to the growing and increasing use of mobile homes in this area of North Carolina and that it was difficult to receive prompt and efficient service from existing carriers who were authorized to move mobile homes in this area of North Carolina. Their testimony tended to show that the only carrier certified to move mobile homes in this particular area and who actually resided in Roanoke Rapids was difficult to contact and do business with; that he did not have a telephone; that he lived out in the country, and that he was not in good health and was not readily available to provide service.

The witness, Turman, who is engaged in the business of servicing mobile homes, was particularly emphatic about the need for additional carriers in these particular counties. He testified that in the process of setting up mobile homes and preparing them for moving, it is important both for the owners or occupants of said homes who are in the process of moving them and for the persons who were assisting them in getting the homes either ready for moving or properly set up for occupancy after a move to be able to have prompt moving service available; that it is difficult for everyone concerned to coordinate these activities unless the person doing the moving can be counted on to be present and carry out the move when promised or expected. He further testified that it had been his experience in the past in dealing with the carriers who were presently and are presently certified to carry out this service in the counties under consideration, that the carrier would often be late in arriving - sometimes as much as three days late - and that this caused a great deal of difficulty for everybody concerned. He testified as to the difficulty in getting in touch with some of the carriers who were presently certified in these counties and making arrangements with them for needed moves.

At the close of the plaintiff's evidence, protestants entered a Motion of Non-suit, contending that the plaintiff had not carried the burden of proof with regard to the need for the service or the authority requested in the application. The Commission ruled that there was not sufficient evidence on the need for a statewide authority to go forward and inquired from counsel whether there might be a stipulation on reducing the authority requested. Counsel for applicant then stipulated that the authority requested in the application might be reduced and confined to the Counties of Halifax, Hertford, Northampton, Vance and Warren. Upon this stipulation the Motion for Non-suit was overruled.

Protestants then presented witnesses in opposition to the application. Mr. Robert D. McGinnis testified on behalf of the protestants Morgan Drive Away, Inc., and Transit Homes, Inc., and Mr. H. T. Overbey testified on behalf of National Trailer Convoy, Inc.

Their evidence tended to show that they held existing authority in all of the counties being applied for and that they had drivers available to perform the service of moving mobile homes in these counties. The evidence also tended to show that there were other carriers certified to provide this service in these counties. The evidence tended to show that neither of them had agents living in any of these counties but that one of them has drivers living in the counties in question. The Morgan Drive Away agent lives in Raleigh and the National Trailer Convoy agent maintains an office in Goldsboro, and Portsmouth, Virginia. In order for persons desiring to have mobile homes moved in these particular counties they would have to contact the agents either in Raleigh, Goldsboro, or Portsmouth, Virginia, unless they were able to get in touch with one of the drivers who might then make the contact on their behalf. Their evidence showed that the next nearest carrier office available for providing service in these particular counties would be in Wilson, North Carolina, some 75 to 100 miles away.

Protestants are all interstate carriers and their drivers are available to make moves and do make moves from the counties in question to points and places throughout North Carolina and throughout the continental United States.

Based upon the evidence presented and the exhibits filed, the Commission makes the following

FINDINGS OF FACT

1. The applicant is fit, willing and able to properly perform the proposed service upon certain conditions hereinafter set forth in the ordering portion of this order.

2. Applicant is solvent and financially able to furnish adequate service on a continuing basis.

3. The continuing growth of the use of mobile homes both for private residences and as rental residences, both in mobile home parks and on privately owned lots, in the counties being applied for in this application indicate the need for reliable common carrier service to move mobile homes from points and places within these counties. Applicant is a person sufficiently experienced with heavy equipment in moving other articles of commerce to properly equip him on the basis of his experience to engage in the business of moving mobile homes.

4. There are other carriers certified to move mobile homes in the counties being applied for, but some of these

carriers do not maintain offices within these counties and the offices they do maintain are in cities distant from these counties. The protesting carriers are interstate carriers and principally engage in long moves and are difficult to obtain for short moves within the counties being applied for. The other existing carriers are either removed by some distance from the counties being applied for or are not providing quick and efficient service for the moving of mobile homes within the counties being applied for.

5. The public convenience and necessity require the service proposed in the counties being applied for in addition to the existing authorized transportation service available for the moving of mobile homes in these counties.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

Applicant is qualified and able to provide the transportation service applied for in this docket. There is a need for such service which is not being presently provided, and it is therefore in the public interest to grant the authority applied for. The public convenience and necessity will be furthered by the granting of this authority.

IT IS THEREFORE ORDERED:

1. That Charlie Rice, Jr., be, and hereby is, granted authority as an irregular route common carrier to transport mobile homes from points and places throughout the Counties of Halifax, Hertford, Northampton, Vance and Warren, as set forth in Exhibit B attached hereto and made a part hereof.

2. Applicant shall file with the North Carolina Utilities Commission a list of equipment to be used by him in the transportation of mobile homes, which equipment must be satisfactory and safe for the purpose of moving mobile homes. Applicant shall file with the North Carolina Utilities Commission a tariff schedule of rates and charges, evidence of insurance, designation of process agent, and shall otherwise comply with the rules and regulations of the Commission. Applicant shall begin operations under the authority granted herein within a period of thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1524

Charlie Rice, Jr.
Route 1, Box 436
Roanoke Rapids, North Carolina

Irregular Route Common Carrier

EXHIBIT B

Transportation of Mobile Homes between all points and places within the Counties of Halifax, Hertford, Northampton, Vance and Warren, North Carolina.

DOCKET NO. T-1489

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Jason V. Rice - Application for Authority to Transport Group 21, Mobile Homes as an Irregular Route Motor Common Carrier) ORDER GRANTING AUTHORITY

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, January 22, 1970

BEFORE: Commissioners Marvin R. Wooten, Hugh A. Wells, Miles H. Rhyne and John W. McDevitt (Presiding)

APPEARANCES:

For the Applicant:

Thomas S. Bennett
Attorney at Law
913 Shepard Street
Morehead City, North Carolina

T. D. Bunn
Hatch, Little, Bunn, Jones & Liggett
P. O. Box 527, Raleigh, North Carolina

For the Protestants:

W. T. Shaw
Attorney at Law
2610 Hazelwood Drive
Raleigh, North Carolina
For: Matthew W. Cooper, d/b/a, Cooper's Mobile Home Moving Service

Thomas S. Harrington
Harrington & Stultz
Box 535, Eden, North Carolina
For: Morgan Drive Away, Inc., and Transit Homes, Inc.

McDEVITT, COMMISSIONER: Jason V. Rice, Route 2, Box 297, Newport, North Carolina, filed application on October 27, 1969, for authority to transport Group 21, mobile homes, as an irregular route motor common carrier within the geographical area including the following counties: Pamlico, Craven, Onslow, Carteret, Jones, Pitt, Lenoir, Greene, New Hanover, Wayne, Brunswick, Pender, Duplin, Sampson, Martin, Washington, Tyrrell, Hyde, Dare, Beaufort, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden, and Currituck.

Public hearing was scheduled and held as captioned with notice thereof appearing in the Calendar issued November 17, 1969. Protests were filed by Cooper's Mobile Home Moving Service, Morgan Drive Away, Inc., and Transit Homes, Inc. During the course of the hearing counsel for the Applicant moved to amend its application to eliminate Onslow County as a point of origin for the transportation of mobile homes. The motion was allowed whereupon counsel for all Protestants withdrew their protests and retired from the hearing.

Evidence presented by the Applicant included the testimony of applicant, Jason V. Rice; Jim Wells, Manager of a mobile home sales lot for the Strouder Corporation, Newport, North Carolina; and Rudolph Calhoun, operator of a mobile home park located at Newport, North Carolina. The testimony of witnesses tends to show that there are many mobile home dealers, parks, owners and residents throughout the area for which authority is sought; that the sale and use of mobile homes has rapidly increased; that there is substantial need for additional transportation service for mobile homes; that many mobile homes are used as summer beach cottages and require seasonal transportation to and from inland points and places.

Based on the evidence adduced the Commission makes the following

FINDINGS OF FACT

1. Applicant Jason V. Rice successfully engaged in the transportation of mobile homes for two years as a common carrier in interstate and intrastate commerce under an owner-operator lease to Transit Homes, Inc. Applicant Rice owns two tractors which are equipped to transport mobile homes and his net worth is in excess of $35,000. Applicant Rice has resided in the area for over seven years and is familiar with the requirements of the shipping public and the North Carolina Utilities Commission.

2. Applicant proposes to serve the 28 easternmost counties of North Carolina in which there is substantial mobile home manufacturing, sales and residential occupancy. Mobile home parks housing 20 to 100 or more units are commonplace and use of mobile homes as beach cottages is rapidly increasing.

3. Applicant amended its application to eliminate Onslow County as a point of origin for the transportation of mobile homes which action resulted in the withdrawal of the only protest to the proposed service.

4. Examination of certificates granted by the North Carolina Utilities Commission to carriers having authority to perform the proposed service reveals that there is insufficient transportation service reasonably available to the shipping public in the area for which authority is sought.

CONCLUSIONS

The Commission concludes that the Applicant has borne the burden of proof required by G.S. 62-262 and has shown to the satisfaction of the Commission:

1. That public convenience and necessity requires the proposed service in addition to existing authorized transportation service.

2. That applicant, Jason V. Rice, is fit, willing and able to properly perform the proposed service.

3. That applicant, Jason V. Rice, is solvent and financially able to furnish the proposed service on a continuing basis.

ACCORDINGLY, IT IS ORDERED:

1. That applicant, Jason V. Rice, be, and he is hereby, granted a motor vehicle common carrier certificate in accordance with the scope of authority as set forth in Exhibit B hereto attached and made a part hereof.

2. That applicant, Jason V. Rice, file with the Utilities Commission within thirty (30) days from the date of this Order his tariffs of rates and charges, equipment list and evidence of insurance for protection of the public, and otherwise comply with the laws of North Carolina and the regulations of the Utilities Commission affecting such authority and operations.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1489 Jason V. Rice
Route 2, Box 297
Newport, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

(1) Transportation of Mobile Homes between all points and places in the following counties: Pamlico, Craven, Carteret, Jones, Pitt, Lenoir, Greene, New Hanover, Wayne, Brunswick, Pender, Duplin, Sampson, Martin, Washington, Tyrrell, Hyde, Dare, Beaufort, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden and Currituck.

(2) Transportation of Mobile Homes from points and places in all counties in paragraph (1) to Onslow County.

DOCKET NO. T-1405, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Walter Graham Ricks, d/b/a)
Ricks' Trailer Park, Route 3, Box 29,) RECOMMENDED
Selma, North Carolina) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on January 22, 1970, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Thomas D. Bunn
Hatch, Little, Bunn, Jones & Liggett
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina

For the Protestants:

Thomas S. Harrington
Harrington & Stultz
Box 535, Eden, North Carolina
For: Morgan Drive Away and Transit Homes, Inc.

W. T. Shaw
Attorney at Law
2610 Hazelwood Drive
Raleigh, North Carolina
For: Matthew W. Cooper, d/b/a Cooper's Mobilehome Moving Service

HUGHES, EXAMINER: By application filed with the Commission on October 24, 1969, Walter Graham Ricks, d/b/a Ricks' Trailer Park (Applicant), Route 3, Box 29, Selma, North Carolina, seeks irregular route common carrier authority to engage in the transportation of mobile homes "between points in Johnston, Harnett, Wayne, Wilson and Wake Counties and from those counties to all points and places within the State of North Carolina and return."

Notice of said application, along with the time and place of the hearing, together with a brief description of the authority sought, was published in the Commission's Calendar of Hearings issued on November 17, 1969. Protests thereto were timely filed by Morgan Drive Away, Inc., Elkhart, Indiana, Transit Homes, Inc., Greenville, South Carolina, and Matthew W. Cooper, d/b/a Cooper's Mobilehome Moving Service, Raleigh, North Carolina.

All parties were present at the hearing and represented by counsel.

Testimony of Applicant tends to show that he is presently the holder of Common Carrier Certificate No. C-945, heretofore issued by this Commission, which certificate authorizes the transportation of mobile homes between points and places within Johnston County; that in addition to his transportation business, he is the owner of a trailer park located at Selma, North Carolina; that he is the owner of two (2) tractors, only one (1) of which is presently licensed, which are both suitable for transporting mobile homes; that he has a net worth in the amount of some $40,000; that he has received calls and demands from members of the general public for the transportation of mobile homes from and to points and places beyond the limits of his present authority; that to his knowledge, there are no other authorized movers of mobile homes located in Johnston County and that at the time of filing the application herein, the only such carrier within the area applied for, of which he had knowledge, was Transit Homes, Inc., which is shown in the Yellow Pages of the telephone directory to have a terminal in Goldsboro; that he had no knowledge of Morgan Drive Away, Inc. having a terminal in Wake County or of Protestant, Cooper, being located in Wake County, until he received a written copy of Cooper's protest; that should the authority sought be granted, he is in a position financially to obtain more equipment and to immediately start providing service within the territory applied for.

A number of people appeared in support of the application. These include Mr. Daniel Bissette of Middlesex (Nash County) who is engaged in the sale of mobile homes and who testified that he has missed at least one sale of a mobile home and had to refund payment for the reason that he was unable to find a carrier to make delivery. The witness further testified that most of his business is in Nash and Johnston Counties and that he was interested in securing the services

of a local mover who could be reached by telephone within a few minutes and provide service for these short hauls.

The Applicant then presented Mr. Clifford Massengill, an officer of the First Citizens Bank and Trust Company of Smithfield (Johnston County), who testified that the bank quite frequently finances mobile homes which on occasion have to be repossessed; that on such occasions, the bank has had difficulty obtaining service to transport such mobile homes; that the mobile homes being repossessed are located all over the entire State of North Carolina and that transportation service on repossessions has been poor throughout the State; that recently eighteen (18) or twenty (20) mobile homes were repossessed in the western part of the State and difficulty was encountered in getting them moved; that a deal for the sale of these homes was actually lost because of his inability to get them moved and his company sustained a loss because the mobile home had to be sold on the site; that when a mobile home is repossessed and sold, it is the normal procedure to move it anywhere in North Carolina; that the bank is interested in all of the counties applied for, for the reason that it is financing mobile home units in approximately every one of these counties, and that if the application herein is granted, the bank would utilize Applicant's service.

Mr. Jim Starling, who is in the mobile home sales business in Pine Level (Johnston County), testified on behalf of Applicant to the effect that there have been delays of a few days in getting service from existing authorized carriers; that if the authority sought is granted, he would use Applicant's service to pick up new trailers at the points of manufacture at Lillington, Red Springs, Maxton and Havelock, to bring them to his sales lot in Pine Level; that most of his sales are in Johnston County, but that he has had several outside the county, mostly in Goldsboro, which Applicant could not deliver under his present authority; that delays from existing carriers for transportation to points outside Johnston County has worked an inconvenience and that in his opinion there is a public need for the service proposed in addition to existing service; that on several occasions, shipments to points outside Applicant's present territory have been performed by manufacturers' trucks, who made no charge for such service; that he was not familiar with service offered by Protestants, except that he had used the service of Cooper on one occasion and had called Cooper on another occasion, but was unable to obtain prompt service, so he had not called him again.

Applicant next offered the testimony of Mr. Charlie Parrish, who testified that he was employed by Ingram and Parker Insurance Agency; that back in November he had the occasion to buy a used trailer in Johnston County, which he wanted moved to Surf City and that over a period of three or four days, he ended up having to call seven (7) different firms trying to get the mobile home moved on a particular day; that he first called Applicant who advised him that he

could not move the trailer because the destination was out of his territory, but who referred him to other carriers, including Cooper and Transit Homes, Inc.; that Cooper was unable to move the housetrailer on the date requested, but that he finally obtained the desired service from Transit Homes in Goldsboro.

Mr. W. B. Hinnant, a general contractor whose business is located in Selma (Johnston County), testified for the Applicant that his interest in the application was for the transportation of two (2) trailers which he uses as offices and which he has occasion to move from time to time from Johnston County to and from building sites outside Johnston County; that heretofore he has moved the trailers with one of his company trucks for the reason that Applicant was without the requisite authority and that he has hesitated to engage the services of carriers whose qualifications and reliability were unknown to him; that the two (2) trailers are moved not more that twice a year and that he would use the service of Applicant if available.

Other supporting witnesses included Mr. Brack Wilson, who operates the Ford business in Smithfield (Johnston County), under the name, B & R Wilson, Inc., and who is also in the mobile home sales business. It appears from his testimony that Mr. Wilson moves all of the trailers which he sells, in private carriage and his testimony was more or less in the nature of a character witness for Applicant. Mr. Brad Godwin, who operates the Red and White Super Market in Selma, owns two (2) trailers which Applicant has moved from time to time within Johnston County and who wishes service was available for Applicant to transport his trailers to and from Atlantic Beach. In addition, Mr. F. C. Winters and Mr. Hobart House were tendered for the purpose of establishing the qualifications of the Applicant.

At this point in the hearing, Protestants moved that the application be dismissed for non-suit motion on the grounds that there had been a failure to establish public convenience and necessity. The motion was taken under advisement.

Protestants, Morgan Drive Away, Inc., and Transit Homes, Inc., offered their District Managers, Earnest J. Cournaya and John Carson, respectively, whose testimony tends to show that they are nationwide movers of mobile homes under authority of the Interstate Commerce Commission and that they also operate throughout the State of North Carolina under authority heretofore issued by this Commission; that they have "terminals" located at certain strategic points throughout the State; that they do not own any trucks for the movement of housetrailers in this State, but use the services of owner-drivers who are under contract with them for a percentage of the revenue obtained; that at the time of the hearing, Protestant, Morgan Drive Away, has fifty-two (52) trucks licensed in North Carolina and "terminals" or offices located in Goldsboro, Fayetteville, Greensboro,

Statesville and Charlotte; that four (4) of said trucks are believed to be located at Goldsboro, which "terminal" was established in June of 1969; that Protestant, Transit Homes, has approximately thirty (30) trucks under lease in North Carolina and "terminals" located at Wilmington, Jacksonville, Fayetteville, Charlotte, Statesville, Reidsville, Mount Airy, Oteen and Asheville; that there is a considerable turnover of owner-drivers and that solicitation of new owner-drivers by newspaper advertisements and otherwise to take care of the turnover and for expanding the business is being carried on at the present time. It further appears from their testimony that such Protestants would engage Applicant to operate out of the area applied for if Applicant should desire to enter into a owner-driver contract with their companies. "Terminals" or "offices" are described by the witnesses as either a housetrailer office with one (1) girl employee or the home of an owner-driver with driver's wife serving as terminal manager or agent. These girls or wives, in addition to answering the telephone, etc., also inspect the trucks for safety.

Protestant Cooper offered testimony from which it appears that he is the holder of statewide intrastate authority to pull mobile homes in North Carolina and that his base of operations is in Raleigh; that presently he has three (3) trucks suitable for pulling mobile homes and that he advertises in the Yellow Pages of the telephone directories, in the Raleigh News and Observer and otherwise solicits business by leaving cards in trailer parks and trailer sales places; that he can handle additional business if offered; that he has solicited business from Mr. Starling, the Applicant's shipper witness from Pine Level, and has served him in the movement of mobile homes; that he has two (2) telephones, one in Raleigh and one in Clayton.

Protestants renewed their motion to non-suit the application, which motion was again taken under advisement. Said motion is now denied and the application is considered on its merits for the reasons hereinafter set forth.

The privilege of filing briefs was waived.

Upon consideration of the application, the record in this case, the testimony presented and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That public convenience and necessity does not require the proposed service in addition to existing authorized transportation service, between points in Harnett, Wayne, Wilson and Wake Counties and from these counties to all points and places within the State of North Carolina and return,

(2) That public convenience and necessity does require the service proposed in addition to existing authorized

transportation service, from points and places in Johnston County to all points and places within the State of North Carolina and return,

(3) That the Applicant is fit, willing and able to properly perform the proposed service, and

(4) That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

It appears from the evidence that Applicant, under his existing authority, which is limited to the confines of Johnston County, has shown that he is an experienced operator and well qualified to render service in the transportation of mobile homes; that there is a considerable number of mobile homes moved within Johnston County and from Johnston County to other points within the State and from points within the State to Johnston County; that there is not sufficient or adequate service for the transportation of mobile homes to and from points in Johnston County and other sections of the State; that residents and business people of Johnston County should not be required to suffer the inconvenience of making numerous telephone calls to distant points to obtain service, but should be able to obtain the required service from a qualified carrier such as Applicant when such a carrier is locally available.

The evidence insofar as it relates to Harnett, Wayne, Wilson, and Wake Counties is insufficient to establish a public demand and need for the proposed service in addition to existing authorized service.

Upon consideration of the applicable statutes and the evidence presented in this case, the Hearing Examiner concludes that Applicant has satisfied the burden of proof required by statute for a portion of the authority sought, as specified in Exhibit B hereto attached, and that to that extent, the application should be approved and granted. The Hearing Examiner further concludes that in all other respects, the application should be denied.

IT IS, THEREFORE, ORDERED:

That Applicant, Walter Graham Ricks, d/b/a Ricks' Trailer Park, Route 3, Box 29, Selma, North Carolina, be, and he is hereby, granted authority to engage in the transportation of mobile homes from points in Johnston County to all points within the State of North Carolina and from points within the State to points in Johnston County, and that Certificate No. C-945, heretofore issued to Applicant be amended to conform with Exhibit B hereto attached and made a part hereof.

IT IS FURTHER ORDERED:

That the application, except to the extent granted herein, be, and the same is, hereby denied.

IT IS FURTHER ORDERED:

That Applicant file with the North Carolina Utilities Commission a tariff schedule of rates and charges and otherwise comply with the rules and regulations of this Commission and begin operations under the authority granted herein within a period of thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1405 SUB 1

Ricks' Trailer Park
Walter Graham Ricks, d/b/a
Irregular Route Common Carrier
Selma, North Carolina

EXHIBIT B

Transportation of mobile homes:

1. Between points and places within Johnston County.

2. From points in Johnston County to all points and places within the State of North Carolina.

3. From all points and places within the State of North Carolina to points in Johnston County.

DOCKET NO. T-1521

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of S S & J Enterprises, Ltd.,) RECOMMENDED
Box 772, Apex, North Carolina) ORDER

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on December 11, 1970, at 2:00 p.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
Raleigh, North Carolina

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on June 29, 1970, S S & J Enterprises, Ltd., Box 772, Apex, North Carolina, seeks authority to engage in the transportation of Group 21 - Mobile Homes "between points and places in Chatham, Harnett and Wake Counties; from points and places in Chatham, Harnett and Wake Counties tc all points and places within the State of North Carolina and from all points and places in the State of North Carolina to points and places within Chatham, Harnett and Wake Counties." Notice of the application with a description of the authority sought, along with the time and place of hearing, was given in the Commission's Calendar of Hearings issued July 1, 1970. Protests to the application were timely filed by Transit Homes, Inc., Boyd Q. Douglas, t/a Dreamland Mobile Home Park, Morgan Drive Away, Inc., and National Trailer Convoy, Inc.

Upon motion of the Applicant, the territory applied for was subsequently amended to read "between points and places in Chatham, Harnett and Wake Counties." Whereupon, protests of all protesting parties were withdrawn and no one appeared at the hearing in opposition to the granting of the amended application.

The Applicant presented the testimony of Mr. Curtis L. Jones, Vice President of S S & J Enterprises, Ltd., Mr. Franklin Page, Manager of Apex Mobile Home Estates, Mr. John Goodwin, owner of Goodwin Mobile Home Park and by affidavit, Mr. L. A. Pierce, District Manager of the Raleigh District of Carolina Power & Light Company. Testimony in support of the application, there being none to the contrary, tends to show that there is a public need for a service of the nature which Applicant proposes to render and that Applicant has the ability, equipment and resources to provide such service in a satisfactory manner.

The evidence further tends to show that Mr. Curtis L. Jones, who will be in charge of the proposed transportation, has operated as an exempt motor carrier for some twelve (12) years and is experienced in the transportation of mobile homes; that Applicant owns three (3) trucks which are especially suited for towing mobile homes and that Applicant has net assets in the amount of some $31,700.00.

FINDINGS OF FACT

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the Applicant is fit, willing and able to properly perform the proposed service, and

(3) That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

It appears from the evidence that there has been a marked increase in the number of mobile homes located in the three (3) counties applied for; that during the year 1969, twenty-five percent (25%) of all new residential connections made by Carolina Power & Light Company in said area were mobile homes; that during 1970, to date, approximately thirty-five (35%) of all such new residential connections were mobile homes; that there are now existing within this territory thirty-five (35) mobile home parks with fifteen (15) spaces or more, and presently under construction, six (6) mobile home parks with thirty (30) spaces or more, and four (4) mobile home parks in the planning stage with thirty (30) spaces or more, one of which has six hundred (600) spaces planned, and that although the Power Company does not keep a record of the number of times these mobile homes are relocated within the area, they do know that many of these are secondary moves and that there is a considerable amount of transferring of the location of the mobile homes in the three (3) county area.

Upon consideration of all of the evidence and the applicable law, the Hearing Examiner concludes that the Applicant has satisfied the burden of proof required by statute and that the application, as amended, should be granted.

IT IS, THEREFORE, ORDERED:

(1) That S S & J Enterprises, Ltd., Box 772, Apex, North Carolina, be, and it is, hereby granted authority as an irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto and made a part hereof.

(2) That Applicant file with the North Carolina Utilities Commission a tariff schedule of rates and charges, lists of equipment, evidence of insurance, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin operations under the authority granted herein within a period of thirty (30) days from the date this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1521 S S & J Enterprises, Ltd.
Irregular Route Common Carrier
Apex, North Carolina

EXHIBIT B Transportation of Group 21. Mobile Homes between points and places in Chatham, Harnett and Wake Counties.

DOCKET NO. T-1520

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
David E. Moody, T/A Sanford Mobile Home Towing Service, 613 Bragg Street, Sanford, North Carolina) RECOMMENDED ORDER

HEARD IN: Court Room, Lee County Courthouse, Sanford, North Carolina, August 11, 1970, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Clawson L. Williams, Jr.
Attorney at Law
P. O. Box 2195, Raleigh, North Carolina

For the Protestants:

Charles B. Morris, Jr.
Jordan, Morris & Hoke
Attorneys at Law
P. O. Box 1606, Raleigh, North Carolina
For: National Trailer Convoy, Inc.

J. Hoyte Stultz, Jr.
Harrington & Stultz
Attorneys at Law
P. O. Box 535, Eden, North Carolina
For: Morgan Drive Away, Inc., and Transit Homes, Inc.

Lowry M. Betts
Pittman, Staton & Betts
Attorneys at Law
P. O. Box 1009, Sanford, North Carolina
For: Boyd Q. Douglas, T/A Dreamland Mobile Home Park

HUGHES, EXAMINER: By application filed with the Commission on June 15, 1970, David E. Moody, T/A Sanford Mobile Home Towing Service, 613 Bragg Street, Sanford, North Carolina (Applicant), seeks authority to operate as a common carrier over irregular routes in the transportation of mobile homes or housetrailers from points and places in Chatham, Lee, Moore and Montgomery Counties to all points and places in North Carolina and from points and places in North Carolina to points and places in Chatham, Lee, Moore and Montgomery Counties.

Notice of the application, along with the time and place of hearing and a description of the authority sought, was published in the Commission's Calendar of Hearings issued July 1, 1970. Protests thereto were filed within apt time by Transit Homes, Inc. (Transit), Greenville, South Carolina; Morgan Drive Away, Inc. (Morgan), Elkhart, Indiana; Boyd Q. Douglas, T/A Dreamland Mobile Home Park (Douglas), Sanford, North Carolina; and National Trailer Convoy, Inc. (National), Tulsa, Oklahoma.

All parties were present at the hearing and represented by counsel.

Testimony of Applicant tends to show that he is a resident of Bear Creek in Lee County; that from August, 1969 until July, 1970, he was engaged in the transportation of mobile homes as a leased operator under contract with Protestant Morgan; that he owns a 1969 "Short Dog" tractor suitable for pulling mobile homes; that prior to his association with Morgan, he was employed as a driver for Carolina Delivery Service; that since the termination of his contract with Morgan, he has been working for Sanford Mobile Home Distributors as a driver and serviceman and as a driver for Mr. John L. Allen, who has an interest in several mobile home sales lots located throughout the State; that since the termination of his association with Morgan, he has had requests for mobile home transportation service from various people within Lee, Montgomery and Chatham Counties, some of which he referred to an authorized carrier in Sanford, and that he has a net worth in the amount of some $27,000.

It was subsequently stipulated during the course of the hearing that since the filing of the application, Applicant's equity in the 1969 tractor referred to in his testimony has been transferred to Mr. John L. Allen.

The application is supported by Mr. Earl B. McDonald, Jr., of Sanford Mobile Home Distributors, who used and became familiar with the service of Applicant when he was with Morgan; that in the sale of mobile homes, promptness in making deliveries of said homes to purchasers is most important; that if the authority is granted, he will use the proposed service and needs it in addition to that offered by existing carriers; that Protestants Morgan, National and Transit do not have a "terminal" in Lee County and that said carriers are not listed in the Yellow Pages of the Sanford

telephone directory; that he has never called upon Protestant Douglas for service for the reason that Douglas is also engaged in the business of selling mobile homes and that he did not feel that it was good business to use the transportation service of a competitor.

Mr. Wallace L. Morrow of Siler City in Chatham County, who operates Circle "M" Mobile Homes, a mobile home retail sales agency, testified that his interest in the application stems from the fact that Applicant's home at Bear Creek is only a few miles from Siler City, which will permit Applicant to provide a common carrier service much more convenient than any now available; that he has used the service of Morgan and Transit but finds their service slow, in that it sometimes takes two (2) or three (3) days to obtain said service; that he knows Applicant and would use his service; that there is presently no authorized common carrier of mobile homes domiciled in Chatham County and that he does not know Douglas or the other regulated common carrier in Lee County and will not do business with anybody that he is not acquainted with.

The Applicant then presented Mr. Darryl Mullinax of Taylor Mobile Homes Manufacturing, which firm is engaged in the manufacture of mobile homes in Southern Pines and Troy, these towns being located in Moore and Montgomery Counties respectively. Witness testified that the products of his firm are Number One in retail sales in North Carolina and that it has seventy (70) dealers located throughout the State; that Taylor moves its own trailers and generally furnishes its own transportation in private carriage, but on occasion has to call on common carriers; that he knows Applicant, who has furnished him with satisfactory service in the past and that the proposed service is needed in addition to existing authorized carriers. Upon inquiry, however, he stated that he is not in a position to offer an opinion as to whether present service is inadequate.

Mr. John L. Allen of Troy in Montgomery County, who is in the mobile home sales business, testified on behalf of Applicant to the effect that he has sales lots at various points throughout the State; that on occasion, he needs the service of common carriers; that he became acquainted with Applicant through the use of his service when Applicant was associated with Protestant Morgan; that the equity in the 1969 "Short Dog" truck which formerly belonged to Applicant has recently been transferred to him with the understanding that if the application herein is granted, the ownership of the tractor will be returned to Applicant; that it has been his experience when quick service for the movement of a mobile home is needed, it is usually not available and that such service which must be obtained from distant points is not feasible; that he has had no difficulty in obtaining transportation for the past several months for the reason that up until the middle of July, Applicant was available through Morgan; that he has had no occasion to call a common carrier since Applicant's contract with Morgan was

cancelled; that he has called Douglas on two (2) occasions for service and at both times, Douglas was away from home and unavailable; that it has been his experience that when a purchaser buys a mobile home, he wants it delivered immediately and that heretofore he has had to use factory transportation, his own tractors and common carriers for transportation in his mobile home sales business.

Applicant then presented Mr. Claude Cagle, who is with a mobile home sales firm in Siler City. This witness testified that since his sales agency in Siler City is new, he has not experienced too much difficulty in obtaining service for the reason that up to this time, he had only sold a few homes, but that last Friday he attempted to obtain service from L. C. Hunter for the movement of a mobile home on that date, but was unable to obtain the desired service; that he did not call Protestant Douglas for the reason that he considers Douglas as his competitor; that he would use the service of Applicant if it is made available and feels that with as much traffic as there is in the movement of mobile homes, another carrier is needed.

Applicant next offered the testimony of Mr. Hubert Odom, who is also in the employ of Sanford Mobile Home Distributors and who testified, among other things, that he is familiar with Applicant and likes his service; that Applicant also sets the mobile homes up, which is a very important part of the overall service and that service is often needed between the sales lot in Sanford and a place of storage used by his firm in Moncure.

Protestant Douglas offered testimony from which it appears that he is the holder of a certificate from this Commission which authorizes the transportation of mobile homes within and from and to fifteen (15) counties, which counties include Lee, Chatham, Moore and Montgomery, and from said counties to all points within the State and from all points within the State to said counties; that in addition to his transportation operation, he and his wife own and operate three (3) mobile home parks; that he and his wife have also been engaged in the sale of mobile homes but that said sales business is presently being liquidated; that his base of operations is Sanford and that he advertises his service in the Yellow Pages of telephone directories in all of the counties which he is authorized to serve, including the four (4) counties involved in this application; that said telephone directory listings indicate that collect calls will be accepted; that he has one (1) tractor available for service within and to and from the fifteen (15) counties which he is authorized to serve; that he himself drives the tractor and that during the fiscal year 1969-1970 he transported one hundred and thirty-one (131) mobile homes; that neither Morgan, National or Transit have "terminals" in the counties applied for and that the only telephone Yellow Page listing carried by any of the three (3) within the four (4) county area is one by National which appears in a Moore County telephone directory.

Protestant National Trailer Convoy, Inc., offered Mr. H. T. Overby, District Manager for the States of North and South Carolina, whose testimony tends to show that National is a nationwide mover of mobile homes under authority from the Interstate Commerce Commission and that it also operates throughout the State of North Carolina under authority heretofore issued by this Commission; that it has "terminals" located in Charlotte, Fayetteville, Goldsboro, Jacksonville, Matthews and Wilkesboro; that instead of operating its own trucks, National uses the service of leased operators who generally own their own equipment and are under contract with National for a percentage of the revenue obtained; that five (5) of the trucks presently used are owned by National and leased to operators who in turn lease them back to National the same as other leased operators; that he did not know if any of National's drivers were located in the four (4) counties involved in this application, but that Fayetteville is his company's nearest "terminal" point to the area; that the leased operator turnover for his company is from ten (10) to twelve (12) percent annually and that his company was advertising for leased operators in the Raleigh newspaper only last week; that inexperienced new leased operators are subjected to a rather comprehensive training program; that with only a few exceptions none of the equipment located in North Carolina is dedicated solely for use under the intrastate authority which it holds from this Commission; that, in his opinion, sixty percent (60%) of the movements of mobile homes from the Fayetteville area are in interstate commerce and that the "terminal" in Fayetteville is a cabana on the side of a mobile home at and from which point the "terminal" agent, a woman, answers the telephone, solicits business, types bills of lading, etc., dispatches and generally supervises the leased operators and also makes safety inspections of the equipment. It further appears from the testimony of this witness that he would like very much to engage the services of Applicant as a leased operator for the purpose of serving the territory applied for herein.

Protestants Morgan Drive Away, Inc., and Transit Homes, Inc., offered their District Supervisors, Robert D. McGinnis and John Carson, respectively, whose testimony regarding service offered by their companies was similar in all material respects to the testimony of the witness for National Trailer Convoy, Inc. They are each nationwide carriers in interstate commerce and have "terminals" located at certain points from which the leased operators are dispatched from and to points both within and without the State of North Carolina. In addition, Witness McGinnis offered testimony concerning the record of Applicant during the period when Applicant was a leased operator for Morgan, which tends to show that when it came to his attention that Applicant had filed an application with the North Carolina Utilities Commission for authority in his own name, Applicant's contract as a leased operator with Morgan was terminated. Witness McGinnis also testified that his company was presently soliciting leased operators by running

advertisements in newspapers in Fayetteville, Winston-Salem, Greensboro, Raleigh and Charlotte. When asked if he would enter into an agreement with another qualified leased operator within the four (4) counties applied for, he indicated an affirmative answer and gave as his opinion that there was plenty of business within the area.

All parties waived privilege of filing briefs.

Upon consideration of the record in this case, the testimony offered and the evidence presented, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That Protestants Boyd Q. Douglas, T/A Dreamland Mobile Home Park, National Trailer Convoy, Inc., Morgan Drive Away, Inc., and Transit Homes, Inc., hold appropriate irregular route common carrier authority from this Commission to engage in the transportation of mobile homes within the counties and territory proposed to be served by Applicant,

(2) That Boyd Q. Douglas, T/A Dreamland Mobile Home Park, is the only carrier opposing the application who has a base of operations within the four (4) county area or who is listed in the Yellow Pages of the telephone directories within said counties, except that Protestant National Trailer Convoy, Inc., apparently is listed in the Yellow Pages of a Moore County directory,

(3) That Protestant Boyd Q. Douglas, T/A Dreamland Mobile Home Park, has one (1) truck or tractor with which to move housetrailers within and from and to the fifteen (15) counties which he is authorized to serve and that in addition to his housetrailer moving business, he operates three (3) trailer parks and engages in the sale of mobile homes, although it appears from the record that the sales business is being liquidated,

(4) That Protestants Morgan Drive Away, Inc., National Trailer Convoy, Inc., and Transit Homes, Inc., do not have a "terminal" located in the four (4) counties involved nor do they advertise in the Yellow Pages of the telephone directories of the involved counties, except that National carries a listing in a Moore County directory, which shows the telephone number of its Fayetteville "terminal,"

(5) That public convenience and necessity require the service proposed in addition to existing authorized transportation service,

(6) That the Applicant is fit, willing and able to properly perform the proposed service, and

(7) That Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

The evidence shows that Applicant is experienced and well qualified to engage in the transportation of mobile homes and housetrailers, said experience being gained while he was employed as a leased operator by one of the major nationwide carriers, namely, Morgan Drive Away, Inc., a Protestant in this case. His qualifications are not questioned, and in this regard, Witness Overby for Protestant National Trailer Convoy, Inc., indicated that from what he had heard during the course of the hearing, he would like very much to have Applicant as a leased operator.

It further appears from the evidence that Protestants National, Morgan and Transit, all of which conduct their operations with so-called leased operators under a contractural arrangement, have a considerable turnover in said operators and are constantly soliciting and advertising for men with trucks to add to their fleet and for replacements of such leased operators whose contracts have, for one reason or another, been terminated; that the equipment which these major nationwide carriers have leased and stationed in North Carolina is not dedicated to or used solely for service under their intrastate authority, but is also used for interstate movements to and from points throughout the United States. Witness Overby estimated that sixty percent (60%) of his company's business from the Fayetteville area was in interstate commerce. It appears clear that insofar as the three (3) major carriers referred to are concerned, there has been very little effort, if any, given to advertising or otherwise offering their services or soliciting business within the area involved in this application. They are not listed in the telephone directories of the four (4) counties except in one minor instance nor do any of them have a "terminal" located within said counties.

Protestant Douglas is undoubtedly a well qualified carrier who constantly advertises and holds himself out to the public as a mobile home mover, not only within the counties involved in this application but throughout his authorized territory. However, he only has one (1) truck which he drives himself and it is obvious, and the evidence shows, that a man with one (1) truck cannot be available at all times when called upon for service. Although the evidence and the records of the Commission show that there is another authorized one (1) truck operator in Lee County, such carrier did not file a protest to this application nor has he expressed any opposition thereto.

Upon consideration of the applicable statutes and the evidence presented in this case, the Hearing Examiner concludes that Applicant has satisfied the burden of proof required by statute and that the application, as specified herein, should be granted.

IT IS, THEREFORE, ORDERED:

(1) That David E. Moody, T/A Sanford Mobile Home Towing Service, 613 Bragg Street, Sanford, North Carolina, be, and he is, hereby granted authority as an irregular route common carrier to transport mobile homes in accordance with Exhibit B attached hereto and made a part hereof.

(2) That Applicant file with the North Carolina Utilities Commission a tariff schedule of rates and charges, lists of equipment, evidence of insurance, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin operations under the authority granted herein within a period of thirty (30) days from the date that this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1520 Sanford Mobile Home Towing Service
David E. Moody, T/A
Irregular Route Common Carrier
Sanford, North Carolina

EXHIBIT B Transportation of mobile homes from points and places in Chatham, Lee, Moore and Montgomery Counties to all points and places in North Carolina and from points and places in North Carolina to points and places in Chatham, Lee, Moore and Montgomery Counties.

DOCKET NO. T-1520

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
David E. Moody, T/A Sanford Mobile Home Towing Service, 613 Bragg Street, Sanford, North Carolina) ORDER DENYING EXCEPTIONS TO RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on October 19, 1970, at 2:00 p.m.

BEFORE: Chairman H. T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne, and Hugh A. Wells

APPEARANCES:

For the Applicant:

Clawson L. Williams, Jr.
Attorney at Law
P. O. Box 2195, Raleigh, North Carolina

For the Protestants:

Charles B. Morris, Jr.
Jordan, Morris & Hoke
Attorneys at Law
P. O. Box 709, Raleigh, North Carolina
For: National Trailer Convoy, Inc.

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
P. O. Box 535, Eden, North Carolina
For: Morgan Drive Away, Inc.
Transit Homes, Inc.

William W. Staton
Pittman, Staton & Betts
Attorneys at Law
205 Courtland Drive
Sanford, North Carolina
For: Boyd Q. Douglas, T/A
Dreamland Mobile Home Park

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
N. C. Utilities Commission
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: Upon consideration of the record herein, the Recommended Order dated August 20, 1970, entered by E. A. Hughes, Jr., Examiner, the Exceptions to the Recommended Order filed by the protestants, and the able oral arguments presented by attorneys for each of the parties set forth in the caption, and a review and consideration of the matter in its entirety, the Commission concludes that sufficient justification has not been shown and does not exist to support the Exceptions filed and that the same should be denied, and the Commission further concludes that the Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the aforementioned Recommended Order should be approved and adopted by the Commission as its Findings, Conclusions and Order; and

IT IS NOW, THEREFORE, ORDERED:

That the Exceptions to the Recommended Order filed by the protestants, and each of them, be, and the same are, disallowed and denied; and

IT IS FURTHER ORDERED:

That the Recommended Order entered herein on August 20, 1970, be, and the same is, hereby ratified and adopted by the Commission as its Order, effective this date.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

WELLS, COMMISSIONER, DISSENTING: Upon consideration of the record, the Recommended Order dated August 20, 1970, the exceptions to the Recommended Order filed by Protestants, and the Oral Arguments presented by counsel for the parties, it is my conclusion that the record does not contain evidence upon which a valid finding of convenience and necessity may be predicated, and that the record as a matter of fact indicates that the public need for the type of service being considered is being adequately met by existing certificated carriers in the area under consideration. For these reasons, I dissent from the majority order.

Hugh A. Wells, Commissioner

DOCKET NO. T-1490

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Jerry H. Stegall, d/b/a Jerry Stegall Trucking, Route 3, Marshville, North Carolina 28110) RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on December 9, 1969, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Jerry H. Stegall
Marshville, North Carolina
(Appearing for himself)

No Protestants.

HUGHES, EXAMINER: By application filed with the Commission on November 3, 1969, Jerry H. Stegall, d/b/a Jerry Stegall Trucking, Route 3, Marshville, North Carolina, seeks to engage in the transportation of Group 21, Wood Pallets and Wood Chips from Marshville, North Carolina, to and from all points and places in the State of North

Carolina, as a contract carrier under bilateral contract between Applicant and Edwards Wood Products, Marshville, North Carolina.

Notice of the application reflecting the nature thereof and showing the time and place of hearing was given in the Commission's Calendar of Hearings issued on November 17, 1959. No protests were filed and the application is unopposed.

It appears from the application and the evidence that Applicant is an individual and presently holds a certificate of exemption under which he performs certain intrastate exempt transportation; that Applicant owns two (2) trucks which he proposes to use in his operation and that he has net assets in the amount of some $8,000.00. It further appears that Applicant lives next door to Edwards Wood Products (Shipper); that his equipment will be completely dedicated to serving the Shipper on a twenty-four (24) hour basis; that in addition to the intrastate authority sought herein, Applicant has made application to the Interstate Commerce Commission, which application is now pending before that body; that Applicant is familiar with the motor carrier business and understands the difference between a common carrier and a contract carrier as defined, classified and regulated by the Public Utilities Act; that Applicant and Shipper have entered into a bilateral contract covering the service proposed and that a copy thereof has been filed with this Commission.

Upon consideration of the application and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act,

(2) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

(3) That the proposed service will not unreasonably impair the use of the highways by the general public,

(4) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

(5) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that Applicant has borne the burden of proof required by statute and that the authority sought should be granted.

IT IS, THEREFORE, ORDERED:

That a contract carrier permit be granted Jerry H. Stegall, d/b/a Jerry Stegall Trucking, Route 3, Marshville, North Carolina, to engage in the transportation of Group 21, Wood Pallets and Wood Chips, as particularly described in Exhibit A hereto attached and made a part hereof.

IT IS FURTHER ORDERED:

That Jerry H. Stegall, d/b/a Jerry Stegall Trucking, file with this Commission bilateral written contract with shipper, schedules of minimum rates and charges, evidence of insurance coverage, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin active operations under the authority herein granted within thirty (30) days from the date this order becomes final.

IT IS FURTHER ORDERED:

That Exemption Certificate No. E-16251, heretofore issued to Jerry Hubert Stegall be, and the same is, hereby cancelled effective upon the commencement of operations pursuant to the authority contained in this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1490 Stegall, Jerry, Trucking
Jerry H. Stegall, d/b/a
Contract Carrier of Property
Marshville, North Carolina.

EXHIBIT A Transportation of Group 21, Wood Pallets and Wood Chips under bilateral written contract with Edwards Wood Products, Marshville, North Carolina, from Marshville, North Carolina, to and from all points and places in the State of North Carolina.

DOCKET NO. T-1485

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Steve Strickland, d/b/a Strick's Transporters,) ORDER
Route 1, Box 96, Castle Hayne, North Carolina)

HEARD IN: The Superior Courtroom, New Hanover County Courthouse, Wilmington, North Carolina, on January 27, 1970, at 10:00 a.m., and in the Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on January 29, 1970, at 2:30 p.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

J. Ruffin Bailey, Esq.
and Ralph McDonald, Esq.
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

George Sperry, Esq.
Burney & Burney
Attorneys at Law
417 Chestnut Street
Wilmington, North Carolina

For the Protestants:

Thomas S. Harrington, Esq.
Harrington & Stultz
Attorneys at Law
Box 535, Eden, North Carolina
For: Morgan Drive Away, Inc.
Transit Homes, Inc.

WELLS, COMMISSIONER: This matter came on for hearing before Division III of the Commission sitting in Wilmington, North Carolina, at 10:00 a.m. on January 27, 1970, upon application of Steve Strickland, d/b/a Strick's Transporters, whose address is Route 1, Box 96, Castle Hayne, North Carolina, for authority to operate as a common carrier over irregular routes for specific commodities under Group 21, specifically the transportation of mobile homes, house trailers and mobile structures, within the following described territory:

Between points and places in southeastern North Carolina - bounded on the west by U. S. Highway 301; bounded on the south by the South Carolina State Line; bounded on the

east by the Atlantic Ocean; bounded on the north by U. S. Highway 264, the Pamlico River and Pamlico Sound.

Notice of said application with a description of the authority sought, together with the time and place of hearing, was published in the Commission's Calendar of Hearings issued on November 17, 1969. Protests to the application were timely filed by Morgan Drive Away, Inc., 2800 West Lexington Avenue, Elkhart, Indiana, and Transit Homes, Inc., P. O. Box 1628, Greenville, South Carolina.

All parties were present at the hearing and represented by counsel.

Applicant concluded the presentation of his testimony and evidence at approximately 5:30 p.m. on January 27, 1970, and the matter was continued by consent of counsel to be resumed in the Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, at 2:30 p.m. on January 29, 1970.

At the hearing in Wilmington applicant testified as to his experience and ability relating to the moving and transporting of the commodities enumerated in the application and gave testimony and produced exhibits relating to his fitness, willingness and ability to properly perform the proposed service and relating to his financial solvency and financial ability to furnish adequate service on a continuing basis. In addition to the applicant, a large group of public witnesses appeared and testified in favor of the application, giving testimony relating to the need for additional service of the type applied for in the area affected by the application and relating to applicant's skill, experience and ability.

At the time the hearing resumed all parties were present and represented by counsel, and at such time counsel for applicant submitted a motion amending the application by deleting from the authority sought by the applicant all points and places within the following named counties: Onslow, Cumberland, Wayne and Robeson. Upon the applicant's having so amended his application, protestants' counsel asked that protestants be allowed to withdraw their protests, which request was allowed.

Upon consideration of the record and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. The applicant, Steve Strickland, has had a number of years of experience in moving and transporting the commodities enumerated in the application and shows that he is fit, willing and able to properly perform the service proposed in the application. Applicant has also shown that he is solvent and financially able to furnish adequate service of the type applied for on a continuing basis.

2. The mobile home industry has undergone significant growth in the area affected by the application in the last few years. The number of mobile home sales outlets and the number of mobile home parks have greatly increased and the number of persons now residing in mobile homes and turning to mobile homes as residences has dramatically increased in the last few years. The period of the last few years has also seen the development of mobile home manufacturing industry and businesses engaged in repairing and salvaging mobile homes in the area affected by the application. While the incidence of manufacture, sales and use of mobile homes in the affected area has greatly increased in the last few years, the number of firms or persons engaged in the moving or transporting of mobile homes in the affected area has not changed for over five years, and it is clear that there is a definite and substantial need for additional services of the type applied for within the area affected by the application.

3. The furnishing of the services applied for in the area affected by the application will serve a definite and growing public need and will be in the public interest and meet the requirements of public convenience and necessity, and the public convenience and necessity require the proposed service in addition to existing authorized transportation service relating to the commodities enumerated in the application.

CONCLUSIONS

Based upon the record, the evidence and the Findings of Fact set forth herein it is the conclusion of the Commission that (1) the public convenience and necessity require the proposed service in addition to authorized transportation service of the commodities enumerated in the application, (2) the applicant is fit, willing and able to properly perform the proposed service and (3) the applicant is solvent and financially able to furnish adequate service on a continuing basis to move and transport commodities enumerated in the application.

IT IS, THEREFORE, ORDERED that the applicant be and hereby is granted authority to operate as a common carrier over irregular routes between points and places in southeastern North Carolina bounded on the west by U. S. Highway 301, on the south by the South Carolina State Line, on the east by the Atlantic Ocean, and on the north by U. S. Highway 264, the Pamlico River and the Pamlico Sound, excepting from said authority, however, points and places in the following counties: Onslow, Cumberland, Wayne and Robeson. Said authority is confined to the transportation of specific commodities under Group 21, consisting of mobile homes, house trailers and mobile structures.

IT IS FURTHER ORDERED that applicant file with the Commission a tariff of rates and charges, evidence of the required insurance, lists of equipment, designation of

process agent, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within 30 days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1510

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of United Limestone Products, Incorporated, Pollocksville, North Carolina, for Authority to Operate as a Contract Carrier in the Transportation of Liquefied Petroleum Gas) ORDER GRANTING AUTHORITY

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 30, 1970, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

Everette L. Wooten, Jr.
Attorney at Law
P. O. Box 574, Kinston, North Carolina 28501

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina 27602
For: Kenan Transport Company
East Coast Transport Co., Inc.
Petroleum Transportation, Inc.
O'Boyle Tank Lines, Inc.
Eagle Transport Corp.

WESTCOTT, CHAIRMAN: This cause came on for hearing at the captioned time and place. The applicant, United Limestone

Products, Incorporated, seeks authority to transport liquefied petroleum gas in bulk in tank trucks, over irregular routes, from the existing terminal at or near Apex, North Carolina, to the towns of Pollocksville, Jacksonville, Richlands, Swansboro and Bridgeton, North Carolina, as a contract carrier under bilateral contracts with Jenkins Gas Company, Incorporated, at Pollocksville, Jacksonville, Richlands and Swansboro, and with Phillips Gas Company, Inc., at Bridgeton.

The evidence of record tends to show that applicant has an option to purchase a 1967 Ford tractor and tank trailer specifically designed for the transportation of liquefied petroleum gas, from Martin Transport Co., Inc., Kinston, North Carolina, and that the same driver who has been employed by Martin Transport Co., Inc., in delivering gas to the above-named gas distribution companies will be employed by the applicant. The evidence further tends to show that during peak periods of usage of liquefied petroleum gas the distributors in the above-named towns have experienced difficulty in procuring adequate transportation service; that with the exception of Pollocksville, which has a 30,000-gallon storage tank and a 12,000-gallon storage tank, the storage facilities at the other locations in the towns above named are 12,000-gallon storages; that it is necessary to have a carrier domiciled in Pollocksville at the home office of Jenkins Gas Company, Incorporated, subject to immediate call to make deliveries from Apex to the storage tanks in the above-named towns in order to keep an adequate gas supply and to retain customers now being served, and that a contract carrier, as herein proposed, will more adequately serve the needs of the receivers named.

Offered for the record as Exhibit 4 were five bilateral contracts which applicant and receiver each agree to enter into should the authority herein sought be granted.

Witness Jenkins, a stockholder in each of the gas companies named in the respective towns, asserts that, in addition to using the contract carrier, he will call upon common carriers when needed, as has been the case in the past, and that no business of his which protestants have enjoyed in the past will be diverted from them as a result of his using the applicant as a contract carrier.

The evidence of Protestant Kenan Transport Company is to the effect that it maintains a terminal at Apex, has five pieces of equipment adapted to the transportation of liquefied petroleum gas stationed at said terminal and stands ready and willing to serve the needs of Jenkins Gas Company, Incorporated, in the towns in which it operates. Petroleum Transportation, Inc., has five pieces of equipment adapted to the transportation of liquefied petroleum gas, three of which are stationed in South Carolina and the remaining two in western North Carolina; that his transportation business of liquefied petroleum gas has heretofore been confined to transportation from terminals in

South Carolina to points and places in the upper Piedmont and western North Carolina.

From the evidence adduced, the Commission is of the opinion and makes the following

FINDINGS OF FACT

1. That the proposed operation conforms with the definition of a contract carrier.

2. That the proposed operation will not unreasonably impair the service of motor carriers operating under certificates, or rail carriers.

3. That the proposed operation will not unreasonably impair the use of the highways by the general public.

4. That the applicant is fit, willing and able to properly perform the service as a contract carrier, and that the operation proposed will tend to effectuate the declaration of policy for motor carriers.

IT IS, THEREFORE, ORDERED:

1. That the application of United Limestone Products, Incorporated, to engage in the transportation of liquefied petroleum gas from the existing gas terminal at or near Apex, North Carolina, to the towns of Pollocksville, Jacksonville, Richlands and Swansboro, North Carolina, and to Phillips Gas Company, Inc., at Bridgeton, North Carolina, be, and the same is hereby, approved.

2. That United Limestone Products, Incorporated, shall file with this Commission a tariff of rates and charges, evidence of the required insurance, list of equipment, designation of process agent, and otherwise comply with the rules and regulations of the Commission, and institute operations under the authority herein acquired within thirty (30) days from the date of this order.

3. That a copy of this order be transmitted to the attorneys for the applicant and to the attorney for the protestants.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1510 United Limestone Products, Incorporated
Pollocksville, North Carolina

Contract Carrier Authority

EXHIBIT A — Transportation of liquefied petroleum gas in bulk in tank trucks, over irregular routes, from the existing terminal at or near Apex, North Carolina, to Pollocksville, Jacksonville, Richlands, Swansboro and Bridgeton, North Carolina, under individual bilateral contracts with Jenkins Gas Company, Incorporated, and with Phillips Gas Company, Inc.

DOCKET NO. T-1529

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of McKinley William Warren, d/b/a Warren Delivery Service, 111 Hansel Avenue, Asheville, North Carolina, for contract carrier authority) ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on November 18, 1970, at 10:00 A. M.

BEFORE: Commissioners John W. McDevitt, Miles H. Rhyne and Hugh A. Wells, Presiding

APPEARANCES:

For the Applicant:

Lawrence C. Stoker
Attorney at Law
Jackson Building
Asheville, North Carolina 28801

No Protestants.

BY THE COMMISSION: By application filed with the Commission on September 10, 1970, and subsequently amended, McKinley William Warren, d/b/a Warren Delivery Service, 111 Hansel Avenue, Asheville, North Carolina, seeks to engage in the intrastate transportation of Group 15, Retail Store Delivery Service, within a one hundred (100) mile radius of Asheville, North Carolina.

Notice of the application reflecting the nature thereof and showing the time and place of the hearing, was given in the Commission's Calendar of Hearings issued September 16, 1970. No protests were filed and the application is otherwise unopposed.

The evidence tends to show that Applicant has had experience as an employee of Western Auto Supply Company and

Sky City Discount House in Asheville in the serving of and the delivery of large household appliances and furniture; that he has a 1968 Chevrolet pickup truck, which he expects to trade for a 1971 model upon approval of his application; that he has entered into contracts for delivery of large household appliances and furniture items within a one hundred (100) mile radius of Asheville (within the State of North Carolina) with K-Mart Company, Western Auto Supply Company, Free Service Tire and Appliance Company, Sky City Discount House and Burroughs Corporation; that the service to be rendered by him to the companies with whom he has contracts is not available from common carriers and will not interfere with existing common carrier operations; that he will not offer service to the general public and that he has filed contracts which indicates that the charges proposed by him will be not less than those being charged by common carriers for similar service.

Upon consideration of the application and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

(1) That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act,

(2) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers,

(3) That the proposed service will not unreasonably impair the use of the highways by the general public,

(4) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier, and

(5) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act.

CONCLUSIONS

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Commission that Applicant has borne the burden of proof required by statute and that the authority sought in the amended application should be granted.

IT IS, THEREFORE, ORDERED:

(1) That a contract carrier permit be granted McKinley William Warren, d/b/a Warren Delivery Service, 111 Hansel Avenue, Asheville, North Carolina, to engage in the transportation of Group 15, Retail Store Delivery Service,

as particularly described in Exhibit A hereto attached and made a part hereof.

(2) That McKinley William Warren, d/b/a Warren Delivery Service, file with this Commission bilateral written contracts with shippers; schedules of minimum rates and charges, evidence of insurance coverage, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin active operations under the authority herein granted within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1529 — Warren Delivery Service
McKinley William Warren, d/b/a
Contract Carrier of Property
Asheville, North Carolina

EXHIBIT A — Transportation of Group 15, Retail Store Delivery Service, within a one hundred (100) mile radius of Asheville, under bilateral written contracts with K-Mart Company, Western Auto Supply Company, Free Service Tire and Appliance Company, Sky City Discount House and Burroughs Corporation.

DOCKET NO. T-1407, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Willard P. Watson, Inc., Route 1, Walkertown, North Carolina) RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, at 10:00 a.m., January 7, 1970

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Frank C. Ausband
Attorney at Law
P. O. Box 571, Kernersville, North Carolina

For the Protestant:

James T. Hedrick
Newsom, Graham, Strayhorn & Hedrick
Attorneys at Law
Central Carolina Bank Building
Durham, North Carolina
For: Burton Lines, Inc.

HUGHES, EXAMINER: By application filed with the Commission on November 28, 1969, Willard P. Watson, Inc., Route 1, Walkertown, North Carolina (Applicant), seeks a common carrier certificate for authority to engage in the transportation of Group 6, Agricultural Commodities and Group 10, Building Materials, over irregular routes on a statewide basis.

Notice of said application with a description of the authority sought, together with the time and place of hearing, was published in the Commission's Calendar of Hearings issued December 9, 1969. Protest thereto was timely filed by Burton Lines, Inc., Durham, North Carolina.

All parties were present at the hearing and represented by counsel.

It appears from the application and the records of the Commission that Applicant is a corporation, duly organized and existing under the laws of the State of North Carolina, and that Willard P. Watson, as an individual, is presently the holder of Contract Carrier Permit No. P-205, heretofore issued by this Commission, authorizing the transportation of Group 6, Agricultural Commodities, under bilateral contract with Farmers Feed and Seed Store, Kernersville, North Carclina, within the following counties: Forsyth, Iredell, Lincoln, Cabarrus, Union, Montgomery, Alamance, Lee, Scotland, Harnett, Durham, Yadkin, Rowan, Gaston, Davidson, Anson, Randolph, Orange, Moore, Robeson, Johnston, Sampson, Davie, Catawba, Mecklenburg, Stanly, Richmond, Guilford, Chatham, Hoke, Cumberland and Wake.

Applicant's evidence in support of the application tends to show that its office is in Walkertown, although its principal operation is out of Kernersville; that Applicant owns one (1) tractor and four (4) trailers and has no full-time employees; that transportation presently being performed consists mostly of feed, fertilizer and some exempt building materials; that in the event the authority sought is granted, building materials consisting mostly of cement in bags, mortar mix, plywood and sheetrock, will be transported from shippers to building sites generally within a radius of twenty-five (25) or thirty (30) miles of Kernersville and that it proposes to transport the commodities for which authority is sought from points throughout the State to Kernersville, Walkertown and Winston-Salem when requested to do so by supporting shippers.

It appears further from Applicant's testimony that the transportation of the agricultural commodities which he is presently authorized to haul for one shipper, is seasonal and that he feels that the addition of Group 10, Building Materials, to the proposed expanded authority, would be of benefit to him in his business in the "off-season," during the winter months.

In support of the application, Mr. Davis Lain of Kernersville Lumber Company, testified that he would use Applicant's proposed service for the transportation of plywood from Plymouth, cement from Greensboro and sheetrock from points of distributorship. Mr. Lain further testified that he proposes to use Applicant's service for the transportation of sheetrock from Kernersville to contractors; that his firm has suffered delays in obtaining plywood from Plymouth and that if he had a carrier, such as Applicant, that he could call on when needed to go and get the plywood, he would get it much quicker. When asked if what he desired was something in the nature of a contract service, somebody ready and willing, with a truck dedicated to him, he answered in the affirmative.

Mr. Rex Idol, of Farmers Feed and Seed Store, Kernersville, North Carolina, which company Willard P. Watson presently serves as a contract carrier in the transportation of agricultural commodities, testified that he also has part ownership in the Farmers Hardware and Electric in Kernersville, which firm would use Applicant's proposed service for the transportation of pressure treated fence posts, ready mixed cement, roofing, nails and other items of building materials which would be carried by a hardware store; that he can find Applicant when he cannot find anyone else to do his hauling; that he has had difficulty in getting common carriers to pick up less than truck load shipments; that oftentimes Applicant could take part of a load of building materials to a job site and return with a full load of feed and that he prefers Applicant to haul all of his materials because he gives real good service and is usually available at a moment's notice. Mr. Idol further stated that he anticipates that most of the back and forth hauling Mr. Watson does for him now under contract, involving mostly feed, will continue.

Mr. William Webster, who is engaged in the hardware business at Walkertown, offered testimony to the effect that he does not ship anything, but needs Applicant's service to go and get supplies for his store; that in addition to feed, he will use service proposed by Applicant for the transportation of cement, mortar mix and roofing from the distributors in Greensboro and Winston-Salem to his place of business. Witness Webster does not like the service of common carriers which he has used in the past because in his opinion, service of common carriers is inadequate to suit his needs and it has been his experience that to obtain the service of common carriers, you have to have a certain tonnage or poundage and that he needs a carrier that he can

call on in a moment's notice, someone upon whom he can depend and who will furnish him with a special kind of service other than that provided by common carriers.

Mr. C. M. Barbee, who operates the Winston Milling Service in Winston-Salem, testified that he has used Applicant's service for the transportation of feed, lime and pine needles and if the authority sought is granted, he would use Applicant's service for the transportation of mortar mix and cement. He has found Applicant's service as a contract carrier to be satisfactory.

Protestant offered the testimony of Mr. B. R. Peters, Vice-President of Burton Lines, Inc., who testified generally as to his company's operation as a carrier of tobacco and general commodities. It appears from Protestant's testimony that fifty percent (50%) of Protestant's revenue is derived from the transportation of unmanufactured tobacco, which is a seasonal operation normally beginning about July 20 and lasting through January 20; that his company is required to lease a large number of trucks to supplement its own fleet in order to handle tobacco shipments tendered to it; that in addition to statewide tobacco authority, his company is authorized to engage in the transportation of general commodities in seventy-two (72) counties within the State; that Burton maintains a sales office in Charlotte, North Carolina, for the purpose of building up its general freight business; that Protestant has at the present time fifty-two (52) power units, two (2) straight trucks, eighty-six (86) flat bed trailers and thirty-three (33) vans and in addition leases on a year round basis sixty-five (65) power units and thirty-five (35) permanently leased flat bed trailers; that Burton realized an increase in revenue in the amount of approximately $400,000 during the year 1969, which increase, he believes, is due to the opening of the Charlotte sales office; that during the year 1968, his company derived some $270,000 in revenue from the transportation of building materials; that Protestant is ready, willing and able to supply customers in the building material field within the area of its authority. Witness Peters explained that a substantial portion of the general commodity authority held by Burton is restricted to truck load lots.

Before the hearing was concluded, the Hearing Examiner called to the attention of Applicant the Commission's Rule R2-10, and upon being asked by the Examiner that if the Commission should find from the evidence that he was entitled to a contract carrier permit rather than a common carrier certificate, would such be acceptable, Applicant replied that he would accept it but would prefer what he had applied for.

Briefs were waived by both parties.

Upon consideration of the record and the evidence adduced, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That the proposed operations conform with the definition of a contract carrier as contained in the Public Utilities Act,

(2) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates or rail carriers,

(3) That the proposed service will not unreasonably impair the use of the highways by the general public,

(4) That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier,

(5) That the proposed operations will be consistent with the public interest and the policy declared in G.S. 62-2 and G.S. 62-259 of the Public Utilities Act, and

(6) That Applicant should be issued a contract carrier permit to engage in the transportation of Group 6, Agricultural Commodities and Group 10, Building Materials, for the account of certain specific shippers from points in Forsyth County to all points within the State of North Carolina, and from all points within the State of North Carolina to points in Forsyth County.

CONCLUSIONS

The Commission's Rule R2-10 provides as follows:

> "Unless the applicant elects to accept only the type of authority set out in the application, the Commission will grant such authority as the evidence shows the applicant is entitled to receive; that is to say, if the applicant has misconceived the nature of his proposed operation, or has misconstrued the meaning of terms used in his application, and has applied for a certificate to operate as a common carrier when the application should have been for a permit to operate as a contract carrier, or vice versa, the Commission will disregard the form of the application and grant such authority within the scope of the application as the applicant is entitled to receive upon the facts."

In this proceeding, the evidence is conclusive that there is a need by five (5) shippers for a specialized service not available from common carriers. Two (2) of the shipper witnesses flatly declared that the type of service they needed was that of a contract carrier. Two (2) stated in effect that they needed the services of a carrier that would be available upon a moment's notice and one (1) said further that his experience with common carriers had been much less than satisfactory. It is clearly apparent from the evidence

that the application herein should have been for a permit to operate as a contract carrier.

Although the territorial scope applied for was statewide, there has been no showing of a need for any service other than for shipments of freight which would either originate or terminate at points in Forsyth County.

Based upon the record, the evidence presented in this case and the foregoing findings of fact, it is the conclusion of the Hearing Examiner that Applicant should be issued a permit to operate as a contract carrier as particularly described in Exhibit A hereto attached.

IT IS, THEREFORE, ORDERED:

That a Contract Carrier Permit be granted to Willard P. Watson, Inc., Route 1, Walkertown, North Carolina, to engage in the transportation of Group 6, Agricultural Commodities and Group 10, Building Materials, as particularly described in Exhibit A, hereto attached and made a part hereof.

IT IS FURTHER ORDERED:

That Applicant file with this Commission bilateral written contracts with shippers, schedules of minimum rates and charges, evidence of insurance coverage, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of this Commission and begin active operations under the authority herein granted within thirty (30) days from the date that this order becomes final.

IT IS FURTHER ORDERED:

That said application, except to the extent granted, be, and it is, hereby denied.

IT IS FURTHER ORDERED:

That contract carrier authority heretofore issued to Willard P. Watson (an individual) be, and the same is, hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1407 SUB 1 — Watson, Willard P., Inc.
Contract Carrier of Property
Walkertown, North Carolina

EXHIBIT A — Transportation of Group 6, Agricultural Commodities and Group 10, Building Materials, under

bilateral written contracts with Farmers Feed and Seed Store, Kernersville, N. C., Farmers Hardware and Electric, Kernersville, N. C., Kernersville Lumber Company, Kernersville, N. C., Webster Bros. Hardware, Walkertown, N. C., and Winston Milling Company, Winston-Salem, N. C., from points in Forsyth County to all points within the State of North Carolina, and from all points within the State of North Carolina to points in Forsyth County.

DOCKET NO. T-1517

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Johnny Lee Williams, 602 Grovemont Road, Raleigh, North Carolina) RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on August 20, 1970, at 9:30 a.m.

BEFORE: Hugh A. Wells, Hearing Commissioner

APPEARANCES:

For the Applicant:

T. D. Bunn, Esquire
Hatch, Little, Bunn, Jones & Liggett
P. O. Box 527, Raleigh, North Carolina

For the Protestants:

W. T. Shaw, Esquire
2601 Hopewood Drive
Raleigh, North Carolina
For: Matthew W. Cooper, d/b/a
Cooper's Mobilehome Moving Service

WELLS, HEARING COMMISSIONER: By application filed June 5, 1970, Johnny Lee Williams, Applicant, seeks authority as an irregular route motor common carrier to transport mobile homes between all points in Wake County, from Wake County to all points in the State of North Carolina, and from all points in the State of North Carolina to Wake County.

Public hearing was ordered and notice was published in the Commission's Calendar of Hearings issued June 8, 1970. Upon request of counsel for protestants, hearing was later continued to August 20, 1970.

Protests were filed by Transit Homes, Inc., Morgan Drive Away, Inc., National Trailer Convoy, Inc., and Matthew W. Cooper, d/b/a Cooper's Mobilehome Moving Service. When the matter came on for hearing, all protests were withdrawn.

The Applicant, Johnny Lee Williams, appeared and testified in support of the application.

Based upon the evidence adduced at the hearing, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. The applicant is an individual who resides in Raleigh, Wake County, North Carolina.

2. The applicant has had many years' experience in the business of moving mobile homes and is presently skilled in the moving of mobile homes.

3. Applicant owns the necessary equipment for the movement of mobile homes in the territory applied for.

4. Applicant is fit, willing and able, financially and otherwise, to adequately perform the proposed service on a continuing basis.

5. Public convenience and necessity is not presently being served or met by the existing certified carriers in the territory applied for and the public convenience and necessity requires the services of the applicant for transporting mobile homes therein.

CONCLUSIONS

Applicant has borne the burden of proof required by G.S. 62-262(e) that the public convenience and necessity requires additional transportation services of mobile homes within Wake County and to and from Wake County throughout the State of North Carolina, and that applicant is entitled to a certificate of convenience and necessity authorizing him to perform the service applied for.

IT IS, THEREFORE, ORDERED: That Applicant, Johnny Lee Williams, be, and hereby is, granted a certificate to operate as an irregular route motor common carrier in accordance with the scope of authority set forth in Exhibit B hereto attached and made a part hereof, and that a certificate be issued and operations commenced when applicant has furnished evidence of insurance coverage, filed tariff schedules of rates and charges and otherwise complied with the rules and regulations of the Commission within thirty (30) days from the date this order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1517 Johnny Lee Williams
602 Grovemont Road
Raleigh, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B Transportation of Group 21, Mobile Homes, in the following territory: between all points in Wake County; from Wake County to all points in the State of North Carolina; and from all points in the State of North Carolina to Wake County.

DOCKET NO. T-825, SUB 131

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed Increased)
Rates and Charges on Petroleum and Petroleum)
Products, in Tank Truckloads, Scheduled to Become) ORDER
Effective November 1, 1969)

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on February 6, 1970, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Respondent:

Mr. Richard E. Shaw, Vice President
Central Transport, Inc.
Box 5044, High Point, North Carolina

For the Commission Staff:

Mr. Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

No Protestants or Intervenors.

WOOTEN, COMMISSIONER: This matter arises upon a filing by North Carolina Motor Carriers Association, Inc., Agent, Raleigh, North Carolina, of a tariff schedule, for and on behalf of Central Transport, Inc. (hereinafter Respondent), proposing an increase in rates and charges for application on shipments of petroleum and petroleum products, in tank truckloads, moving between points in North Carolina, said publication being scheduled to become effective November 1, 1969, and designated as Supplement No. 9 to North Carolina Motor Carriers Association, Inc., Agent, Tariff No. 5-L, N.C.U.C. No. 80. The Commission being of the opinion that the proposed increase in rates and charges and practices in connection therewith was a matter affecting the public interest, suspended the tariff schedule, instituted an investigation into and concerning the lawfulness of the tariff schedule, named Central Transport, Inc., respondent in this proceeding and assigned said carrier the burden of proof, and set the matter for hearing.

Upon the call of the case, the respondent was represented by its Vice President, Mr. Richard E. Shaw, who was its only witness; the Commission Staff was represented by the Commission Attorney, Edward B. Hipp, who presented only one witness, Mr. Grant Killian, Director of Traffic, North Carolina Utilities Commission; each witness presented several exhibits during their testimony; and no protests were filed and no one appeared in opposition to the tariff filing at the hearing.

Upon consideration of the evidence in this case and appropriate Commission records, the Commission makes the following

FINDINGS OF FACT

1. North Carolina Motor Carriers Association, Inc., Agent, is the tariff filing agent for petroleum carriers, including the respondent herein, and the tariff filing herein is proper and the matter is properly before this Commission and is a matter over which this Commission has jurisdiction.

2. The respondent holds various intrastate irregular route common carrier authority for the transportation of petroleum and petroleum products, liquefied petroleum gas, liquid commodities, dry commodities, dry starch and dry cement, cement in bags and lime in packages, and through the filing in this case seeks to increase rates for only petroleum and petroleum products.

3. The Respondent's petroleum and petroleum products authority was granted in 1951 by this Commission, and its other authority was granted subsequently by the Commission on various dates from March 24, 1954, to May 16, 1967; and the respondent has not actively pursued the improvement of its petroleum and petroleum products volume.

4. The respondent's operating ratio for its entire intrastate operations for several years was as follows:

1966 - 81.0%
1967 - 91.4%
1968 - 86.9%
1969 - 87.9%

5. Increased rates for petroleum were effective in the amount of 4% on August 18, 1968, and an additional 2 1/2% on August 25, 1969; and the respondent's operating ratio for the year 1969 would be lower if the rate increase of 2 1/2% were proformed for the full year.

6. The rate increase sought through this filing, if approved, would have the natural effect of placing an embargo on shipments of petroleum and petroleum by the respondent, and would effectively remove it from competition for the movement of these commodities.

7. The rates heretofore approved by, and on file with, this Commission for the movement of petroleum and petroleum products have not been shown to be unjust and unreasonable.

8. The tariff schedule suspended and under investigation herein is not just and reasonable and should therefore be cancelled by the respondent.

9. The rates heretofore approved by, and on file with this Commission, having heretofore been found to be just and reasonable are found to be competitive and compensatory when appropriately applied by effective and active operations.

Based on the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

That the respondent has failed to sustain the burden of proof that the rates in effect are unjust and unreasonable and that the proposed rates are just and reasonable.

The Commission concludes in this case that it is not appropriate for the respondent, operating with a low operating ratio for its overall operations, for it to single out one group of commodities and attempt to establish a high operating ratio in order to increase rates in such a way as to effectively embargo such commodities from movement by it, and thereby effectively deny its service to the public to that extent, particularly where there is no showing that the same would be consistent with the public necessity, convenience and interest.

The Commission finally concludes that the respondent should be ordered to cancel its proposed rates now under suspension and to continue its tariff schedules in effect prior to the filing of the rates under suspension.

IT IS, THEREFORE, ORDERED, That the Respondent, Central Transport, Inc., be, and it is hereby, directed to cancel the rates under suspension in Supplement No. 9 to North Carolina Motor Carriers Association, Inc., Agent, Tariff No. 5-L, N.C.U.C. No. 80 by the filing of an appropriate supplement with this Commission upon not less than one day's notice.

IT IS FURTHER ORDERED, That the suspension and investigation order of the Commission dated October 21, 1969, be, and the same is hereby, vacated and this proceeding discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Revision in the Rates Applicable) ORDER APPROVING
on Salt, in Bulk, in Truckloads) RATES

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, March 11, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners John W. McDevitt and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Protestant:

James D. Streeter
Diamond Crystal Salt Company
916 S. Riverside Drive
St. Clair, Michigan

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: This matter arises upon the filing by North Carolina Motor Carriers Association, Inc., Agent, Raleigh, North Carolina, for and on behalf of certain of its member carriers of certain tariff schedules proposing an upward revision in the rates applicable on shipments of salt, in bulk, in truckloads, the same being designated as North Carolina Motor Carriers Association, Local Motor Freight Tariff No. 21-B, N.C.U.C. No. 83 (a) Supplement No. 26 thereto, insofar as it proposes an increase in the rates on salt, in bulk, and (b) Supplement No. 30 thereto, Items 4260-C and 4261 thereof only.

By order of this Commission on November 5, 1969, the involved tariff schedules were suspended and an investigation into and concerning the lawfulness of the tariff schedules was instituted and the named carriers participating or proposing to participate in the tariff schedules were named Respondents (hereinafter called Respondents) in this proceeding, and the matter was set for hearing on January 14, 1970. Subsequently, for good cause shown, the matter was continued to the date, time and place set out in the caption.

Diamond Crystal Salt Company filed its protest prior to the hearing in this case, and its Senior Traffic Analyst, James D. Streeter, appeared at the hearing representing his company and testified for and on their behalf.

The Respondents offered the testimony of Mr. L. E. Forrest, Traffic Manager for North Carolina Motor Carriers Association, Inc., James B. Swing, Vice-President and General Manager of Maybelle Transport Company, R. E. Shaw, Vice President and General Manager of Central Transport, Inc., and Mr. A. E. Efird, Assistant to the President of Bulk Haulers, Inc.

The Commission Staff offered the testimony of Mr. Don Coordes, and the only protesting witness was Mr. James D. Streeter who testified for and on behalf of Diamond Crystal Salt Company.

The Respondents offered several exhibits in support of their contentions and the staff presented certain exhibits designed to further explain the tariff filing in this case.

Mr. L. E. Forrest, the first witness for the respondent motor carriers testified that the initial filing in this matter on October 23, 1969, proposed an upward revision in the rates applicable on shipments of salt, in bulk, in truckloads, and that said upward revision as proposed in said filing was greater than the parties intended for movements of said commodity for distances up to 150 miles. The Respondents moved the Commission that their tariff filing be amended, and proposed to justify their increase in rates to be established at less than that originally proposed and suspended. The evidence of the Respondents was designed to justify the upward revision of rates in accord

with their proposed amendment. The amendment as proposed has the effect of revising the suspended rates downward for the movement of said commodity for distances up to 150 miles and makes no change in the suspended rates for the movement of said commodity for distances in excess of 150 miles.

Based on the evidence adduced in this proceeding, we make the following

FINDINGS OF FACT

1. That the respondent carriers participating and proposing to participate in the tariff schedule involved in these proceedings, containing an upward revision in the rates applicable on shipments of salt, in bulk, in truckloads, are subject to the jurisdiction of, and are regulated by, this Commission and said carriers are properly before this Commission.

2. That the cost of performing a service involving the transportation of salt, in bulk, in truckloads, has continually increased since the last rate increase was granted by this Commission.

3. Respondents' present rates and charges are not sufficient to permit them to perform an adequate, economical and sufficient service to shippers and receivers of salt.

4. That the tariff schedule as filed and suspended sets forth rates for the movement of salt, in bulk, in truckloads for distances up to 150 miles, which are unjust and unreasonable and therefore unlawful.

5. That the suspended rates for the movement of salt, in bulk, in truckloads for distances up to 150 miles as amended in this proceeding, upon motion of the Respondents, are just and reasonable and therefore lawful.

6. That the tariff schedule set forth in Item 4261 as filed and suspended for the movement of salt, in bulk, in truckloads for distances in excess of 150 miles is just and reasonable and therefore lawful.

7. That the Respondents are in need of additional revenues and should be allowed to make effective the increase as proposed, amended, and justified in this proceeding, as set forth in Appendix A attached hereto and made a part hereof; said additional revenues are needed by the Respondents to meet the increased cost of operation and to enable them to preserve and continue all motor carrier service now afforded to the using and consuming public of the State engaged in the production and distribution of salt, in bulk.

8. That the movement of salt, in bulk, in truckloads by common carriers has embedded in its cost considerable additional expenses involved for parts, labor, and vehicles,

due to the substantial increase in rate of deterioration and requirements for maintenance.

CONCLUSIONS

In consideration of the record in this proceeding and the foregoing findings of fact, we conclude that the amended proposed increase in rates and charges, as set forth in Appendix A attached hereto and made a part hereof should be allowed to become effective.

We further conclude that these increases are necessary to cover the cost of inflation and to aid the participating carriers to recover additional costs related to the movement of salt, in bulk, in truckloads occasioned by the increased rate of deterioration and cost of maintenance as well as the increased cost of parts and labor.

IT IS, THEREFORE, ORDERED:

1. That the order of suspension in this docket be, and the same is, hereby vacated and set aside for the purpose of allowing the rate adjustments as set forth in Appendix A attached hereto and made a part hereof to be made effective.

2. That the participating carriers shall file with this Commission a new and revised tariff in accord with Appendix A attached hereto and made a part hereof.

3. That the publication authorized in 2 above may be made effective on one day's notice to the Commission and to the public.

4. That upon publication authorized hereby having been made, these proceedings be discontinued and the same are hereby considered discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX A
SALT, DRY, IN BULK, IN HOPPER, DUMP
OR PNEUMATIC TYPE VEHICLES
Minimum Truckload Weight 40,000 Pounds

Rates in Cents Per 100 Pounds

MILES	APPROVED RATES	MILES	APPROVED RATES
10	12	210	45
20	12	220	47
30	13	230	50
40	14	240	52
50	15	250	54
60	16	260	57
70	17	270	59
80	18	280	61
90	20	290	62
100	21	300	64
110	23	310	66
120	25	320	69
130	27	330	71
140	30	340	74
150	33	350	76
160	36	360	78
170	37	370	80
180	39	380	82
190	41	390	84
200	43	400	87

DOCKET NO. T-825, SUB 134

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension and) ORDER
Investigation of Proposed Changes and) DENYING PROPOSED
Additions in Tariff Filings Scheduled to) TARIFF CHANGES
Become Effective March 16, 1970)

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June 4, 1970

BEFORE: Commissioners Miles H. Rhyne, Presiding, John W. McDevitt and Marvin R. Wooten

APPEARANCES:

For the Respondents:

K. D. Shaver, Sr.
President
Dixie Trucking Company, Inc.

P. O. Box 3553, Charlotte, North Carolina
For: Himself

Protestants: None

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

RHYNE, COMMISSIONER: This investigation was instituted by the Commission following the filing, on statutory notice, by the North Carolina Motor Carriers Association, Inc., Agent, Raleigh, North Carolina, and Southern Motor Carriers Rate Conference, Agent, Atlanta, Georgia, of tariff schedules, for and on behalf of their member carriers, proposing certain rules, charges and cancellations, scheduled to become effective March 16, 1970, and designated as follows:

Items 205027, 205065, 205262 and 506090 thru 506390 of Supplement No. 125 to North Carolina Motor Carriers Association, Inc., Agent, Tariff No. 10-D, N.C.U.C. No. 76, and

Items 201745 and 201970 of Supplement No. 51 to Southern Motor Carriers Rate Conference, Agent, Tariff No. 137-H, N.C.U.C. No. 37.

Upon consideration of named tariff filings, the Commission concluded that the interest of the public was affected and by order dated March 9, 1970, suspended the involved tariff schedules to and including July 17, 1970, instituted an investigation into and concerning the lawfulness thereof, and assigned the matter for hearing on April 28, 1970. The order made carriers proposing to participate in the suspended schedules Respondents and placed upon said carriers the burden of proving that the proposed rules, charges and cancellations are just, reasonable, are not the means of creating discrimination, preference or prejudice and are otherwise lawful.

In response to an application, as amended, filed March 20, 1970, by Southern Motor Carriers Rate Conference, Agent, for and on behalf of its member carriers, the Commission caused its order of March 25, 1970, to issue which allowed said Respondents to withdraw and cancel the provisions of suspended Items Nos. 201745 and 201970, canceled the hearing and discontinued the proceeding insofar as these two items were concerned. This same order reassigned the hearing concerning the suspended tariff schedules of the North Carolina Motor Carriers Association, Inc., Agent, to June 4, 1970.

On March 26, 1970, an application was filed by the North Carolina Motor Carriers Association, Inc., Agent, for and on behalf of its member carriers and in response thereto, the

Commission caused its order of April 3, 1970, to issue which allowed respondent carriers to withdraw and cancel Items 205027 and 205262, to withdraw the cancellation of Items 506090 thru 506390, bring forward the rates continued in effect under the suspension order and discontinue the proceeding insofar as it pertained to these items. By this action only Item No. 205065 of Supplement No. 125 to North Carolina Motor Carriers Association, Inc., Agent, Tariff No. 10-D, N.C.U.C. No. 76, was left in issue with three (3) motor carriers remaining as Respondents in this proceeding. This item contains proposed changes in the rule governing detention of vehicles.

Hearing was held at captioned time and place and of the three (3) motor common carrier Respondents only one (1), Dixie Trucking Company, Inc. (Dixie), was present. This respondent was not represented by counsel.

Mr. K. D. Shaver, Sr., President of Respondent Dixie, testified as to the nature of the proposed changes in the rule governing detention of vehicles; the experience of his company in vehicles being delayed in loading or unloading by the consignor or consignee; the increased cost incurred by his company because of these delays, and of need for some relief in the form of increased vehicle detention charges coupled with a reduced amount of time to load or unload a vehicle before detention charges are made.

The Commission's Staff presented testimony which tended to show that the proposed rule, by its lack of clarifying provisions, would be easily subject to misapplication and virtually impossible to police.

Based upon testimony and evidence adduced at the hearing and the record as a whole, the Commission makes the following

FINDINGS OF FACT

1. That respondent motor carriers are subject to the jurisdiction of, and regulation by this Commission and are properly before the Commission in this proceeding.

2. By virtue of the Orders of Suspension and Investigation issued by the Commission under dates of March 9, 1970, March 25, 1970, and April 3, 1970, and under the provisions of G.S. 62-75 and G.S. 62-134, the burden of proof is placed upon the Respondents to show that the proposed rule governing detention of vehicles is just and reasonable.

3. From evidence adduced at the hearing by the Respondents and the lack of evidence, the Commission finds as a fact that Respondents have failed to show to the Commission that the proposed rule is just and reasonable as required of them by the aforesaid orders and General Statutes.

4. The proposed rule contained no provisions safeguarding the public and could be applied in a discriminatory and prejudicial manner.

CONCLUSIONS

The burden of proof is upon the Respondents to show to the satisfaction of the Commission, among other things, that the proposed rule is just, reasonable, is not the means of creating potential discrimination, preference or prejudice and is otherwise lawful. The uncorroborated testimony of the single witness for Respondents is, in this proceeding, considered insufficient for these purposes.

The evidence of record failed to take the question out of the realm of conjecture and speculation as to whether or not the proposed rule is just and reasonable. The record in this docket leaves the Commission with no alternative, in good conscience, except to deny the proposed detention rule.

The Commission finally concludes that the respondent motor carriers should be ordered to cancel their proposed detention of vehicle rule now under suspension, without prejudice, and to continue their tariff schedule in effect prior to the filing of the rule under suspension.

IT IS THEREFORE, ORDERED:

1. That Respondents, Blevins Tire and Moving, Hyte Blevins, d/b/a: Dixie Trucking Company, Inc., and Norven Freight Lines, Incorporated, be, and they are hereby directed to cancel, without prejudice, the vehicle detention rule (Item No. 205065) under suspension in this proceeding and continue in effect the present tariff provisions by the filing of an appropriate tariff publication with this Commission upon not less than one (1) day's notice.

2. That the order of suspension and investigation of March 9, 1970, and the supplemental orders of suspension and investigation dated March 25, 1970, and April 3, 1970, be, and same are hereby, vacated and set aside, and the investigation thereunder discontinued and the proceeding dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 136

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension and Investigation) ORDER
of Proposed Changes and Additions in Tariff Filing,)
Scheduled to Become Effective March 23, 1970)

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on June 3, 1970, at 9:30 a.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Intervenor:

Don M. Elkins
Regional Transportation Manager
Phillips Petroleum Company
P. O. Box 29666, Atlanta, Georgia 30329

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WELLS, COMMISSIONER: This proceeding began following the filing on statutory notice by North Carolina Motor Carriers Association, Inc., Agent, of Supplement 14 to its Petroleum and Petroleum Products Tariff 5-L, N.C.U.C. No. 80, for and on behalf of its member carriers, which proposed the establishment of certain rules and charges for accessorial services in connection with the transportation of petroleum and petroleum products in North Carolina intrastate commerce, scheduled to become effective March 23, 1970. Upon consideration of said filing and the Commission being of the opinion that the interest of the public was involved caused its order of March 17, 1970, to issue suspending the use and application of the schedule to and including July 31, 1970, instituted an investigation into and concerning the matter, and assigned same for public hearing on May 19, 1970, subsequently changed to June 3, 1970.

The order made carriers proposing to participate in the suspended schedule Respondents and pursuant to the

provisions of G.S. 62-75 and 62-134 placed upon said Respondents the burden of proving that the proposed rules and charges are just, reasonable and lawful.

The matter came on for hearing as scheduled. Respondents were represented by counsel. Mr. Don M. Elkins, Regional Transportation Manager, Phillips Petroleum Company, Atlanta, Georgia, appeared as an intervenor as his interests might be made to appear. The Commission's Staff was present and represented by Commission counsel.

Counsel for Respondents, at the call of this matter for hearing, offered for filing a motion seeking authority to withdraw a certain portion of the suspended tariff filing and amend certain other portions thereof as set forth in the motion, and as a matter of convenience also set forth in Exhibit A, a part hereof.

The Commission allowed said motion as hereinabove mentioned without prejudice to the filing of other tariff schedules by Respondents at some later date.

Respondents offered testimony through two witnesses, Mr. L. J. Steele, Coordinator of Traffic and Sales, M & M Tank Lines, Winston-Salem, North Carolina, and Mr. Carl Helms, Traffic Manager, Petroleum Transportation, Inc., Gastonia, North Carolina, tending to show that the proposed rules, as amended, and charges were just, reasonable and lawful. The testimony of Mr. Don M. Elkins, Regional Transportation Manager, Phillips Petroleum Company, Atlanta, Georgia, reflected no opposition to the suspended publication, as amended. The Staff presented one witness, Mr. I. H. Hinton, Assistant Director of Traffic, for the North Carolina Utilities Commission. This witness presented an exhibit which is of record and offered testimony setting forth his views with respect to this matter.

Upon consideration of the evidence adduced in this proceeding and the official record herein, the Commission makes the following

FINDINGS OF FACT

(1) That the motor common carriers participating in the tariff schedule under suspension in this proceeding are subject to the regulatory jurisdiction of the North Carolina Utilities Commission and are properly before the Commission in this proceeding.

(2) That the motion of Respondents for authority to withdraw in part, and amend in part, the tariff schedules under suspension and investigation in this proceeding was allowed.

(3) That the evidence adduced tends to show that the proposed charges for the various accessorial services are not unjust or unreasonable.

(4) That the suspended schedules, as amended by Respondents, except the amendment to Paragraph (b) of Item 115, hereinafter treated, will do no violence to the public interest and should be allowed to become effective.

(5) That the amendment to Paragraph (b) of Item 115, hereinabove mentioned, adding the words "at which such equipment is located" immediately following the word "terminal" and preceding the word "until" therein, as set forth in Respondents' motion, is not just, not reasonable, not in the public interest, and should not be allowed to become effective.

CONCLUSIONS

Based on the foregoing Findings of Fact and the record in this proceeding as a whole we conclude that Respondents should be allowed to withdraw and cancel suspended Item 40-B, to amend the remaining suspended tariff provisions as sought in motion filed in this docket at the hearing, except that portion of the amendment as described in Findings of Fact No. (5) hereinabove should be deleted therefrom, and, that as amended, same may be republished and filed as provided for in the Rules and Regulations of the Commission governing the construction and filing of transportation tariff schedules.

IT IS, THEREFORE, ORDERED:

(1) That the order of suspension and investigation in this docket be, and the same is hereby, vacated and set aside for the purpose of allowing the publication hereinafter authorized to be made.

(2) That Respondents be, and the same are hereby, authorized to withdraw and cancel Item 40-B and continue in effect the present tariff provisions.

(3) That Respondents also be, and the same hereby are, allowed to make the remaining portions of the suspended schedule effective after the affected portions have been revised to read as set forth in the carriers' motion offered and allowed at the hearing, and further, after the deletion of the words "at which such equipment is located" as described in said motion and named in Findings of Fact No. (5) hereinabove.

AND IT IS FURTHER ORDERED:

That publication herein authorized having been made the proceeding and the investigation instituted herein be discontinued and the same is hereby considered as discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A

ITEM 40-B (Motion Provides for Withdrawal)

(a) Gasoline, included blended gasoline; jet fuel; kerosene; naphtha and naphtha distillate, estimated weight 6.6 pounds per gallon. (See Note 1).

(b) Diesel fuel oil; fuel oil numbers 1, 2 and 3 not suitable for illuminating purposes; petroleum oil (lubricating); toluene, toluol; xylene; xylol, when a petroleum derivative in excess of 50 percent of petroleum estimated weight 7.4 pounds per gallon. (See Note 1).

Note 1 - Minimum loads shall be the calibrated capacity of vehicle. At no time shall the calibrated capacity of the vehicle be considered less than 6,000 gallons, except in cases where deliveries are made in municipalities which have ordinances restricting capacities of tank trucks making deliveries, in this case the minimum load will be 4,500 gallons.

ITEM 60-B (Motion Provides for Revision to Read)

(b) A loaded truck may be detained for a period of not more than one hour at the diversion or reconsigning point for the purpose of effecting diversion or reconsigning, without a detention charge. When a loaded truck is held by the consignor or consignee for more than one hour at the diversion or reconsigning point, a detention charge of $5.00 per one-half hour or fraction thereof in excess of the one hour free time will be assessed.

ITEM 115 (Motion Provides for Revision to Read)

(b) Time will be computed from the time the carrier's unit leaves the carrier's nearest terminal at which such equipment is located until the unit returns to that terminal.

(d) No other rules and regulations will apply to service under this item, other than those stated in this item, for such service.

(e) Mileage will be determined by the vehicles' odometer.

Note - Underlined portions added. The remaining portions of the items and not shown are to remain unchanged.

DOCKET NO. T-825, SUB 138

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of N. C. Food Express, Inc. - Suspension and Investigation of Proposed Increased Rates and Charges on Less-Than-Truckload Shipments Requiring Refrigeration While in Transit	) ORDER) OF) VACATION)

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on June 5, 1970

BEFORE: Commissioners John W. McDevitt, Hugh A. Wells (Presiding) and Miles H. Rhyne

APPEARANCES:

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Ruffin Building
Raleigh, North Carolina

No Protestants or Intervenors

WELLS, COMMISSIONER: This investigation was instituted by the Commission following the filing, on statutory notice, by N. C. Food Express, Inc., 1901 Freedom Drive, Charlotte, North Carolina 28208, of its Motor Freight Tariff No. 1, N.C.U.C. No. 2, which proposed the establishment of increased rates and charges for application on less-than-truckload shipments of commodities requiring refrigeration while in transit, scheduled to become effective April 29, 1970.

Upon consideration of the tariff schedule of increased rates the Commission concluded that the interest of the public was involved and by order dated April 28, 1970, suspended the publication to, and including August 31, 1970, instituted an investigation into and concerning the justness, reasonableness and lawfulness thereof, and assigned the matter for hearing on June 5, 1970. The order made N. C. Food Express, Inc., respondent and placed upon that carrier the burden of proving that the proposed increased rates and charges are just, reasonable and otherwise lawful.

No protests were filed prior to the hearing and no one appeared at the hearing in opposition to the proposed increased rates and charges.

Hearing, was held at captioned time and place. The Staff of the Commission was present and represented by the Commission Attorney. Respondent was not present nor was it represented by counsel.

The Staff of the Commission presented the Director of the Commission's Traffic Department as a witness, who offered evidence and testimony in regard to the level of the present rates and the measure of the proposed increase.

The witness offered an exhibit which compared the present and suspended rates of N. C. Food Express, Inc., applicable or proposed for application on less-than-truckload shipments of solid refrigerated products and other commodities requiring refrigeration during transportation by respondent carrier in North Carolina intrastate commerce.

The proposed rate for distances through 100 miles represents an increase of 28 percent over the present figure; for distances over 100 through 150 miles a rate of 185 cents per 100 pounds representing an increase of 23.3 percent is proposed, while the suspended rate proposed for application on shipments moving for distances of 151 through 200 miles represents an increase of 14.3 percent. No increase in rate or charges is proposed for application on shipments moving in excess of 200 miles.

The exhibit offered by the Staff also shows operating statistics of respondent carrier for the years 1967, 1968 and 1969. In 1967 gross revenues and operating expenses as reported by the carrier were the same, resulting in an operating ratio of 100 percent. In 1968 gross revenue was $54,900.06, operating expense $63,436.87, resulting in an operating ratio of 115.5 percent. The figures for 1969 were $57,453.49, $67,544.26 and 117.6 percent, respectively.

The witness testified further that by order dated December 5, 1969, in Docket No. T-825, Sub 121, carriers parties to the general class and commodity tariffs published by North Carolina publishing agents, for and on behalf of their member motor common carriers, were allowed an increase of fifteen (15) percent in their rates and charges applicable on less-than-truckload and any quantity shipments and that if the rates of respondent had been published for its account in an agency tariff respondent would have automatically received the increase of 15 percent.

Based on the evidence adduced at the hearing, the records of the Commission and the record in this proceeding as a whole we make the following

FINDINGS OF FACT

(1) That respondent, N. C. Food Express, Inc., a motor common carrier in North Carolina intrastate commerce of commodities requiring refrigeration while in the course of transportation, is subject to the jurisdiction of, and

regulation by this Commission, and is properly before the Commission in this proceeding.

(2) The suspended rates of respondent represent proposed increases ranging from 14.3 percent for the longer distances to 28 percent for distances less than 101 miles.

(3) That had the respondent's rates been published in one of the North Carolina agency tariffs respondent would have received an increase of fifteen (15) percent in its less-than-truckload rates under the provisions of this Commission's order of December 5, 1969, in Docket No. T-825, Sub 121.

(4) That respondent's present rates and charges are not sufficient to permit the carrier to continue to perform an adequate and efficient service to shippers of products requiring refrigeration while in transit.

(5) Respondent is in need of additional revenues and should be allowed to make an increase of not exceeding 15 percent in its less-than-truckload rates and charges, fractions to be disposed of in the manner hereinafter provided. Rates so constructed represent a just and reasonable adjustment.

Based on the evidence adduced of record and the foregoing Findings of Fact the Commission makes the following

CONCLUSIONS

Respondent should be required to withdraw and cancel the suspended rates and charges and should be permitted to republish rates reflecting an increase in its present rates not to exceed fifteen (15) percent.

IT IS ACCORDINGLY ORDERED:

(1) That the Commission's order of suspension and investigation in this proceeding be, and same hereby is, vacated and set aside for the purpose of allowing the publication hereinafter authorized to be made effective.

(2) That the suspended rates and charges be withdrawn and canceled and respondent be, and hereby is, authorized to republish less-than-truckload rates reflecting an increase not to exceed 15 percent in the present rates and charges, fractions of a cent to be disposed of by use of Item 1A, of Supplement 52, to Agent B. F. Moffitt's Tariff No. 3-F, N.C.U.C. No. 38, same being on file in the offices of the Commission for account of respondent.

(3) That publication authorized hereby may be made effective on one (1) day's notice to the Commission and the public but shall in all other respects comply with the Rules and Regulations of the Commission governing the

construction, publication and filing of transportation tariff schedules.

(4) That upon publication authorized herein having been made this proceeding be discontinued and same is hereby considered as discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 139

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Suspension and Investigation of Proposed Rates and Changes in Rules Applicable to Shipments of Asphalt, Scheduled to Become Effective May 18, 1970	) ORDER) OF) VACATION)

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 25, 1970

BEFORE: Chairman Harry T. Westcott, Commissioners John W. McDevitt and Miles H. Rhyne, Presiding

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon, Wooten, & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

RHYNE, COMMISSIONER: This investigation was instituted by the Commission following the filing on statutory notice, by the North Carolina Motor Carriers Association, Inc., Agent, (NCMCA), of Supplements Nos. 22 and 23 to its Motor Freight Tariff No. 16-C, N.C.U.C. No. 69, proposing an increase of three (3) percent in the rates (Supplement No. 23) and changes in rules (Supplement No. 22) applicable on shipments of asphalt in bulk, moving between points and places in the State in tank truckloads. The schedules were published by North Carolina Motor Carriers Association, Inc., for and on behalf of its member carriers having authority to engage in the transportation of asphalt, in bulk, in tank truckloads.

Upon consideration of the named tariff schedules, the Commission concluded that the interest of the public was affected and by order dated April 29, 1970, suspended the involved tariff schedules to and including September 30, 1970, instituted an investigation into and concerning the lawfulness thereof, and assigned the matter for hearing on June 25, 1970. The order made carriers proposing to participate in the suspended schedules Respondents and placed upon said carriers the burden of proving that the proposed increase and rule changes are just, reasonable, and are otherwise lawful.

American Oil Company, P. O. Box 5690, Chicago, Illinois 60680 (American), and Chevron Asphalt Company, 501 St. Paul Place, Baltimore, Maryland 21202 (Chevron), filed protests to and petitions for suspension of Supplement No. 23 that were not received until May 4 and May 6, respectively, subsequent to the issuance by the Commission of its Order of Suspension and Investigation. The proposed rule changes contained in Supplement No. 22 were not subjected to protest.

The protests of both American and Chevron allege that the proposed increase of three (3) percent in the North Carolina intrastate rates, if allowed to become effective, will result in their competitors in adjoining states having a competitive advantage in the marketing of asphalt in certain areas of the State. American has storage and blending facilities for marketing and distribution of asphalt at Wilmington and encounters competition from producers in Charleston, South Carolina. Chevron has installations for production and distribution of asphalt at Wilmington and Salisbury, North Carolina, and also encounters competition from distributors of that commodity located in adjoining states.

Hearing was held at captioned time and place with witnesses for the respondent motor carriers present and represented by counsel. Representatives of protestants American and Chevron were also present but were not represented by counsel.

At the call of the hearing, counsel for respondent motor carriers stated that inasmuch as the present asphalt hauling season was about midway, the Respondents had agreed with the shippers of asphalt that they would request the Commission to make the proposed increase in rates and changes in rules effective November 1, 1970, and the protestants, American and Chevron, stated they would withdraw their protests on the stipulation that the increased rates would not become effective until November 1, 1970, if approved.

A witness for the Respondents, at the outset of the hearing, testified in regard to the basis for the present and proposed rates and to the nature of the proposed rule changes. He testified further that the proposed increase filing was not made for overall revenue needs but was based

upon an effort to recoup additional taxes and involved expenses placed upon the carriers in 1969 by the Federal Government and the State Legislature. He also testified that the purpose of the proposed rules was to cause a quicker turn-around of equipment and get it back into revenue producing service.

Respondents presented additional witnesses that offered testimony dealing with the operating experiences of individual asphalt carriers.

The Vice-President and Manager of A. C. Widenhouse, Inc., (Widenhouse) testified in regard to the operating experience of his company. The testimony of this witness tends to show that Widenhouse transports both asphalt and petroleum but that the major portion of its revenue is derived from asphalt movements. The witness testified further that his company's petroleum traffic moves in short-haul service resulting in better utilization of equipment at lower cost while the asphalt traffic moves in longer hauls for job-site delivery with attendant higher costs and that asphalt is a seasonable commodity moving between March and December. The witness, using 1969 as a base year, projected the proposed three (3) percent increase to show the results if it had been in effect during the 1970 season. The projection indicated a revenue increase of $17,901.82. Of this increase, $3,508.36 would go to the drivers; $5,577.04 for increased fuel tax; $7,920.50, increased license fees and $875.00, increased Federal Use Tax, for a total of $17,880.90, leaving only approximately a $20.00 balance of the total projected increase, and these figures do not include allowances for increased equipment cost or insurance. The witness testified further that the proposed rule changes were not to earn additional revenue but to enable his company to better utilize its equipment.

The Traffic Manager of Petroleum Transportation, Inc., testified in regard to operating experiences of his company in relation to the transportation of asphalt, which produces approximately 2.1 percent of the total revenue. This witness also projected the proposed three (3) percent increase, based upon 1969 revenue, and indicated the additional revenue generated for his company would be $481.28. Of this figure, $96.26 would be for the drivers; $210.86, increased fuel tax; $264.29, increased license fees, and $54.18, Federal Use Tax, for a total of $625.59, leaving a deficit of $197.31. The increased taxes totaling $529.33 are more than the proposed increase will produce. The witness also testified as to the increased cost of equipment with tractors having increased from $18,000 each in 1968 to over $20,000 each in 1970, and the systemwide operating cost of his company is forty (40) cents per mile.

The Commission's staff presented two exhibits, one of which tended to show that the present minimum earnings of the carriers for the longer distances are low and for the medium distances appear to be marginal. The other exhibit

presented showed for the years 1967, 1968 and 1969 the operating expenses and operating ratios of Respondents herein as extracted from the annual reports of the carriers on file with the Accounting Department of this Commission.

Upon consideration of the evidence adduced in this proceeding, the official record herein and the pertinent records of the Commission of which judicial notice has been taken, the Commission makes the following

FINDINGS OF FACT

1. That respondent motor carriers participating in the tariff schedules under suspension in this proceeding are subject to the jurisdiction of and regulation by this Commission and are properly before the Commission in this proceeding.

2. That the operating costs of transporting asphalt have increased since April of 1968, the date of the last increase in rates.

3. That the minimum weight attached to the rates on asphalt was increased from 40,000 pounds to 45,000 pounds, or the calibrated capacity of the vehicle, whichever is the lesser, effective August 24, 1969.

4. That the increase in minimum weight resulted in very little, if any, increase in revenues of respondent carriers.

5. That the proposed rules and proposed changes therein are not unjust or unreasonable and should be allowed to become effective.

6. That in a prior proceeding this Commission has found that asphalt should move at uniform rates by all motor carriers, including common and contract alike.

7. That the proposed rates will be just and reasonable and should be allowed to become effective and shall constitute rates for all carriers of asphalt, in bulk, in tank trucks, common and contract alike.

CONCLUSIONS

Based on the foregoing Findings of Fact and the record in this proceeding as a whole, we conclude that the Respondents have shown a necessity for the additional revenue the proposed increase will produce and a need for the proposed rules changes which will enhance the utilization of their equipment, and that the suspended tariff schedules should be allowed to become effective.

IT IS THEREFORE ORDERED:-

1. That the Order of Suspension in this Docket dated April 29, 1970, be, and the same is hereby, vacated and set

aside, for the purpose of allowing the suspended tariff schedules as hereinbefore named and described to become effective.

2. That publication authorized hereby, may be made on one (1) day's notice to the Commission and to the public, to become effective not earlier than November 1, 1970, but in all other respects shall comply with the Rules and Regulations of the Commission governing the construction, filing and posting of tariff schedules.

3. That upon publication hereby authorized having been made the investigation in this matter be discontinued, and same is considered as discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-825, SUB 140

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension and Investigation of Proposed Increased Minimum Charge Per Shipment, Scheduled to Become Effective June 22, 1970) ORDER) OF) VACATION)

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on August 18 and 19, 1970, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
C. H. Noah
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WESTCOTT, CHAIRMAN: This investigation was instituted by the Commission following the filing, on statutory notice, by Motor Carriers Traffic Association, Inc., Agent, P. O. Box 1500, Greensboro, North Carolina, North Carolina Motor Carriers Association, Inc., Agent, P. O. Box 2977, Raleigh, North Carolina, and Southern Motor Carriers Rate Conference, Agent, P. O. Box 7347, Station C., Atlanta, Georgia, of tariff schedules, for and on behalf of certain of their member carriers proposing an increase in their minimum charge for a single shipment moving in North Carolina intrastate commerce from $3.50 to $4.50, same being scheduled to become effective June 22, 1970, and designated as follows:

Motor Carriers Traffic Association, Inc., Agent: Motor Freight Tariff No. 3-P, N.C.U.C. No. 38, Supplement No. 62, Item 100065-C, thereof,

North Carolina Motor Carriers Association, Inc., Agent: Motor Freight Tariff No. 10-D, N.C.U.C. No. 76, Supplement No. 130, Item 205260, thereof,

Southern Motor Carriers Rate Conference, Agent: Motor Freight Tariff No. 137-H, N.C.U.C. No. 37, Supplement No. 58, Item 201940-C, thereof.

Upon consideration of named tariff filings, the Commission concluded that the interest of the public was affected and by order dated June 4, 1970, suspended the involved tariff schedules to and including October 31, 1970, instituted an investigation into and concerning the lawfulness thereof, and assigned the matter for hearing on August 18, 1970. The order made carriers proposing to participate in the suspended schedules Respondents and placed upon said carriers the burden of proving that the proposed minimum charge per single shipment is just, reasonable, is not the means of creating discrimination, preference or prejudice and is otherwise lawful.

Hearing was held at captioned time and place with witnesses for the Respondents present and represented by counsel. There was one letter-protest in opposition to the proposed increased minimum charge filed prior to the hearing, but upon call of the matter for hearing no one appeared as a protestant.

Several of the respondent motor carriers presented as witnesses officers of their respective companies who testified as to their companies' experience in transporting shipments that fall within the minimum charge category. Their testimony and exhibits tend to show that these minimum charge shipments consisted of up to 52.5 percent of the total number of shipments moving in North Carolina

intrastate commerce handled by their companies, while the revenue derived therefrom was considerably less than 50 percent. The testimony of these witnesses also tends to show that the attendant cost in transporting minimum charge shipments is greater than the present minimum charge of $3.50.

The Respondents also presented as a witness a cost expert who, by using data derived from a continuing traffic study in which many of the Respondents participate, and data derived from two special traffic studies, introduced testimony and exhibits which tend to show that the respondent motor carriers' revenue received for transporting minimum charge shipments does not cover the cost of providing this service. This witness testified that the North Carolina terminal cost of handling minimum charge shipments in single-line service is $5.64 per shipment computed as follows: pickup and delivery, $3.92; platform handling, $.97; billing and collecting, $.75, for a total origin and destination cost of $5.64. The traffic studies conducted by Respondents indicate that the average haul and average weight of a minimum charge shipment moving in single-line service is 107 miles and 169 pounds, respectively. Using the line-haul system unit cost per hundredweight mile, as shown to be .18740 cents, the average minimum charge shipment would accrue line-haul cost of 34 cents which, added to the terminal cost of $5.64, would result in a total cost per average shipment of $5.98 for which the Respondents presently receive $3.50.

A shipper witness appearing in support of the proposed increased minimum charge testified that his company, a major manufacturer of telephone cable, needed the minimum shipment service and that approximately 25 percent of the total number of shipments made by his company were minimum charge shipments. He testified further that his company felt with the additional revenue the Respondents would derive from the proposed increase that the service offered on this type traffic would improve. He also stated that next-day delivery on these small shipments was a necessity and that carriers would be in a better financial position to do this if the increase were allowed to become effective.

Upon consideration of the evidence adduced in this proceeding, the official record herein and the pertinent records of the Commission, of which judicial notice has been taken, the Commission makes the following

FINDINGS OF FACT

1. That respondent motor carriers participating in the tariff schedules under suspension in this proceeding are subject to the jurisdiction of and regulation by this Commission and are properly before the Commission in this proceeding.

2. That the operating costs of transporting minimum charge shipments have increased since June of 1969, the date of the last increase in the minimum charge for a single shipment.

3. That the present minimum charge per shipment of $3.50 is not sufficient to offset the attendant cost of handling and transporting a minimum charge shipment.

4. That the proposed minimum charge of $4.50 per shipment will be just and reasonable and should be allowed to become effective.

CONCLUSIONS

The cost figures of respondent motor carriers are based on the cost finding formulae of the Interstate Commerce Commission, which have not been approved by this Commission for determining intrastate costs, and the correctness of same is questionable. Nevertheless, based upon the foregoing Findings of Fact and the record in this proceeding as a whole, we conclude that the Respondents have shown need for the additional revenue the proposed increase in the minimum charge for a single shipment will produce, that the proposed charge is not excessive, and that the suspended tariff schedules should be allowed to become effective.

IT IS THEREFORE ORDERED:

1. That the Order of Suspension in this docket dated June 4, 1970, be, and the same is hereby, vacated and set aside for the purpose of allowing the suspended tariff schedules, as hereinbefore named and described, to become effective.

2. That publication authorized hereby may be made on one (1) day's notice to the Commission and to the public, but, in all other respects, shall comply with the Rules and Regulations of the Commission governing the construction, filing and posting of tariff schedules.

3. That upon publication hereby authorized having been made, the investigation in this matter be discontinued, and this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1084, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application to Transfer Common Carrier) RECOMMENDED
Certificate No. C-358 from Earl Stevens & I.R.) ORDER
Stevens, d/b/a I.J. Stevens & Sons to F.W.)
Groves Trucking Company (a corporation))

HEARD IN: Commission's Hearing Room, Raleigh, North Carolina, on September 1, 1970, at 9:30 a.m.

BEFORE: E. A. Hughes, Examiner

APPEARANCES:

For the Applicants:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestants:

A. W. Flynn, Jr.
York, Boyd & Flynn
P. O. Box 180, Greensboro, North Carolina
Appearing for M & M Tank Lines, Inc.

J. Ruffin Bailey
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
Appearing for Schwerman Trucking Company
Kenan Transport Company
Southern Oil Transportation Co.
East Coast Transport Co., Inc.
Eagle Transport Corporation
Petroleum Transportation, Inc.
Bulk Haulers, Inc.
Public Transport Corporation

HUGHES, EXAMINER: By joint application filed with the Commission on July 24, 1970, Earl Stevens & I. R. Stevens, d/b/a I. J. Stevens & Sons, Wilmington, North Carolina, as Transferor, and F. W. Groves Trucking Company (a corporation), Route 1, Box 44, Leland, North Carolina, as Transferee, seek approval of the transfer from said Transferor to said Transferee of all of the authority contained in Certificate No. C-358. The involved authority reads as follows:

"(1) Transportation of fertilizer and fertilizer materials including ordinary fertilizer, fish scrap, lime, manure and related soil fertilization materials, from

all points and places within the counties of Pender, Onslow, New Hanover and Brunswick to all points and places in the State of North Carolina, and return from all points and places within the State to all points and places within the counties of Pender, Onslow, New Hanover and Brunswick.

"(2) Transportation of building materials, including lumber, rough or dressed, flooring, weatherboarding, sheeting, roofing, cut stone, slats, tile, brick, cement, and cinder blocks, as well as all other building materials usually transported in flatbed trucks, from all points and places within the counties of Pender, Onslow, New Hanover and Brunswick to all points and places in the State of North Carolina, and return from all points and places within the State to all points and places within the counties of Pender, Onslow, New Hanover and Brunswick.

"(3) Transportation of general commodities, except those requiring special equipment, between New Hanover County and all points and places in the State of North Carolina on and east of U. S. Highway 21. LIMITATION: Transportation of these commodities is limited to a movement from one consignor at one time on the same truck.

"(4) Transportation of cotton in bales in truck loads from markets or places of storage to other places of storage, manufacturing, or shipping points, between Wilmington, North Carolina, and all points and places in the State of North Carolina.

"(5) Transportation of liquefied petroleum gases and empty cylinders between all points and places in the State of North Carolina on and east of U. S. Highway 21.

"(6) Retail Store Delivery Service, including the delivery of merchandise from retail stores to their customers and the return or exchange of such merchandise, within the Cities of Wilmington, Goldsboro and Wilson, and their adjoining trade areas."

Notice of the application, together with a description of the involved rights, along with the time and place of hearing was published in the Commission's Calendar of Hearings issued August 12, 1970. Protests were timely filed by M & M Tank Lines, Inc., Schwerman Trucking Company, Kenan Transport Company, Southern Oil Transportation Co., East Coast Transport Co., Inc., Eagle Transport Corporation, Petroleum Transportation, Inc., Bulk Haulers, Inc., and Public Transport Corporation. Protestants contend that the commodities, fertilizer and fertilizer materials as shown in Item (1), cement as shown in Item (2) and liquefied petroleum gas as shown in Item (5), of the authority proposed to be transferred, have never been transported by

Transferor in bulk in tank trucks and that if the transfer is approved, said approval should contain a restriction which would prohibit the transportation of fertilizer and fertilizer materials, cement and liquefied petroleum gas in bulk in tank trucks.

The evidence and the records of the Commission tend to show that Transferor began operations in 1945 and acquired a certificate under the grandfather provision of the Truck Act of 1947; that Transferor has operated continuously and is presently operating within its scope of authority with one exception, said exception being Retail Store Delivery Service as shown in Item (6) which authority has never been operated since it was acquired by Transferor; that a contract between Transferor and Transferee was entered into under the provisions of which Transferor agreed to sell and Transferee agreed to purchase all of the operating rights of Transferor under Certificate No. C-358 for a total consideration in the amount of $10,000. It further appears from the application and the evidence that there are no debts or claims against Transferor of the nature specified in G.S. 62-111(c). It appears further from the evidence presented that Transferor has never transported nor held itself out to transport liquid fertilizer and liquid fertilizer materials, in bulk in tank trucks, cement in bulk in tank trucks or liquefied petroleum gas in bulk in tank trucks.

The evidence further shows that Transferee, F. W. Groves Trucking Company is a corporation organized under the laws of the State of North Carolina; that said Transferee is the holder of a common carrier certificate heretofore issued to Transferee by the North Carolina Utilities Commission authorizing the transportation of certain specific commodities, which in part duplicate a portion of the authority sought to be transferred, namely, Building Materials, as described in Group 10 of Rule R2-37; that operations are presently being carried on thereunder and that said Transferee corporation is fully qualified financially and otherwise to acquire the authority to be transferred and to conduct operations thereunder in a manner satisfactory to the shipping public and to this Commission.

Upon consideration of the evidence adduced, all of the testimony as well as the records of the Commission, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That Transferor is a common carrier by motor vehicle subject to the jurisdiction of this Commission and as such is authorized to engage in intrastate transportation of the commodities shown within the territory as hereinabove described and has held itself out continuously since the acquisition of such authority to engage in such transportation, with the exception of Retail Store Delivery

Service as described in Item (6), which has never been operated;

(2) That the words "fertilizer" and "fertilizer materials" as contained in Item (1) of the authority proposed to be transferred have heretofore been construed by the Commission in its Administrative Ruling of April 17, 1969, in General Order No. 4066-W, to mean "dry fertilizer" and "dry fertilizer materials,"

(3) That Transferor has never held itself out to engage in the transportation of cement other than in bags; that Transferor owns no equipment for the transportation of cement in bulk and has never offered to handle such commodity except in bags, on flat bed trucks as contemplated in its authority as issued by the Commission,

(4) That Transferor has never transported or held itself out to engage in the transportation of liquefied petroleum gas in bulk in tank trucks and that the transportation of such commodity has been limited to its transportation in cylinders as contemplated in the authority under Item (5) as issued by the Commission,

(5) That the Retail Store Delivery Service as authorized in Item (6) has never been operated and no service has been performed under said authority since it was acquired by Transferor by purchase in 1956 and that said authority to engage in Retail Store Delivery Service is dormant and should be cancelled under the provisions of G.S. 62-112(c).

(6) That Transferor and Transferee have entered into a written contract for the sale and transfer of said certificate, under the terms of which the total consideration involved in the proposed transaction is $10,000,

(7) That there are no debts or claims against Transferor of the nature specified in G.S. 62-111(c),

(8) That Transferee, Groves, is a corporation organized under the laws of the State of North Carolina and that said Transferee is the holder of a certificate heretofore issued by this Commission and is qualified financially and otherwise to acquire the authority sought to be transferred and to render satisfactory service on a continuing basis and

(9) That the transfer of the authority described in Exhibit B hereto attached will not create an additional carrier in competition with existing carriers and that the proposed transfer and sale, with the exception of the Retail Store Delivery Service authority and with the imposition of certain restrictions on the transportation of cement and liquefied petroleum gas, is justified by the public convenience and necessity as contemplated under G.S. 62-111.

CONCLUSIONS

It is clear from the evidence that Transferor has never transported liquid fertilizer and liquid fertilizer materials in bulk in tank trucks or cement in bulk in tank trucks or liquefied petroleum gas in bulk in tank trucks, nor has Transferor, since the acquisition of the respective authorities held itself out to engage in the transportation of said commodities in bulk in tank trucks or owned any equipment suitable for their transportation in bulk in tank trucks. It also appears clear from the Commission's Administrative Ruling in Docket No. 4066-W that Transferor holds no authority to engage in the transportation of liquid fertilizer and liquid fertilizer materials and that the wording of the authority granting the cement and liquefied petroleum gas rights contemplates that said cement would be transported on flat bed trucks and that the liquefied petroleum gas would be transported in cylinders. The Hearing Examiner, therefore, concludes that for clarification, the word "fertilizer" wherever it appears in the authority should be preceded by the word "dry" and that said cement and liquefied petroleum gas authority should be restricted against the transportation of such commodities in bulk in tank trucks.

In all other respects, the Hearing Examiner concludes that Applicants have borne the required burden of proof and that the sale and transfer of Items (1) through (5) more particularly described and restricted in Exhibit B hereto attached from Earl Stevens and I. R. Stevens, d/b/a I. J. Stevens & Sons to F. W. Groves Trucking Company (a corporation) should be approved.

The Hearing Examiner further concludes that the failure of Transferor to exercise the authority described in paragraph (6) has rendered said authority dormant and that said authority should now be cancelled.

IT IS, THEREFORE, ORDERED:

(1) That the sale and transfer of the authority more fully described and restricted in Exhibit B hereto attached from Earl Stevens and I. R. Stevens, d/b/a I. J. Stevens & Sons to F. W. Groves Trucking Company (a corporation) be, and the same is, hereby approved.

(2) That the Retail Store Delivery Service authority as specified in paragraph (6) of the authority proposed to be transferred be, and the same is, hereby cancelled.

(3) That F. W. Groves Trucking Company (a corporation) comply with the Commission's rules and regulations relative to the filing of tariffs to cover the newly acquired authority and otherwise comply with the rules and regulations of the Utilities Commission and begin operations thereunder within thirty (30) days from the date this order becomes final.

(4) That the authority granted herein to the extent that it duplicates any authority heretofore granted to or now held by Transferee shall not be construed as conferring more than one operating right.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Deputy Clerk

DOCKET NO. T-1084 SUB 5

Groves, F. W., Trucking Company
(a corporation)
Irregular Route Common Carrier
Leland, North Carolina

EXHIBIT B

(1) Transportation of dry fertilizer and dry fertilizer materials including ordinary dry fertilizer, fish scrap, lime, manure and related soil fertilization materials, from all points and places within the counties of Pender, Onslow, New Hanover and Brunswick to all points and places in the State of North Carolina, and return from all points and places within the State to all points and places within the counties of Pender, Onslow, New Hanover and Brunswick.

(2) Transportation of building materials, including lumber, rough or dressed, flooring, weatherboarding, sheeting, roofing, cut stone, slats, tile, brick, cement, and cinder blocks, as well as all other building materials usually transported in flat bed trucks, from all points and places within the counties of Pender, Onslow, New Hanover and Brunswick to all points and places in the State of North Carolina, and return from all points and places within the State to all points and places within the counties of Pender, Onslow, New Hanover and Brunswick.

(3) Transportation of general commodities, except those requiring special equipment, between New Hanover County and all points and places in the State of North Carolina on and east of U. S. Highway 21.
LIMITATION: Transportation of these commodities is limited to a movement from one consignor at one time on the same truck.

(4) Transportation of cotton in bales in truckloads from markets or places of storage to other places of storage, manufacturing, or shipping points, between Wilmington, North Carolina, and all points and places in the State of North Carolina.

(5) Transportation of liquefied petroleum gases and empty cylinders between all points and places in the State of North Carolina on and east of U. S. Highway 21.

RESTRICTION: That cement as it appears in Item (2) and liquefied petroleum gases as it appears in Item (5) cannot be transported in bulk in tank trucks.

DOCKET NO. T-1526

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Sale and transfer of CP-27 from Elmer N. Wilkinson, d/b/a Elmer N. Wilkinson Transfer, Mebane, North Carolina, to Manly Ray, d/b/a Manly-Ray-Moving, 113 Trail One, Burlington, North Carolina	) RECOMMENDED) ORDER) APPROVING) TRANSFER)

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on September 1, 1970, at 2:00 p.m.

BEFORE: Hugh A. Wells, Commissioner

APPEARANCES:

For the Applicant:

Elmer N. Wilkinson (Transferor)
Mebane, North Carolina
For: Himself

Manly Ray (Transferee)
113 Trail One
Burlington, North Carolina
For: Himself

WELLS, COMMISSIONER: This matter came on for hearing at the above stated time and place upon the application of Elmer N. Wilkinson, Transferor, and Manly Ray, Transferee, to transfer Common Carrier Certificate No. CP-27. Notice of the application and of the time and place of the hearing

upon the application was published in the Commission's Calendar of Hearings issued August 12, 1970.

On August 26, 1970, protests to the application were filed on behalf of Merchant's Pickup and Delivery Service, Inc., Burlington, North Carolina; Carolina Transfer & Storage Co., Charlotte, North Carolina; Alamance Transfer & Storage Co., Inc., Burlington, North Carolina; W. C. Roney Trucking Co., Burlington, North Carolina; and Tatum-Dalton Transfer Company, Greensboro, North Carolina.

When the matter came on for hearing applicants Wilkinson and Manly were present. Protestants were not present and were not represented at the hearing by counsel. No other persons appeared at the hearing in protest of the application.

Mr. Wilkinson testified that he had not been operating his common carrier certificate for some time due to poor health and that he had been previously authorized by the Commission to suspend his operations due to these circumstances. He further testified that he had been personally acquainted with Manly Ray for many years and knew Mr. Ray to be experienced in the household moving business and knew him to be a reputable and dependable person.

Mr. Ray testified as to his fitness and ability to exercise the rights under Certificate No. CP-27 and testified that he fully intended to provide service to the public under said certificate.

FINDINGS OF FACT

1. Pursuant to a Show Cause Order and based upon the evidence adduced at the hearing held under that order (in Docket No. T-773, Sub 1) the Commission, by order dated August 7, 1970, suspended the common carrier authority of Elmer N. Wilkinson under Certificate No. CP-27, for a period of 90 days, due to Mr. Wilkinson's poor health.

2. During said period of suspension, on August 10, 1970, Wilkinson and Ray filed with the Commission an application for transfer of said certificate to Ray.

3. Subsequently, on August 26, 1970, protests were filed on behalf of protestants hereinbefore mentioned alleging that the public convenience and necessity did not justify the proposed transfer; that the authority to be transferred was dormant; and that the applicant Ray is not able and willing to operate the authority under said certificate.

4. The certificate sought to be transferred is not dormant but is under temporary suspension by previous order of the Commission, by reason of the certificate holder's physical disability.

5. Applicant Ray has many years experience in the household goods moving business, is financially able to assume and carry out the operating rights under said certificate, and has indicated his willingness to actively engage in serving the public under said certificate.

6. Protestants have adduced no evidence to show the proposed transfer would be contrary to the public convenience and necessity.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The proposed transfer of operating rights considered in this application will serve the public convenience and necessity and is justified under the evidence and Findings of Fact herein.

IT IS, THEREFORE, ORDERED:

1. That Certificate No. CP-27 heretofore issued to Elmer N. Wilkinson, d/b/a Elmer N. Wilkinson Transfer, and all rights thereunder, as set out in Exhibit B attached hereto, be, and hereby are transferred to Manly Ray, d/b/a Manly-Ray-Moving.

2. That Transferee file evidence of insurance, a tariff of rates and charges, a list of equipment, a designation of process agent, and otherwise comply with the rules and regulations of this Commission, and begin operations under the authority herein acquired within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of September, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1526

Manly Ray, d/b/a Manly-Ray-Moving
113 Trail One
Burlington, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of

such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, between all points and places throughout the State of North Carolina. This authority does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants.

DOCKET NO. T-1492

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application to transfer Common Carrier Certificate No. C-578 from Tarheel Express, Inc., a North Carolina corporation, of Hickory, North Carolina, to North Carolina Express, Inc., a North Carolina corporation, of High Point, North Carolina	) ORDER) APPROVING) TRANSFER) AND) REQUIRING) SECURITY

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, March 12, 1970, at 10:00 a.m.

BEFORE: Commissioners Hugh A. Wells, Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

Arch Schoch, Sr.
Schoch, Schoch & Schoch
Attorneys at Law
Professional Building
High Point, North Carolina
For: North Carolina Express, Inc.

For the Intervenors:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina
For: M. & H. Trucking Company, Inc.
Tallant Transfer, Inc.
Tarheel Express, Inc.

WOOTEN, COMMISSIONER: This matter arises upon a joint application of North Carolina Express, Inc., High Point, North Carolina, and Tarheel Express, Inc., Hickory, North Carolina, wherein approval is sought for the sale and transfer of authority contained in Certificate No. C-578 from Tarheel Express, Inc., to North Carolina Express, Inc. Notice of the application was given in this case in the Commission's Calendar of Hearings issued on January 12, 1970. No protests were filed and no one appeared in opposition to the application as filed.

M. & H. Trucking Company, Inc., and Tallant Transfer, Inc., were permitted to intervene in this case, it appearing that they had an interest in the matter.

Testifying for the applicant and in favor of the application were: Julian S. Puckett, Hickory, North Carolina, President of North Carolina Express, Inc.; John H. Digh, General Manager of Tarheel Express, Inc.; and Eugene M. Holland, Hickory, North Carolina, Traffic Manager for Tallant Transfer, Inc.

It was stipulated by the parties that M. & H. Trucking Company, Inc., was the holder of certain common carrier operating rights issued by this Commission, which are presently under lease to Tarheel Express, Inc., and that the sale and transfer in this case did not include the common carrier rights owned by M. & H. Trucking Company, Inc., and that it was understood and agreed upon by and between the parties that immediately upon the final consummation of the sale and transfer herein contemplated M. & H. Trucking Company, Inc., would begin the active operation of its rights and that the lease of the same to Tarheel Express, Inc., would thereupon end.

It was further agreed and stipulated by attorney for Tallant Transfer, Inc., that the said Tallant Transfer, Inc., would waive its right to any security or bond under applicable statutes to secure the payment of the interline account due and payable by Tarheel Express, Inc., to Tallant Transfer, Inc., provided the transferor (North Carolina Express, Inc.) would include the name of Tallant Transfer, Inc., on the check or draft making payments required by the contract between the parties with reference to the transfer in this case. North Carolina Express, Inc., agreed that it would in making any payments under its contract include the name of both Tallant Transfer, Inc., and Tarheel Express, Inc., on checks issued in payment thereunder, which agreement was joined in by Tarheel Express, Inc.

Upon consideration of the evidence, the Commission makes the following

FINDINGS OF FACT

1. Tarheel Express, Inc., of Hickory, North Carolina, is an irregular route common carrier of general commodities by

motor vehicle, authorized to engage in North Carolina intrastate commerce by Certificate No. C-578, and is the owner of said certificate.

2. Tarheel Express, Inc., agrees to sell and North Carolina Express, Inc., agrees to buy the Certificate No. C-578 of the former.

3. North Carolina Express, Inc., is a North Carolina corporation, which is financially responsible, and whose officers have been and are engaged in the transportation of property by motor vehicle intrastate, and it is fit, willing and able to properly operate the North Carolina intrastate authority covered by Certificate No. C-578 proposed to be transferred.

4. The sale and transfer in this case under the contract between the parties is to be paid at the rate of $25,000 in cash upon consummation, and $25,000 one year and one day thereafter at an interest rate of 7-1/2%. By agreement between parties the said $50,000 is to be paid by check which shall be made payable to Tarheel Express, Inc., and Tallant Transfer, Inc. The $50,000 consideration in this case covers the purchase price agreed upon by the parties for the transfer from the transferor to the transferee of the transferor's operating authority embraced in the State of North Carolina Utilities Commission Certificate No. C-578 and Interstate Commerce Commission Certificate of Registration No. MC-99334 (Sub-No. 2). At the time of the execution of the contract between the parties thereto on November 29, 1969, North Carolina Express, Inc., agreed to and did place $5,000 on deposit with the First National Bank of Catawba County, Hickory, North Carolina, to be payable to Tarheel Express, Inc., upon consummation of the transaction contemplated herein, which said $5,000 is included in a part of the total $50,000 consideration.

5. Tarheel Express, Inc., has certain liabilities which include but are not limited to an interline account due and payable to Tallant Transfer, Inc., in the amount of $85,441.01; an overcharge claim payable to the United States Government in the amount of $621.23, 50% of which is interline; a loss or damage claim due and payable to a customer in Lenoir, North Carolina, in the amount of $5.00; a contested loss claim by Drexel Furniture Industries in the amount of $808.25; withholding taxes due the State of North Carolina for wages withheld from employees in the amount of $184.70; wages to officers and employees in the amount of $11,051 which is for current payroll; and other liabilities to general creditors for insurance, gas, etc., in the amount of $12,581.19, said transferors' accounts receivable, which are current, total $15,310.41 against which there are no charges which are not included in the liabilities listed above. The estimated value of the present rolling stock of Tarheel Express, Inc., is approximately $35,000. Tarheel owns office equipment and supplies in the approximate value of $4,000 - $5,000.

6. The transfer in this case is justified by the public convenience and necessity.

CONCLUSIONS

1. In accordance with the provisions of G.S. 62-111(a) we conclude that the Commission must approve the transfer herein, in that the parties have agreed to the same and have filed application with this Commission seeking approval, and in the light of the fact that the Commission has herein above found as a fact that this transfer is justified by the public convenience and necessity.

2. We further conclude that there are and will be, prior to the final date of the consummation of the sale in this case, certain outstanding debts and claims against the seller of a class and kind set forth in G.S. 62-111(c), including: (i) for gross receipts, use or privilege taxes due or to become due the State, as provided in the Revenue Act, (ii) for wages due employees of the seller, other than salaries of officers, (iii) for unremitted c.o.d. collections due shippers, (iv) for loss of or damage to goods transported, or received for transportation, (v) for overcharges on property transported, and (vi) for interline accounts due other carriers.

3. The Commission concludes that Tarheel Express, Inc., must provide appropriate security for the payment of all outstanding claims or debts of the class and kind enumerated in the paragraph next preceding, excluding its interline account with Tallant Transfer, Inc., in the amount of $85,441.01, in connection with which the creditor has waived its right to such security; and that the $5,000 heretofore paid in escrow by the purchaser to the First National Bank of Catawba County is a sufficient sum with which to provide appropriate security authorized under G.S. 62-111(c), which said security should be released upon the payment of all claims enumerated in Conclusion No. 2 above and upon the filing of an affidavit to that effect with this Commission.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application filed by Tarheel Express, Inc., and North Carolina Express, Inc., for the transfer of intrastate operating authority in Certificate No. C-578 issued to Tarheel Express, Inc., Hickory, North Carolina, to North Carolina Express, Inc., High Point, North Carolina, be, and the same is, hereby approved.

2. That North Carolina Express, Inc., be, and it is, hereby required to file its evidence of insurance, tariffs of rates and charges, and otherwise comply with the rules and regulations of this Commission within 30 days from this date.

3. That Certificate No. C-578, containing authority as described in Exhibit B attached hereto be transferred from

Tarheel Express, Inc., to North Carolina Express, Inc., and that North Carolina Express, Inc., notify this Commission the date on which the transfer is consummated.

4. That the $5,000 placed on deposit by North Carolina Express, Inc., with the First National Bank of Catawba County, Hickory, North Carolina, on October 13, 1969, shall remain in escrow and shall not be paid to nor received by North Carolina Express, Inc., Tarheel Express, Inc., and/or Tallant Transfer, Inc., or any other person, firm or corporation pending further orders of this Commission.

5. That the $5,000 in escrow frozen by Ordering Paragraph 4 above shall be immediately released by order of this Commission upon the payment of all claims of the class and kind enumerated in Conclusion No. 2 herein and the filing of an appropriate affidavit with reference thereto with this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1492

North Carolina Express, Inc.
105 South Perry Street
High Point, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of general commodities, except those requiring special equipment, over irregular routes, between points and places in the counties of Cabarrus, Alamance, Cherokee, Cumberland, Davie, Davidson, Forsyth, Gaston, Durham, Cleveland, Halifax, Iredell, Jackson, Johnston, Lee, Mecklenburg, Montgomery, McDowell, Randolph, Rockingham, Richmond, Rowan, Surry, Stanly, Anson, Caldwell, Edgecombe, Catawba, Guilford, Haywood, New Hanover, Henderson, Wilkes, Union, Vance, Wake, Buncombe, Burke, Alexander, Harnett, Lincoln, Scotland, Robeson, Hoke, Moore, Wayne, Columbus, Wilson and Pasquotank.

Transportation of furniture and furniture parts, new, between Iredell County and points and places in North Carolina.

DOCKET NO. T-1514

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
White Star Sales & Service, Inc., 1930 Remount Road, Charlotte, North Carolina - Purchase of authority contained in Certificate No. C-839 from Custom Towing Service, Inc.) ORDER

HEARD IN: The Courtroom of the Commission on July 1, 1970, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott, Commissioner John W. McDevitt, Presiding and Commissioner Hugh A. Wells

APPEARANCES:

For the Applicants:

Peter H. Gerns
Attorney at Law
815 American Building
Charlotte, North Carolina 28202

BY THE COMMISSION: By application filed with the Commission on June 1, 1970, approval is sought by Custom Towing Service, Inc., Transferor, and White Star Sales & Service, Inc., Transferee, for the sale and transfer of the operating rights contained in Certificate No. C-839 from said Transferor to said Transferee. Said application was set for hearing and notice duly given in the Commission's Calendar of Hearings issued June 8, 1970. Said notice reflected a description of the involved authority along with the time and place of hearing and contained a provision that if no protest was filed by a certain specified date, the case would be decided on the basis of the application and no hearing would be held.

Subsequent to the issuance of the notice of hearing, the Commission, on its own motion, issued its order of June 22, 1970, amending said notice of hearing by rescinding the no hearing provision and requiring that the hearing be held as scheduled at the captioned time and place and that all parties be present.

No protest was filed and the application is unopposed.

It appears from the evidence presented and from the records of the Commission that Transferor was delinquent in the filing of its 1969 Annual Report, as required under the provisions of G.S. 62-36 and NCUC Rule R2-48, which provides that such reports must be filed with the Commission on or before April 30th of the succeeding year and there was also a question as to whether the involved franchise was dormant by reason of the failure of Transferor to perform service

under said authority for a period of thirty (30) days prior to the filing of the application. The delinquent Annual Report was filed during the course of the hearing and a rather involved but satisfactory explanation was given for the interval between the time Transferor ceased operations and the time of the filing of the application.

It further appears from the application and the evidence presented at the hearing that there are no debts and claims against Transferor of the nature specified in G.S. 62-111(c) and that Transferee is qualified financially and by experience to acquire the operating authority being transferred and to provide adequate and continuous service to the public thereunder.

Upon consideration of the application, the records of the Commission and evidence adduced, the Commission makes the following

FINDINGS OF FACT

(1) That Transferor, Custom Towing Service, Inc., is the holder of Common Carrier Certificate No. C-839 and that service under said franchise has been continuously offered to the public up to the time of the execution of the application to transfer said certificate,

(2) That Transferor and Transferee have entered into a sales agreement for the sale and transfer of said certificate and a copy thereof has been filed with the Commission,

(3) That Transferee, the principal officer of which formerly held said certificate in another corporate name, is qualified in all respects to acquire said certificate and provide adequate service thereunder, and

(4) That the transfer of said authority from Custom Towing Service, Inc., to White Star Sales & Service, Inc., is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities and that Transferee is fit, willing and able to perform such service to the public under said franchise.

CONCLUSIONS

The Commission has generally and for the most part held to the view that the following five things are primarily essential to the approval of the sale and transfer of common carrier authority: (1) The seller must be the owner of the rights. (2) The operation of the rights must be active - or at least not abandoned. (3) There must be a contract or agreement between the Transferor and the Transferee for the sale. (4) The purchaser, or Transferee, must be fit, able, and willing to render service under the authority on a continuing basis. (5) The seller must file a statement

under oath with respect to debts and claims. The evidence offered and the application and records of the Commission of which judicial notice is taken justify findings that all five of these requirements have been met.

Any matter raised and not specifically discussed has nevertheless been considered and found either to be without merit or not germane to a proper disposition of the proceeding.

The Commission concludes that applicants have met the burden required by law and that the sale and transfer of the authority, more particularly described in Exhibit B hereto attached, from Custom Towing Service, Inc., to White Star Sales & Service, Inc., should be approved.

IT IS, THEREFORE, ORDERED:

(1) That the transfer of Certificate No. C-839, together with the operating rights described in Exhibit B hereto attached and made a part hereof, from Custom Towing Service, Inc., to White Star Sales & Service, Inc., be, and the same is, hereby approved.

(2) That White Star Sales & Service, Inc., file with the Commission appropriate evidence of insurance, tariffs, lists of equipment, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired, within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of July, 1970.

(SEAL)	NORTH CAROLINA UTILITIES COMMISSION Mary Laurens Richardson, Chief Clerk
DOCKET NO. T-1514	White Star Sales & Service, Inc. Irregular Route Common Carrier Charlotte, North Carolina
EXHIBIT B	Group 13, Motor Vehicles, viz: Transportation of automobiles, trucks, tractors, trailers, chassis, and other motor vehicles, whether wholly or partially assembled, and whether involving the utilization of the motive power of the vehicle being transported or not, between all points and places throughout the State of North Carolina.

DOCKET NO. T-243, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Richard R. Infinger to purchase all of the capital stock of Black's Motor Express, Inc., from the sole stockholder, D. J. Black	) ORDER APPROVING) SALE AND TRANSFER) OF STOCK)

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on April 1, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott (Presiding) and Commissioners John W. McDevitt, Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicant:

J. Ruffin Bailey and
Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina 27602

A. Y. Lennon
Stevens, Burgwin, McGhee & Ryals
Attorneys at Law
P. O. Box 24
Wilmington, North Carolina 28401

For the Protestants:

T. D. Bunn
Hatch, Little, Bunn, Jones & Liggett
Attorneys at Law
P. O. Box 527
Raleigh, North Carolina
For: Overnite Transportation Company
Thurston Motor Lines, Inc.

Tom Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058
Raleigh, North Carolina 27609
For: Petroleum Transportation, Inc.
Schwerman Trucking Company
A. C. Widenhouse, Inc.
Carolina Asphalt & Petroleum Company
Kenan Transport Company
Coastal Transport, Inc.
Tidewater Transit, Co., Inc.

O'Boyle Tank Lines, Inc.
East Coast Transport Company, Incorporated
H & P Transit Co.
Southern Oil Transportation Company, Inc.
Maybelle Transport Company
Chemical Leaman Tank Lines, Inc.

WOOTEN, COMMISSIONER: This proceeding arises upon petition filed with the North Carolina Utilities Commission (Commission) on February 11, 1970, by Richard R. Infinger (petitioner), P. O. Box 7398, Charleston Heights, South Carolina 29405, wherein the petitioner seeks authorization to purchase all of the capital stock of Black's Motor Express, Inc., from the sole stockholder, D. J. Black. In its Calendar of Hearings issued on February 19, 1970, the Commission set said petition for hearing on the date and at the time and place set out in the caption.

Subsequent to the publication in the Commission's Calendar of Hearings, in this case, and in apt time, protests were filed by: Overnite Transportation Company; Thurston Motor Lines, Inc.; Petroleum Transportation, Inc.; Schwerman Trucking Company; A. C. Widenhouse, Inc.; Carolina Asphalt & Petroleum Company; Kenan Transport Company; Coastal Transport, Inc.; Tidewater Transit Co., Inc.; O'Boyle Tank Lines, Inc.; East Coast Transport Company, Incorporated; H & P Transit Co.; Southern Oil Transportation Company, Inc.; Maybelle Transport Company, and Chemical Leaman Tank Lines, Inc. The petitioner and all protestants appeared for the hearing and each was represented by counsel.

Based upon the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That Black's Motor Express, Inc., is a North Carolina Corporation, and is the holder of Common Carrier Certificate of Public Convenience and Necessity No. C-11, issued by the North Carolina Utilities Commission under which it is authorized to transport by motor truck as a common carrier, over irregular routes, the following commodities:

"(1) Transportation of petroleum and petroleum products in bulk in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Salisbury, Apex, Fayetteville and Selma to points within the entire State of North Carolina, and of gasoline, kerosene, fuel oils and napthas in bulk in tank trucks, over irregular routes between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals.

"(2) Transportation of liquefied petroleum gas, in bulk, in tank trucks from all originating terminals of such

liquefied petroleum gas to points within the territory described in above paragraph (1).

"(3) Transportation of general commodities, except those requiring special equipment, over irregular routes, between all points and places in the Counties of Guilford, Robeson, Columbus, New Hanover, Bladen, Sampson and Wake; from Wilmington to all points and places in the counties of Scotland, Lee, Cumberland, Harnett, Johnston, Wayne, Duplin and Lenoir."

2. That Richard R. Infinger is an individual who resides in Charleston Heights, South Carolina, and who has been directly connected with and involved in the transportation business since 1956 as a common carrier, working for Infinger Transportation Company, which company holds various common carrier authority for the movement of petroleum products and general commodities.

3. That the transferor and the transferee have entered into a written contract for the sale and transfer of all of the capital stock of Black's Motor Express, Inc., under terms and conditions which require a $25,000.00 initial payment and other payments subsequent thereto at six-month intervals.

4. That the sale and transfer in this case is for the sale and transfer of all of the outstanding capital stock of Black's Motor Express, Inc., and is not a sale or transfer of a franchise for a motor carrier of property.

5. That the transfer of the stock in this case to the transferee will not create an additional carrier in competition with existing carriers and the proposed transfer and sale is justified by the public convenience and necessity as contemplated by G.S. 62-111.

6. That D. J. Black entered the transportation business in North Carolina in 1930, and was granted a certificate under the Grandfather provisions of the 1947 North Carolina Truck Act, which certificate included the authority, commodity and territory description of which is set forth in subparagraphs (1) and (3) of Finding of Fact 1 above; that subsequently and in 1961, the said D. J. Black was issued, at his request, pursuant to order of this Commission, without a showing of public convenience and necessity, common carrier authority, the commodity and territory description of which is set forth in subparagraph (2) of Finding of Fact 1 above; that the Commission granted D. J. Black the authority to transport liquefied petroleum gas to become an integral part of the carrier's authority to engage in the transportation of petroleum and petroleum products; that it was not the intent of the Commission and it was never contemplated that the liquefied petroleum gas could be separated from the petroleum authority through sale, cancellation or otherwise, in that the Commission's order had the necessary effect of merely enlarging upon its

previously established definition of petroleum and petroleum products; that in the Fall of 1969, the said D. J. Black incorporated his transportation business under the style and name of Black's Motor Express, Inc.

7. That Richard R. Infinger is experienced in the transportation of petroleum and petroleum products and general commodities as a common carrier in this State for interstate traffic and in the States of South Carolina, Georgia and Tennessee with both inter and intrastate authority; that his experience since 1956 in business as a motor common carrier of property qualifies him as a suitable individual for the acquisition of the stock here sought to be transferred; that the same equipment, facilities and financial resources which are presently possessed by Black's Motor Express, Inc., will continue as before after the transfer, and, in addition thereto, the financial resources of Richard R. Infinger will likewise be available at his option; that Black's Motor Express, Inc., and Richard R. Infinger have adequate equipment, experience, financial resources and are otherwise fit and able to perform the transportation service authorized by this Commission and set forth in Finding of Fact 1 above.

8. That Black's Motor Express, Inc., has participated in and has on file with this Commission tariffs covering all phases of its comon carrier certificate and the same have been participated in and have been on file with this Commission since 1947 and are circulated to shippers throughout the North Carolina intrastate area; that the said tariffs show the scope of the company's operation and territory; and that, although Black's Motor Express, Inc., has not actively solicited business of various kinds in certain areas of its territory, the company has never refused to handle any shipment of petroleum or petroleum products, or general commodities, or liquefied petroleum gas.

9. That the franchise held by Black's Motor Express, Inc., is not dormant and that the said Black's Motor Express, Inc., has continued to perform transportation for compensation under the authority of its certificate continuously up to and including the date of the hearing.

10. That Richard R. Infinger, the stock transferee in this case, and Black's Motor Express, Inc., are capable of rendering service equal to or better than that which is presently being afforded.

11. That the transfer of the stock in this case is in the public interest; will not adversely affect the service to the public under the franchise held by Black's Motor Express, Inc.; will not unlawfully affect the service to the public by other public utilities and the corporation, after this transfer, under the management of Richard R. Infinger is fit, willing and able to perform the service to the public under said franchise; and that service under the

franchise heretofore issued to Black's Motor Express, Inc., has been continuously offered to the public up to the time of the filing of the petition in this case.

12. That the transfer of stock in this case is justified by the public convenience and necessity and should be approved.

CONCLUSIONS

The sale and transfer of all of the capital stock of Black's Motor Express, Inc., a North Carolina motor common carrier of property, is governed by a comprehensive statutory scheme, which includes the following provisions of G.S. 62-111:

> "(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets."

In the light of the above cited statute, it appears that the Commission must give its approval to the transfer in this case, in that the Commission has herein found such transfer to be justified by the public convenience and necessity.

G.S. 62-111(e) provides:

> "The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)."

Even though this section of G.S. 62-111 does not appear to apply in a stock transfer case, it is noted that the Commission in this case has found all of the facts required therein.

The transportation policy of the State of North Carolina as declared in the Public Utilities Act of 1963, as amended, clearly favors transfers of actively operated motor carriers' certificates without unreasonable restraint, which policy is also applicable to stock transfers. A policy following the protestants' position would diminish the value of existing motor freight franchises and deny the holders thereof, of valuable rights. The statutory requirement referred to in G.S. 62-111(a) is satisfied by a showing that the authority has been and is being actively operated in satisfaction of that public need previously found or established to exist when the rights in this case were acquired under the 1947 Grandfather Clause and when granted by Commission order in 1961.

The record in this case fails to show that the operations of Black's Motor Express, Inc., are contrary to the public interest as distinguished from the interest of the protestants.

IT IS, THEREFORE, ORDERED:

1. That the sale and transfer of all of the capital stock of Black's Motor Express, Inc., from D. J. Black, Wilmington, North Carolina, to Richard R. Infinger, Charleston Heights, South Carolina, be, and the same is, hereby approved.

2. That Black's Motor Express, Inc., shall continue to comply with the laws of the State of North Carolina and the rules and regulations of this Commission with respect to its common carrier operations.

3. That Richard R. Infinger notify this Commission upon the completion of the transfer herein approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of May, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1492

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application to Transfer Common Carrier Certificate No. C-578 from Tarheel Express, Inc., a North Carolina corporation, of Hickory, North Carolina, to North Carolina Express, Inc., a North Carolina corporation, of High Point, North Carolina	ORDER APPROVING STOCK TRANSFER UPON MOTION IN THE CAUSE

HEARD IN: Chambers, on the Pleadings, by the Three Commissioners Originally Hearing the Cause, on October 19, 1970, at 11:30 a.m.

BEFORE: Commissioners Hugh A. Wells, Miles H. Rhyne and Marvin R. Wooten (Presiding)

BY THE COMMISSION: This matter came on for consideration at the above date, time and place upon motion in the cause by the applicant that in lieu of the purchase and sale by transfer of Common Carrier Certificate C-578 from Tarheel Express, Inc., to North Carolina Express, Inc., the Commission approve the acquisition by North Carolina Express, Inc., of all outstanding stock of Tarheel Express, Inc., in accord with the agreement between the parties attached to said motion.

Upon consideration of the matter, it appears to the Commission that on the 18th day of March, 1970, the Commission approved, to the extent of the North Carolina operating authority, a contract by which North Carolina Express, Inc., could purchase the Common Carrier Certificate No. C-578 from Tarheel Express, Inc.; that by order dated June 30, 1970, the Commission extended the time for the consummation of said sale and transfer to November 1, 1970; that Tarheel Express, Inc., held authority as granted by the Interstate Commerce Commission, which authority was included in the said contract of purchase and sale; that application was made by the applicant to the Interstate Commerce Commission for authority to transfer its interstate operating authority to North Carolina Express, Inc., the approval of which has been delayed; that the parties were advised that in the event the sale and transfer is effected by the transfer of the stock of Tarheel Express, Inc., rather than a transfer of the operating authority, no approval by the Interstate Commerce Commission would be required; that the parties, together with the present stockholders of Tarheel Express, Inc., have agreed to a transfer by stock purchase rather than the transfer of operating authority as heretofore approved in this docket; and that, therefore, good cause has been shown justifying the Commission in allowing the motion in the cause herein.

It further appearing to the Commission that the Findings of Fact and Conclusions of Law set out in its order of March 18, 1970, in this docket are sufficient to support the approval of the motion herein for the reason that the requirements of G.S. 62-111 are greater in the case of transfer of a certificate than in the case of a stock transfer as contemplated by the motion herein.

IT IS, THEREFORE, ORDERED, as follows:

1. That the motion filed in the cause by Tarheel Express, Inc., and North Carolina Express, Inc., requesting approval of the acquisition by North Carolina Express, Inc., of all the outstanding stock of Tarheel Express, Inc., in

accordance with the agreement attached to said motion be, and the same is, hereby approved in lieu of the transfer of intrastate operating authority in Certificate No. C-578 approved by this Commission in its order in this docket dated March 18, 1970.

2. That the North Carolina Express, Inc., shall notify this Commission the date on which the stock transfer is consummated and finalized, all of which shall be done and completed within thirty (30) days from this date.

3. That the $5,000 placed on deposit by North Carolina Express, Inc., with the First National Bank of Catawba County, Hickory, North Carolina, on October 13, 1969, shall remain in escrow and shall not be paid to nor received by North Carolina Express, Inc., Tarheel Express, Inc., and/or Tallant Transfer, Inc., or any other person, firm or corporation pending further orders of this Commission.

4. That the $5,000 in escrow frozen by Ordering Paragraph 3 above shall be immediately released by order of this Commission upon the payment of all claims of the class and kind enumerated in Conclusion No. 2 of the Commission's order dated March 18, 1970, in this docket, and the filing of an appropriate affidavit with reference thereto with this Commission.

5. That the transfer, heretofore approved in this docket, to North Carolina Express, Inc., of the irregular route common carrier authority previously held by Tarheel Express, Inc., under North Carolina Certificate C-578, as set forth in Exhibit B attached hereto and made a part hereof, be, and the same is hereby, declared null and void, with appropriate right, title and interest therein to revert to Tarheel Express, Inc.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of October, 1970.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1492

North Carolina Express, Inc.
105 South Perry Street
High Point, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of general commodities, except those requiring special equipment, over irregular routes, between points and places in the counties of Cabarrus, Alamance, Cherokee, Cumberland, Davie, Davidson, Forsyth, Gaston, Durham, Cleveland, Halifax, Iredell, Jackson,

Johnston, Lee, Mecklenburg, Montgomery, McDowell, Randolph, Rockingham, Richmond, Rowan, Surry, Stanly, Anson, Caldwell, Edgecombe, Catawba, Guilford, Haywood, New Hanover, Henderson, Wilkes, Union, Vance, Wake, Buncombe, Burke, Alexander, Harnett, Lincoln, Scotland, Robeson, Hoke, Moore, Wayne, Columbus, Wilson and Pasquotank.

Transportation of furniture and furniture parts, new, between Iredell County and points and places in North Carolina.

DOCKET NO. T-1092, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Thomas E. Tucker, Ray Templin, and Carl Jorgensen, all of Charlotte, North Carolina, seeking approval of the transfer of control of N.C. Food Express, Inc., through stock purchases and transfers	) ORDER) APPROVING) TRANSFER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on July 31, 1970, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Miles H. Rhyne and Marvin R. Wooten, Presiding

APPEARANCES:

For the Applicants:

Bobby G. Deaver
Brown, Fox & Deaver
Attorneys at Law
109 Green Street
Fayetteville, North Carolina 28301

No Protestants or Intervenors

WOOTEN, COMMISSIONER: This matter arises upon Petition filed by Attorney Bobby G. Deaver for and on behalf of Thomas E. Tucker, Carl Jorgensen and Ray Templin (hereinafter applicants), all of Charlotte, North Carolina, seeking approval of stock transfer of 75% of the total outstanding stock of N.C. Food Express, Inc., Albemarle, North Carolina, from C. J. Whitley, the present owner of 100% of said stock. Notice of the Petition, setting the matter for hearing on April 30, 1970, was given in the

Commission's Calendar of Hearings issued April 1, 1970. Subsequent thereto the matter was reassigned for hearing at this time and place, when the applicants failed to show on the April 1 hearing date.

No protests have been received by the Commission and no one appeared in opposition to the application at the hearing.

Testifying for the applicants was Mr. C. J. Whitley, present owner of all of the outstanding stock of N.C. Food Express, Inc. Also tendered for questions by the Commission were Carl Jorgensen and Thomas Tucker, two of the applicants.

Based upon the evidence adduced at the hearing, the Commission's records, and the file in this matter, we make the following

FINDINGS OF FACT

1. N.C. Food Express, Inc., is a North Carolina corporation, with its principal office in Albemarle, North Carolina; that it is the holder of Common Carrier Certificate No. C-784 issued by this Commission authorizing transportation of certain commodities as designated therein between points and places throughout the State of North Carolina; and that C. J. Whitley, Albemarle, North Carolina, is the owner of all outstanding stock in said corporation.

2. That the applicants are individuals who reside in Charlotte, North Carolina, and who have been connected with and involved in the transportation business in this State for several years; and that the sale and transfer as proposed would constitute the stock ownership in N.C. Food Express, Inc., as follows:

(a)	C. J. Whitley	25%
(b)	Carl Jorgensen	25%
(c)	Thomas Tucker	25%
(d)	Ray Templin	25%

3. That the transferor and the transferees have entered into a contract providing for the payment by the applicants of sums certain to the transferor in installments in exchange for stock and the furnishing of additional sums of money with which to purchase equipment, for the continued and improved operation of this common carrier.

4. That the sale and transfer in this case is the sale and transfer of 75% of the outstanding capital stock of N.C. Food Express, Inc., and thereby a transfer of the control of the same, and is not a sale or transfer of a franchise of a motor carrier of property.

5. That the transfer of stock in this case to the transferees will not create an additional carrier in

competition with existing carriers and the proposed transfer and sale is justified by the public convenience and necessity as contemplated by G.S. 62-111.

6. That the franchise held by N.C. Food Express, Inc., is not dormant and that said carrier has continued to perform transportation for compensation under the authority of its certificate continuously up to and including the date of this hearing, as contemplated by the Public Utilities Act of North Carolina.

7. That the transferees and the transferor are capable of rendering service equal to or better than that which is presently being afforded.

8. That the transfer of the stock in this case is in the public interest; will not adversely affect the service to the public under the franchise held by N.C. Food Express, Inc., and will not unlawfully affect the service to the public by other public utilities, and the corporation, after this transfer, will be fit, willing, and able to perform the service to the public under said franchise.

9. That the transfer of stock in this case is justified by the public convenience and necessity and should be approved.

10. That the history of the Certificate No. C-784 issued by this Commission is as follows:

(a) Certificate was initially issued on February 4, 1959, to Carolina Food Express, Inc., all of whose stock was owned by C. J. Whitley upon a showing of public convenience and necessity.

(b) On February 23, 1962, C. J. Whitley sold all of his stock (which was all the stock outstanding) in Carolina Food Express, Inc., to C. W. Griffin.

(c) On October 22, 1964, C. W. Griffin transferred 50% of his complete ownership of Carolina Food Express, Inc., to Neill P. Guy under a merger plan.

(d) That subsequently, Carolina Food Express, Inc., was placed in Receivership and on May 2, 1967, Mr. C. J. Whitley purchased Certificate No. C-784 from the Receiver for $3,500.00, and immediately transferred the same to N.C. Food Express, Inc., which was wholly owned by the said C. J. Whitley.

(e) That on and after February 2, 1968, the said C. J. Whitley sold his 100% ownership in N.C. Food Express, Inc., to one Robert E. Cowart.

(f) That on August 27, 1969, Mr. C. J. Whitley took over complete ownership of N.C. Food Express, Inc., from Robert E. Cowart who defaulted on his previous purchase agreement under (e) above.

(g) That C. J. Whitley subsequent to August 27, 1969, operated the franchise herein through N.C. Food Express, Inc., with A. W. Lane, E. R. Flowers, and Ray Templin, and that the said A. W. Lane, E. R. Flowers and Ray Templin were unable to make appropriate financial arrangements to continue participation in the operation of the same.

(h) That thereafter, arrangements satisfactory to the parties were made by and between C. J. Whitley and the applicants herein, which resulted in the present application.

CONCLUSIONS

The sale and transfer of a portion of the capital stock of N.C. Food Express, Inc., a North Carolina motor common carrier of property, is governed by a comprehensive statutory scheme, which includes the following provisions of G.S. 62-111:

"(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets."

In the light of the above cited statute, it appears that the Commission must give its approval to the transfer in this case, in that the Commission has herein found such transfer to be justified by the public convenience and necessity.

G.S. 62-111(e) provides:

"The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to

> the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)."

Even though this section of G.S. 62-111 does not appear to apply in a stock transfer case, it is noted that the Commission in this case has found all of the facts required therein.

The transportation policy of the State of North Carolina as declared in the Public Utilities Act of 1963, as amended, clearly favors transfers of actively operated motor carriers' certificates without unreasonable restraint, which policy is also applicable to stock transfers. A policy following any other position would diminish the value of existing motor freight franchises and deny the holders thereof, of valuable rights. The statutory requirement referred to in G.S. 62-111(a) is satisfied by a showing that the authority has been and is being actively operated in satisfaction of that public need previously found or established to exist when the rights in this case were granted by Commission order in 1959.

The record in this case fails to show that the operations of N.C. Food Express, Inc., are contrary to the public interest.

The Commission views with serious concern the history of Certificate No. C-784 and the many transfers of the same. We conclude that further future such transfers must not be approved without complete historical, financial, and operational investigation by this Commission and its staff, and a complete and full inquiry into this matter in order to determine in minute detail that the letter and a spirit of the Public Utilities Act is not thereby being violated.

IT IS, THEREFORE, ORDERED:

1. That the sale and transfer of 75% of the capital stock of N.C. Food Express, Inc., from C. J. Whitley to Carl Jorgensen, Thomas Tucker, and Ray Templin, with each such transferee to purchase and receive 25% of the outstanding capital stock in said N.C. Food Express, Inc., be, and the same is, hereby approved.

2. That N.C. Food Express, Inc., shall continue to comply with the laws of the State of North Carolina and the rules and regulations of this Commission with respect to its common carrier operations.

3. That N.C. Food Express, Inc., and C. J. Whitley notify this Commission upon the completion of the transfer herein approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-114, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Sale of all of the capital stock of Eastern Oil Transport, Inc., from G. S. Donnell and wife, Vivian Donnell, 2201 Carolina Beach Road, Wilmington, North Carolina, to Northeast Industrial Oil Corporation, 220 Trust Building, Durham, North Carolina	) ORDER APPROVING) SALE AND TRANSFER) OF STOCK

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on August 4, 1970, at 2:00 p.m.

BEFORE: Chairman H. T. Westcott (Presiding) and Commissioners Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicants:

Alton Y. Lennon
Stevens, Burgwin, McGhee & Ryals
Attorneys at Law
P. O. Box 24, Wilmington, North Carolina 28401
For: G. S. Donnell

Arch T. Allen
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Northeast Industrial Oil Corporation

Eugene Clyde Brooks III
Brooks and Brooks
Attorneys at Law
222 Trust Building
Durham, North Carolina
For: Northeast Industrial Oil Corporation

For the Protestant:

A. W. Flynn, Jr.
York, Boyd & Flynn
Attorneys at Law
P. O. Box 180, Greensboro, North Carolina
For: M & M Tank Lines, Inc.

WESTCOTT, CHAIRMAN: This cause arises upon petition filed with the North Carolina Utilities Commission (Commission) on June 24, 1970, wherein authority is sought to transfer all of the capital stock of Eastern Oil Transport, Inc. (Eastern), from G. S. Donnell and wife, Vivian Donnell, Wilmington, North Carolina, to Northeast Industrial Oil Corporation (Northeast) of Durham, North Carolina.

Notice of the matter was given in the Commission's Calendar of Hearings issued on July 1, 1970. Said notice, among other things, contained the following note:

"If no protests are filed by 4:30 p.m., Friday, July 31, 1970, this case will be decided on the basis of the application, the documentary evidence attached thereto and the records of the Commission pertaining thereto, and no hearing will be held."

In apt time, M & M Tank Lines, of Winston-Salem, filed its protest to the granting of the application, was present at the hearing and represented by counsel as shown in the caption.

Applicant offered the direct testimony of G. S. Donnell, E. M. Cameron and Mr. J. M. Bowen and 18 exhibits, Exhibit 1 through 3 and 8 by reference, the others being documentary offerings.

Based upon the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Eastern Oil Transport, Inc., is a North Carolina corporation and is the holder of Common Carrier Certificate No. C-161 issued by the North Carolina Utilities Commission and therein authorized to transport by motor vehicle as a common carrier:

"(1) Transportation of petroleum and petroleum products, and asphalt, in bulk, in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Salisbury, Apex, Fayetteville and Selma to points and places within the entire State of North Carolina, and of gasoline, kerosene, fuel oils and naphthas in bulk in tank trucks, over irregular routes between all points and places within the territory it is now authorized to

make deliveries from presently authorized originating terminals.

"(2) Transportation of liquefied petroleum gas, in bulk, in tank trucks from all originating terminals of such liquefied petroleum gas to points within the territory described in above paragraph 1."

2. All of the issued and outstanding common capital stock of this company (192 shares) is owned by G. S. Donnell.

3. For the calendar year ended December 31, 1969, Eastern had gross operating revenues of approximately $87,461.00 and net income after taxes of $6,461.00. As of December 31, 1969, the net worth of Eastern was approximately $35,000.00.

4. The equipment owned and operated by Eastern consists of 7 tractors and 14 trailers.

5. Northeast Industrial Oil Corporation is a North Carolina corporation, having its principal office and place of business in Conway, North Carolina. As a corporation, the company has been engaged in business since September 18, 1962. It owns and operates 10 tractors and 11 tank trailers.

6. There are 50 shares of issued and outstanding common capital stock issued by Northeast, 13 shares to E. M. Cameron, 13 shares to A. J. White, 13 shares to A. K. Barrus, Jr., and 11 shares to J. M. Bowen. The officers and directors of Northeast are the same as the stockholders. E. M. Cameron, A. J. White, Sr., and A. K. Barrus, Jr., own the outstanding common stock of Asphalt and Petroleum Company, an Exempt Carrier, and Carolina Asphalt & Petroleum Company, a Contract and Common Carrier.

7. The transferor and the transferee have entered into a written contract for the sale and transfer of all of the capital stock of Eastern Oil Transport, Inc., under terms and conditions set forth in the contractual agreement.

8. The sale and transfer in this case is for the sale and transfer of all of the outstanding capital stock of Eastern Oil Transport, Inc., and is not a sale and transfer of a franchise for a motor carrier of property.

9. The transfer of the stock in this case to the transferee will not create an additional carrier in competition with existing carriers and the proposed sale and transfer is justified by the public convenience and necessity as contemplated by G.S. 62-111.

10. That Eastern entered the transportation business as a partnership in 1945 with the now sole stockholder of Eastern operating same as a proprietorship beginning in 1948 and

caused the business to be incorporated in 1960 and has operated same as a corporation since that time. The original operating authority granted Eastern was under the Grandfather provisions of the 1947 Truck Act, said present authority having been amended from time to time to include additional originating terminals and to include the transportation of LP gas, pursuant to an order of this Commission without a showing of a public convenience and necessity, the Commission having taken the position that liquefied gas should be an integral part of a carrier's authority to engage in the transportation of petroleum and petroleum products. It was not then and is not now the intent of the Commission that liquefied petroleum gas could and should be separated from the authority to transport petroleum products through sale, cancellation or otherwise, in that the Commission's order in that case had the necessary effect of enlarging upon its previously established definition of petroleum and petroleum products for those carriers desiring and requesting this authority.

11. The stockholders and officers of the transferee are experienced in the transportation of petroleum and petroleum products in intrastate traffic in North Carolina and that said experience in operating business as a motor carrier of property qualifies them as a suitable corporation for the acquisition of the stock here sought to be transferred. That the same equipment, facilities and financial resources which are presently possessed by Eastern Oil Transport, Inc., will continue as before after the transfer, and, in addition thereto, the financial resources of the stockholders and officers of Northeast will likewise be available in the conduct of the business.

12. Eastern is actively operating its common carrier authority, has its tariff and insurance on file with this Commission, systematically files its annual report with this Commission and has not refused to handle shipments of petroleum and petroleum products when requested so to do by the public.

13. That the Certificate No. C-161 held by Eastern is not dormant and that Eastern has continued to perform transportation for compensation under the authority of its certificate continuously up to and including the date of this hearing.

14. That the transfer of the stock in this case is in the public interest, will not adversely affect the service to the public under the franchise it holds, will not unlawfully affect the service to the public by other public utilities, and that the transferee is fit, willing and able to perform the service to the public after acquisition of the stock herein sought to be transferred.

CONCLUSIONS

The sale and transfer of all of the capital stock of Eastern, a North Carolina motor common carrier of property, is governed by comprehensive statutory scheme, which includes the following provisions of G.S. 62-111:

"(a) No franchise now existing or hereafter issued under the provisions of this chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets."

G.S. 62-111(e) provides:

"The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)."

We have given due consideration to the above quoted provisions of law, to the testimony in this case, the transportation policy of the State of North Carolina as declared in the Public Utilities Act of 1963, as amended, and conclude that applicants have carried the burden of proof as required in their offering of competent material evidence. We further conclude that applicable law provides for transfer of stock of an actively operated utility and further that the record in this case fails to show that the operation of Eastern is now or will be after transfer of the stock contrary to the public interest.

IT IS, THEREFORE, ORDERED:

1. That the sale and transfer of all of the capital stock of Eastern Oil Transport, Inc., from G.S. Donnell and wife, Vivian Donnell, to Northeast Industrial Oil Corporation be, and the same is, hereby approved.

2. That Eastern Oil Transport, Inc., shall continue to comply with the laws of the State of North Carolina and the rules and regulations of this Commission with respect to its common carrier operations.

3. That the transferee shall notify this Commission when the transfer has been consummated and shall begin actively operating the authority contained in Certificate No. C-161 within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-1222

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Failure of F.L. German & Stuart Lingle, d/b/a German Mobile Homes, Div. of F.L. German Motor Company, to provide active service to the public for the transportation of mobile homes as authorized and required by Common Carrier Certificate No. C-848) ORDER REVOKING CERTIFICATE

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on January 23, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Respondent: None

For the Commission's Staff:

Larry G. Ford
Commission Attorney
Raleigh, North Carolina

BY THE COMMISSION: On November 12, 1969, the Commission issued an order to F. L. German & Stuart Lingle, d/b/a German Mobile Homes, Division of F. L. German Motor Company (Respondent), 97 N. Main Street, Granite Falls, North Carclina, giving notice to said Respondent to appear before the North Carolina Utilities Commission in its Court Room, Raleigh, North Carolina, on January 23, 1970, at 10:00 a.m., and show cause why Respondent's operating authority should not be revoked for alleged unauthorized discontinuance or nonuse of service authorized and required by Common Carrier Certificate No. C-848, heretofore issued to Respondent by

this Commission. Said order was personally served on F. L. German on November 17, 1969.

Pursuant to the provisions of said order, the matter came on for hearing for the purpose set out therein, on January 23, 1970, when and where the Respondent was neither present nor represented by counsel. The Commission's staff offered testimony which tends to show that Respondent has not conducted any operation whatever under its intrastate operating authority since the year 1967.

Based upon the pertinent records of the Commission, of which it takes judicial notice, the Respondent's file and the competent evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) That pursuant to the provisions of an order in this docket of date January 23, 1962, the Respondent is the holder of Certificate No. C-848, in which Respondent is authorized to engage in the transportation of mobile homes between points in certain specified counties and points and places throughout the State of North Carolina.

(2) That Respondent has discontinued the service authorized by said certificate for a period of thirty (30) days or longer without the written consent of the Commission and that, in fact, Respondent has not performed any transportation authorized by said Certificate since the year 1967.

(3) That by Respondent's failure to exercise the authority authorized by Certificate No. C-848, Respondent has, to all intents and purposes, ceased to be a common carrier by motor vehicle in intrastate commerce in North Carolina and public convenience and necessity is no longer served by such Common Carrier Certificate, which should be cancelled.

Based on the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

G.S. 62-112(c) provides

> "(c) The failure of a common carrier or contract carrier of passengers or property by motor vehicle to perform any transportation for compensation under the authority of its certificate or permit for a period of 30 consecutive days shall be prima facie evidence that said franchise is dormant and the public convenience and necessity is no longer served by such common carrier certificate or that the needs of a contract shipper are no

longer served by such contract carrier. Upon finding after notice and hearing that no such service has been performed for a period of 30 days the Commission is authorized to find that the franchise is dormant and to cancel the certificate or permit of such common or contract carrier..."

Under the aforesaid findings and the applicable law, the Commission concludes that Common Carrier Certificate No. C-848, heretofore issued to Respondent, is dormant and that said certificate should be cancelled and revoked.

IT IS, THEREFORE, ORDERED:

That Certificate No. C-848, heretofore issued to F. L. German & Stuart Lingle, d/b/a German Mobile Homes, Div. of F. L. German Motor Company, 97 N. Main Street, Granite Falls, North Carolina, be, and the same is, hereby revoked and cancelled.

IT IS FURTHER ORDERED:

That a copy of this order be transmitted to said Respondent and a copy sent to the North Carolina Department of Motor Vehicles.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. T-681, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Helms Motor Express, Inc., Investigation and Show Cause Proceedings Regarding the Status of Loss and Damage Claims and Payment Thereon	ORDER TO NOTIFY CLAIMANTS OF INSURANCE COVERAGE

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on November 3, 1970

BEFORE: Chairman Harry T. Westcott, Presiding, Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Respondent:

Mr. Kent Burns
Boyce, Burns & Smith
Attorneys at Law
Capital Club Building
Raleigh, North Carolina

For the Commission Staff:

Mr. Edward B. Hipp
Commission Attorney
217 Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On September 5, 1969, the Commission entered its Order in Docket No. T-681, Sub 30, approving the sale and transfer of stock of Helms Motor Express, Inc., from the prior stockholders to McRae Industries, Inc., and provided in said Order that the new stockholder shall advance certain funds to Helms Motor Express, Inc., to be used in part to retire outstanding loss and damage claims and to report the status of loss and damage claims on a monthly basis.

On February 10, 1970, the Commission issued its Order Setting Supplementary Conference to review claim practices on Helms Motor Express, Inc., said conference was duly held on February 27, 1970, and evidence was received by the Commission as to claim practices of Helms Motor Express, Inc. The Commission continued to require and to receive the monthly reports of the status of delinquent claim accounts pursuant to said Order of the Commission of September 5, 1969, and said Supplemental Order. Review of the reports, as filed through July 31, 1970, reveals that cargo loss and damage claims have increased each month since receiving said reports, both as to number of claims outstanding and the total amount due. The Commission received a copy of a letter from Helms Motor Express, Inc., addressed to one of its claimants in which Helms advised said claimant that the claim has been processed and approved for payment, but cannot be paid until additional funds are available in the claims account. Based upon said reports and the record in Docket No. T-681, Sub 30, the Commission found that it was necessary in the interest in the protection of the public using Helms Motor Express, Inc., that proceedings be instituted to require that Helms Motor Express, Inc., make satisfactory arrangements to bring its cargo loss and damage claims into a current status and to show cause why they should not be kept in a current status with sufficient financial support thereof, or in lieu thereof, to show cause why proceedings shall not be instituted to protect the public from loss from such unpaid loss and damage claims.

On October 5, 1970, the Commission issued an Order setting a hearing in the Commission Hearing Room on November 2, 1970, in which Helms Motor Express, Inc., should report to the Commission the status of payment of its cargo loss and damage claims as of said date, including all claims outstanding, the age of such claims, and to make necessary financial arrangements for payment of said claims acknowledged to be liabilities of Helms Motor Express, Inc., and to report such financial arrangements and to show cause why each of said cargo loss and damage claims payable by Helms Motor Express, said loss and damage claims have not been paid on a current basis and why they cannot be kept on a current basis, or in lieu thereof, to show cause why the Commission should not institute appropriate proceedings as might be found necessary to protect the public, including shippers and receivers of freight utilizing Helms Motor Express, Inc., from loss from said unpaid loss and damage claims, or on failure of such proceeding, to protect the public during the continued operation of Helms Motor Express, Inc., to show cause why the operating authority of Helms Motor Express, Inc., under the franchise from the Utilities Commission should not be suspended, or protection for the public be established therewith until such time as assurances are provided to protect the public from loss from such failure to pay loss and damage claims.

On October 7, 1970, the Commission received a letter from Mr. B. J. McRae, President, Helms Motor Express, Inc., requesting an informal conference to discuss that company's need for emergency relief. The Commission, on October 31, 1970, issued its Order in which (1) Helms' request for an informal conference is deemed to be a request for formal hearing; and (2) that the scope of the November 2, 1970, show cause hearing is hereby expanded to include Helms' request for emergency relief.

The hearing, as set in Commission Order of October 5, 1970, and expanded in Commission Order of October 31, 1970, was held at 8:30 a.m. on November 3, 1970, in the Hearing Room of the Commission, Puffin Building, One West Morgan Street, Raleigh, North Carolina. Witnesses for Helms Motor Express, Inc., were Mr. B. J. McRae, President; Mr. G. M. Boysworth, Claims Manager since March, 1970; and Mr. R. D. Austin, Secretary and Treasurer.

Mr. B. J. McRae testified that Helms' operations for the first six months of 1970 resulted in a net loss of $91,000; that 1969 loss was $271,826; and that current operations are at a loss of $760.00 per day. McRae further testified that Helms was in receipt of a letter from its insurance carrier, Transport Insurance Company, notifying Helms that Transport Insurance Company extends cancellation to November 19, 1970, and that Transport Insurance Company can continue insurance coverage for Helms only with assurance of claim payment and a trust fund for such payment.

Mr. G. M. Boysworth, Claims Manager, testified that Helms' unpaid claims outstanding on August 31, 1970, totalled $248,976; that approximately 50% of the claims outstanding on August 31, 1970, are more than one year old in terms of the time from which they were filed with Helms and still remain outstanding and unpaid, in the amount of $73,706; that of the claims now outstanding against Helms, 43% are short claims, 35% are visible damage claims, 14% are concealed damage claims; that $85,000 of the claims were incurred during the time when Transport Insurance Company had on file with the Commission a certificate of insurance for cargo damage claims for Helms; and that other claims were incurred during the time that Aetna Insurance Company was Helms' insurance carrier.

Mr. R. D. Austin, Secretary and Treasurer, testified that insurance coverage cost Helms $3.33 per $100.00 of revenue; that under the insurance policies customers presenting claims can present such claims to the insurance carrier if demands on Helms are unsatisfied; and that Helms has not notified claimants of their right to do so because of the subsequent 13% charge against the Helms' reserve which would occur.

Helms Motor Express, Inc., moved that the Commission (1) list the truck rate suspension under Docket No. T-825, Sub 143; (2) authorize a $1.00 arbitrary charge on each shipment without public notice and hearing; and (3) allow route relief.

Based upon the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the amount of loss and damage claims outstanding and unpaid and filed against the respondent Helms Motor Express was $212,486 on August 31, 1970, plus $36,489 of additional liability on said claims from Helms' connecting carriers for a total outstanding of $248,976.

2. That approximately 50% of the said claims outstanding on August 31, 1970, are more than one year old in terms of the time from which they were filed with Helms and still remain outstanding and unpaid, involving an amount of $73,706.

3. That of the claims now outstanding against Helms, 43% are described as short claims, i. e., claims for shipments which are short for part of the goods on the bill of lading from either loss or theft, 35% are visible damage claims, and 14% are concealed damage claims.

4. That $85,000 of the claims were incurred during the time when Transport Insurance Company had on file with the Commission a certificate of insurance for cargo damage claims for Helms, and the remaining claims were incurred or

arose during the time that the Helms certificate of insurance was filed showing Aetna Insurance Company as the insurance carrier prior to August 1, 1969. The Commission has received notice of cancellation of Helms' insurance coverage by its present carrier, Transport Insurance Company, as of November 19, 1970.

5. That respondent Helms is operating at a cash deficit and has no cash to pay all of its claims or to bring them on a current basis and is unable to make arrangements for current payment of said claims under its present operating revenues.

6. That Helms has failed to prove justification of an increase in rates under Docket No. T-825, Sub 143, without notice and hearing to the public, and the Commission finds that good cause has not been shown to authorize such rate increase without notice to the public.

7. That Helms has not shown sufficient cause upon which to authorize a $1.00 arbitrary charge on each shipment, as moved by Helms during the hearing, without notice and hearing to the public, and the Commission finds that good cause has not been shown for such arbitrary rate increase without notice and hearing to the public.

8. That Helms' request for some relief in its routes is not sufficiently detailed or adequate to support any change in the Helms routes.

Whereupon, the Commission makes the following

CONCLUSION

The Commission concludes that a substantial number of cargo loss and damage claims payable by Helms Motor Express, Inc., are unpaid and outstanding, and approximately 50% of these claims are more than one year old; that Helms has been unable to make arrangements for payment of said claims; that Helms has not shown good cause why the Commission should not take such action as might be found necessary to protect the public for loss on said unpaid claims. The Commission further concludes that Helms has not shown sufficient cause upon which to allow increase in rates without public notice and hearing, or upon which to authorize a $1.00 arbitrary charge on each shipment without public notice and hearing; and that Helms' request for route relief is not sufficiently detailed or adequate to support a change in those routes.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the motion to cancel the suspension of rates filed under Docket No. T-825, Sub 143, so as to allow said rates to go into effect without notice or hearing to the public is denied.

2. That the oral motion of Helms to increase its rates by a $1.00 arbitrary charge per shipment during the course of this hearing is hereby denied.

3. That Helms is ordered to give notice to all persons or firms having filed claims for loss and damaged freight of their right to file such claims with its insurance carriers, Aetna Casualty and Surety Company for the period from May 1, 1959, to August 1, 1969, and Transport Insurance Company from the period August 1, 1969, to November 19, 1970, by mailing to each said unpaid claimant a copy of the Notice attached hereto.

4. That Helms is ordered to mail said Notice within fifteen (15) days from receipt of this Order, and to furnish this Commission a list of all claimants so notified within thirty (30) days from receipt of this Order; that Helms is ordered to transmit by certified mail a copy of this Order, with the attached Notice, to Aetna Casualty and Surety Company and Transport Insurance Company.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

NOTICE TO CLAIMANTS OF INSURANCE COVERAGE

Any shipper or consignee who has presented cargo loss or damage claims to Helms Motor Express, Inc., and whose claims are unpaid and outstanding as of this date is hereby notified of the right to present such claims to Helms' insurance carriers, on the basis of the relevant insurance policy provisions to such effect.

Those claims which arose between May 1, 1959, and August 1, 1969, are covered under Aetna Casualty and Surety Company Policy No. 25 IMT 130 401 FC.

Policy No. 25 IMT 130 401 FC
Aetna Casualty and Surety Company
151 Farmington Avenue
Hartford, Conn. 06115

Those claims which arose between August 1, 1969, and this date, are covered under Transport Insurance Company Policy No. GL 610.

Policy No. GL 610
Transport Insurance Company
4100 Harry Hines Blvd.
Dallas, Texas 75219

HELMS MOTOR EXPRESS, INC.

DOCKET NO. T-1108, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Jesse W. Lowe, d/b/a Lowe's Transportation) ORDER
Company, Carthage, North Carolina - Failure to) CANCELLING
Keep Insurance on File) CERTIFICATE

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, February 13, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Respondent:

Neither present, nor represented by counsel

For the Commission's Staff:

Larry G. Ford
Associate Commission Attorney
Raleigh, North Carolina

BY THE COMMISSION: By order dated December 31, 1969, the Commission directed Jesse W. Lowe, d/b/a Lowe's Transportation Company, Carthage, North Carolina, to appear in the offices of the Utilities Commission at the captioned time and place to show cause, if any he had, why his operating authority should not be revoked for willful failure to file appropriate security for the protection of the public as is required by G.S. 62-268.

The evidence and records of the Commission reveal that Jesse W. Lowe is deceased and that his son, John R. Lowe (hereinafter referred to as Respondent), is Administrator of his Estate; that the cargo insurance of Respondent was cancelled by his insurer effective November 20, 1969; that the cancellation of said insurance was called to the attention of said Respondent by letter dated October 23, 1969; that subsequent thereto, Respondent requested an authorized suspension of operations for ninety (90) days and that the Commission, by order dated November 19, 1969, granted a suspension of operations until December 20, 1969; that upon failure of Respondent to file evidence of the required insurance at the expiration of the authorized suspension of operations, an Order to Show Cause was issued on December 31, 1969, and it was served upon John R. Lowe, Administrator of the Estate of Jesse W. Lowe, on January 5, 1970, by Inspector Worth B. Hailey.

Respondent was not present at the hearing nor was anyone present in his behalf. The staff testified as to what the

Commission's files disclose in regard to insurance, from which it appears that there has been no evidence of cargo insurance on file with the Commission to cover Certificate No. C-790 in the name of Jesse W. Lowe, d/b/a Lowe's Transportation Company, as required by law, from November 20, 1969, up to and including the date of the hearing.

Based upon the pertinent records of the Commission, of which it takes judicial notice, the file of Jesse W. Lowe, d/b/a Lowe's Transportation Company, and the competent evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That pursuant to the issuance of the Commission's order in Docket No. T-1108, Sub 1, dated May 19, 1959, Jesse W. Lowe, d/b/a Lowe's Transportation Company, is the holder of Certificate No. C-790, in which said carrier is authorized to engage in the transportation of certain commodities within the area designated in said certificate,

2. That the certificate of cargo insurance issued to Jesse W. Lowe, d/b/a Lowe's Transportation Company and on file with this Commission as required by law, was cancelled by insurer effective November 20, 1969; that nothing having been done to reinstate said insurance, an Order to Show Cause was issued on December 31, 1969, suspending the operating authority of Jesse W. Lowe, d/b/a Lowe's Transportation Company and directing Respondent to appear in the offices of the Commission and show cause, if any he had, why Certificate No. C-790 should not be cancelled by reason of Respondent's failure to keep appropriate insurance in force and on file with the Commission as required by law, and

3. That at the hearing on February 13, 1970, Respondent did not appear nor did anyone appear in his behalf; that the evidence of record tends to show that said insurance has not been reinstated nor has Respondent made any effort to comply with the Commission's insurance requirements.

CONCLUSIONS

G. S. 62-268 provides that no certificate shall be issued or remain in force until the applicant shall have procured and filed with the Commission such insurance for the protection of the public as the Commission shall require. Rule F2-36 requires all common carriers of property to obtain and keep in force at all times cargo insurance issued by a company authorized to do business in North Carolina. G. S. 62-112 provides for the revocation of a franchise after notice and hearing for failure to provide and keep in force at all times insurance for the protection of the public.

Upon the aforesaid findings and the applicable law, the Commission concludes that Respondent has willfully violated G.S. 62-268 and has, in effect, abandoned his certificate for the transportation of property, heretofore authorized, and that said certificate should be cancelled.

IT IS, THEREFORE, ORDERED:

That Common Carrier Certificate No. C-790, heretofore issued to Jesse W. Love, d/b/a Lowe's Transportation Company, Carthage, North Carolina, be, and the same is, hereby revoked and cancelled.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-4, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Norfolk Southern Railway) ORDER
Company for Authority to Discontinue its) GRANTING
Agency Station at Mackeys, North Carolina) APPLICATION

HEARD IN: The Courtroom of the Commission, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on January 30, 1970

BEFORE: Commissioners John W. McDevitt, Presiding, Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For Applicant:

R. N. Simms, Jr.
P. O. Box 2776
Raleigh, North Carolina 27602

For the Using and Consuming Public:

Maurice W. Horne
Special Assistant
Attorney General's Office
Room 124, Ruffin Building
Raleigh, North Carolina 27602

For the Commission Staff:

Larry G. Ford
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: Applicant, Norfolk Southern Railway Company (Applicant or Norfolk Southern), filed application with this Commission on November 12, 1969, seeking authority to discontinue its agency station at Mackeys, Washington County, North Carolina, cease the handling of less-than-carload shipments thereat and to dismantle or remove its freight station building.

The Commission ordered an investigation by its staff which was made by Inspector Charles E. Payne who filed a report with the Commission on November 21, 1969, indicating that no shipper or receiver of freight through the Mackeys agency objected to the granting of the authority sought and all were agreeable to the handling of their traffic through the agency of applicant at Plymouth, North Carolina.

Upon consideration of the application and the record in this matter as a whole the Commission concluded that the

proposed action of applicant would not adversely affect the public interest and accordingly caused its Order of December 3, 1969, to issue which granted the application.

Notice of Intervention and Motion to Set Aside the aforementioned order was filed by the office of the Attorney General on December 5, 1969, upon the grounds that this was a matter affecting the public interest, and that the same should be assigned for hearing with public notice given.

The Intervention and Motion of the Attorney General was set for oral argument on December 19, 1969, when and where after hearing the able arguments of counsel for the applicant and the Attorney General, the Commission concluded that this matter should be reopened for the purpose of formal public hearing with appropriate public notice given.

The matter was reopened by Order in this docket dated December 22, 1969, which assigned the matter for formal public hearing before the Commission in its Courtroom, Raleigh, North Carolina, on January 30, 1970. The order also required applicant to give appropriate public notice of the time, place and purpose of the hearing by publication in regard thereto in a newspaper having general circulation in the Mackeys area, said publication to contain a provision that all protests or notices of protest must be filed with the Commission not later than January 22, 1970, the publication to be made not less than twenty (20) days prior to the date of the hearing as therein fixed.

No protests or notices of protest were received before the matter was called for hearing.

This matter came on for hearing at captioned time and place with Applicant, Norfolk Southern Railway Company, present and represented by counsel with witnesses. The office of the Attorney General was represented and presented two witnesses.

Applicant presented its Chief Transportation Officer, Mr. H. B. Parrott as a witness. The witness offered exhibits and gave testimony concerning the services now available to the shipping and receiving public through its agency at Mackeys and also explained the details of its plan to serve its patrons in the Mackeys-Creswell-Columbia area through its full agency at Plymouth, North Carolina.

Mr. Parrott testified that the closing of the agency at Mackeys would have very little effect on railroad patrons in the area and that if the station building is removed the warehouse floor would be left intact as an unloading ramp and that removal of the remaining portion of the building will release additional land for the stockpiling of limestone by railroad patrons at Mackeys.

The witness also testified that if an agency is to be maintained at Mackeys the Norfolk Southern must bear the

expense of making major repairs on the existing station building or replacing it.

The evidence of the witness tends to show that the cost of operating the agency is increasing while the revenue produced is decreasing. An exhibit was offered which shows that the 1968 revenue for Norfolk Southern at Mackeys was $4,360.63 less than produced at the agency in 1967. During the first half of 1969, revenue decreased a further $3,855.39 when compared to a like period of 1968. The witness testified further that expenses incident to maintenance of the agency at Mackeys were steadily increasing.

The further testimony of Mr. Parrott tends to show that while business at Mackeys is decreasing the agency is by no means a deficit operation. Applicant merely believes that it can provide a much improved and superior service to its patrons in the Mackeys area by providing services incident to the receipt and forwarding of carload shipments through its agency at Plymouth, North Carolina. In addition, and while so doing, applicant hopes to save a little money.

The Office of the Attorney General presented two witnesses, Mr. Joe Landino, Forestry Service, West Virginia Pulp and Paper Company, and Mr. Gerald Jackson, Manager, FCX, both of Columbia, North Carolina. These gentlemen both testified that their entire interest in this matter was in being sure that their respective companies could continue to receive and forward carload shipments through the station at Mackeys. They do not object to handling the details incident to the movement of their shipments with the Plymouth, North Carolina, agency of Applicant.

The testimony adduced at the hearing and the exhibits support and justify the following

FINDINGS OF FACT

(1) That the Applicant, Norfolk Southern Railway Company, is a common carrier of property by rail in North Carolina, is subject to the jurisdiction of this Commission and is properly before the Commission in this proceeding.

(2) The proposed governing agency at Plymouth, North Carolina, is located on Applicant's main line of railroad extending from Charlotte to Norfolk, Virginia, 9.2 rail miles south of Mackeys. The town of Mackeys has a population of approximately 250.

(3) The present office hours at Mackeys are from 1:00 p.m. to 5:00 p.m., daily except Saturday, Sunday and holidays. The agency hours at the proposed governing agency at Plymouth are from 8:00 a.m. to 6:00 p.m., daily including Saturdays, Sundays and most holidays.

(4) Mackeys is on the same telephone exchange with Plymouth and there are no telephone tolls for calls from Mackeys to Plymouth. Applicant will accept collect calls at Plymouth from its patrons at Creswell and Columbia that ship and receive carload traffic through Mackeys.

(5) Freight trains serving Mackeys will continue to set off and pick up in the same manner as at present. Cars for loading at Mackeys will be ordered through Plymouth, from conductors of local trains serving Mackeys or directly from equipment personnel at Raleigh, North Carolina.

(6) There will be no abandonment, dimunition or curtailment in the train service now available to shippers and receivers at Mackeys.

(7) On outbound carload shipments, the conductor of trains picking up cars can sign bills of lading, or if so desired the shipper can have the bills of lading signed by the carriers agent at the controlling agency at Plymouth, North Carolina.

(8) The agency at Plymouth will notify patrons of the arrival of carload shipments and empties for loading at Mackeys by U.S. Mail and/or by telephone if the consignee has a telephone at the expense of the carrier.

(9) Prepayment of shipments may be made at the Plymouth agency.

(10) Applicant posted notice of its proposed action as required by Rule R1-14 of the Commission's Rules and Regulations. It also gave notice to the public concerning the reopened hearing and the time, place and purpose thereof, as required by Order in this docket of January 30, 1970.

(11) No protests were filed to the proposed action of Norfolk Southern and no one appeared at the hearing in opposition to the granting of the application.

(12) That no less-than-carload freight shipments have been handled at Mackeys since June, 1967.

CONCLUSIONS

G.S. 62-118 is the governing statute. Entitled "Abandonment and Reduction of Service" it provides that upon finding that public convenience is no longer served or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses the Commission shall have the power, after petition, notice and hearing to authorize by order any public utility to abandon or reduce such service.

The provisions of the statute have been complied with and the evidence adduced at the hearing clearly shows that the

agency of the Norfolk Southern Railway Company at Mackeys is not a deficit operation.

The evidence however also shows that under the plan of Applicant its trains will continue to serve Mackeys in the same manner as at present although the details of the movement of shipments received or forwarded and of empty cars and other matters incidental to the movements will be handled by the full agency maintained by Applicant at Plymouth, North Carolina, rather than by the present part-time agency at Mackeys. There will be no abandonment of train service now available to the patrons of Applicant at Mackeys nor will there be any actual curtailment or diminution of agency service.

In the foregoing circumstances the Commission concludes, and so finds, that the proposed action of Norfolk Southern if allowed will do no violence to the public interest and that the application in this docket should be approved.

IT IS THEREFORE ORDERED:

(1) That the application of Norfolk Southern Railway Company for authority to discontinue its agency station, cease handling of less-than-carload traffic and dismantle and remove its freight station building at Mackeys, North Carolina, be, and the same is hereby, approved.

(2) That Applicant notify the Commission the date its agency at Mackeys is discontinued and the date the station building is dismantled and removed.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-4, SUB 62

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Norfolk Southern Railway Company - Application for Authority to Discontinue the Operation of Its Agency Station at Washington, North Carolina	) ORDER) GRANTING) APPLICATION)

HEARD IN: The Commission Courtroom, Raleigh, North Carolina, on March 4, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott, Commissioners Marvin R. Wooten (Presiding) and Miles H. Rhyne

APPEARANCES:

For Applicant:

Mr. R. N. Simms, Jr.
Attorney at Law
P. O. Box 2776, Raleigh, North Carolina 27602

For Commission Staff:

Mr. Larry G. Ford
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission (Commission) on December 11, 1969, Norfolk Southern Railway Company (Applicant) seeks authority permitting it to (1) discontinue its agency station at Washington, North Carolina, (2) cease handling of less-than-carload freight thereat, (3) dismantle its freight station building and (4) handle future business through its Chocowinity agency.

The investigation by the Commission's staff was made by Inspector Charles E. Payne who filed a report with the Commission on December 19, 1969, and same indicated that no shipper or receiver of freight through the Washington agency objected to the granting of the authority sought by Applicant.

Attached to the application is the affidavit of Applicant certifying that notice was posted on November 25, 1969, on two separate and conspicuous places on its station at Washington, North Carolina, advising the public that Applicant would in not less than ten (10) days nor more than twenty (20) days from the date of posting of the notice make application as hereinabove mentioned. On January 6, 1970, the Commission issued notice of public hearing of the application to be held in the Courtroom of the Commission, Wednesday, March 4, 1970, at 10:00 a.m.

No protests or notices of protest were received by the Commission in this matter and no one appeared at the hearing in opposition to Applicant's proposal.

This matter came on for hearing at the captioned time and place with Applicant, Norfolk Southern Railway Company, present and represented by counsel and witness.

Applicant presented its Chief Transportation Officer, Mr. H. F. Parrott as a witness. The witness offered testimony and exhibits concerning the services now available to the shipping and receiving public through its agency at Washington, and also explained the details of its plan to serve its patrons through its Chocowinity agency.

Mr. Parrott testified that the closing of the agency at Washington would have very little effect on railroad patrons in the area; that Applicant has just completed its new station building at Chocowinity, and that it completed the moving of its facilities into said new station building on March 2, 1970.

The evidence of the witness tends to show that freight trains now serving Washington will continue to set off and pick up cars in the same manner as now handled; that the Chocowinity agency would notify patrons of the arrival of carload shipments and empty cars placed for loading at Washington by U. S. Mail and/or by telephone if the consignee or shipper has a telephone, at the expense of Applicant; that no agency personnel would be retained at Washington; that no less-than-carload freight shipments were handled through the Washington agency during the year 1968, nor through October, 1969; that Washington and Chocowinity are on the same telephone exchange; that it will add a Supervisory Agent at Chocowinity to assist in the coordinating of equipment, trains, and personnel in this area; that the office hours at Washington are 7:45 a.m. to 4:45 p.m., daily except Saturday, Sunday, and holidays, and that the office hours at Chocowinity are 7:30 a.m. to 3:30 p.m., daily except Saturday, Sunday, and holidays, and, in addition, it has other agency personnel on duty from 3:30 p.m. to 7:30 a.m., daily including Saturdays, Sundays, and holidays, which gives almost 24 hours per day service at Chocowinity compared to only eight (8) hours per day at Washington.

The testimony of Mr. Parrott also tends to show that the Washington agency is by no means a deficit operation, but that Applicant believes it can provide an improved and superior service to its patrons in the Washington area by providing services incident to the receipt and forwarding of carload shipments through its new facilities at Chocowinity, North Carolina.

The testimony adduced at the hearing and the exhibits support and justify the following

FINDINGS OF FACT

(1) That the Applicant, Norfolk Southern Railway Company, is a common carrier of property by rail in North Carolina, is subject to the jurisdiction of this Commission, and is properly before the Commission in this proceeding.

(2) That the agency at Chocowinity, North Carolina, is located on Applicant's main line of railroad extending from Charlotte, North Carolina, to Norfolk, Virginia, approximately 4 rail miles south of Washington, North Carolina.

(3) That the present office hours at Washington are from 7:45 a.m. to 4:45 p.m., daily except Saturday, Sunday and

holidays. The office hours at Chocowinity are from 7:30 a.m. to 3:30 p.m., daily except Saturday, Sunday and holidays, but it has other agency personnel on duty thereat from 3:30 p.m. to 7:30 a.m., daily including Saturday, Sunday and holidays.

(4) Washington is on the same telephone exchange with Chocowinity and there are no telephone tolls for calls from Washington to Chocowinity.

(5) Freight trains serving Washington will continue to set off and pick up cars in the same manner as at present. Shippers may order cars for loading at Washington through Chocowinity, from the conductor of local trains serving Washington, or directly from equipment personnel at Raleigh, North Carolina.

(6) The agency at Chocowinity will notify patrons of the arrival of carload shipments and empties for loading at Washington by U. S. Mail and/or by telephone if the consignee has a telephone at the expense of carrier.

(7) Prepayment of shipments may be made at the Chocowinity agency.

(8) Applicant posted notice of its proposed action pursuant to Rule R1-14 of the Commission's Rules and Regulations. It also gave notice to the public concerning the hearing, the time, place, and purpose thereof, as required by Order in this docket dated January 6, 1970.

(9) No protests were filed to the proposed action of Applicant and no one appeared at the hearing in opposition thereto.

(10) That no less-than-carload freight shipments were handled at Washington during the year 1968 or through October, 1969.

CONCLUSIONS

G.S. 62-118 is the governing statute. Entitled "Abandonment and Reduction of Service" it provides that upon finding that public convenience is no longer served or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses the Commission shall have the power, after petition, notice and hearing to authorize by order any public utility to abandon or reduce such service.

The provisions of the statute have been complied with and the evidence adduced at the hearing clearly shows that the agency of Applicant at Washington is not a deficit operation.

The evidence shows, however, that under its plan Applicant's trains will continue to serve Washington in the

same manner as at present, although the details of the movement of shipments received or forwarded and of empty cars and other matters incidental to the movements will be handled by its Chocowinity agency. There will be no abandonment of train service now available to its patrons at Washington.

Upon consideration of the foregoing circumstances and conditions the Commission concludes, and so finds, that the proposed action of Norfolk Southern Railway Company, if allowed, will do no violence to the public interest and that the application should be approved.

IT IS THEREFORE ORDERED:

(1) That the application of Norfolk Southern Railway Company for authority to discontinue its agency station, cease handling of less-than-carload traffic, dismantle its freight station building at Washington, North Carolina, and to handle future business through its Chocowinity agency be, and the same is hereby, approved.

(2) That Applicant notify the Commission the date its agency at Washington is discontinued and the date the station building is dismantled.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-4, SUB 63

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk Southern Railway Company - Application for Authority to Discontinue Its Agency Stations at Bailey and Middlesex, North Carolina) ORDER GRANTING APPLICATION

HEARD IN: The Commission Courtroom, Raleigh, North Carolina, on March 19, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott, and Commissioners John W. McDevitt, Marvin R. Wooten (Presiding) and Miles H. Rhyne

APPEARANCES:

For the Applicant:

R. N. Simms, Jr.
Attorney at Law
P. O. Box 2776, Raleigh, North Carolina 27602

For the Commission Staff:

Larry G. Ford
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission (Commission) on January 9, 1970, Norfolk Southern Railway Company (Applicant) seeks authority permitting it to: (a) discontinue its agency stations at Bailey and Middlesex, North Carolina, (b) cease handling of less-than-carload freight thereat, (c) dismantle or otherwise dispose of its freight station buildings, and (d) handle future business through its Wilson agency.

The investigation by the Commission's staff was made by Inspector Worth R. Hailey who filed a report with the Commission on January 16, 1970. His report reveals that Mrs. Guy Bissette (on behalf of her husband), Mr. Joseph Iamm, and Mrs. E. B. Peele (on behalf of her husband), Bailey, North Carolina, opposed the granting of the application of Applicant insofar as it relates to the Bailey agency, and advised that they would appear at the hearing in opposition thereto. His report further reveals that there was no objection to Applicant's proposal insofar as it relates to the Middlesex agency.

Attached to the application is affidavit of Applicant certifying that notices were posted on December 23, 1969, at two separate and conspicuous places on its stations at Bailey and Middlesex, North Carolina, advising the public that it would in not less than ten (10) days nor more than twenty (20) days from the date of posting of the notices make application as hereinabove mentioned. On January 27, 1970, the Commission issued notice of public hearing of the application to be held in the Courtroom of the Commission, Thursday, March 19, 1970, at 10:00 a.m.

No formal protests were received by the Commission in this matter and no one appeared at the hearing in opposition to Applicant's proposal.

This matter came on for hearing at the captioned time and place with Applicant, Norfolk Southern Railway Company, present and represented by counsel and witness.

Applicant presented its Chief Transportation Officer, Mr. H. B. Parrott, as a witness. He offered testimony and exhibits concerning the services now available to the shipping and receiving public through its agencies at Bailey and Middlesex, and also explained the details of its plans to serve its patrons through its Wilson agency.

He testified that the closing of its agencies at Bailey and Middlesex would have very little effect on railroad patrons in the areas; that the freight trains now serving Bailey and Middlesex will continue to set off and pick up

cars in the same manner as now handled; that the Wilson agency would notify patrons of the arrival of carload shipments and empty cars placed for loading at involved points by U. S. Mail and/or by telephone; that no agency personnel would be retained at either Bailey or Middlesex; that no less-than-carload freight shipments were handled at either Bailey or Middlesex during the years 1967, 1968, and 1969; that the office hours at Bailey are 8:00 a.m., to 9:45 a.m. and 1:15 p.m. to 5:00 p.m., daily except Saturday, Sunday and holidays; at Middlesex they are 10:00 a.m. to 12:00 noon, daily except Saturday, Sunday and holidays, and that at Wilson the office hours are 8:00 a.m. to 5:00 p.m., daily except Saturday, Sunday and holidays. In addition, the Wilson agency has other office personnel on duty until 9:00 p.m. each working day and usually until 12:00 noon on Saturdays.

The testimony of Mr. Parrott also tends to show that the Bailey and Middlesex agencies are by no means a deficit operation, but that Applicant believes it can provide as good or better service to its patrons in the Bailey and Middlesex areas by providing services incident to the receipt and forwarding of carload shipments through its facilities at Wilson, North Carolina.

The testimony adduced at the hearing and the exhibits support and justify the following

FINDINGS OF FACT

1. That the Applicant, Norfolk Southern Railway Company, is a common carrier of property by rail in North Carolina, is subject to the jurisdiction of this Commission, and is properly before the Commission in this proceeding.

2. That the agencies at Bailey and Middlesex, North Carolina, are located on Applicant's main line of railroad extending from Charlotte, North Carolina, to Norfolk, Virginia, approximately 13.4 and 18.6 rail miles west of Wilson, North Carolina, respectively, and 12.7 and 7.5 rail miles east of Zebulon, North Carolina, respectively.

3. The present office hours at Bailey are from 8:00 a.m. to 9:45 a.m., and 1:15 p.m. to 5:00 p.m., daily except Saturday, Sunday and holidays; at Middlesex they are 10:00 a.m. to 12:00 noon, daily except Saturday, Sunday and holidays, and at Wilson they are 8:00 a.m. to 5:00 p.m., with other office personnel on duty thereat until 9:00 p.m. each working day and usually until 12:00 noon on Saturdays.

4. Bailey and Middlesex are on the same telephone exchange as Wilson and there are no telephone tolls for calls from these points to Wilson, North Carolina.

5. Freight trains serving Bailey and Middlesex will continue to set off and pick up cars in the same manner as at present, and shippers may order cars for loading at these

points through Wilson, from the conductor of local trains serving said points, or directly from equipment personnel at Raleigh, North Carolina.

6. The agency at Wilson will notify patrons of the arrival of carload shipments and empties for loading at Bailey and Middlesex by U. S. Mail and/or by telephone.

7. Prepayment of shipments may be made at the Wilson agency.

8. Applicant posted notice of its proposed action pursuant to Rule R1-14 of the Commission's Rules and Regulations. It also gave notice to the public concerning the hearing, the time, the place, and the purpose thereof, as required by order in this docket dated January 27, 1970.

9. No formal protests were filed to the proposed action of Applicant and no one appeared at the hearing in opposition thereto.

10. That no less-than-carload freight shipments were handled at Bailey and Middlesex during the years 1967, 1968 and 1969.

11. That public convenience and necessity does not require continued operation of the agency stations at Bailey and Middlesex, North Carolina, and the public will be adequately served if the business at Bailey and Middlesex, North Carolina, is conducted from the agency station at Wilson, North Carolina.

CONCLUSIONS

G.S. 62-118 is the governing statute. Entitled "Abandonment and Reduction of Service" it provides that upon finding that public convenience is no longer served or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have the power, after petition, notice and hearing to authorize by order any public utility to abandon or reduce such service.

The provisions of the statute have been complied with and the evidence adduced at the hearing clearly shows that the agencies of Applicant at Bailey and Middlesex are not deficit operations.

The evidence shows that under Applicant's plan its trains will continue to serve Bailey and Middlesex in the same manner as at present, although the details of the movement of shipments received or forwarded and of empty cars and other matters incidental to the movements will be handled by its Wilson agency. The public can and will be adequately served if its business at Bailey and Middlesex is conducted from its agency at Wilson, North Carolina.

Upon consideration of the foregoing circumstances and conditions, the Commission concludes, and so finds, that the proposed action of Norfolk Southern Railway Company, if allowed, will do no violence to the public interest and that the application should be approved.

IT IS, THEREFORE, ORDERED:

1. That the application of Norfolk Southern Railway Company for authority to discontinue its agency stations at Bailey and Middlesex, North Carolina, cease handling of less-than-carload freight thereat, dismantle or otherwise dispose of its freight station buildings, and to handle future business through its Wilson agency be, and the same is, hereby approved.

2. That Applicant notify the Commission the date its agencies at Bailey and Middlesex are discontinued, and the date the station buildings are disposed of or dismantled.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-4, SUB 64

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk Southern Railway Company - Application) ORDER
for Authority to Close Its Agency Stations at) GRANTING
Stantonsburg and Walstonburg, North Carolina) APPLICATION

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on June 16, 1970, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

R. N. Simms, Jr.
Attorney at Law
P. O. Box 2776, Raleigh, North Carolina

No Protestants.

WOOTEN, COMMISSIONER: By application filed with the North Carolina Utilities Commission (Commission) on March 25, 1970, Norfolk Southern Railway Company (Applicant) seeks authority permitting it to: (a) close its agency stations at Stantonsburg and Walstonburg, North Carolina, (b) cease

handling less-than-carload freight thereat, (c) dismantle or otherwise dispose of its freight station buildings at involved points, and (d) handle future business through its agency stations at Wilson and Farmville for Stantonsburg and Walstonburg, respectively.

The investigation for the Commission's staff was made by Inspector James E. Warren, who filed a report with the Commission indicating that he had contacted the several shippers and receivers and found no objections to the approval of the application herein.

Attached to the application is affidavit of Applicant that notices were posted on March 6, 1970, at two separate and conspicuous places on the stations at Stantonsburg and Walstonburg, North Carolina, advising the public that it would in not less than ten days nor more than twenty days from the date of posting of the notices make application as hereinabove mentioned. On April 21, 1970, the Commission issued notice of public hearing of the application to be heard in the Hearing Room of the Commission on Tuesday, June 16, 1970, at 9:30 a.m.

No formal protests were received by the Commission in this matter and no one appeared at the hearing in opposition to the Applicant's proposal.

This matter came on for hearing at the captioned time with the Applicant, Norfolk Southern Railway Company, present and represented by counsel and witness.

Applicant presented its Chief Transportation Officer, Mr. H. F. Parrott, as witness. He offered testimony and exhibits concerning the services now available to the shipping and receiving public through its agencies at Stantonsburg and Walstonburg, North Carolina, and also explained the details of its plans to serve its patrons through its Wilson and Farmville agencies, respectively.

He testified that at the present time the Applicant has an agent working Stantonsburg and Walstonburg for one hour at each station daily, except Saturdays, Sundays and holidays. This agent works out of Wilson, North Carolina, going to Stantonsburg for one hour, then on to Walstonburg for one hour. The Applicant has personnel on duty at its Wilson, North Carolina, agency from 8:00 a.m. until 8:00 p.m., Monday through Friday and until 1:00 p.m. on Saturdays. The agent at Farmville, North Carolina, is also available until 12:00 noon on Saturdays, which makes more agency service available to the Stantonsburg and Walstonburg patrons, if this petition is granted, than they presently have. The Applicant advises that arrangements will also be made for the agents at Wilson, North Carolina, and Farmville, North Carolina, to go to Stantonsburg and Walstonburg to handle personally any matters that cannot be handled by telephone.

The testimony of the Applicant did not tend to show that the operations of the stations here involved are deficit operations, but tended to show that the Applicant can provide as good or better service to its patrons at Stantonsburg and Walstonburg by providing services incident to the receipt and forwarding of carload shipments through its facilities at Wilson and Farmville, North Carolina.

The testimony adduced at the hearing and the exhibits support and justify the following

FINDINGS OF FACT

1. That the Applicant, Norfolk Southern Railway Company, is a common carrier of property by rail in North Carolina, is subject to the jurisdiction of this Commission, and is properly before the Commission in this proceeding.

2. That Stantonsburg agency is located on the Norfolk Southern's Norfolk-Charlotte main line 7.8 rail miles east of Wilson, North Carolina, and 7.2 miles west of Walstonburg, North Carolina, and the Walstonburg agency is also on this same main line 6.3 miles west of Farmville, North Carolina.

3. That the present office hours at Stantonsburg and Walstonburg, North Carolina, are for one hour periods daily, except Saturdays, Sundays and holidays and is afforded by agents working out of Wilson, North Carolina.

4. That the Wilson agency is open for service from 8:00 a.m. until 8:00 p.m., Monday through Friday and until 1:00 p.m. on Saturdays, and the agent at Farmville is also available until 12:00 noon on Saturdays.

5. That the nearest agency station to Stantonsburg is Wilson, and the nearest agency station to Walstonburg is Farmville, both of which can afford equal and improved service to the public.

6. There has been no less-than-carload freight handled at either Stantonsburg or Walstonburg stations during 1967, 1968, 1969, and through February 1970.

7. That appropriate and proper notice has been given by the Applicant as provided by the Commission's rules and order.

8. No formal protests were filed to the proposed action by the Applicant and no one appeared at the hearing in opposition thereto.

9. That public convenience and necessity does not require continued operation of the agency stations at Stantonsburg and Walstonburg, North Carolina, and the public will be adequately served if the business at these two

stations is continued from the agency stations at Wilson and Farmville, respectively.

CONCLUSIONS

G.S. 62-118 is the governing statute. Entitled "Abandonment and Reduction of Service" it provides that upon finding that public convenience is no longer served or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have the power, after petition, notice and hearing to authorize by order any public utility to abandon or reduce such service.

The provisions of the statute have been complied with and the evidence adduced at the hearing clearly shows that the agencies of Applicant at Stantonsburg and Walstonburg are not deficit operations.

The evidence shows that under Applicant's plan its trains will continue to serve Stantonsburg and Walstonburg in the same manner as at present, although the details of the movement of shipments received or forwarded and of empty cars and other matters incidental to the movements will be handled by its Wilson and Farmville agencies. The public can and will be adequately served if its business at Stantonsburg and Walstonburg is conducted from its agencies at Wilson and Farmville, respectively.

Upon consideration of the foregoing circumstances and conditions, the Commission concludes, and so finds, that the proposed action of Norfolk Southern Railway Company, if allowed, will do no violence to the public interest and that the application should be approved.

IT IS, THEREFORE, ORDERED:

1. That the application of Norfolk Southern Railway Company for authority to discontinue its agency stations at Stantonsburg and Walstonburg, North Carolina, cease handling of less-than-carload freight thereat, dismantle or otherwise dispose of its freight station buildings, and to handle future business through its Wilson and Farmville agencies be, and the same is, hereby approved.

2. That Applicant notify the Commission the date its agencies at Stantonsburg and Walstonburg are discontinued, and the date the station buildings are disposed of or dismantled.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-4, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Norfolk Southern Railway	)	
Company for Authority to Dualize the	)	ORDER
Operation of Its Station Agencies at	)	GRANTING
Wendell and Zebulon, North Carolina	)	APPLICATION

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 17, 1970, at 10 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Hugh A. Wells and Miles H. Rhyne

APPEARANCES:

For the Applicant:

R. N. Simms, Jr.
Simms and Simms
Attorneys at Law
Raleigh, North Carolina 27602

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

For the Protestants:

W. B. Hopkins, in Person
Larry Daniel, in Person
Elwood Perry, in Person
Wade H. Privette, in Person

WESTCOTT, CHAIRMAN: In this proceeding Norfolk Southern Railway Company, a common carrier of property by rail in the State of North Carolina, hereinafter referred to as Applicant, seeks authority to dualize the operation of its station agencies at Wendell and Zebulon, North Carolina. Notice of the application was given as required by the Commission's Rules of Practice and Procedure.

The evidence in support of the application tends to show that the agencies involved, Wendell and Zebulon, are both located in Wake County, North Carolina; that the two stations are located on Applicant's Charlotte-Norfolk Main Line, Wendell being located 17.7 rail miles east of Raleigh and Zebulon 22.3 rail miles east of Raleigh; that Wendell and Zebulon are 4.6 rail miles apart; that the highway distance between Wendell and Zebulon is 4.3 miles; that

there was no less-than-carload freight handled, inbound or outbound, at Wendell or Zebulon during the years 1968 and 1969; that there is no rail passenger service at either station, the same having been discontinued many years ago; that Wendell is the governing agency for Eagle Rock, which is also located in Wake County a short distance from Wendell; that there were no shipments of any kind handled, inbound or outbound, at Eagle Rock during 1968 and 1969; that there are no agency stations controlled by the Zebulon agent; that the agents at Wendell and Zebulon have heretofore handled REA express and that said carrier having been notified of the petition has filed application for authority to discontinue handling express shipments through Wendell and Zebulon agencies and to substitute therefor pickup and delivery of shipments by truck from its central office in Raleigh.

The evidence further tends to show that the present office hours observed at both stations are from 7:45 a.m. to 4:45 p.m., with one hour for lunch, daily except Saturdays, Sundays and holidays; that the Applicant proposes in its application that the office at Wendell be kept open for the transaction of business from 8:00 a.m. to 11:45 a.m. daily except Saturdays, Sundays and holidays, and that the station at Zebulon be kept open by the same agent from 1:00 p.m. to 4:45 p.m. daily except Saturdays, Sundays and holidays; that Wendell and Zebulon, while on separate telephone exchanges, are served by Southern Bell Telephone and Telegraph Company and have toll-free service between the two towns.

The evidence of Applicant further tends to show that, on an average, approximately 45 minutes of agency work a day at Wendell is required, while at Zebulon approximately an hour is required per day by the agent to perform the actual agency service. Applicant therefore contends that one agent can easily do all the work at both stations and that by the consolidation of agency service it could save an estimated $9,500 to $10,000 per year. It is not contended by Applicant, nor does its evidence show, that it is actually losing money at either of the two stations. Applicant contends, however, that it should not be required to continue the inefficient use of its resources in light of its over-all financial condition.

The testimony of protestants for the most part tends to show that the Wendell-Zebulon area of Wake County is a growing community and that its business leaders are exerting an organized effort to attract new industries, and that use is made of the agents at the stations in the ordering of empty cars, spotting of inbound cars and observations of claims or damaged shipments which may occur from time to time.

Applicant further testified that in such instances the agent could be called from either station to report on the discovery of inbound damaged shipments, or from the main office of Applicant at Raleigh, and a Claim Agent could be

dispatched immediately from its general office in Raleigh should the same be needed and requested.

The evidence offered justifies the following

FINDINGS OF FACT

1. For the year 1969 Applicant experienced earnings insufficient in the amount of $82,000 to pay its fixed charges; therefore, the financial condition of Applicant is such that it should practice any reasonable economy that would tend to allow it to continue to render service in the entire area it serves.

2. The railroad freight service proposed to be offered in the instant application at Wendell and Zebulon should the application herein be allowed will reasonably provide for the needs and convenience of the shipping and receiving public.

3. Public convenience and necessity will not be adversely affected by the consolidation of the agencies at Wendell and Zebulon through the plan of one agent dividing his time between the two stations as proposed.

4. Public convenience and necessity will not be adversely affected by an agent serving the station at Wendell from 8:00 a.m. to 11:45 a.m. each day except Saturdays, Sundays and holidays and at Zebulon from 1:00 p.m. to 4:45 p.m. each day except Saturdays, Sundays and holidays, upon the condition that the agent make himself available at either of said stations in case of emergency and upon call by any shipper or receiver.

5. The agency stations at Wendell and Zebulon will reasonably provide agency service commensurate with the needs of the area involved, and public convenience and necessity does not require that a separate agent be maintained at both Wendell and Zebulon on a full-time basis.

CONCLUSIONS

The question as to whether or not the agency service at Wendell and Zebulon is being furnished at a loss or at a profit is one factor for consideration in this cause. The revenues derived from less-than-carload freight, the extent to which the station is being used by the public in general, the extent to which the traffic is increasing or decreasing, and the proportion in which it serves the convenience and necessity of the public as compared to its maintenance cost by the railroad should also be considered.

G.S. 62-247, among other things, provides:

> "Commission to establish and regulate stations for freight and passengers; abandonment of station or diminution of accommodations. - (a) The Commission is empowered and directed to require, where the public necessity demands, and it is demonstrated that the revenue received will be sufficient to justify it, the establishment of stations or terminals by any railroad company, to require the erection of depot accommodations commensurate with such business and revenue, and to require the erection of accommodations for loading and unloading livestock and for feeding, sheltering and protecting the same in transportation. The Commission shall not require any railroad company to establish any station nearer to another station than five miles*...." (*Emphasis added)

While it is true that the last sentence in the above-quoted statute applies to the powers of this Commission relative to requiring a railroad to establish a station, it tends to imply that public convenience and necessity does not require a station within five miles of another. Questions of convenience to the public find their limitations in the criteria of reasonableness and justice. No absolute rule can be set up and applied to all cases. The facts in each case must be considered in order to determine whether public convenience and necessity requires a service to be maintained or permits its discontinuance.

We conclude that the full-time agency service at both Wendell and Zebulon is not necessary to serve the shipping and receiving public at said towns and, further, that one agent, by dividing his time between the two agencies as proposed by Applicant in this cause, can adequately serve the public convenience and necessity of those shippers and receivers using Applicant's service.

IT IS, THEREFORE, ORDERED:

1. That the application of Norfolk Southern Railway Company for authority to dualize its stations at Wendell and Zebulon, North Carolina, by providing service with an agent at Wendell from 8:00 a.m. to 11:45 a.m. each day except Saturdays, Sundays and holidays and at Zebulon from 1:00 p.m. to 4:45 p.m. each day except Saturdays, Sundays and holidays be, and the same is hereby, granted.

2. That the Commission retain jurisdiction of this cause in order to give the public an opportunity to try out the proposed agency hours and determine whether or not they are such as to meet the convenience of the shipping and receiving public; that in the event they do not prove satisfactory, the Commission, upon notice from those affected, will make a further determination of the hours each agency should be kept open.

3. That the effective date of this order shall be on and after February 1, 1971.

4. That a copy of this opinion be transmitted to the Applicant, to the attorneys appearing in the proceeding, and to each of the parties appearing as protestants in this case.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-4, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Motion of Railway Express Agency, Incorporated, to Discontinue Its Express Agencies at Wendell and Zebulon, North Carolina	))))	ORDER APPROVING MOTION TO DISCONTINUE EXPRESS AGENCIES

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 17, 1970

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Hugh A. Wells and Miles H. Rhyne

APPEARANCES:

For the Applicant:

R. N. Simms, Jr.
Simms and Simms
Attorneys at Law
Raleigh, North Carolina

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

No Protestants.

WESTCOTT, CHAIRMAN: In this cause Railway Express Agency, Incorporated, hereinafter called REA, seeks authority to discontinue its agencies at Wendell and Zebulon, North Carolina, and in support thereof offers testimony and exhibits through its General Supervisor of REA terminals, Mr. Marvin F. Beasley, Charlotte, North Carolina, which tend to show that it now maintains agency service at Zebulon, the

same being handled by the Norfolk Southern Railway agent at that point, and at Wendell with the business being handled by the Norfolk Southern Railway agent at Wendell; that REA has been notified that Norfolk Southern made application to the Commission for authority to dualize its offices at Wendell and Zebulon and to reduce the hours at each agency, and that REA desires to close its agency at both places whether or not the Commission grants the relief sought by Norfolk Southern Railway Company in Docket No. R-4, Sub 65, wherein authority is sought to dualize Norfolk Southern's agency service.

The evidence further tends to show that pickup and delivery service within the corporate limits of Wendell and Zebulon is now provided by REA from Raleigh as needed, with a frequency of five days per week; that use by the public at the said agencies in Wendell and Zebulon is not adequate to justify their continuance; that REA's traffic at Wendell, North Carolina, for the period beginning May 1, 1969, through April 30, 1970, produced gross monthly average revenue of only $40.42 upon which REA was required to pay $10.00 as a commission and in addition an average for rent and utilities of $21.00 per month, and that the average number of shipments was less than five per month for the said period. At Zebulon for the same twelve months' period, May 1, 1969, through April 30, 1970, the agency grossed an average of $182 per month, on which average commissions were $18.79 and average monthly rent and utilities $23.50 for an average number of shipments of less than 21 per month for the same period; that the shipping public at Wendell and Zebulon is now making little use of the express service now offered, but rather is either personally picking up shipments at Raleigh or receiving deliveries from the Raleigh pickup and delivery truck serving Wendell and Zebulon, which service constitutes approximately 98% of the REA service to Wendell and Zebulon.

The evidence further tends to show that Wendell and Zebulon are served by Southern Bell Telephone and Telegraph Company and that toll-free service is provided from the two said exchanges to Raleigh, making it possible for the shippers and receivers of express at Wendell and Zebulon to have direct communications with the express office in Raleigh.

The testimony of Witness Beasley tends to show that a survey was made of the shipping and receiving public in Wendell and Zebulon. No opposition was expressed to the motion to close the present stations and serve the two towns from the Raleigh terminal.

From the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That shippers and receivers of packages by REA in Wendell and Zebulon can be conveniently served from REA's Raleigh terminal with its pickup and delivery service.

2. That a large majority of the packages originating at or destined to Wendell and Zebulon are handled by REA's Raleigh terminal on its pickup and delivery service.

3. That at present the only shipments being handled by its agents in the Towns of Zebulon and Wendell are destined to points within the corporate limits of each town.

4. That the shipping and receiving public will not be adversely affected by allowing the motion in this cause.

5. That public convenience and necessity no longer requires REA to maintain offices in the Towns of Wendell and Zebulon.

CONCLUSIONS

It appears from the evidence adduced that the shippers and receivers of express in the Towns of Wendell and Zebulon are making little use of the agency service provided therein and, instead, are using either the Raleigh terminal or pickup and delivery service from the Raleigh terminal; that guaranteed commissions to the agents for handling the small volume of express and the rent on space and utilities it is required to pay create a deficit operation which is out of proportion to the public convenience and necessity it serves, and that, as heretofore found, the service offered from REA's Raleigh terminal, either directly or by pickup and delivery service, will serve the convenience and necessity of the shipping and receiving public at Wendell and Zebulon, and the motion to discontinue its present service should therefore be allowed.

WHEREFORE, IT IS ORDERED:

1. That the Motion of Railway Express Agency, Incorporated (REA), to discontinue its agencies at Wendell and Zebulon, North Carolina, be, and the same is hereby, approved.

2. That the authority herein granted shall become effective on and after February 1, 1971.

3. That REA shall publish notice in a newspaper having general circulation in the Towns of Wendell and Zebulon that REA's service will be discontinued at Wendell and Zebulon and thereafter furnished through its terminal in Raleigh.

4. That a copy of this order be transmitted to the applicant and to each of the attorneys appearing in the cause.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-4, SUB 65

WELLS, COMMISSIONER, DISSENTING. As pointed out in the majority opinion the record in this case shows that both the Wendell and Zebulon stations are profitable operations. The eastern portion of Wake County is undergoing a commercial and industrial metamorphosis, and the service of the applicant railroad through its Wendell and Zebulon stations is playing an important and vital role in the progress of this area. While it is commendable for the applicant railroad to seek a more efficient operation and to cut unnecessary cost where possible, the Commission should look carefully at disturbing an established grade of service upon which the public has come to depend, particularly where the disturbing of this service might appear to have the effect of inhibiting the very growth in traffic upon which the railroad itself must depend for its continued financial vitality.

It appears to me that in this case the facts are on the side of continuing the operation of these two stations at their present level for the time being, with the reasonable expectation that business through these two stations might improve rather than diminish.

For these reasons I dissent from the majority opinion.

Hugh A. Wells, Commissioner

DOCKET NO. R-26, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk and Western Railway Company - Petition for Authority to: (1) Discontinue Its Agency Station at Mayodan, (2) Retire and Remove the Station Building Thereat, and (3) Maintain Mayodan as a Prepay Non-Agency Station Thereafter for the Handling of Freight Shipments) ORDER GRANTING PETITION

HEARD IN: The Courtroom, City Hall, Madison, North Carolina, on February 3, 1970, at 10:00 a.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Petitioner:

Cowles Liipfert
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Attorneys at Law
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James C. Bishop, Jr.
Law Department
Norfolk and Western Railway Company
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Roanoke, Virginia

For the Protestants:

S. Z. Blacksin
Attorney at Law
400 First Street, N. W.
Washington, D. C.
For: Transportation-Communication Division, Brotherhood of Railway and Airline Clerks

D. Leon Moore
Bethea, Robinson & Moore
Attorneys at Law
Law Building
209 Main Street
Reidsville, North Carolina
For: Town of Mayodan

For the Attorney General:

Maurice W. Horne
Special Assistant
Office of the Attorney General
P. O. Box 629, Raleigh, North Carolina
For: The Using and Consuming Public

For the Commission's Staff:

Larry G. Ford
Associate Attorney

WELLS, COMMISSIONER: By petition filed with the North Carolina Utilities Commission (Commission) on November 20, 1969, Norfolk and Western Railway Company (petitioner) seeks authority permitting transfer of its agency service at Mayodan, North Carolina, to Madison, North Carolina, as the governing agency, with Mayodan to be maintained thereafter as a prepay station for freight, and for permission to retire and remove the station building at Mayodan.

Attached to the petition is the affidavit of petitioner certifying that notice was posted on November 6, 1969, on the station door and ticket office window at the Mayodan station advising the public that petitioner would in not less than 10 days nor more than 20 days from the date of posting of the notice make the petition referred to above. On December 3, 1969, the Commission promulgated notice of public hearing of the petition to be held in the City Hall at Madison on Tuesday, February 3, 1970, at 10:00 a.m.

On December 5, 1969, the Attorney General of the State of North Carolina filed notice of intervention and request for compliance with Rule R1-24(g) of the Commission.

At the hearing petitioner presented two witnesses: Glenn G. Mullins, Superintendent of the Shenandoah Division of petitioner, and Paul E. Barden, Traveling Auditor for petitioner.

Mr. Mullins, by direct testimony and certain exhibits, testified as to the location of the Mayodan and Madison stations, the facilities located at each and the availability of other common carrier service in the community. He also gave testimony relating to the activities of the agents at both Mayodan and Madison and as to the nature and volume of business being transacted through the Mayodan station. Mr. Barden gave evidence relating to volume of business at the two stations and revenues produced therefrom.

Four witnesses appeared and testified either on behalf of the intervenor or as protestants to the petition. They were Honorable James A. Collins, Mayor of the Town of Mayodan; Melvin L. Powers, associated with Washington Mills Company; L. C. Puckett, associated with Atlantic Veneer Corporation; Raymond H. Cure, Assistant Superintendent of Madison-Mayodan City Schools; and Miss Lettie Elizabeth Crouch, testifying on behalf of the consuming public.

The testimony adduced at the hearing and the exhibits introduced into evidence support and justify the following

FINDINGS OF FACT

1. Petitioner is a common carrier of property by rail, subject to the jurisdiction of the Commission, and is properly before this Commission in this proceeding.

2. The Mayodan agency station is located on petitioner's line from Roanoke, Virginia, to Winston-Salem, North Carolina, 6.1 rail miles south of petitioner's station at Stoneville, North Carolina, and 2 rail miles north of petitioner's station at Madison, North Carolina. By public highway the station at Mayodan is 7 miles south of Stoneville and 2 miles north of Madison. The communities of Madison and Mayodan are immediately adjacent to each other, and telephone service between the two towns is toll-free.

3. Petitioner's facilities at Mayodan consist of a station building, main track, station siding and industrial sidings. The station is served by two local freight trains per day, Monday through Friday: one northbound and one southbound; and one northbound train on Saturdays and one southbound on Sundays. Petitioner furnishes no passenger service at Mayodan and does not handle mail through its Mayodan station.

4. The Mayodan station is presently manned by a single agent who is on duty eight hours per day, Monday through Friday, from 8:00 a.m. to 5:00 p.m. The agency station at Madison is manned by a single agent whose duty hours are the same as those for Mayodan.

5. In addition to petitioner, Mayodan is served on a regularly scheduled basis by the following common carriers of freight: McLean Trucking Company, Hennis Freight Lines, Inc., Pilot Freight Carriers, Inc., and Overnite Transportation Company.

6. Petitioner will continue to provide freight service at Mayodan, to be handled through the Madison agency. Train crews will continue to set off and spot inbound cars at Mayodan, and the Madison agent will notify consignees by telephone of the arrival of the cars, with confirmation by mail. The Madison agent will handle bills of lading and order cars for loading of outbound shipments, and will also handle instructions for spotting of inbound cars at Mayodan.

7. During the year 1968 a total of 312 carload shipments (in and out) were handled through the Mayodan station. The total number of working days for the year was 255. An average of 1.3 shipments per day can be derived from the foregoing figures. There were 108 working days on which there were no shipments in or out. The average shipment requires approximately 30 minutes of the station agent's time for handling, and based upon the foregoing figures, the station agent at Mayodan during the year 1968 spent an average of 40 minutes per working day handling shipments in and out.

8. During the year 1969 there were 411 shipments in and out of the station at Madison. The agent spent an average of 50 minutes per day handling these shipments. Based upon the foregoing figures and assuming approximately the same level of business, the agent at Madison could handle the business for both stations, on the average, in 90 minutes out of each working day.

9. There are only four shippers and receivers regularly using the Mayodan station. During 1969 there were 259 carloads received and 44 carloads forwarded. During the calendar year of 1968 the petitioner's proportion of revenue from traffic received and forwarded through the Mayodan station was in the sum of $33,459; and for the first six months (January through June) of 1969 these revenues

amounted to $18,599. The cost of operating the Mayodan station was in the sum of $9,615 for the year 1968, consisting principally of salary payments and fringe benefits to the station's agent and his relief agent. These costs were not substantially different for the year 1969.

Based upon the foregoing Findings of Fact the Commission makes the following

CONCLUSIONS

1. By transferring its agency service from the present Mayodan station to the nearby Madison station (as the governing agency) and by maintaining the Mayodan station as a prepay station for freight and by continuing to handle freight traffic in and out of the Mayodan track facilities through the Madison agency, petitioner has presented a plan of operations which will not result in the abandonment, diminution or curtailment in train service now available to shippers and receivers at Mayodan.

2. The communities of Mayodan and Madison are both small. They are immediately adjacent to each other, and the population to be served and the geographical area involved are not sufficient to reasonably require the continued operation of two separate freight agencies. Both of these communities can be easily and conveniently served by one freight agency and by the services of a single agent.

3. While the Mayodan station is not a deficit operation, in the sense that it fails to generate less revenue than it costs to operate, it is nevertheless clear that petitioner can effect substantial savings by transferring the agency operation from Mayodan to Madison and eliminating the functions of the agent at Mayodan. So long as such savings can be accomplished without significantly inconveniencing the shipping and receiving public (as is the case here), petitioner should be commended for its efforts to effect such sensible economies in its operations.

4. The public interest and the public convenience and necessity will be reasonably served by granting petitioner's petition.

IT IS, THEREFORE, ORDERED:

1. That Norfolk and Western Railway Company's petition for authority permitting transfer of its agency service at Mayodan, North Carolina, to Madison, North Carolina, as the governing agency, with Mayodan to be maintained hereafter as a prepay station for freight, and for permission to retire and remove the station building at Mayodan be and the same is hereby approved and granted.

2. That petitioner notify the Commission of the date its agency at Mayodan is discontinued and the date the station building is dismantled and removed.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Seaboard Coast Line Railroad Company,) RECOMMENDED
Application for Authority to Discontinue) ORDER GRANTING
Its Agency Station at Macon, North Carolina) APPLICATION

HEARD IN: The Commission Courtroom, Raleigh, North Carolina, on April 17, 1970, at 11:00 a.m.

BEFORE: John W. McDevitt, Hearing Commissioner

APPEARANCES:

For the Applicant:

Thomas F. Ellis
Maupin, Taylor & Ellis
Attorneys at Law
33 West Davie Street
Raleigh, North Carolina

J. R. Davis
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Seaboard Coast Line Railroad Company
3600 West Broad Street
Richmond, Virginia 23213

For the Commission Staff:

Edward B. Hipp
Commission Attorney
217 Ruffin Building
Raleigh, North Carolina 27602

No Protestants.

McDEVITT, HEARING COMMISSIONER: Seaboard Coast Line Railroad Company (Applicant or Seaboard) a common carrier by rail of persons and property in North Carolina intrastate commerce, by application filed February 10, 1970, seeks

authority to discontinue the operation of its station agency at Macon, North Carolina.

Macon, Warren County, North Carolina, is located on Applicant's Portsmouth Subdivision extending from Norlina, North Carolina, to Portsmouth, Virginia, six rail miles east of Norlina and eleven rail miles west of Littleton, North Carolina.

An investigation into and concerning this matter was made by Commission Transportation Inspector J. E. Warren who filed a report with the Commission on February 20, 1970. The report reveals that patrons of the railroad in the Macon area are not opposed to the granting of the application. Mr. W. J. Wilson, Chairman of the Town Board, while expressing opposition to discontinuance of the station agency at Macon indicated he would not attend in the event the matter was assigned for hearing.

No formal protests were received by the Commission and no one appeared at the hearing in opposition to Applicant's proposal.

This matter came on for hearing at the captioned time and place with Applicant, Seaboard Coast Line Railroad Company, present and represented by counsel with witnesses.

Upon consideration of the evidence adduced at the hearing, the Hearing Commissioner makes the following

FINDINGS OF FACT

(1) Applicant is a duly authorized common carrier of persons and property by rail in North Carolina intrastate commerce, is subject to the jurisdiction of the North Carolina Utilities Commission and is properly before the Commission in this proceeding.

(2) Macon is 10.2 highway miles from the proposed governing agency at Littleton, North Carolina. The two stations are connected by U. S. Highway 158, which is hard-surfaced and in good condition.

(3) The office hours at Macon and the proposed governing agency at Littleton are from 8:00 a.m., to 5:00 p.m., with one hour for lunch.

(4) The population of Macon is 187, authority 1960 census.

(5) Applicant does not intend to remove or, in any way, disturb the team track at Macon. Same will continue to be available to the public for the loading or unloading of carload shipments.

(6) There is no passenger train service offered at Macon and the railroad agent does not act as agent for the Railway Express Agency.

(7) Freight trains serving Macon will continue to set off and pick up cars in the same manner as at present and shippers may order cars for loading at Macon through the agency at Littleton by telephone, mail or personal visit.

(8) Applicant posted notice of its proposed action pursuant to Rule R1-14 of the Rules of Practice and Procedure.

(9) Applicant furnished an affidavit that notice had been given to the public of the time, place and purpose of the hearing by publication of an appropriate notice in the April 9, 1970, issue of the Warren Record, a newspaper published in the town of Warrenton, North Carolina, and having general circulation in the Macon area.

(10) Applicant's exhibits show that for the calendar year 1968, its total revenues at Macon were $36,412.00, for the first seven (7) months of 1969 were $43,400.00, while for the last five (5) months of 1969 no shipments were originated or terminated at Macon.

(11) The traffic handled at Macon during the first seven (7) months of 1969 consisted of 474 carload shipments of pulpwood and one carload shipment of scrap steel forwarded. The pulpwood was local traffic while the shipment of scrap steel moved in joint line service.

(12) The woodyard at Macon was abandoned on July 5, 1969, when shippers transferred their activities to Norlina and opened a wood loading yard at that station.

(13) No business has been handled at Macon since the pulpwood loading yard was moved to Norlina. Further, Applicant can see no prospect of obtaining any business at Macon in the foreseeable future.

The foregoing findings of fact and the record in this proceeding as a whole justify the following

CONCLUSIONS

(1) The public convenience and necessity does not require the continued operation of Macon, North Carolina, as an agency station.

(2) That the application should be granted and Seaboard Coast Line Railroad permitted to discontinue its agency at Macon and to handle future business from the agency station at Littleton, North Carolina.

IT IS ACCORDINGLY ORDERED:

1. That the application of Seaboard Coast Line Railroad Company in this docket be, and the same is, hereby approved.

2. That Seaboard be, and it is hereby, authorized to discontinue its agency station at Macon, North Carolina, and handle future business from its agency at Littleton, North Carolina.

3. That Applicant notify the Commission the date it closes its Macon agency station.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of April, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-29, SUB 183

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Southern Railway Company to discontinue)
its Agency Station at Grover, North Carolina) ORDER

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Wednesday, March 4, 1970, at 12:25 p.m.

BEFORE: Chairman Harry T. Westcott, Commissioners Marvin R. Wooten, and Miles H. Rhyne, Presiding

APPEARANCES:

For the Applicant:

James M. Kimzey
Joyner & Howison
Attorneys at Law
Wachovia Bank Building, Raleigh, North Carolina

For the Commission's Staff:

Edward B. Hipp
Commission Attorney
N. C. Utilities Commission
Ruffin Building, Raleigh, North Carolina

No Protestants.

RHYNE, COMMISSIONER: Southern Railway Company (hereinafter Southern), by application filed on December 5, 1969, seeks authority to: (1) discontinue its agency

station at Grover, North Carolina, (2) dismantle and remove the station building, and (3) handle future business from its agency station at Blacksburg, South Carolina. Notice of hearing was given in the Commission's Order dated January 8, 1970. Said notice required petitioner to give notice of the time, place and purpose of the hearing by the publication of an appropriate notice in regard thereto, in a newspaper having general circulation in the Grover area, said publication to be made not more than fifteen (15) nor less than five (5) days prior to the date of hearing.

Petitioner posted notice of its proposed action pursuant to Rule R1-14 of the Rules of Practice and Procedure. It also gave notice to the public concerning the time, place and purpose of the hearing as required by the aforementioned Order in this docket dated January 8, 1970.

No protestants appeared at the hearing. Appearing as witnesses for the petitioner were R. S. Esteppe, and R.A. Robb

Upon consideration of the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Petitioner is a duly authorized common carrier of persons and property by rail in North Carolina intrastate commerce and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Grover, North Carolina, is located on the Southern main line between Kings Mountain, North Carolina, and Blacksburg, South Carolina, being approximately five miles north of Blacksburg. Grover is connected by several first class highways in both northerly and southerly directions.

3. There is no passenger service offered at the Grover Station.

4. The petitioner's records reflect that they did not have any shipments of any consequences in 1969 and very little during 1968, and that there have been no profits for sometime at the Grover Station.

5. There is no Railway Express Agency in Grover.

6. Express is handled in over-the-road trucks by Railway Express and the only carload receiver is Minette Mills.

7. Bills of lading would be presented to the shipping agent at Blacksburg, South Carolina, and the agent at Blacksburg would notify consignee or shipper by telephone or U. S. Mail of arrival of carloads or empties as is now done by the agent at Grover. Order Notify bills of lading would be surrendered to the agent at Blacksburg and he would have cars placed. In other words, shippers and receivers of

freight, carload or less-carload would conduct their business with the proposed governing agency station at Blacksburg, South Carolina, in essentially the same manner as they have conducted it in the past with the Grover agency.

CONCLUSIONS

The petitioner has borne the statutory burden of proof and has established by the greater weight of evidence that:

(1) The public convenience and necessity does not require the continued operation of its agency station at Grover, North Carolina.

(2) No existing shipper or receiver will be materially inconvenienced or affected by the closing of the agency station at Grover.

(3) The public can and will be adequately served if its business at Grover is conducted from the agency station at Blacksburg, South Carolina.

(4) The petition should be granted and Southern permitted to discontinue the agency station at Grover and to handle future business from the agency station at Blacksburg, South Carolina.

IT IS, THEREFORE, ORDERED:

1. That the petition in this docket be, and same is, hereby approved.

2. That Southern Railway Company be, and it is, hereby authorized to discontinue its agency station at Grover, North Carolina, and to handle future business from its agency station at Blacksburg, South Carolina.

3. That Petitioner notify this Commission the date it closes its Grover Agency Station.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-5, SUB 249

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Railway Express Agency, Incorporated - Appli-	) ORDER
cation for Authority to Close and Discontinue	) GRANTING
Its Agency at Mackeys, North Carolina	) APPLICATION

HEARD IN: The Commission Courtroom, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on Friday, January 30, 1970, at 11:00 a.m.

BEFORE: Commissioners John W. McDevitt (Presiding), Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For the Applicant:

R. N. Simms, Jr.
Attorney at Law
P. O. Box 2776, Raleigh, North Carolina 27602

For the Commission Staff:

Larry G. Ford
Associate Commission Attorney
North Carolina Utilities Commission
Ruffin Building
1 West Morgan Street
Raleigh, North Carolina 27602

BY THE COMMISSION: Railway Express Agency, Incorporated (REA), filed with the Commission on January 9, 1970, an application seeking authority to close and discontinue its agency at Mackeys, North Carolina, same being contingent upon the application of Norfolk Southern Railway Company to close its office at Mackeys, North Carolina.

The matter was set for hearing at the time and place shown in caption by order of the Commission dated January 12, 1970, and said order also required the applicant to give notice of the hearing by publication.

The Commission did not receive a protest nor did anyone appear at the hearing in opposition to the proposed action of applicant.

Applicant offered one exhibit, an affidavit of publication of the News and Observer Publishing Company, regarding the publication of notice of the hearing, and its witness, Mr. Marvin F. Beasley, Manager, Raleigh Agency of REA, offered testimony that notice was posted of its proposed action pursuant to Rule R1-14 of the Commission's Rules of Practice and Procedure; that its agent at Mackeys is a joint agent with Norfolk Southern Railway Company; that it handled an average of seventeen (17) shipments per month during the period October, 1968, through September, 1969, with average monthly revenues accruing therefrom to it in the amount of $132.74 and with average compensation paid to its joint agent of $14.17 per month; that if the Norfolk Southern is granted permission to close its office at Mackeys it will be impractical and impossible with the small volume of business at this point to obtain a suitable person to act as its

agent, and that if this application is granted its future business would be handled through its Plymouth Agency.

Norfolk Southern Railway Company has been authorized to discontinue its agency station at Mackeys by order in Docket No. R-4, Sub 60 in another proceeding.

Upon consideration of the testimony and exhibits received in evidence, the Commission makes the following

FINDINGS OF FACT

1. That Applicant is a duly authorized common carrier of property in North Carolina intrastate commerce and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. That Applicant's agency at Mackeys is a joint agency operated in conjunction with the Norfolk Southern Railway Company.

3. That its Mackeys agency is served by its Rocky Mount - Elizabeth City over-the-road truck five days per week.

4. That it handled 200 shipments through its Mackeys agency with gross revenues derived therefrom in the amount of $1,592,84 for the twelve-month period October, 1968, through September, 1969; that for this same period it paid to its agent $170.04, or an average of $14.17 per month.

5. That it will be impossible for it to obtain a suitable agent at Mackeys, if the Norfolk Southern is granted permission to close its office thereat, due to its small volume of business at this point.

6. That there will be little or no inconvenience to the public resulting from the handling of future business through its Plymouth Agency.

Based upon the foregoing Findings of Facts the Commission reaches the following

CONCLUSIONS

1. Proper notice was given to the public of REA's proposal to close and discontinue its office at Mackeys, North Carolina.

2. No existing shipper or receiver will be materially inconvenienced or affected by the closing of the office at Mackeys.

3. The public can and will be adequately served if its business at Mackeys is conducted from its agency at Plymouth.

4. The application should be granted and REA permitted to close and discontinue its office at Mackeys and to handle future business from its agency at Plymouth, North Carolina.

IT IS, THEREFORE, ORDERED:

1. That the application of Railway Express Agency, Incorporated, in this docket be, and the same is hereby, approved.

2. That Railway Express Agency, Incorporated, be, and it hereby is, authorized to close and discontinue its agency at Mackeys, North Carolina, and to handle future business from its agency at Plymouth, North Carolina.

3. That applicant notify this Commission the date it closes its agency at Mackeys.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-5, SUB 251

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Railway Express Agency, Incorporated - Appli-	) ORDER
cation for Authority to Close and Discontinue	) GRANTING
Its Agency at Bailey, North Carolina	) APPLICATION

HEARD IN: The Commission Courtroom, Raleigh, North Carolina, on March 19, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott, and Commissioners John W. McDevitt, Marvin R. Wooten (Presiding) and Miles H. Rhyne

APPEARANCES:

For the Applicant:

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P. O. Box 2776, Raleigh, North Carolina 27602

For the Commission Staff:

Larry G. Ford
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission (Commission) on March 6, 1970,

Railway Express Agency, Incorporated (Applicant), seeks authority to close and discontinue its agency at Bailey, North Carolina, contingent upon a similar application of Norfolk Southern Railway Company to close its agency at Bailey, North Carolina.

The matter was set for hearing at the time and place shown in caption by order of the Commission dated March 10, 1970.

The Commission did not receive a protest nor did anyone appear at the hearing in opposition to the proposed action of Applicant.

Applicant offered one exhibit, an affidavit of publication of the News and Observer Publishing Company, regarding the publication of notice of the hearing, and its Witness, Mr. Marvin F. Beasley, Manager, Raleigh agency, offered testimony that notice was posted of its proposed action pursuant to Rule R1-14 of the Commission's Rules of Practice and Procedure; that its agency at Bailey is a joint agency with the Norfolk Southern Railway Company; that it handled an average of ten (10) shipments per month for the period February, 1969, through January, 1970, with average revenues accruing therefrom to it in the amount of $82.07; that its average compensation paid to its joint agent for this same period amounted to $10.91 and average monthly rent and utilities paid were $21.00; that if the Norfolk Southern Railway Company is granted permission to close its agency at Bailey it will be impractical and impossible with the small volume of business at this point to obtain a suitable person to act as its agent, and that if the application is granted its future business would be handled through its Wilson agency with little or no inconvenience to the public.

Norfolk Southern Railway Company has been authorized to discontinue its agency station at Bailey, North Carolina, by order in Docket No. R-4, Sub 63, in another proceeding.

Upon consideration of the testimony and exhibit received in evidence, the Commission makes the following

FINDINGS OF FACT

1. That Applicant is a duly authorized common carrier of property in North Carolina intrastate commerce and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. That Applicant's agency at Bailey is a joint agency operated in conjunction with the Norfolk Southern Railway Company.

3. That its agency at Bailey is served by its Rocky Mount-Selma, over-the-road truck five days per week.

4. That it handled through its agency at Bailey an average of ten (10) shipments per month for the period

February, 1969, through January, 1970, with average revenues derived therefrom in the amount of $80.07; that for this same period it paid its joint agent an average of $10.91 per month.

5. That it will be impossible for it to obtain a suitable agent at Bailey, if the Norfolk Southern Railway Company is granted permission to close its agency thereat, due to the small volume of business at Bailey.

6. That public convenience and necessity does not require continued operation of the agency station at Bailey, North Carolina, and the public will be adequately served if the business at Bailey is conducted from its agency at Wilson, North Carolina.

CONCLUSIONS

1. Proper notice was given to the public of Railway Express Agency, Incorporated's proposal to close and discontinue its agency at Bailey, North Carolina.

2. No existing shipper or receiver will be materially inconvenienced or affected by the closing of the agency at Bailey.

3. The public can and will be adequately served if its business at Bailey is conducted from its agency at Wilson, North Carolina.

4. The application should be granted and Railway Express Agency, Incorporated, permitted to close and discontinue its agency at Bailey, North Carolina.

IT IS, THEREFORE, ORDERED:

1. That the application of Railway Express Agency, Incorporated, in this docket be, and the same is hereby, approved.

2. That Railway Express Agency, Incorporated, be, and it hereby is, authorized to close and discontinue its agency at Bailey, North Carolina, and to handle future business from its agency at Wilson, North Carolina.

3. That Applicant notify this Commission the date it closes its agency at Bailey.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-66, SUB 59

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Southern Freight Association, Agent, Atlanta, Georgia, for Relief from the Provisions of the Long and Short Haul Law - General Statutes 62-141	)	ORDER GRANTING APPLICATION

BY THE COMMISSION: Southern Freight Association, Agent, Atlanta, Georgia, by Z. C. Berry, its Tariff Publishing Officer, in application filed with this Commission on June 25, 1970, seeks relief from the provisions of the Long and Short Haul Law, (G.S. 62-141) for and on behalf of the Seaboard Coast Line Railroad that will permit the publication and maintenance of a rate of 18 cents per 100 pounds from Wilmington, North Carolina, to Graingers, North Carolina, subject to Tariff of Increased Rates and Charges X-265, if and when approved for application on North Carolina intrastate traffic, for application on shipments of ethylene glycol in tank cars, (Rule 35), and minimum weight provided for tank cars of not less than 20,000-gallon capacity but in no case less than 180,000 pounds per car and to simultaneously maintain higher rates for application on like traffic moving to intermediate points on the direct route of the Seaboard Coast Line Railroad from Wilmington to Graingers via Goldsboro, Wilson and Rocky Mount, including a reduced rate of 25 cents per 100 pounds to Rocky Mount, North Carolina, subject to Tariff of Increased Rates and Charges X-265, if and when same is approved for application on North Carolina intrastate traffic.

The origin and both Rocky Mount and Graingers are local stations on the Seaboard Coast Line Railroad. The only route available to Rocky Mount is via Seaboard Coast Line direct and applicant maintains that said route is the only proper route for shipments moving from Wilmington to Graingers, North Carolina.

The distance to Rocky Mount via Seaboard Coast Line Railroad direct through Goldsboro and Wilson is 124 miles while the distance to Graingers via Seaboard Coast Line through Goldsboro, Wilson and Rocky Mount is 193 miles or 69 miles in excess of the distance to Rocky Mount.

The proposed rates are related to truck rates which are based on highway distances. The highway distance from Wilmington to Rocky Mount is 133 miles while the short highway distance from Wilmington to Graingers is only 94 miles. The rail rate making or short physical distance to Rocky Mount is 124 miles via Seaboard Coast Line direct and to Graingers (Kinston) 110 miles via Seaboard Coast Line Goldsboro, Atlantic and East Carolina Railway beyond.

The proposed rates reflect the basis that is now observed in publishing rates for application on shipments of ethylene

glycol loaded in large tank cars of not less than 20,000-gallon capacity. Applicant does not wish to depart from the established basis but in absence of the relief sought it would be necessary to either reduce the rate to Rocky Mount to be no higher than proposed to Graingers or to increase the rate to the latter point to be not less than proposed for application to Rocky Mount, North Carolina. Relief from the provisions of the Long and Short Haul Statute (G.S. 62-141) is therefore sought as otherwise it would be necessary to publish rates favoring the receiver at Rocky Mount or discriminating against the receiver at Graingers and other receivers of ethylene glycol in large tank cars.

Upon consideration of the record in this matter as a whole and the justification offered for the relief sought, and good cause appearing,

IT IS ORDERED: That the relief sought from the long and short haul provisions of G.S. 62-141, be, and same hereby is, granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-66, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of North Carolina Rail Carriers - Petition and Motion for Authority to Apply the Ex Parte 265 Increase on North Carolina Intrastate Traffic Upon Less Than Statutory Notice and for Certain Other Relief	ORDER DENYING MOTION TO RECONSIDER ORDER OF SEPTEMBER 24, 1970

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Monday, October 19, 1970, at 3:00 p.m.

BEFORE: Chairman H. T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Respondents:

Albert E. Russ, Jr.
Attorney at Law
Seaboard Coast Line Railroad Company

3600 West Broad Street
Richmond, Virginia

James M. Kimzey and
William T. Joyner, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina

James L. Howe III
Attorney at Law
Southern Railway Company
P. O. Box 1808, Washington, D. C.

For the Protestants:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina 27602
For: Albemarle Paper Company
Weyerhaeuser Company
U. S. Plywood-Champion Papers, Inc.

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
217 Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: On September 30, 1970, the respondents, Southern Railway Company and Seaboard Coast Line Railroad Company, filed their Motion praying that the Commission reconsider and withdraw its order of September 24, 1970, wherein the Commission allowed a previous Motion filed by counsel for and on behalf of protestants, Albemarle Paper Company, Weyerhaeuser Company and U. S. Plywood-Champion Papers, Inc., and thereby required the respondent rail carriers to prepare and file with this Commission on or before December 1, 1970, an exhibit showing a separation of their inter- and intrastate operating results in each of the states in which said railroads operate, observing the separation formula used in the evidence that was submitted with the Petition of the respondents filed herein on August 24, 1970. The respondents also moved the Commission, in addition to their request for a reconsideration and withdrawal of its aforementioned order of September 24, 1970, that an order issue denying the aforementioned Motion of the protestants. Upon consideration of the Motion filed by the respondents, the Commission concluded that the matter should be assigned for oral argument and by order dated October 12, 1970, assigned the same for hearing as set out in the caption.

Upon consideration of this matter in its entirety and upon the further consideration of the able arguments of counsel

for the parties, the Commission concludes that good cause has been shown and that the Motion of the intervening paper companies should be allowed, and further that the Motion of the respondents moving the Commission to withdraw its aforementioned order and to deny the Motion of the protestants filed on September 18, 1970, should be denied.

IT IS, THEREFORE, ORDERED:

1. That the Motion of the respondents, Southern Railway Company and Seaboard Coast Line Railroad Company, filed on September 30, 1970, praying that the Commission reconsider and withdraw its aforementioned order of September 24, 1970, and further praying that the Commission issue an additional order denying the Motion of the protestants filed on September 18, 1970, be, and the same is, hereby denied.

2. That the Southern Railway Company and Seaboard Coast Line Railroad Company be, and the same are, hereby required to prepare and file with this Commission an exhibit showing a separation of their interstate and intrastate operating results in each of the states in which said railroads operate, observing the separation formula used in the evidence that was submitted with the Petition filed with the Commission by respondent railroads on August 24, 1970.

3. That the statistical information required by 2 above shall be filed with this Commission, with copies to the parties, on or before December 1, 1970.

4. That the Orders of September 9, and 17, 1970, in this docket shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-66, SUB 60

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
North Carolina Rail Carriers - Petition and Motion for Authority to Apply the Ex Parte 265 Increase on North Carolina Intrastate Traffic Upon Less Than Statutory Notice and for Certain Other Relief	ORDER ALLOWING MOTION TO WITHDRAW TARIFF FILINGS AND PETITION

BY THE COMMISSION: In response to petition filed in this docket on August 24, 1970, by counsel for North Carolina rail carriers (Respondents) this Commission caused its Order of September 9, 1970, to issue, same granting relief that permitted the filing by railroads operating in North Carolina intrastate commerce of Supplement S-3 to Tariff of

Increased Rates and Charges X-265-A, which proposed to make applicable for said carriers on North Carolina intrastate commerce effective September 24, 1970, increases in freight rates and charges corresponding in all respects with the interstate increases authorized by the Interstate Commerce Commission in its Order of May 29, 1970, in Ex Parte 265, Increased Freight Rates and Charges.

The Order of September 9, 1970, also denied the request for authority to advance the effective date of the aforementioned tariff schedule from September 24, 1970, to an earlier date, suspended and deferred the effectiveness of said filing to June 22, 1971, unless and until otherwise ordered, instituted an investigation into and concerning the reasonableness and lawfulness of same and, with view of making the earliest possible disposition of the matter, assigned it for hearing in the Courtroom of the Commission on December 15, 1970.

Respondents filed the evidence and testimony of their expert witnesses on August 24, 1970, simultaneously with the filing of the aforementioned petition.

By Order of September 24, 1970, issued in response to Motion of intervenor-protestant paper companies, respondent rail carriers were required to provide not later than December 1, 1970, certain additional statistical information as described in said order. Following oral argument on October 19, 1970, on Motion of the rail carriers to reconsider and the reply of protestant paper companies, Order of October 21, 1970, issued which denied the Motion to Reconsider and required Respondents to furnish, on or before December 1, 1970, a separation of their interstate and intrastate operations in each state in which they do business.

The Commission is now in receipt of Motion filed by respondent railroads on October 29, 1970, which moves that they be permitted to withdraw Supplements S-3 (Increase Supplement) and S-4 (Suspension Supplement) to Tariff of Increased Rates and Charges X-265-A, their petition filed herein on August 24, 1970, and that the proceeding be discontinued.

This Commission has expedited the handling of all pleadings filed in this matter and its staff has expended considerable time and effort preparing its evidence and testimony with view of enabling disposition of this matter at the earliest possible date. Nevertheless, upon consideration of the record in the proceeding as a whole, and it now appearing that Respondents no longer desire to apply the Ex Parte 265 increase on North Carolina intrastate traffic, the Commission concludes that the Motion of Respondents to withdraw their tariff filing and Petition filed in connection therewith should be allowed.

IT IS ACCORDINGLY ORDERED:

(1) That the Motion of Respondents filed herein on October 29, 1970, as hereinbefore enumerated and described, be, and the same is hereby, allowed.

(2) That Respondents may, by appropriate tariff publication, arrange to withdraw Supplements S-3 and S-4 to Tariff of Increased Rates and Charges X-265-A, and same may be accomplished on one (1) day's notice to the Commission and the public, but publication shall in other respects comply with the rules of the Commission governing the construction, publication and filing of transportation tariff schedules.

(3) That hearing in this matter assigned for December 15, 1970, be, and the same is hereby, canceled and the docket in this proceeding closed.

(4) That all parties to the proceeding shall be furnished with copy of this Order by U. S. First Class Mail.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-71, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Seaboard Coast Line Railroad - Investigation of Train Accidents at Enfield, Dudley and Clarkton, North Carolina	) ORDER CONCLUDING INVESTIGATION

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, September 16, 1969

BEFORE: Chairman Harry T. Westcott, presiding, Commissioners John W. McDevitt, Clawson L. Williams, Jr., Marvin R. Wooten and M. Alexander Biggs, Jr.

APPEARANCES:

For the Respondents:

Thomas F. Ellis
Maupin, Taylor & Ellis
Attorneys at Law
P. O. Box 829, Raleigh, North Carolina

Albert B. Russ, Jr.
Seaboard Coast Line Railroad Company

3600 West Broad Street
Richmond, Virginia

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: By order dated April 29, 1969, the North Carolina Utilities Commission instituted an investigation of train accidents which occurred on Seaboard Coast Line Railroad facilities in the vicinity of Enfield, Dudley and Clarkton on February 27, 28 and March 9, 1969. Seaboard Coast Line Railroad Company was ordered to appear and present evidence as to the circumstances surrounding the train accidents, the procedures and methods involved in handling trains transporting hazardous materials and to show what steps have been or will be taken to prevent further accidents.

Public Hearing was held as captioned. Seaboard Coast Line Railroad Company offered the testimony of five witnesses including its Vice President of Transportation and Maintenance, Engineer of Tests, Assistant Vice President for Engineering and Maintenance of Rights-of-Way, the Vice President for Manufacturing of Griffin Wheel Company and the Equipment Control Manager for Sperry Rail Service. Company witnesses did not include any of the personnel actually involved in the accidents. Fifty exhibits were offered by Seaboard Coast Line to explain various aspects of its operations and the accidents which prompted the investigation.

The Utilities Commission's Staff offered testimony of two investigators and seven exhibits developed in the course of the investigation.

Witness David C. Hastings, Vice President of Transportation and Maintenance, testified that he is responsible for publishing operating and safety rules for use of each Company employee; that the Company is divided into eight operating divisions and two terminal divisions; that each operating division of 800 to 1700 miles of track is under jurisdiction of a Division Superintendent; that operating divisions are divided into subdivisions to effectively control segments of the division by more than one train dispatcher; that large terminal divisions are located at Jacksonville, Florida, and Hamlet, North Carolina; that speed restrictions on trains include those imposed by ordinance of cities and towns; those imposed by the Company on certain curves, those imposed by the Company on bridge structures due to clearance or weight limitations, those imposed because of maintenance work in progress and those imposed due to defective conditions; that permanent-type speed restrictions are marked by a sign visible day and

night; that speed restrictions imposed in connection with regular maintenance work are covered by train orders; that speed restrictions imposed because of defective conditions are also issued by the train dispatcher on advice of any responsible supervisor; that special instructions issued and contained in the employees' time table are issued in North Carolina by the superintendents of the Rocky Mount and Raleigh Divisions; that the normal procedure when a derailment occurs requires the crew to attend to the immediate safety of persons and property, make a report to the division superintendent who activates all departments in clearing the wreckage and restoring service; that written reports are transmitted to the U.S. Department of Transportation and the North Carolina Utilities Commission on collisions, derailments or other train accidents with more than $750 damage to equipment, track or roadbed, excluding the cost of clearing the wreck.

With reference to the Enfield accident, Witness Hastings testified that there were no fatal injuries; that freight train No. 110 originated in Jacksonville, Florida, and proceeded via Savannah, Georgia, Florence, South Carolina, South Rocky Mount, North Carolina, receiving required inspections en route; that maximum authorized speed for Train No. 110 between Richmond, Virginia, and Florence, South Carolina, is 60 miles an hour; that it was traveling at 60 miles an hour at the time of its derailment; that Conductor E. B. Orubaugh at about 2:25 p.m. on February 27, 1969, while making an inspection from the caboose on the west side of the train observed an excessive amount of dust and immediately applied the brakes in emergency; that the train came to a complete stop 2600 feet from the point of derailment; that the first sign of derailment was the sign of a broken wheel on ties beginning some distance from a bridge; that he assumed the Conductor applied brakes in emergency about the time the broken wheel was traversing the bridge; that he assumed as the car with the broken wheel traversed the bridge or open-decked trestle it damaged the trestle to the extent that as the slack ran in from the rear of the train when the Conductor applied brakes in emergency, the deck of the trestle collapsed; that the track at the scene of the accident is almost level; that 50 of 61 cars in the center of the train derailed; that 52 cars at the front and 37 cars at the rear of the train were undamaged; that damage was approximately $167,081 to equipment and $62,800 to roadbed facilities; that investigations made by the company to determine the cause of the accident included movement and performance of the train prior to derailment; that there was nothing unusual or improper in either the operation of the train or the conduct of employees that could have affected the cause of the derailment; that the accident was caused by a broken wheel; that wheel failure originated from an interior defect in the larger portion of the wheel which could not have been detected by visual inspection; that the manufacturer of the wheel participated in the investigation and analysis of the defective wheel; that improved design, manufacturing technology and new

inspection procedures have been developed which virtually eliminate the production and placing in service of defective train wheels.

With reference to the train accident which occurred near Dudley, North Carolina, on February 28, 1969, Witness Hastings testified that Train No. 116, a third class freight train, consisting of 60 freight cars, originated at Wilmington, North Carolina; that stops were made at Rose Hill and Warsaw where certain cars were set off and others picked up and the train was inspected; that maximum authorized speed was 35 miles per hour; that the crew noticed unusual movement at the trailing end of the lead unit at about 8:20 a.m. on February 28 when the train was moving at the speed of 32 miles per hour; that before action could be taken the brakes went into emergency, and movement stopped within approximately 550 feet; that 19 cars were derailed including 12 cars of pulpwood, three cars of cement, three cars of fertilizer and one empty hopper; that the train was traveling northward on a descending grade of 5/10 of 1% when the lead unit rolled over a broken 100-pound type rail, the break being 51 1/2 inches from the receiving end of the rail; that a portion of the rail was found lodged in the fuel tank of the second diesel locomotive; that a 42-inch portion of the rail has not been found; that the rail was manufactured in 1923; that the type of rail defect is known as an engine driver burn fracture; that the rail was formerly used on the main line of the Coast Line and was moved to this second position in 1945; that investigations were made of the movement of the train and its overall performance prior to the derailment and of the manner in which the Company employees conducted themselves; that there was nothing unusual or improper in either the operation of the train or the conduct of the employees connected with it which could have affected the cause of the derailment; that the accident was caused by a broken rail; that the track was inspected and tested by the Sperry car on October 29, 1968, and that the tape showing the results of this test did not reveal a reportable defect in the rail; that damage to equipment amounted to approximately $53,893, to roadbed $9,000; that all tracks of the entire Seaboard Coast Line System are inspected visually twice a week by the Roadmaster or his representative by means of motor car inspection; that Sperry Rail Service Detector Cars as well as the Seaboard Coast Line Rail Test Cars periodically operate over the tracks of the Company electronically testing the rails for defects.

With reference to the accident near Clarkton, North Carolina, on March 9, 1969, Witness Hastings testified that the Train No. 478 originated at Hamlet, North Carolina, and moved toward Wilmington with 190 freight cars; that it set off 16 loaded cars and 7 empty cars at Dixie, 15 loaded cars and 5 empties at Lumberton; that it left Lumberton with 106 loaded freight cars and 36 empties weighing 10,760 tons; that the maximum authorized speed for the track was 45 miles per hour; that the train was traveling at the speed of 40

miles per hour at the point of derailment; that the engine crew observed no irregularities when the train passed over the point where the derailment subsequently occurred; that the track in the vicinity of the wreck was straight and descended on a 49/100 of 1% grade across two trestles described as standard ballast, deck trestles containing six piles in each bent, a timber cap, timber stringers, ballast boards, standard stone ballast retained by timber guard rails on both sides and track laid on top thereof; that an earthen embankment was placed at the location between the trestle and the point of derailment about 12 months prior to the time of the derailment in order to remove a portion of the timber trestle which formerly occupied the entire swamp area; that the timber trestle was expensive to maintain and, in accordance with generally accepted standards, a portion of it was filled in, leaving only two waterways; that 34 freight cars near the rear portion of the train, including 25 cars of ammunition, were derailed; that 83 cars at the head of the train were not derailed and proceeded to destination after inspection; that there were no explosions or fires during or following the accident; that investigations were made of the entire movement of the train; that he concluded there was nothing unusual or improper in either the operation of the train or the conduct of Seaboard Coast Line employees that could have caused the derailment; that it was impossible to state conclusively the cause of the derailment at Clarkton; that none of the equipment was in defective condition; that the fill was well compacted and had caused little or no trouble since it was placed in service; that there had been heavy rains prior to the derailment and the swampy area on both sides of the new embankment was filled with water thereby causing the footing of the embankment to be saturated with water; that it is possible that the new embankment became so saturated with water above the level of the swamp that it gave way under the movement of Train 478; that the rail in the area of the accident is 100-pound jointed 39-foot rail laid in 1962; that the track was timbered in March, 1966 and retimbered in 1968 when the trestle was replaced and new ballasts installed; that approximate damage to equipment was $196,489 and to roadbed $5,688.

Witness Hastings testified that the Company is subject to extensive rules of the Interstate Commerce Commission and the Department of Transportation governing transportation of hazardous materials such as ammunition; that rules govern packing, marking, loading and handling while in transportation; that the comparative safety of the railroads is indicated by the fact that only five fatalities and 292 injuries occurred on the entire Seaboard Coast Line System in 1968; that low earnings and operating costs have resulted in deferred maintenance in recent years; that the entire railroad is scheduled each year for rail testing, utilizing the Company's two test cars for the purpose of detecting internal defects in the steel rail before breaks occur; that one Sperry Rail Service Detector Car is operated over the entire system.

On cross-examination, Witness Hastings testified that the Research Program of the American Association of Railroads is partially financed by the Company and that the Seaboard Coast Line Research Program itself is rather minor compared to Company's participation in National programs; that research on wheels and the method of manufacture is carried on by the industry and the American Association of Railroads; that the Company depends significantly upon experienced personnel who are required by rule and policy to inspect and report defective equipment on other conditions which may impair the safety of train operations.

With reference to the Clarkton wreck, Witness Hastings testified that in restoring the roadbed across the swampy area at the scene of the derailment, core samples did not indicate that the fill was in distress and he determined that it was not necessary to do anything else to the fill; that the level of employment in the car maintenance shop is such as to enable the Company to be able to keep ahead of the normal maintenance that would be required; that there are many freight cars which are set aside in bad condition because of the fact that the Company has neither the money nor the men to repair them; that the Company did not reach the ideal level of locomotive replacement until 1969 in which year it purchased 60 units; that "we have had to take the maintenance dollars that have been allocated to us and expend them in areas where the maximum tonnage is hauled and in the area where it is essential that we maintain the railroad for high speed operations. We have had to take the remaining monies and use them on the so-called branch lines, the line at Clarkton being a branch line, to the very best of our ability in order to maintain these lines for safe passage at the speeds at which we are authorizing them to travel"; that car capacity is one of the things causing derailment, or the increase in derailments; that joint condition had nothing to do with the cause of derailments; that there was a downward trend in the number of railway accidents on the Seaboard Coast Line System in North Carolina between 1967 and the instant hearing in 1969, and that the downward trend is a result of the efforts of the Company to maintain acceptable safety standards; that cars loaded in accordance with the approved loading procedures outlined in the established safety standards can be handled in any freight train in accordance with the designation as to its location at the maximum authorized speed for the train in that particular territory; that in his opinion all the tracks leading into the Sunny Point Ammunition terminal are perfectly safe for handling ammunition at the normal posted speed; that there is no more danger in handling a carload of explosives than handling any other commodity if it is loaded in accordance with safety regulations; that he relied on the Report of his staff that the fill in the vicinity of the Clarkton accident was properly stabilized.

Mr. L. W. Green, Jr., Engineer of Tests, testified that the broken wheel involved in the Enfield accident was sent to the Waycross, Georgia, laboratory for examination and

metallurgical analysis; that parts were cleaned, photographed, and subjected to a macrostructure determination, chemical and physical analysis which revealed that the failure of the wheel was caused by an internal defect due to manufacturing casting practices which are now outmoded; that it would have been impossible for Company inspectors to have visually detected the flaw before the break; that wheels manufactured in recent years are subjected to sonic tests which locate defects and eliminate the defective wheels from being placed in service; that the purpose of the laboratory is to analyze lubricating oil, handle company photography, test new commodities such as cleaner compounds, fuel oil and lubricating oil, and run road tests of a new appliance to a car; that metallurgical examination is one facet of laboratory work; that he has examined other wheels broken as a result of derailment but never before had seen or examined a wheel with such a defect.

Witness J. E. Bosoong, Vice President-Manufacturing, Griffin Wheel Company, testified that his company manufactured the wheel involved in the Enfield accident in 1958, examined and analyzed it following the accident, and that results of their independent examination, macrostructure determination, physical and chemical analysis showed that the wheel met all specifications and requirements in effect at the time it was manufactured and failure was caused by an internal defect which the Company could not have detected at the time; that research has resulted in design improvements and test equipment which make it unlikely that wheels with similar defects will be placed in service; that wheels of the same vintage and design are in service throughout the country; that there is no known way of testing an in-service wheel with the sonic test equipment used by the manufacturer; that such internal defects cannot be located by visual inspection.

Witness J. W. Thomas, Equipment Control Manager, Sperry Rail Service testified that the company operates an electronic rail-testing car over the Seaboard Coast Line System; that the Detector Car locates defective rails which are recorded, marked and reported to the Company; that the Detector Car inspected the broken rail in the Dudley derailment on October 29, 1968; that "there was an indication and detection equipment response" at or near the point of the broken rail that was interpreted by the operator of the Sperry Car as being caused by a visual surface condition identified as a driver burn; that the Sperry Car operating over Seaboard Coast Line Railroad in 1968 detected a total of 4,598 rail defects which were reported to the Company and identified on the track; that the type of defect reported would require replacement of rail.

Mr. Thomas B. Hutchinson, Assistant Vice President - Engineering and Maintenance of Way, testified that a Seaboard Coast Line employee accompanies the Sperry Detector

Car operator and when a flaw or defect is located a work force which follows the Sperry Car's movements as closely as possible replaces the defective rail; that defective rails are removed before another train is operated over the track; that with reference to the construction of the trestle and fill through the swampy area at Clarkton, a bulldozer was used to remove vegetation and growth and the area was filled with material taken from a cut approximately one mile west of the fill; that the fill material was successively built up in layers and compacted with a caterpillar tractor to proper elevation; that after the derailment further investigations were made to see that the fill was properly stabilized; that the fill material scattered by the boxcars was replaced without change; that the work with bulldozers, etc., indicated that core sampling and other hydrological tests which are normally and generally made, unless the condition is obvious, were not needed.

Two Utilities Commission staff members were stationed at the scene of the Clarkton accident involving Train No. 478 to investigate, observe, and interview various persons. Their reports, testimony and exhibits tend to parallel the evidence offered by the Company; photographs of the wreck show that the base of the fill where the wreck occurred was substantially covered with water. Statistics were cited to show derailments on the Seaboard System for recent years as follows: 69 in 1964, 91 in 1965, 123 in 1966, 168 in 1967, 177 in 1968, and 42 for the first 3 months of 1969.

Mr. B. C. High, Transportation Assistant to the Vice President of Operations testified in Docket R-66, Sub 56, (Staff Exhibit 5): That overall track, rail and crosstie maintenance deferments run about 40 percent on the rail programs and 35 percent on the crosstie programs throughout the entire State of North Carolina; that the primary cause of maintenance deferment is due to the "lack of finances" that its repair shops should be turning out approximately 4140 cars annually; that due to declining revenues and reduced car forces it turned out 3,466 cars in 1968 compared with 4,811 in 1967, 5,029 in 1966, and 5,318 in 1965; that the track between Fayetteville and Wilmington is inadequate to handle heavy loads being offered; that these heavy loads are otherwise routed over longer routes; that Seaboard Coast Line has other trackage not up to standard for handling the larger and heavier cars hauled today; that "we are having to divert these cars over our lines by reason of deferred maintenance."

Based upon the evidence the Commission is of the opinion and concludes that the Clarkton accident resulted from the failure in the roadbed and earthen embankment at the point of derailment; that the operating crew of Train No. 478 was not negligent; that adequate tests were not made of the surface on which the earthen embankment was constructed to assure stability under the known swampy condition of the area; and that the train was operating within the posted speed restrictions.

The Commission further concludes that the Enfield accident was the result of a broken wheel; that the wheel failure stemmed from an internal defect in the metal structure not discernable by visual inspection; that there are many wheels of the same age group and design still in service throughout the country which have not been subjected to the sonic test for defects to which all wheels are now subjected in the manufacturing process; that danger exists in the continued use of wheels which have not been subjected to tests now used in wheel manufacturing.

The Commission further concludes that the accident near Dudley was the result of a broken rail; that the Sperry Detector Car last operated over the track at the scene on October 29, 1968, and did not detect a defect of the type and degree of severity which required reporting to the Company; that the Sperry Detector Car Operator noted a detection equipment response which he identified as an engine driver-burn fracture which may have been the origin of the rail failure.

The evidence tends to show that the Company has extensive safety rules, maintenance and construction standards and policies; however, it is the opinion of the Commission that the testimony of company witnesses with reference to the accidents in this proceeding was based in significant measure upon assumptions that because of the existence of the safety rules, maintenance and construction standards and policies, they were observed, adhered to, and followed.

The Commission is of the opinion and concludes that the Clarkton and Dudley accidents are traceable to deferred maintenance; that the evidence justifies continuing surveillance and investigation of railroad safety standards and performance and positive action by the Company to bring its equipment and railroad to full performance standards.

IT IS, THEREFORE, ORDERED that the investigation of the train accidents at Clarkton, Enfield and Dudley be, and it is hereby, terminated.

IT IS FURTHER ORDERED that the Seaboard Coast Line Railroad file with the North Carolina Utilities Commission an inventory of deferred maintenance on equipment and facilities which are in effect on the date this order issues, together with a plan of action for instituting maintenance and safety programs to effectively and substantially reduce accidents stemming from failures in rail, wheel, roadbed, or other operational equipment and facilities.

IT IS FURTHER ORDERED that the Utilities Commission's Staff review the deferred maintenance programs and practices of the Seaboard Coast Line Railroad and file a report thereon on or before March 1, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Katherine M. Peele, Chief Clerk

DOCKET NO. R-71, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of the Seaboard Coast Line Railroad Company to Implement the Mobile Agency Concept in the Tarboro, North Carolina, Area, for a Six-Month Trial Period) RECOMMENDED ORDER

HEARD IN: Edgecombe County Court House, Tarboro, North Carolina, on December 9 and 10, 1969

BEFORE: Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

Z. Creighton Brinson
Taylor, Brinson & Aycock
Attorneys at Law
210 East St. James Street
Tarboro, North Carolina 27886

Richard D. Sanborn, Jr.
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202

For the Protestants:

J. Russell Kirby
Kirby, Webb & Hunt
Attorneys at Law
Box 249, Wilson, North Carolina
For: E. K. Veach, Farmers Exchange, Scotland Neck, North Carolina; Russell Roebuck, Kaiser Agricultural Chemicals, Robersonville, North Carolina; W. B. Carroll, Tillery, North Carolina; Hackney High, Oak City, North Carolina; B & R Motor and Tractor, Scotland Neck, North Carolina; Shields, Scotlant Neck, North Carolina; Town of Whitakers, North Carolina; and Other Shippers and Receivers in the Area Concerned With the Application

S. Z. Placksin
T. C. Division
Brotherhood of Railway & Airline Clerks
400 First Street
Washington, D. C. 20001
For: T. C. Division, Brotherhood of Railway & Airline Clerks

For the Intervenor:

Thomas J. Bolch, Special Assistant
Consumer Protection Division
North Carolina Attorney General's Office
Justice Building
P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public of North Carolina

For the Commission's Staff:

Larry G. Ford
Associate Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: On September 12, 1969, Seaboard Coast Line Railroad Company (Applicant) filed with this Commission a petition seeking authority to implement a mobile agency concept in the Tarboro, North Carolina, area, for a six-month trial period. The Commission, being of the opinion that the interest of the public was involved, set the matter for hearing on December 9, 1969, by its order in this docket dated September 17, 1969. By this same order, applicant was required to give notice of the time, place and purpose of the hearing by having an appropriate notice inserted in the newspapers named in Appendix A of the applicant's application, approximately ten (10) days before date of hearing.

On December 4, 1969, motion for leave to intervene was filed by counsel for and on behalf of interested parties and business firms located in the area to be served by the proposed mobile agency concept. The Commission, by its order dated December 5, 1969, permitted the intervention of these parties.

Also, on December 4, 1969, certain of the intervenors, through counsel, filed with the Commission a motion to dismiss the cause of action in this docket and by order of the Commission dated December 5, 1969, intervenors' motion was denied, which said motion was again made at the opening of the hearing in this case and the same was denied.

Hearing was held at captioned time and place with applicant, protestants and intervenors present and represented by counsel.

Applicant presented evidence and testimony which tends to show that improvements in highways, communications and computerization of agency accounting have made the mobile agency concept a feasible railroad operation.

Testimony and evidence of applicant further shows that it proposes to establish a governing agency at Tarboro where full agency service will be available to the involved area 13 hours per day from 7:00 a.m. to 8:00 p.m., Monday through Saturday. Using Tarboro as a base of operations, the applicant, by utilizing a radio equipped van truck containing all necessary office equipment and supplies and operated by a qualified employee traveling a specified route and schedule, will provide complete agency service to its following fixed agency stations: Whitakers, Battleboro, Halifax, Tillery, Scotland Neck, Oak City-Hassell, Robersonville and Parmele-Bethel, North Carolina. Mobile agency service will also be provided to applicant's non-agency stations at Kingsboro, Pender, Spring Hill, Palmyra, Hobgood, Whitehurst, Conetoe, Mildred and Speed, North Carolina, where at present agency service is not available to the public. The mobile agent will call on applicant's customers at their places of business in the above listed towns and will prepare bills of lading, furnish information concerning car supply, routing of traffic and perform all other agency services according to customer requirements.

Applicant proposes to establish a toll free public telephone system whereby the public in the area to be served by the mobile agent can, by dialing a special number, call the governing agency at Tarboro for whatever agency service they need anytime between the hours of 7:00 a.m. to 8:00 p.m., Monday through Saturday, instead of from 8:00 a.m. to 5:00 p.m., Monday through Friday, as is presently available to the public through the various fixed agency stations with the exception of the dualized agency stations of Oak City-Hassell and Parmele-Bethel which are open less than eight hours per day Monday through Friday.

Applicant will install in the Tarboro agency a communication system which will enable the agent on duty in the Tarboro agency to request information on railroad car movements directly from its computer center in Jacksonville, Florida. By utilizing the mobile agent's radio or the toll-free telephone system into Tarboro, a customer can obtain very quickly full information concerning car location.

Applicant's freight trains in the area are equipped with radios and the mobile agent, through the dispatcher and the Tarboro agency, will be able to be in contact with the freight trains setting off and picking up cars at each station. This will make possible better coordination between the mobile agent service and train service than is now available through the present agency service.

Applicant has made a detailed study of the work load of the agent at each present agency station and has determined

that the mobile agency concept can, without difficulty, handle all agency functions performed at the agency and non-agency stations proposed to be served by the mobile agency.

With the implementation of the mobile agency concept, the agency stations hereinbefore named now staffed with a full-time agent on duty eight hours per day five days per week will not be open to the public and these agents will no longer be on duty at these stations, except for Scotland Neck. The agent at Scotland Neck will continue to be on duty there and applicant does not propose to remove this agent until the mobile agent can be sufficiently trained to take over his work. However, applicant stated that before the six-month trial period is over Scotland Neck would be a part of the mobile agency concept and the fixed agent would be removed.

Testimony was offered by supporting witnesses in favor of the six-month trial period of the mobile agency concept. One stated that it would be of benefit in attracting new industry to the area. Others stated the proposed service would be greater than that offered by the fixed agency now serving them and that they had no objection to trying the new mobile agency for the six-month trial period.

Protestant witnesses presented testimony in opposition to the mobile agency concept with several stating it would not meet their needs inasmuch as they felt with the removal of the fixed agent presently serving them they would lose the benefits of services rendered by this local agent. As examples they cited instances of proper car placement, sealing and inspecting stop-off cars for reshipment and prompt damage inspection. Others stated, while they were opposed to the mobile agency concept, the handling of their business by telephone with the Tarboro agency rather than the agency now serving them would not be an inconvenience. Other protestants, appearing in their capacity as town board members or mayors of towns involved, indicated they felt the loss of the agency in their town would be detrimental to its future growth and development.

Twenty-three witnesses testified in opposition to the application, many of whom represented shippers or consignees. Their testimony can be summarized as a protest against a reduction in the agency service they are now receiving, an expression of fear in trying a new service, and a plea against the loss of the local agent in the community.

The protestants presented Honorable Joe E. Eagles, State Representative, who represents the counties of Edgecombe and Nash in the State House of Representatives. Mr. Eagles indicated that he has some doubts regarding the plan and desires further information on the plan.

Honorable Julian Allsbrook, a veteran State Senator who represents the counties of Warren, Halifax, Edgecombe, and

Pitt, among others, testified for the protestants in opposition to the mobile agency plan, both legally and factually. Senator Allsbrook's testimony was also directed to the adverse effect on the welfare of the community and the deterrent effect on attracting new industries as well as future growth and expansion, resulting from what he termed as any reduction, in transportation service in eastern North Carolina.

Having carefully considered all evidence presented, and upon a review of the entire record as a whole, including the briefs of able counsel, the Commission hereby makes the following

FINDINGS OF FACT

1. That the Applicant, Seaboard Coast Line Railroad Company, is a corporation authorized to do business in North Carolina, as a franchised common carrier by rail engaged in both interstate and intrastate commerce; that with regard to its intrastate operations, applicant is subject to the jurisdiction of and regulation by the North Carolina Utilities Commission; and that applicant has properly filed its application with this Commission concerning this matter, over which this Commission has appropriate jurisdiction.

2. That the applicant is here requesting temporary authority to initiate a mobile agency service in the Tarboro, North Carolina, area, for a six (6) month period, which said service would operate from a base station at Tarboro and would serve the following agency and non-agency stations:

Agency	Non-Agency
Whitakers	Kingsboro
Battleboro	Pender
Halifax	Spring Hill
Tillery	Palmyra
Scotland Neck*	Hobgood
Oak City - Hassell	Whitehurst
Bethel - Parmele	Conetoe
Robersonville	Mildred
	Speed

*Scotland Neck would not be included initially, but would be included at some later time during the six-months' trial period, at a time when the mobile agent is sufficiently familiar with the operation.

In addition to the above, the proposed concept involves the following features:

(1) A central office will be established at Tarboro and said office will be equipped with a telephonic service over which all of its customers in its involved area may phone the agency without cost.

(2) The mobile agent will use a specially equipped mobile van which will be supplied with all of the necessary fixtures ordinarily needed and used by a railroad agent.

(3) The mobile agent will be expected to perform the usual duties of a railroad station agency, including checking of tracks at the station to determine cars on hand for demurrage and other purposes. In addition, he will be equipped to collect freight charges if the customer so desires; receive orders for empty cars and provide answers for any inquiries as to available railroad service.

(4) The mobile agent will visit the place of business of each of the railroad patrons rather than having the customer come to the agency, as is the case at present.

(5) The mobile agent will work six days a week, whereas the present stations are open only five days each week.

(6) There will be a reduction of five agents, but said agents are protected by the Brotherhood-Company agreements, and if moved a moving expense of $400 will be allowed.

3. That the applicant will make a monetary savings in operating expense by the establishment of a mobile agency in North Carolina.

4. That the implementation of the mobile agency concept as proposed by the applicant does not constitute an abandonment or reduction in railroad freight service at the present agency stations involved; that service afforded by the applicant at the stations here involved includes a wide range of services, including, but not limited to, number of trains, hours of operation, handling of claims, damage inspection and verification, placement and movement of cars, billing, and receiving orders for cars, etc.; and that the proposed mobile agency method of operation will not result in any substantial reduction in any service presently offered, but on the contrary will result in substantially the same and improved service in that: (1) there is no reduction in the number of trains to serve the stations; (2) that agent will call on customers at the customers' place of business; (3) nine (9) non-agency stations heretofore closed due to insufficient business will receive agency service; (4) agency service will be available thirteen (13) hours per day, six days a week instead of eight (8) hours, five days a week; (5) toll free telephone service will be available to customers; (6) the applicant's communication system will allow the Tarboro agent to make direct inquiry into applicant's computer center at Jacksonville, Florida, to provide rapid information for the mobile agent, via radio, and for the customer, via toll free

telephone, regarding the location of freight cars; and (7) closer coordination between local freight train service and the agent for the benefit of the shipping and receiving public.

5. That the substitution of the mobile agency for the present fixed agencies will not result in a reduction, but on the contrary will improve service, and the implementation and operation of the same is both practical and feasible.

6. That there is no passenger service offered at any of the agency stations involved, and the applicant proposes no reduction in freight train service at any of said stations.

7. The mobile agency operation contemplates the closing of the fixed agency stations at the various locations and the substitution therefor of a mobile agency station.

8. That the changes in the present method of operation as proposed, and in existing plant, equipment, apparatus, facilities and other physical property ought reasonably to be made.

9. That the proposed mobile agency operation does not in any way alter or reduce the number or schedule of trains serving any of the agency stations affected.

CONCLUSIONS

The Commission concludes that the Seaboard Coast Line Railroad is engaged in the operation of a privately owned business; that by virtue of the nature of the service it undertakes to render, certain exceptional duties are imposed upon it by the common law and by statute; that this Commission is authorized by statute to regulate its rates, service to the public, and the safety of its equipment and operating practices; and that in other respects, the company has the same freedom as does any other corporation in the management of its properties and in the employment and assignment of the duties of its employees. (See Utilities Commission v. R. R. 268 N. C. 242).

We conclude that it is the policy of the State of North Carolina, "to provide fair regulation of public utilities in the interest of the public,...to promote adequate, economical and efficient utility services....and to these ends, to vest authority in the Utilities Commission to regulate public utilities generally and their rates, services and operations, in the manner and in accordance with the policies set forth in this chapter," (G.S. 62-2); and that this Commission has no authority to regulate or impose duties upon a railroad company except insofar as that authority has been conferred by Chapter 62 of the General Statutes, liberally construed to effectuate the policy of the State contained therein.

Every railroad is mandatorily required to furnish adequate, efficient and reasonable service in accord with G.S. 62-131(b).

G.S. 62-118 deals with the "Abandonment and reduction of service" by railroads and sets forth the criterion upon which this Commission shall have the power to authorize such abandonment or reduction in service. We conclude that "abandonment and reduction" in service under this statute, contemplates more than the substitution of a mobile agency for a particular agent, and that it also encompasses the broader concept of abandonment or reduction in railroad service by trains operating and serving a particular area. As set out in our findings of fact above, we have found that the applicant here seeks to afford the same and improved service with a new and innovative plan, a mobile agent serving the same and additional areas with the same service from its trains and substantially the same service from its agent. We, therefore, conclude that this is not an "abandonment or reduction in service" as is contemplated by G.S. 62-118, and therefore said statute is not determinative in this case. We also conclude that any inconvenience brought about by the approval of the mobile agency plan in this case will be occasional and minimal in comparison with the savings to the railroad and the improvement and extension of service contemplated by the plan, and that it is not in the public interest and is not required by Chapter 62 of the General Statutes that a public utility should waste its manpower or other resources with no substantial resulting benefit to the public. (See State ex rel. Utilities Commission v. Atlantic Coast Line Railroad, 268 N. C. 242).

Time marches on; the agency stations here involved were constructed when highways still gasped in summer dust and surrendered to winter mud. Stations were required in that era, but obsolescence has been upon them for generations. The improvement in the highways of this State, in motor vehicular transportation, in communications of all kinds, including, but not limited to, radio and telephone, and the advent of computerized accounting and other services justifies the temporary approval of new and innovative ideas and methods for the improvement of services and the reduction of costs, which will maintain that proper balance in the proportion of costs incurred to the benefit and service to the public (G.S. 62-2) in order to promote continued growth of economical public utility services that afford adequate and efficient services to all of the citizens and residents of the State. A railroad is not required to spend the earnings received from a particular station in the community in which it is located contrary to the necessities of reasonable service. The continuance of economic waste at the stations involved in this petition is not justified by the favorable revenues which they produce when considered in the light of the economic plight of railroads generally and the transportation policy of this State.

The Commission further concludes that temporary approval for the implementation of the "Mobile Agency Concept" as applied for should be granted, under the supervision of this Commission and its staff, subject to proper protective provisions in the public interest; that the present physical stations should be closed but not dismantled, moved, leased, occupied or otherwise altered, pending further orders of this Commission; that the Commission should keep a constant vigil over the operation during the period of temporary approval so that it might enter such additional orders as may be indicated by circumstances from time to time in order to insure the adequacy and sufficiency of service; and that the number of mobile agencies, telephone lines, and other facilities should keep pace with the needs and demands for service.

G.S. 62-32(b) provides: "The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish." G.S. 62-42(a) provides: "Whenever the Commission,... finds..., (3) That....changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility,...ought reasonably to be made...the Commission shall enter and serve an order directing that such...changes shall be made..." G.S. 62-30 provides: "The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties." We conclude that the above statutes empower this Commission to approve the "Mobile Agency Concept" and to supervise its operation with the view to ordering such changes, additions and/or deletions as may be indicated by circumstances from time to time.

G.S. 62-245 deals with the railroads' duty to receive and forward freight tendered and provides a penalty for the unlawful refusal to receive and forward such freight. It is the conclusion of the Commission that such duty to receive and forward tendered freight remains unaltered by the approval and implementation of the "Mobile Agency Concept."

The Commission finally concludes that a formal and public hearing, to determine all issues involved, must be afforded prior to final approval of changes contemplated by the implementation of the Mobile Agency Concept in this docket.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That, subject to further order of this Commission, the petitioner be, and it is hereby, granted temporary approval and authority to initiate its Mobile Agency Concept and Plan, in the area and manner hereinabove described, effective within thirty (30) days after the effective date of this order.

2. That said "Mobile Agency" operation shall be in accord with the petitioner's proposal as above described, and shall be subject to supervision, inspection and investigation by the Commission and its staff, pending further and/or interim orders by the Commission.

3. That the petitioner shall file a report with this Commission, which shall include all data accumulated by it on its Mobile Agency operation, within fifteen (15) days after its Mobile Agency has been in operation for a period of six (6) calendar months, upon the receipt of which the Commission will consider the same and set the matter for further formal and public hearing.

4. That the petitioner shall immediately report to the Commission any unforeseen problems or difficulties concerning any aspect of its Mobile Agency operation, in the event such should occur.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-71, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Seaboard Coast Line Railroad Company - Application to Retire Its Team Track at Addor, North Carolina, and to Discontinue That Point as a Non-Agency Station	) ORDER GRANTING APPLICATION

HEARD IN: The Courtroom of the Commission, Ruffin Building, Raleigh, North Carolina, on March 17, 1970

BEFORE: Chairman Harry T. Westcott (Presiding), and Commissioners John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

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Maupin, Taylor & Ellis
Attorneys at Law
33 W. Davie Street
Raleigh, North Carolina

J. R. Davis
Seaboard Coast Line Railroad

3600 W. Broad Street
Richmond, Virginia 23230

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Ruffin Building, Raleigh, North Carolina 27602

No Protestants.

BY THE COMMISSION: These proceedings arise on application of Seaboard Coast Line Railroad Company (Applicant) for authority to retire its team track at Addor, North Carolina, and to discontinue that point as a non-agency station.

Considering the matter as affecting the public interest, the Commission scheduled and held public hearing on the application at the captioned date, time and place.

Applicant gave due notice of its intention to file its application and of the time, date and place of the public hearing thereon. No protests or motions to intervene were filed and no one appeared at the hearing in opposition to the granting of the application.

Following hearing, Applicant waived its right to file brief and the Commission took the matter under consideration. Having fully considered the evidence adduced in light of the applicable law, (G.S. 62-118) the Commission makes the following

FINDINGS OF FACT

1. Applicant, Seaboard Coast Line Railroad Company, is a duly authorized and existing corporation and common carrier of persons and property by rail in North Carolina, is subject to the jurisdiction of the North Carolina Utilities Commission, is properly before it, and the Commission has jurisdiction over the subject matter involved.

2. Addor, Moore County, is located on Applicant's Raleigh to Hamlet Line, 4.3 rail miles south of Aberdeen and 6.3 rail miles north of Hoffman, North Carolina.

3. Applicant gave due notice of its intention to file its application as required by Rule R1-14 of the Commission's Rules of Practice and Procedure and of the time, place and purpose of the hearing as required by the Notice of Hearing issued in this docket on February 17, 1970.

4. That no carload shipments were received at or forwarded from Addor during the 24 months period that immediately preceded filing of the application.

5. Any carload freight traffic which might develop in the Addor area can be conveniently handled through Applicant's stations at Pine Bluff, Aberdeen and Hoffman, North Carolina.

6. That the stations of Pine Bluff and Aberdeen are located approximately 3.5 and 6 miles, respectively, north of Addor, via State Highways 1102, 1103, and U.S. Highway 1, while Hoffman is approximately 7.7 miles south of Addor via U.S. Highway 1 and State Highway 1102.

7. There is no station building or other facility of Applicant at Addor, other than a two-car team track.

Upon the foregoing findings of fact, and based upon the entire record as a whole, the Commission makes the following

CONCLUSIONS

Applicant has borne the burden of showing that public convenience and necessity no longer requires the maintenance of the public team track at Addor, North Carolina. Therefore, the authority sought in the application will be granted.

ACCORDINGLY, IT IS ORDERED:

That the application in this docket be, and the same is hereby, granted. Applicant is hereby authorized to retire its team track at Addor, North Carolina, and to discontinue that point as a non-agency station.

That Applicant advise this Commission the date the team track at Addor is retired and that point discontinued as a non-agency station.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. R-71, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Seaboard Coast Line Railroad Company - Application for Authority to Retire the Team Track at Crouse, North Carolina, and to Discontinue That Point as a Non-Agency Station	) ORDER) GRANTING) APPLICATION)

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on June 16, 1970, at 10:30 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Marvin R. Wooten and Miles H. Rhyne (Presiding)

APPEARANCES:

For the Applicant:

T. F. Ellis
Maupin, Taylor & Ellis
Attorneys at Law
33 W. Davie Street
Raleigh, North Carolina

No Protestants.

WOOTEN, COMMISSIONER: These proceedings arise on the application of Seaboard Coast Line Railroad Company (Applicant) for authority to retire its team track at Crouse, North Carolina, and to discontinue that point as a non-agency station.

Considering the matter as affecting the public interest, the Commission scheduled and heard a public hearing on the application at the above captioned date, time and place.

Applicant gave due notice of its intention to file its application and of the time, date and place of the public hearing thereon. No protests or motions to intervene were filed and no one appeared at the hearing in opposition to the granting of the application.

Following the hearing, Applicant waived its right to file brief and the Commission took the matter under consideration. Having fully considered the evidence adduced in light of the applicable law (G.S. 62-118), the Commission makes the following

FINDINGS OF FACT

1. Applicant, Seaboard Coast Line Railroad Company, is a duly authorized and existing corporation and common carrier of persons and property by rail in North Carolina, is subject to the jurisdiction of the North Carolina Utilities Commission, is properly before it, and the Commission has jurisdiction over the subject matter involved.

2. Crouse, North Carolina, is located on the Applicant's Lincolnton to Cherryville line, 3.5 and 5.6 miles, respectively, west of Saxony and Lincolnton, North Carolina, and 5.5 miles east of Cherryville, North Carolina.

3. Applicant gave due notice of its intention to file its application as required by Rule R1-14 of the Commission's Rules of Practice and Procedure and of the time, place and purpose of the public hearing as required by the Notice of Hearing issued in this docket on April 29, 1970.

4. That no carload shipments were received at or forwarded from Crouse during the 24 months' period that immediately preceded the filing of the application.

5. Any carload freight traffic which might develop in the Crouse area can be conveniently handled through Applicant's stations at Saxony, Lincolnton or Cherryville, North Carolina.

6. That Saxony, Lincolnton, Crouse and Cherryville are traversed and connected by good roads and highways and are located in close and convenient proximity to one another.

7. There is no station building or other facility of the Applicant at Crouse other than the team track here involved.

8. That public necessity and convenience nc longer requires the continued maintenance of the public team track at Crouse, North Carolina.

Upon the foregoing findings of fact and based upon the entire record as a whole, the Commission makes the following

CONCLUSIONS

Applicant has borne the burden of showing that public convenience and necessity no longer requires the maintenance of the public team track at Crouse, North Carolina. Therefore, the authority sought in the application should be granted.

ACCORDINGLY, IT IS ORDERED:

1. That the application in this docket be, and the same is hereby, granted. Applicant is hereby authorized to retire its team track at Crouse and to discontinue that point as a non-agency station.

2. That the Applicant advise this Commission the date the team track at Crouse is retired and that point discontinued as a non-agency station.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-29, Sub 184

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company - Application for Authority to Discontinue Passenger Train Service Between Greensboro and Asheville, North Carolina	ORDER AUTHORIZING MODIFICATIONS AND REDUCTIONS IN TRAIN SERVICE AND DENYING APPLICATION TO DISCONTINUE TRAINS ENTIRELY

HEARD: City Council Room, Asheville, N. C., Old Commission Room, Forsyth County Courthouse, Winston-Salem, N. C.

DATE: May 12-13, 1970, Asheville
May 14, 1970, Winston-Salem

BEFORE: Chairman H. T. Westcott; Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne, and Hugh A. Wells

APPEARANCES:

For the Applicant:

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For the Protestants:

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Appearing for: Citizens Committee to Save SRR Trains 15 & 16

Bruce Elmore
304 Northwestern Bank Building
Asheville, N. C.
Appearing for: J. W. Bell, Div. Chairman, BRAC, Asheville; R. W. Redmond, Sec. UTU #782, Asheville; W. H. Melton, Jr., Q. B. Merrill, Mrs. M. Norman Beecher, Rex Jarrett, Walter Gardner and Undersigned

Petitioners of Petition #1; W. A. DeBord, et al., Undersigned Petitioners of Petition #2; Harold J. Kenner, et al., Undersigned Petitioners of Petition #3; Alice P. Schleeniger, et al., and other signers of Petitions

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Box 991, Raleigh, N. C.

BY THE COMMISSION: The applicant Southern Railway Company (hereinafter sometimes called the "applicant" and "railroad") commenced this proceeding by filing its application on March 13, 1970, for authority to discontinue the operations of its passenger Trains Nos. 15 and 16 between Greensboro and Asheville, North Carolina. Southern Railway is a common carrier by rail with extensive operations in North Carolina, including operation of freight trains and passenger trains.

By Order of the Commission entered March 18, 1970, the application was set for hearing in Asheville, North Carolina, on May 12 and 13, 1970, and in Winston-Salem, North Carolina, on May 14, 1970. Notice of the hearing was published in newspapers in Winston-Salem and Asheville, North Carolina.

Numerous individual protests were filed with the Commission and formal protests of record were entered by a Citizens Committee to Save Southern Railway Trains 15 and 16 in Asheville, North Carolina, by the United Transportation Union, by the Brotherhood of Railroad Enginemen, the American Association of Railroad Passengers, Black Mountain Association of Retired People, and spokesmen for petitioners on various petitions filed with the Commission opposing discontinuance of Trains 15 and 16, and by various individuals who use Trains 15 and 16 in passenger service.

The public hearings were held as scheduled in Asheville and Winston-Salem, North Carolina, and the applicant, the protestants and the Commission Staff were present and represented by counsel and presented evidence through testimony of witnesses and exhibits as follows:

APPLICANT

Oran O. Kell, Manager of Passenger Sales for Southern Railway, Atlanta, Georgia, testified as to the equipment and operations of Trains 15 and 16, sometimes known as THE ASHEVILLE SPECIAL, and the efforts of Southern Railway to promote the sale of passenger tickets for Trains 15 and 16. The Asheville Special consists of one combination coach and baggage car, one combination coach and lounge car, and one sleeping car. Train 15 leaves Greensboro at 7:30 a.m. to

arrive in Asheville, North Carolina, at 1:03 p.m., and Train 16 leaves Asheville, North Carolina, at 1:35 p.m. to arrive in Greensboro, North Carolina, at 7:05 p.m. Each train serves stations at Greensboro, Winston-Salem, Statesville, Newton, Conover, Hickory, Connelly Springs, Valdese, Morganton, Glen Alpine, Marion, Old Fort, Ridgecrest, Black Mountain, Swannanoa, Azalea-Oteen, and Asheville, some of the stations being flag stops. The sleeping car is transferred to Trains 5 and 6, The Piedmont, at Greensboro, North Carolina, for through service to and from Washington, D. C., and by connections to points beyond. Mr. Kell offered exhibits showing the schedules, the maps, population studies, bus schedules and airline schedules. Mr. Kell testified that The Asheville Special produces feeder value from passengers to and from points beyond Greensboro on other trains in the amount of $100,000 to $110,000 per year over and above direct ticket revenue on Trains 15 and 16 between Greensboro and Asheville. The Southern Railway also operates Trains 1 and 2, the Southern Crescent (formerly The Southerner) on its north-south run through Greensboro.

Mr. Frank A. Luckett, Controller of Southern Railway, Washington, D. C., testified and presented exhibits relating to the revenues and expenses of Southern Railway on Trains 15 and 16 with comparisons for previous years and for the various months preceding the application to discontinue Trains 15 and 16.

Mr. H. R. Moore, General Manager, Southern Railway Eastern Lines, Atlanta, Georgia, testified as to the operation of Trains 15 and 16, including testimony as to the manner in which three crews were used to operate the train; one crew between Greensboro and Winston-Salem and return, and two crews for operation of the train between Winston-Salem and Asheville.

PROTESTANTS

Judge J. Will Pless, Marion, North Carolina, testified as the first protestant seeking continuance of Trains 15 and 16, stating the reasons the public desires continued operation of said trains, including use by students, people under 16, people without automobiles, and elderly people who do not drive automobiles and others who rely on public transportation and who do not like to use air travel or bus transportation. Other protestants appearing in Asheville included Luke Atkinson as a member of the Asheville City Council; Rev. Dwight Ware; Dr. E. P. Patton, Assistant Professor of Transportation, Knoxville; Winfield Scott Harvey, Arden; Louise Pittman, Asheville; William Allen; Ralph Ward; Hubert C. White, Black Mountain; Mrs. Hubert C. White; Graham Childress; Dr. Russell Norburn; James Reed; William J. Perence; Mother Dorothy McGuire, Mother Superior, St. Genevieve and Gibbons School; Jesse Ledbetter; R. E. Ward; Mrs. H. P. Price; Max Polansky; Mrs. C. E. Folckemer; Mrs. James McClure Clark; J. Sloan Coleman; Bernard Elias; Mrs. Burnley Weaver; Mrs. Thomas Polsky; George Stephens,

Sr.; Herman Davis; W. W. Gunter, United Transportation Union; George Spencer, Brakeman, Southern Railway; and Rev. Henry H. Chapman.

The following public witnesses appeared in protest and offered testimony in support of use of trains in Winston-Salem: Walter Fritz; Rev. O. N. Hutchinson; Byrd Wade III; William L. Van Hoy; Mrs. Lillian Hobson; Carl Russell, Sr.; J. F. Parker, Jr.; Miss Virginia Eastin; Ellie Osborne, Jr.; Lawrence Keesler; and Ben Cornelius.

The Commission Staff presented testimony of Don Coordes, Transportation Inspector, reporting on train service on Trains 15 and 16.

Southern Railway offered rebuttal testimony of Lawson G. Polleson, Consultant, Labor Relations Department of Southern Railway, with respect to an operation of three crews on Trains 15 and 16 in efforts to reduce the crew expense on said trains; and the testimony of Charles W. Campbell, Trainman on Trains 15 and 16, relating to his seniority on Trains 15 and 16.

Based upon the testimony and exhibits and other evidence of record, the Commission makes the following

FINDINGS OF FACT

1. Applicant is a common carrier of passengers, freight and express by railroads operating within and between the States of Virginia, North Carolina, South Carolina, Georgia, and other states throughout the south and District of Columbia, and as part of its operation provides passenger service between Greensboro and Asheville, North Carolina, and is subject to the jurisdiction of the Commission for service, rates, facilities and the discontinuance of service.

2. In providing passenger service between Greensboro and Asheville, North Carolina, the applicant operates one round trip daily using one train, No. 15, for the westbound trip which is scheduled to leave Greensboro at 7:30 a.m. and arrive in Asheville at 1:03 p.m., and for the eastbound trip, Train No. 16, leaving Asheville at 1:35 p.m. and arriving in Greensboro at 7:05 p.m. Two complete sets of train equipment are used in the operation due to the frequent occasions on which Train No. 15 is late in arriving in Asheville, and Train 16 must leave Asheville by 1:35 p.m. in order to make connections in Greensboro for The Piedmont for points north. Each train makes regular or flag stops at the stations at Greensboro, Winston-Salem, Statesville, Newton, Conover, Hickory, Connelly Springs, Valdese, Morganton, Glen Alpine, Marion, Old Fort, Ridgecrest, Black Mountain, Swannanoa, Azalea (Oteen), and Asheville.

3. Trains 15 and 16 make connections at Greensboro, North Carolina, with the Southern Railway's Piedmont Special to and from points north of Greensboro and interchange the pullman car at Greensboro for points north and receive the pullman car at Greensboro from points north of Greensboro. Both trains handle special baggage, but do not handle REA express or mail.

4. Trains 15 and 16 provide the last passenger service afforded to the public west of the Southern Railway's main line track running north and south between Greensboro and Charlotte, and provide the last passenger service available at the stations served by Trains 15 and 16 west of Greensboro, including the principal towns of Winston-Salem, Statesville, Hickory, Morganton, Marion, Old Fort, Black Mountain and Asheville.

5. Asheville, North Carolina, is a large population center for the entire western portion of the State of North Carolina, and is both an economic and cultural center offering major recreational and educational facilities, and is the center of many retirement areas and resort areas, and has camping areas that attract young people under 16 years of age to summer camps, in addition to winter colleges and schools. The retirement centers attract elderly people beyond the age of driving automobiles. As the natural geographical center of this large area, Asheville is a center for passenger train service for western North Carolina, and there is a substantial demand and need for passenger train service at Asheville, and the public convenience and necessity requires that passenger train service be provided at Asheville, North Carolina, for intrastate service and for connections with the main line of the Southern Railway for points north and south.

6. The applicant now enjoys a large and profitable rail freight business on its rail route served by Trains 15 and 16 between Greensboro and Asheville producing rail freight service revenues of $14,290,000 for the year 1969 with total freight expenses of $13,200,000, leaving freight net income before income taxes of $1,090,000, at the stations served for passengers by Trains 15 and 16.

7. Applicant's passenger service between Greensboro and Asheville is a direct feeder service for its long-haul trains through connections at Greensboro, and is an essential and necessary service to the travelling public between Asheville and Greensboro and intervening points and between these points and points north and south of Greensboro on the applicant's main line tracks between Washington, D. C., and New Orleans, Louisiana, and from connections at these points throughout the United States.

8. The service offered by applicant to the travelling public over its line between Greensboro and Asheville has not been promoted in recent years so as to encourage continued passenger use of such service, and the public has

in certain instances been discouraged from using such service by station windows being closed during hours when the public is seeking service, by off-line ticket agents who are not familiar with the service, by the use of equipment which is old and on occasions is uncomfortable, by frequent delays in operation and failure to meet time schedules, and by a general level of service that does not lend encouragement for use by the public.

9. Applicant has made very little, if any, effort to sell its passenger service between Asheville and Greensboro, and for the most part has allowed its facilities and its services to reach a condition in which they are not attractive to the public and to the point where they discourage public use.

10. Applicant has not advertised Trains 15 and 16 since 1964 and has made no special efforts to increase the use of the trains for any potential they would have as scenic trains operating into the Smoky Mountains and the Blue Ridge Mountains over one of the great mountain scenic routes in the eastern United States.

11. Applicant is experiencing a deficit in net income from the operation of Trains 15 and 16 under its present method of operation with the use of its present facilities and by the maintenance of its present schedules.

12. Trains 15 and 16 earned passenger ticket revenue of $75,400 from 26,400 passenger fares in 1969, plus $3,049 in baggage and other revenue, plus feeder revenue from passengers on other trains who terminated or originated their trip on Trains 15 or 16 in the amount of $117,000, and direct train expenses of $422,153, including wages. Under the Interstate Commerce Rule, feeder value is considered to have 50% expense connected with handling such passengers, leaving net profit in feeder value from passengers on these trains of $58,500. The feeder revenue is derived from 12,732 passengers using Trains 15 and 16 for points beyond Greensboro. The expenses are thus $285,204 in excess of revenues plus one-half of feeder revenues.

13. The passenger station at Winston-Salem serves only Trains 15 and 16, and these trains are charged with the total expense amount of $26,549 as station expense at Winston-Salem.

14. Trains 15 and 16 are operated by three crews with the total crew wage cost of $237,000. Trains 15 and 16 use two complete sets of equipment having total equipment cost in locomotive and car repairs, supplies and expenses, and sleeping car net loss of $120,018 in cost attributed to the equipment itself over and above the wage cost, fuel cost and terminal company costs.

15. Southern Railway had total earnings in 1969 of $45,959,000, with earnings on common stock of $6.39 per

share. During the first quarter of 1970, the earnings per share were $1.71, which if annualized to four quarters would be $6.84 per share, or an increase of 6% for 1970 over 1969. The North Carolina operating revenues were $68,800,000 with North Carolina operating income of $13,000,000.

16. Trains 15 and 16 averaged 36 passengers per trip during 1969 with a total of 26,400 passenger fares.

17. The losses on Trains 15 and 16 by the applicant of $285,204 in 1969, after credit for 50% of the feeder value, are sufficiently great that substantial major operating economies must be authorized and effected or the trains will have to be discontinued. The value and use of these trains by the public is sufficiently great that the trains should not be discontinued and could not be discontinued in the public interest or in accordance with the public convenience and necessity, and the Commission finds as a fact that the operating costs charged to these trains can and must be reduced in substantial amounts in order to warrant and justify the continued operation of said trains. Southern Railway has not made adequate or sufficient studies, if any at all, as to means and methods of reducing operating expenses of these trains, including crew wages, equipment expenses, and other expenses of said trains. Until further efforts are made to reduce the operating expenses and until means are authorized by this Commission for reduction of said expenses, it is not in the public convenience and necessity to discontinue said trains. The Commission considers the present losses to be sufficiently great that drastic and extreme measures must be authorized by this Commission or the train service to Asheville and western North Carolina will be discontinued by the applicant. Trains 15 and 16 operated from Salisbury to Asheville prior to 1949, and the first and obvious economy that must be authorized and ordered is for Trains 15 and 16 to be moved back to the route from Salisbury to Asheville, via Statesville, and thence over the remaining present route to Asheville. The trains can make the same connections with the main line Trains 5 and 6 at Salisbury as they presently do at Greensboro and the feeder value will be retained, and the essential service will be retained. This proposal will admittedly eliminate service at Winston-Salem, which is regretable, but which is unavoidable on this record. Winston-Salem is located 27 miles from the main station at Greensboro, and the hardship on Winston-Salem passengers of going to Greensboro for service is offset by the savings from moving the origin from Greensboro to Salisbury and the resulting potential of saving the trains for the future rather than losing the trains completely if they are maintained on their present route at the present losses.

18. The result of moving the origin of the trains from Greensboro to Salisbury will be to reduce the mileage from the present 195.5 miles to 138.9 miles, resulting in a shorter run.

19. In addition to moving the origin from Greensboro to Salisbury, the Commission finds that further economies must be authorized and effected and hereby authorizes reduction of the number of stations served from 17 stations to 7 stations, by eliminating the service at stations at Greensboro, Winston-Salem, Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa, and Azalea (Oteen).

20. The Commission further authorizes and orders that the expenses be further reduced by eliminating daily service of Trains 15 and 16 and by instituting every other day service on Monday, Wednesday and Friday. This will permit operation of one set of equipment in turn-around service from Salisbury to Asheville every Monday, Wednesday and Friday, and may permit operation of the trains by one crew in turn-around service every other day. This reduces wage expenses from three crews to one crew, but the testimony shows that all of the crews on this train have seniority and could revert to freight train service, and it would appear that saving one crew in passenger train service is the better alternative to losing Trains 15 and 16 entirely and losing all three crews in passenger service.

21. With the change of route from Salisbury to Asheville, Trains 15 and 16 would still be the last passenger train service to six towns which serve as population centers for a substantial portion of western North Carolina, and the Commission finds that public convenience and necessity requires that the rail service be continued by the applicant on the reduced basis as now authorized between Salisbury and Asheville, via Statesville, by the change of the origin point from Greensboro back to Salisbury.

CONCLUSIONS

1. Applicant has offered train service to Asheville, North Carolina, either from Salisbury or from Greensboro, with connections to and from points on its main line routes and connections to the entire United States, for many years. This passenger train service now consists of one daily round trip schedule, Train 15 leaving Greensboro at 7:30 a.m. for arrival in Asheville at 1:03 p.m., and Train 16 leaving Asheville at 1:35 p.m. and arriving back in Greensboro at 7:05 p.m. Connections are made at Greensboro by both Train 15 and Train 16 with the Trains Nos. 5 and 6, respectively, The Piedmont Special, to and from Washington, D. C., with through pullman service and connecting coach service. At the present time, Trains 15 and 16 have been operated by two different sets of train equipment, including on each of said trains a diesel locomotive, a combination coach and baggage car, a combination coach and lounge car, and one pullman car. No regular food service is available on either train, except that arrangements have been made for a stop to receive sandwiches on board, to order by any passengers.

2. Each train is operated by a crew of five men, but three separate crews are utilized to operate the trains. One crew originates in Greensboro and gets off in Winston-Salem where it waits until the next train comes back through, and it takes that train back from Winston-Salem to Greensboro. The other two crews operate alternating on the leg between Winston-Salem and Asheville. The three crews are required primarily, if not solely, because of differences in union contracts relating to crew districts, boundary lines and crew rules which prevent one crew from running straight through from Greensboro to Asheville.

3. Prior to recent years, the pullman car on Trains 15 and 16 originated in New York City and was known as The Asheville Special, but the Pennsylvania Central has eliminated handling the pullman from Washington to New York, and it is now The Asheville Special pullman car from Washington, D. C., to Asheville.

4. The Winston-Salem passenger station is open from 12:30 p.m. to 6:25 p.m. and serves only Train 16 eastbound through Winston-Salem to Greensboro, but is not open to Train 15 going westbound through Winston-Salem to Asheville.

5. Western North Carolina is a center for recreation for the entire Eastern Seaboard, with summer camps, retirement homes, mountain touring and winter skiing, and is a center for educational institutions, including colleges in Asheville and other nearby points in western North Carolina. Trains 15 and 16 provide the only passenger service into the entire western part of North Carolina. A substantial number of passengers will use Trains 15 and 16, and these trains are the last remaining passenger train service available to this substantial group of passengers. The testimony shows that the passengers now utilizing these trains are for the most part too young or too old to use private automobiles and do not choose from personal reasons to use air or bus transportation. The area traversed by Trains 15 and 16 is one of the most scenic routes in the Eastern United States, including the climb from Old Fort into the Smoky Mountains and Blue Ridge Mountains.

6. The Commission concludes that the present losses of the applicant are substantial and that unless they can be reduced in consequential amounts that the losses to the applicant would outweigh the advantages however great to the public from continued use of Trains 15 and 16.

7. Substantial savings can be accomplished by the following measures:

(a) Moving the origin of the trains from Greensboro to Salisbury by reverting to the Salisbury-Asheville route used prior to 1949, thus saving 56.6 miles, or 29%, of the trip and effecting immediate savings in expenses, such as fuel, maintenance, etc., and permitting other savings covered below.

(b) Changing the origin from Greensboro to Salisbury will result in closing the station at Winston-Salem and eliminating losses from this station of $26,000 per year.

(c) Reducing the stations served on the remaining route from 15 stations to 7 stations, by eliminating stops at Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa, and Azalea (Oteen), leaving station service at Salisbury, Statesville, Hickory, Marion, Old Fort, Black Mountain and Asheville.

(d) Reduce the service from daily service to three-round-trips-a-week service.

8. The above reductions in service and reductions in operations will result in immediate and substantial savings and reductions in cost by reducing the mileage covered and the stations served and by reducing from seven to three the round trips served each week.

9. Careful review of the records and the schedules in evidence indicate that one set of train equipment could serve Trains 15 and 16 on the shortened mileage distance by operating three (3) every-other-day round trips each week in turn-around service from Salisbury to Asheville in the morning and back from Asheville in the afternoon (or by 6 one-way-each-day trips, three round trips a week, by going to Asheville one day and returning the following day). Review of the possible schedules indicate that connections could be maintained with Trains 5 and 6, The Piedmont Special, at Salisbury by leaving Salisbury for Asheville at 9:00 a.m. and arriving from Asheville to Salisbury at 5:40 p.m. every other day, a round trip distance of 278 miles, and this should offer the potential of operating these trains with substantial savings in crew wages.

10. Applicant is a public utility. It enjoys franchise privileges. It enjoys substantial revenue from operating freight service under this franchise into western North Carolina over the lines involved in this proceeding, and it enjoys an overall profitable railroad operation. Its 1969 earnings were among the best of any railroad in the United States and its 1970 earnings in the first quarter offer chances for improvement over 1969. The applicant cannot plead or show in the record that its general overall operating condition requires or makes mandatory any immediate curtailment of passenger train service, in order to continue in solvent operation. The rule for considering continuance of passenger trains is to balance the disadvantages to the public from the discontinuance of such trains against the losses to the railroad from the continuance of said trains. The applicant cannot consider the operation of passenger Trains 15 and 16 in a vacuum and when public convenience and necessity requires, must consider the losses and detriment to the public from discontinuance of its operation of said trains.

11. We conclude that the public need requires that the applicant continue to render rail passenger train service over its lines to Asheville, North Carolina, and that the present route from Greensboro to Asheville may be modified by substitution of a route over applicant's tracks from Salisbury to Asheville. We also conclude that present daily service may be modified by offering three-round-trips-a-week service on Monday, Wednesday and Friday, or on Tuesday, Thursday and Saturday, of each week. We conclude also that the applicant should work out attractive schedules for this service in its connection with trains to and beyond Salisbury to points on the Southern railroad and rail points throughout the United States and to promote said service as an outstanding scenic route into the heart of the Smoky Mountains, and furnish better facilities in its operation to provide for the public need in a more adequate, efficient and agreeable manner. We further conclude that the applicant has not adequately surveyed nor furnished in this record any sufficient study of the methods available to the applicant which are approved in this Order for reduction of losses and expenses in the operation of Trains 15 and 16, and that the complete discontinuance and abandonment of Trains 15 and 16 is not just and reasonable until and if all available means are utilized as approved and authorized in this Order for modifying and reducing service by Trains 15 and 16 to effect major economies in their operation.

This Commission concludes that a substantial number of the present expenses in the operation of Trains 15 and 16 are unreasonable and unjustified to the extent they can be eliminated as approved in this Order, and that the losses alleged to be incurred on Trains 15 and 16 by the applicant are due to such unreasonable and unjustified expenses and are found not sufficient cause for the discontinuance of the said Trains 15 and 16. It may be true that the economies authorized in this Order could not have been effected by the applicant without approval of this Commission, but this record fails to disclose that applicant has considered any such methods nor has sought approval of any such methods, but, on the contrary, has continued all expenses on Trains 15 and 16 which maximize the losses on said trains, which have the ultimate effect of supporting its application to discontinue said trains due to the magnitude of said losses. The burden is upon the applicant to prove that its expenses are just and reasonable, and it is incumbent upon the applicant to seek every reasonable means to reduce the expenses on this service before it is authorized to discontinue the service altogether.

12. The reductions in service and modifications in service authorized in this Order are material and substantial, and while it is too early to find as a fact the entire savings that will result from such modifications and reductions in service, the Commission can and does find and conclude that the savings will be so substantial if the modifications are entered into by good faith by the applicant that its losses will be reduced to such a minimum

amount that they will no longer justify or merit the discontinuance of Trains 15 and 16 in view of the public convenience and necessity for such service. The resulting need and benefits to the public from continued operation of Trains 15 and 16 as thus modified will far outweigh the substantially and drastically reduced amount of losses which might remain after such reductions in service.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application of Southern Railway Company to discontinue operation of Trains 15 and 16 between Greensboro and Asheville is denied, except as hereinafter modified by reduction of service of Trains 15 and 16.

2. The applicant is authorized and ordered to modify the operation of Trains 15 and 16 in order to effect savings in the expenses of said trains and the losses therefrom by changing the route of said trains from the present route from Greensboro to Asheville to revert back to the route used prior to 1949 from Salisbury to Asheville; to close the station at Winston-Salem and discontinue service of said trains at Winston-Salem and Greensboro; to reduce the schedules from daily service to three-round-trips-a-week service on Monday, Wednesday and Friday, or on Tuesday, Thursday and Saturday, and to discontinue service at the stations at Greensboro, Winston-Salem, Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa, and Azalea (Oteen).

3. That all reasonable and appropriate methods be utilized and explored for reduction of expenses in the operation of said Trains 15 and 16 as modified herein and to operate said trains insofar as possible and feasible with one set of train equipment in turn-around service and to seek every means possible to operate said one train in turn-around service with one crew in turn-around service. That if applicant does not find such one train-one crew turn-around service possible on every-other-day service, that, in the alternative, it further endeavor and attempt to operate one train and one crew in one-way-each-day service in three-round-trips-a-week service running west from Salisbury to Asheville one day and east from Asheville to Salisbury the following day in three round trips a week, six days a week service, or in the most economical combination of such methods of reducing expenses through such reductions in the frequency of service.

4. That the applicant proceed forthwith to arrange for the most attractive schedules for the operation of said trains in such modified and reduced service and to provide for the public better facilities and more efficient and reasonable service for such service as thereafter remains and to take reasonable methods to promote and advertise such service as a unique service on The Asheville Special on the scenic route traversed by said trains with equipment suitable for and adaptable to scenic routes, and promotions

based upon the recreational and cultural center in western North Carolina, and the advantages offered to those members of the public who need and prefer train service as compared to other modes of transportation.

5. The modifications and reductions in service authorized in this Order shall not be placed into effect until the applicant Southern Railway Company has notified the Utilities Commission of such plan of reduction in service adopted by the applicant and has posted a notice of such change in operations and schedules of Trains 15 and 16 at all stations presently served by said trains.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 184

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Railway Company - Application for Authority to Discontinue Passenger Train Service Between Greensboro and Asheville, North Carolina) AMENDED ORDER

BY THE COMMISSION: On July 9, 1970, the Commission entered in the above-captioned proceeding an Order Authorizing Modifications and Reductions in Train Service and Denying Application to Discontinue Trains Entirely.

It has come to the attention of the Commission that its Order of July 9, 1970, appears to authorize Southern Railway Company to discontinue passenger service entirely on its Trains 15 and 16 at the stations at Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa, and Azalea (Oteen).

The Commission being of the opinion, based on the record and pleadings in this matter, that passenger service should not be discontinued entirely and that flag stops should be required at Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa, and Azalea (Oteen),

IT IS, THEREFORE, ORDERED that the Commission's Order of July 9, 1970, be, and the same hereby is, amended to require Southern Railway Company to modify its train passenger service on Trains 15 and 16 at Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa, and Azalea (Oteen) to provide that in each instance flag stops be scheduled and permitted, thereby not eliminating passenger service entirely.

IT IS FURTHER ORDERED that Southern Railway Company amend its publication of passenger schedules on Trains 15 and 16 to provide for flag stops at Newton, Conover, Connelly Springs, Valdese, Glen Alpine, Ridgecrest, Swannanoa and Azalea (Oteen).

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Duputy Clerk

(SEAL)

DOCKET NO. P-36, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of General Telephone Company of North Carolina for Adjustment of Its Rates and Charges for Telephone Service in the Monroe, Altan, and Goose Creek Exchanges	))))	ORDER APPROVING RATES

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on June 9 and 10, 1970

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt, Marvin R. Wooten, Hugh A. Wells and Miles H. Rhyne

APPEARANCES:

For the Applicant:

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Union County Farm Bureau

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For: Monroe-Union County Chamber of Commerce
Union County Farm Bureau

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WOOTEN, COMMISSIONER: The Applicant, General Telephone Company of North Carolina (hereinafter referred to as General, the Company, or the Applicant), filed its application for adjustment of its rates and charges for telephone service in the Monroe, Altan, and Goose Creek Exchanges on February 27, 1970. By order dated March 12, 1970, the Commission suspended the proposed rates which were designed to become effective April 1, 1970, and set the matter for hearing at this time and place. The Commission's order further initiated an investigation, required that public notice be given, and declared the proceeding to be a general rate case pursuant to G.S. 62-137. Under date of March 13, 1970, the Applicant transmitted supplements to its petition of February 27, 1970, wherein it set forth the depreciation rates by class of plant. In apt time, and specifically on May 25, 1970, the Monroe-Union County Chamber of Commerce and the Union County Farm Bureau filed a Motion to Intervene in these proceedings, and by order issued on June 2, 1970, the intervention was allowed.

Hearing on this matter was held in the Commission Hearing Room on June 9 and 10, 1970, in Raleigh, North Carolina. Pursuant to order, the staff of the Commission made an investigation into the books, records, and operations of General.

In presenting its case, the Company offered a number of witnesses and exhibits in support of its application. Testifying for the Company was F. Gordon Maxson, Vice President - Revenue Requirements, General Telephone Company of North Carolina; Lyle E. Orstad, Treasurer, General Telephone Company of the Southeast and General Telephone Company of North Carolina; Gerald F. Gawronski, Accounting Director, General Telephone Company of the Southeast and General Telephone Company of North Carolina; John J. McGrath, Topeka, Kansas, a Consulting Engineer; Sam E. Wahlen, General Commercial Engineer for General Telephone Company of the Southeast, in which capacity has responsibility for all rate and tariff matters for General Telephone Company of North Carolina; Claude O. Sykes, General Manager, General Telephone Company of North Carolina; and E. M. Shepherd, Jr., District Manager, General Telephone Company of North Carolina.

The intervening protestants, Monroe-Union County Chamber of Commerce and Union County Farm Bureau, presented the testimony of the following witnesses: William C. Nesbitt, President, Union County Chamber of Commerce, President, Alvac Metals, Monroe, North Carolina; Boyce Catoe, President, Union County Farm Bureau, who is also engaged in the well drilling and pump service, and farming business;

H.L. Jenkins, Union County Manager; James Marsh, Union County, Appraisal Consultant, and has 20 years service as County Agricultural Agent; Edward Garbaccio, Vice President and General Manager, McCoy-Ellison, Inc. (manufacturing textile machinery); K. C. Long, Farmer and Employee of Celanese Corporation of America, and a voluntary Fireman; Witt Clawson, Secretary-Treasurer, Monroe Hardware Company (wholesale hardware distributor); and Thomas M. Moyer, Vice President, Controller, American Bank and Trust Company. The protestants also tendered the following seventeen witnesses: Woody Faulk, Security Bank and Trust Company, Monroe; Nathan Green, Executive Vice President, Monroe-Union County Chamber of Commerce; N. B. Nicholson, former Agricultural Extension Agent, Union County; E. L. Belton, School Teacher, Union County; E. M. Price, retired Executive, Superior Stone Company, Monroe; Van Hilson, retired Executive, Monroe; Lee Baker, Laundromat Owner and Operator, Monroe; Z. K. Simpson, Farmer, Union County; Mrs. Delores Laval, associated with the local newspaper, Monroe; Orin Baucom, Delmar Printing Company, Monroe; Bill Howerton, retired Executive, Dickerson, Inc., Monroe; Kenneth Steele, President, Steele Electric Company, Monroe; Wayne Neely, District Manager, Central Sawyer, Monroe; Mrs. Tom McCullom, Housewife and a member of the Farm Bureau Committee, Union County; Mrs. Hilda Carnes, Housewife, Union County; Mrs. A. C. Mabry, who owns a catering service, Monroe; and Mr. J. Cliff Williams, of Union County.

The Commission Staff presented a number of exhibits and the testimony of three witnesses: S. J. Painter, Commission Director of Accounting; Joseph W. Smith, Commission Director, Department of Economics and Planning; and Mr. Gene Clemmons, Commission Chief Engineer, Telephone Service Division.

Upon consideration of the entire record, the evidence and testimony presented and received during the course of the hearing, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, General Telephone Company of North Carolina, under and in accord with the laws of the State of North Carolina, is authorized to do business in this State as a duly created and existing North Carolina Corporation with headquarters in Durham, North Carolina; is a wholly owned subsidiary of General Telephone and Electronics Corporation; is a public utility providing general telephone service in Union County, North Carolina, through three (3) exchanges located at Monroe, Altan and Goose Creek; and as of November 30, 1969, the Company was serving through its three exchanges 8,592 main stations with 3,077 extensions.

2. The test period used by the Company and the Commission Staff was the same and included the twelve (12) month period ending November 30, 1969, upon which their

computations and results were based. The period used and the method of adjustment are in compliance with G.S. 62-133.

3. The increase in rates and charges proposed by General is for local service in this State, and does not involve toll (long distance) rates. The proposed increase is designed to produce $448,704 under its local exchange and general rate tariffs, of which $244,136 would accrue to the Company's use.

4. The Company presented evidence tending to show the Trended Book Cost of the plant and property of General Telephone Company of North Carolina as of November 30, 1969, to be $6,876,398 and the Net Trended Book Costs to be $6,464,613 which takes into account observed depreciation and not actual depreciation reserve; the Commission Staff offered evidence tending to show an end-of-period net investment in telephone plant to be $5,503,761 after adding $185,143 for telephone plant under construction to $6,404,645, telephone plant in service per company books, and deducting the depreciation reserve of $1,086,027; the staff further offered evidence after accounting and pro-forma adjustments tending to show an end-of-period net investment in telephone plant plus allowance for working capital to be $5,564,391; we find that the reasonable net fair value investment in telephone plant for General Telephone Company of North Carolina's utility plant used and useful in rendering telephone service in this State at November 30, 1969, is $5,700,000, excluding any allowance for working capital.

5. That a reasonable allowance for working capital is $106,000, taking into consideration reasonable materials, supplies, and cash and deducting average Federal Income Tax accruals.

6. Having fully considered and given full weight to all of the evidence and the matters herein found, we further find the fair value of General Telephone Company of North Carolina's rate base to be $5,806,000 upon which to establish a reasonable rate of return.

7. The evidence presented by the Staff and the Company tends to show that the Company's annual gross operating revenues at the end of the test period were $1,069,258, and we so find.

8. The evidence as presented tends to show Company gross operating revenues under the proposed rates, (1) by the Company to be $1,517,962 and (2) by the Staff to be $1,491,413. We find annual gross operating revenues under the rates hereinafter found to be reasonable and approved would be $1,461,394.

9. The Company and Commission Staff presented evidence tending to establish reasonable operating expenses of $577,760 and $510,206, respectively, and we find the actual,

reasonable and legitimate total operating expenses to be $510,206.

10. Annual depreciation expense evidence by the Company shows an expense of $290,350, and the evidence by the Staff shows the same to be $306,724. We find the reasonable annual cost consumed by depreciation is $306,724.

11. The evidence for the Company tends to show tax expenses under the present rates to be $115,128, while the Staff's evidence on that subject tends to show expenses of $106,179 and $281,969 under the present and proposed rates, respectively; we find reasonable and actual annual tax liability to be $106,179 under present rates and $281,969 under the proposed rates and under the rates hereinafter found reasonable and approved that the Company's annual tax liability is estimated at $267,184.

12. We find the net investment tax credit after the proposed rate increase is $28,090, which is included in Finding of Fact Number 11 above.

13. The Company's evidence tends to show a net operating income for return of $145,858 under present rates and $389,994 under the proposed rates. The Staff shows $166,449 and $423,765, respectively. Allowing for all operating revenue deductions herein found reasonable, the Company would be permitted net operating income for return of $408,531 under the rates hereinafter found reasonable and approved.

14. The capital structure of the Company shows total capitalization of $5,405,690, consisting of $1,090,000 long-term debt (20.16%) at interest rates ranging from 4 and 3/4% to 5 and 1/2%, equity capital (46.08%) totaling $2,490,690 and comprised of $1,200,000 in capital stock, $898,830 in capital surplus, and $391,860 in earned surplus (retained earnings); and short-term debt (33.76%) or $1,825,000 at 8 and 1/2% interest per annum.

General's reasonable annualized fixed charges were $57,925 for long-term debt and $155,125 for short-term debt, for a total annualized and reasonable debt service requirement of $213,050.

The Applicant's earnings on its common equity from its operations under present rates is negative. The Company would earn 8.41% on its common equity under the proposed rates and will be permitted to earn 7.80% return on common equity under the rates hereinafter found reasonable and approved.

15. The Company is earning a rate of return, on the fair value of its property, as herein found, of 2.87% under present rates; it would earn 7.30% under the proposed rates, and will be permitted to earn 7.04% under the rates herein found reasonable and approved.

16. Giving full consideration to all the evidence, facts, and circumstances in this case, we find a fair rate of return on the fair value of the Company's utility property is 7.04%.

17. Rates as proposed by the Company would permit the Company to earn, in addition to the reasonable operating revenue deductions herein found, a rate of return of 7.30% on the fair value of the Company's property herein found. To the extent such proposed rates produce, in addition to the reasonable operating revenue deductions herein found, a rate of return in excess of 7.04% on the fair value of the Company's property as herein found (i.e., $5,806,000), such rates are excessive, unjust and unreasonable. Rates charged in accordance with the schedule hereto attached and made a part hereof will permit the Company to earn, in addition to the reasonable operating revenue deductions herein found, a fair rate of return on the fair value of its public utility property used and useful in providing the service rendered to the public within this State and constitute rates that are just and reasonable, both to the Applicant and to the public.

18. That the present service rendered by General in its service area is inadequate and insufficient to provide subscribers with adequate, modern, sufficient and efficient telephone service; however, we find that the Company is presently continuing a service improvement program, ordered in part by this Commission, with vigor and determination with the view to improving and correcting insufficient preventive and corrective maintenance of the outside plant and central office equipment, to add additional and sufficient equipment to properly handle its traffic requirements, to increase and improve the number and training of its maintenance and installation employees and to provide adequate planning and supervision by management.

19. Monroe Telephone Company was acquired in 1965 by its present owners and subsequently became General Telephone Company of North Carolina; at the time of acquisition the area served by the Company was in the beginning of an accelerated economic development, and customers were demanding additional, more dependable, and higher grades of service than ever before; at the time of acquisition the Company's central office equipment capacity was near exhaustion, building space was inadequate, the system consisted of extensive open-wire circuits, and inter-office trunking and toll circuits were not sufficient to meet the then needs; there were 1,980 business and 5,991 residence prime telephones, 42% of the residence customers were on multi-party lines, with an average of six (6) subscribers on each line, 14% had one-party line service, 10% two-party, and 34% four-party; the Monroe Exchange then had a capacity of 3600 lines and 6400 terminals; Altan had 240 lines and 800 terminals and Goose Creek had 240 lines and 700 terminals.

20. Subsequent to acquisition, General undertook to review its entire situation and begin to plan for and initiate a service improvement program to correct the deficiencies then existing, recognizing engineering time intervals, equipment installation time, construction time intervals, building addition requirements, and the intervals required to add and train new people and existing personnel; it is apparent that the Company, with prodding from this Commission, made effective plans for building additions, to add central office equipment to construct additional outside plant facilities, and to employ and train additional personnel and then moved to initiate such plans.

21. This Commission in Docket No. P-36, Sub 56, held hearings in August, 1969, in Monroe, North Carolina, in connection with an investigation into the adequacy and sufficiency of the telephone service of General Telephone Company of North Carolina, and as a result entered an order dated September 4, 1969, in which the Commission ordered the Company to take certain positive steps with reference to service improvement after having found the same to be insufficient and inadequate; the Commission Staff, subsequent to said hearing and during May, 1970, made an additional service investigation regarding the sufficiency of service being rendered by the Applicant in its service area; the result of said investigation shows that service was much improved and was rated by Commission Engineers as "in the low good range," with still additional progress being needed to bring the level of service to an appropriate standard; the findings by the Commission Staff were substantiated by the public witnesses who testified regarding continued problems, while acknowledging substantial improvement.

22. In response to public demand, in the territory served by the Applicant, and elsewhere, this Commission has required and is requiring the Applicant and other telephone utilities to upgrade service by obsoleting multi-party and four-party service, looking towards an all one-party telephone system for the State; additionally, this Commission has been and is insisting that telephone utilities in this State reduce discriminatory mileage and zone rate charges to rural customers (those living outside companies' base rate areas) looking toward an all base rate telephone system; and the Applicant has been and is spending large sums of money annually to accomplish the above objectives of this Commission and is committed to the elimination of multi-party and four-party service by December 31, 1972, and the immediate elimination of zone and mileage charges and the substitution therefor of a basic charge within the base rate area and one charge outside the base rate area.

From the evidence, testimony and records of the Commission, we arrive at the following

CONCLUSIONS

1. General Telephone Company of North Carolina, the Applicant, is properly before this Commission, which has jurisdiction over the Applicant as to its utility rates and service in North Carolina, and over the subject matter in these proceedings.

2. While original cost, trended cost, and replacement value of the Company's utility properties within North Carolina have been considered, we conclude that neither constitutes a proper rate base. We have, therefore, arrived at our own independent conclusion, without reference to any specific formula, both as to fair value of the Company's property and a fair rate of return on that fair value.

3. The statutory rate-making formula is controlling in this matter. We have considered the fact that the present service rendered by General Telephone Company in its service area is inadequate and insufficient to provide subscribers with adequate, modern, sufficient and efficient telephone service as one element bearing upon the value of the utility investment and the rate it should be permitted to earn, along with other factors, including, but not limited to, (1) the fact that the Company is presently continuing a service improvement program, ordered in part by this Commission, with vigor and determination, (2) the Company is improving its service and correcting its deficiencies, (3) the nature, size and extent of the territory served by the Company, and (4) the condition and level of its telephone facilities when acquired by its present owners in 1965. We conclude that it is our responsibility to require the highest standard of service consistent with reasonable rates, and that such responsibility can only be discharged with reasonable regard to all facts and circumstances in each case within the limits of the statutory rate-making formula.

4. From the record in this case, we conclude that the telephone service being offered to the public by the Applicant is much improved over the level of service heretofore afforded; that, in accord with orders of this Commission in Docket No. P-36, Sub 56, the Company is presently taking the necessary steps with the view towards improving and correcting insufficient, preventive and corrective maintenance of the outside plant and central office equipment, to add additional and sufficient equipment to properly handle its traffic, to increase and improve the number and training of its maintenance and installation employees, and to provide adequate planning and supervision by management; that the progress made by the Company in this area should be acknowledged and that the Company should be advised and enjoined that it must continue its remedial action in all areas; and that the improvements in service heretofore made and those planned and contemplated require the installation of more abundant and improved equipment and resultant large expenditure of capital which leaves the

Commission with two courses of pursuit, it may either ignore the duty imposed upon it by statute to grant a fair rate of return and thereby starve the Company, making it impossible for it to continue its service improvement plan, or it can take the approach, which we here adopt, for improved service by fixing just and reasonable rates under our statutory formula. We further conclude that it is appropriate to approve fair rates which should be a necessary and integral part of the eventual solution of the Company's service problems, when joined with appropriate remedial action carried out with deliberate dispatch by the Company.

5. That the Company's plan, as submitted in this rate case, to eliminate zone and mileage charges, and substitute therefor one charge for customers within the base rate area and one charge for all other customers outside the base rate area, and its plan to eliminate multi-party and four-party service by December 31, 1972, are commendable objectives and in line with this Commission's orders and directives and should be approved.

6. That the Company should continue to comply with the requirements of the order issued by this Commission in Docket No. P-36, Sub 56, dated September 4, 1969, except that the deadline for the elimination of multi-party service should be moved up from December 31, 1971, to December 31, 1972, in the light of the fact that the Company has increased its objective, in line with the philosophy of this Commission, to also eliminate four-party service, the elimination of both of which reasonably requires this additional period of time within which to accomplish the same.

7. That General Telephone Company of North Carolina should continue its action to bring telephone service at Monroe, Goose Creek and Altan to an adequate and efficient level as required by North Carolina Public Utilities Law, General Statute 62-131(b); and that this Commission should continue its surveillance and supervision of the Company's service improvement program as outlined in Docket No. P-36, Sub 56, and as expanded upon in this case.

8. That the Applicant should continue filing reports heretofore required by this Commission relating to the quality of service being rendered in order to allow the Commission and its Staff to continue its evaluation of the Company's service and its improvement.

9. That the evidence presented justifies the rates and charges herein found reasonable and approved; that foreign exchange rates are uniform for all companies operating in North Carolina and such uniformity should not be disturbed; and that the proposed rates for multi-party and four-party service are slightly out of line and should be adjusted to the extent herein found reasonable and approved.

10. That the Commission cannot permit the parent-holding company to use other affiliated companies as a device for transmitting an unreasonable level of profits to such parent company for goods or services supplied the operating company (General) by way of an affiliated company (G.S. 62-153); that all transactions between the Company and affiliates must be consummated within a true arm's-length environment if their results are to be accepted without adjustment or in-depth scrutiny; and that the Commission should continue to require, receive and evaluate appropriate reports regarding inter-affiliated company transactions in order to continue proper surveillance and conduct such investigation as might be indicated from time to time in connection with such inter-affiliated company transactions.

11. We conclude it to be appropriate in the discharge of our duty to look closely at transactions between the Company and affiliated supply companies through our regular and continued study of such transactions in order to be sure that the public is not required to pay rates based on excessive costs resulting from excessive profits earned by an unregulated supplier; and that the evidence in this case and the records of this Commission do not reflect such excessive costs in this instance.

12. That it is appropriate for this Commission to look at and carefully consider the level and quality of service being offered by the Applicant as a factor in determining what constitutes just and reasonable rates to be charged by it, which we have done in this docket; additionally, we have considered the Company's improvement program and its progress; and we further conclude that the Applicant must receive a fair return on its investment to survive and to continue its service improvement program; otherwise, capital will not be attracted to furnish the funds for the new equipment needed to meet the present demands and the demands of increased population and economic growth and the consequential necessity for increased services, nor the accomplishment of the goals, objectives, and improvements heretofore ordered by this Commission, resulting from public demand; to conclude and order otherwise would have the necessary effect of confiscating the property of the utility.

IT IS, THEREFORE, ORDERED:

1. That the application in this docket be, and it is, hereby approved, consistent with the premises. In all other respects, the application is disapproved and denied.

2. That the Applicant, General Telephone Company of North Carolina, is authorized to file and make effective on all bills rendered on and after August 1, 1970, its tariffs containing rates and charges in accordance with schedule of rates and charges contained in Appendix "A" attached hereto and incorporated herein. No charges other than those herein

approved shall be made applicable to the rates and charges hereby approved and authorized.

3. That the Commission Staff shall continue its surveillance of the service being rendered by the Applicant in Docket No. P-36, Sub 56.

4. That the Applicant shall continue to comply with the terms and conditions of the order of this Commission in Docket No. P-36, Sub 56, dated September 4, 1969, except as provided in Ordering Paragraph 5 below.

5. That the Applicant shall proceed immediately to eliminate all multi-party and four-party service at Monroe, Altan and Goose Creek so that all such service is eliminated not later than December 31, 1972.

6. That the Applicant, General Telephone Company of North Carolina, take immediate, substantial and thorough action to bring telephone service at Monroe, Goose Creek and Altan to an adequate and efficient level as required by North Carolina General Statute 62-131(b).

7. That the Company shall substantially improve telephone service in its franchised service area and implement plans for service improvement as filed with the Commission and as testified to in the hearing in this case.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

* See portion of Appendix A below. For the remainder of Appendix A, see official Order in the Office of the Chief Clerk.

APPENDIX A
GENERAL TELEPHONE COMPANY OF NORTH CAROLINA

RATE GROUP SCHEDULES

CLASS OF SERVICE	RATE GROUP 1 0-6,000**	RATE GROUP 2 6,001-12,000**	RATE GROUP 3 12,001-20,000**
BUSINESS			
One Party	$14.80	$15.80	$16.80
Private Branch Exchange Trunk	22.20	23.70	25.20
Semi-Public	22.20	23.70	25.20
Two Party	13.80	14.80	15.80
Four Party	12.80	13.80	14.80
Multi-Party	11.80	12.80	13.80
Extension	2.00	2.00	2.00
Private Branch Exchange Extensions:			
Commercial	2.00	2.00	2.00

RESIDENCE

One Party	7.40	7.90	8.40
Two Party	6.60	7.10	7.60
Four Party	5.45	5.95	6.45
Multi-Party	4.45	4.95	5.45
Extension	1.25	1.25	1.25

** Main stations and PBX trunks within the local calling area.

Regrouping

Whenever the calling scope in any given exchange shall have experienced a growth, or a decrease, to a point within 5 percent of the group limitations indicated above, the Company shall notify the North Carolina Utilities Commission for such action as the Commission may deem proper.

LOCAL EXCHANGE SERVICE RATES

MONROE, GOOSE CREEK & ALTAN EXCHANGES

BUSINESS SERVICE

One Party	$15.80
Private Branch Exchange	23.70
Semi-Public	23.70
Two Party	14.90
Four Party	13.80
Multi-Party	12.80
Extension	2.00
Private Branch Exchange Extension Commercial Converted to Main PBX Stations	2.00

RESIDENCE SERVICE

One Party	7.90
Two Party	7.10
Four Party	5.95
Multi-Party	4.95
Extension	1.25

* Existing rate eliminated and new rate authorized in this docket under a new packaging plan or other method.

WELLS, COMMISSIONER, DISSENTING: The company deserves an increase in rates, but it is getting too much too soon.

The company has asked for and has been given rate increases which are excessive and inflationary. These increases will result in most of the company's customers having their telephone bill doubled. If the private sector of our economy were to engage in such practices, the results would be disastrous.

While there is evidence that the company is attempting to improve its services, the weight of the evidence was that the level of service being provided is not adequate. This was a case in which the consumer side was carefully and ably presented to the Commission, with many responsible citizens and businessmen making the long journey from Union County to Raleigh to earnestly inform the Commission of their telephone problems. We have not heard them well. The company has made many promises of improved services and we are all hopeful that these promises will soon be fulfilled; but I would prefer to base significant rate increases on performance rather than promises. I conclude from the evidence that the company has not done what it reasonably could have done to improve service to an acceptable level, and that the rate increases granted in effect, reward the company for doing the job not as well as it should have been done.

I also conclude from the evidence that the company's operating expenses during the test period are too high, especially in view of the results being obtained; and that with better management and with the use of new and better equipment, operating expenses might be significantly reduced and the company thereby enabled to enjoy an adequate profit at lower rates than those allowed.

The multi-party and four-party subscribers will all be converted in two or three years to one and two-party service. This is commendable and desirable. But in the meantime, these subscribers will be paying very high rates for a low grade of service. I conclude from the evidence that these rates, particularly, are not just and reasonable, and that no significant increase in present rates for these grades of service should be allowed.

Hugh A. Wells, Commissioner

DOCKET NO. P-78, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Westco Telephone Company - Application for Authority to Issue and Sell Securities and to Amend Its Charter	ORDER GRANTING AUTHORITY TO ISSUE AND SELL SECURITIES AND AMEND CHARTER

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina

DATE: June 5, 1970, at 11:00 a.m.

BEFORE: Chairman H. T. Westcott, Presiding; and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne, and Hugh A. Wells

APPEARANCES:

For the Applicant:

Herbert L. Hyde and
Robertson Wall
VanWinkle, Buck, Wall, Starnes and Hyde
Attorneys at Law
18-1/2 Church Street
Asheville, North Carolina 28807

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This cause comes before the Commission upon an Application of Westco Telephone Company (Westco), filed April 20, 1970, through its Counsel, VanWinkle, Buck, Wall, Starnes and Hyde, Asheville, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell, at negotiated private placement, $1,000,000 principal amount of its Notes due June 1, 1990, bearing interest at a rate of 10.50% per annum from issue date;

2. To amend its Charter to provide for the issuance of 20,000 shares of Preferred Stock; and

3. To issue and sell, at negotiated private placement, 5,000 shares of Preferred Stock, par value $100 per share, for $500,000 cash, such shares to provide for dividends at a rate of 10.25% per annum from the issue date.

From the testimony presented at the hearing and upon the exhibits attached to the Application, the Commission makes the following

FINDINGS OF FACT

1. Westco Telephone Company is a North Carolina Corporation duly authorized to transact business in the States of North Carolina and Georgia; is the owner and operates telephone communications systems in certain territories within the States of North Carolina and Georgia;

is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Westco has petitioned this Commission for authority to issue and sell to Lincolm National Life Insurance Company of Fort Wayne, Indiana, at par, $1,000,000 of the company's notes maturing in 20 years, bearing an interest rate of 10.50% per annum. Said notes are to be nonrefundable for 10 years from borrowing at a lower interest cost. Provisions are made for a sinking fund beginning at the end of the third year at 3% annually in cash. The notes permit the incurring of additional funded debt provided long-term debt does not exceed the limitations as set forth in the Original Indenture, as supplemented.

3. Westco further proposes to amend its Charter to provide for the issuance of 20,000 shares of Preferred Stock, par value $100 per share, and at this time to issue and sell to Lincoln Life Insurance Company 5,000 of such shares at par, which shares are to provide for a 10.25% dividend rate. The preferred shares are nonrefundable for 10 years from proceeds from borrowing at a lower interest rate but will be recallable at par for sinking fund purposes. Preferred shares will provide for a 5% sinking fund beginning at the end of the third year. The preferred shares will be nonvoting but under certain conditions of default, a majority of directors may be elected.

4. The notes and preferred shares are to be sold at private placement and there will be no expense to the company other than costs of this proceeding, the proceeding before the Georgia Utilities Commission, the brokerage fee in the amount of $3,750, and the costs of the amendment to the Charter.

5. The proceeds from the sale of the Notes and the Preferred Stock will be applied toward the payment of short-term loans.

6. The company is presently financed under an REA mortgage. The REA has been advised as to the proposed financing, has given its consent thereto, and has waived the restrictions on the payment of dividends insofar as such restrictions would affect the payment of dividends on and the purchase or redemption of the preferred stock proposed to be issued.

CONCLUSIONS

From a review and study of the Application, its supporting data, and other information in the Commission's files, the Commission is of the opinion and so concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service;

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Westco Telephone Company be, and it is hereby authorized, empowered and permitted under the terms and conditions set forth in the Application:

1. To issue and sell to Lincoln Life Insurance Company, at negotiated private placement, $1,000,000 principal amount of its Notes due June 1, 1990, bearing interest at a rate of 10.50% per annum from issue date;

2. To amend its Charter to provide for the issuance of 20,000 shares of Preferred Stock;

3. To issue and sell to Lincoln Life Insurance Company, at negotiated private placement, 5,000 shares of Preferred Stock, par value $100 per share, for $500,000 cash, such shares to provide for dividends at a rate of 10.25% per annum from the issue date;

4. To devote the proceeds to be derived from the issuance and sale of the securities described herein to the purposes set forth in the Application;

5. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

6. To file with this Commission, in the future, a notice of negotiations of short-term bank notes or construction advances from the company's parent setting forth the principal amount thereof, rate of interest and date of maturity.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-78, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Westco Telephone Company and Western Carolina Telephone Company - Amended Joint Application for the Former to Issue and Sell at Par 100,000 Shares of Its Common Stock of the Par Value of $5 Per Share and for the Latter to Purchase the Said 100,000 Common Shares at $5 Per Share	) ORDER) APPROVING) JOINT) APPLICATION

HEARD IN: The Hearing Room of the North Carolina Utilities Commission, Raleigh, North Carolina

DATE: June 5, 1970, at 11:00 a.m.

BEFORE: Chairman H. T. Westcott, Presiding; and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne, and Hugh A. Wells

APPEARANCES:

For the Applicants:

Herbert L. Hyde and
Robertson Wall
VanWinkle, Buck, Wall, Starnes and Hyde
Attorneys at Law
18-1/2 Church Street
Asheville, North Carolina 28807

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: This cause comes before the Commission upon the Joint Application of Westco Telephone Company (Westco) and Western Carolina Telephone Company (Western), the Petitioners, filed on May 12, 1970, through their Counsel, VanWinkle, Buck, Wall, Starnes and Hyde, Asheville, North Carolina, wherein authority of the Commission is sought as follows:

> Westco be permitted to issue 100,000 shares of its common stock of the par value of $5 per share and to sell said shares to Western at a price of $5 per share.

During the hearing counsel for the Applicants sought authority to amend the Application to include the permission for Western to purchase the shares at a price of $5 per share. Such amendment was allowed.

From the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Westco Telephone Company is a North Carolina corporation duly authorized to transact business in the States of North Carolina and Georgia; is a wholly owned subsidiary of Western Carolina Telephone Company; is the owner of and operates telephone communications systems in certain territories within the States of North Carolina and Georgia; is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. Western Carolina Telephone Company is a North Carolina corporation, with its principal place of business located in Weaverville, North Carolina; is the owner of and operates telephone communications systems within the State of North Carolina; is a public utility as defined in Article I of Chapter 62, General Statutes (G.S. 62-1 - G.S. 62-4) of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

3. Westco has petitioned this Commission for authority to issue $1,000,000 in debentures and to amend its Charter to provide for the issuance of 20,000 preferred shares and to issue and sell 5,000 of such shares, which petition is before this Commission and all exhibits attached thereto are made a part of this petition by reference.

4. Westco needs additional funds for the purpose of retiring short-term debt and to continue the construction program as set forth in exhibits made a part of this petition by reference.

5. Western has, subject to approval of this Commission, agreed to purchase the 100,000 common shares to be issued by Westco for a total sum of $500,000.

6. No commissions or underwriting fees will be incurred by the issuance and sale of said shares and the only costs to be incurred will be attorneys' fees and out-of-pocket costs.

7. The net proceeds from the sale of the shares will be applied toward the payment of short-term bank loans.

CONCLUSIONS

From a review and study of the Application, its supporting data, and other information in the Commission's files, the Commission is of the opinion and so concludes that the transactions herein proposed are:

(a) For a lawful object within the corporate purposes of the Petitioner;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by Petitioner of its service to the public and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Westco Telephone Company is hereby authorized, empowered and permitted under the terms and conditions set forth in the Application:

1. To issue and sell to Western, at par, 100,000 shares of its common stock of the par value of $5 per share, at a price of $5 per share.

2. To devote the proceeds to be derived from the issuance and sale of the securities described herein to the purposes set forth in the Application.

3. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of thirty (30) days following the completion of the transactions authorized herein; and

4. To file with this Commission, in the future, a notice of negotiations of short-term bank notes or construction advances from the company's parent setting forth the principal amount thereof, rate of interest and the date of maturity.

IT IS FURTHER ORDERED, That Western Carolina Telephone Company is hereby authorized, empowered and permitted under the terms and conditions set forth in the Application:

1. To purchase 100,000 shares of Westco common stock, par value $5 per share, at par, for $500,000 cash.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of June, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-70, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Complaint of Walter J. Klein, Matthews, North Carolina, Seeking Refunds for Service Interruptions of Short Duration and Interpretation of Tariff, Complainant vs. North Carolina Telephone Company, Matthews, North Carolina, Defendant	) ORDER FINDING) THAT PLAINTIFF) HAS NOT) ESTABLISHED) GROUNDS FOR) REFUND)

PLACE: Commission Hearing Room, Raleigh, North Carolina

DATE: July 8, 1970

BEFORE: Chairman H. T. Westcott, Presiding; Commissioners John W. McDevitt, Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Complainant:

Walter J. Klein
Matthews, North Carolina
Appearing for himself

For the Respondent:

B. Irvin Boyle
Boyle, Alexander & Carmichael
623 Law Building
Charlotte, North Carolina 28202
For: North Carolina Telephone Company

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: This proceeding was instituted on March 31, 1970, by letter complaint of Walter J. Klein, seeking a refund from the defendant North Carolina Telephone Company for alleged interruptions of service in his telephone service at Matthews, North Carolina. The defendant filed answer to the complaint on April 20, 1970, under Commission Rule R1-9 and the complaint and answer was set for hearing by Order of the Commission issued on June 5, 1970.

The proceeding was called for hearing on July 8, 1970, as scheduled, and the plaintiff offered testimony and exhibits setting forth failure and interruptions of his telephone service in Matthews during the period September, 1969, through January, 1970, including letters and correspondence between the plaintiff and the defendant relating to complaints of plaintiff's telephone being out of order and the replies relating to the efforts and measures taken by defendant to remedy the plaintiff's telephone difficulties. The defendant offered testimony and evidence showing the trouble reports made by the plaintiff from August, 1969, to May, 1970, the trouble found and the elapsed time. The witness further testified that it has experienced problems with equipment manufactured and installed by Stromberg-Carlson Corporation. Stromberg-Carlson has installed new equipment in the Matthews central office to provide improved capacity for service in Matthews and that said new central office equipment contained innovations and equipment components that did not function properly and that it was necessary for Stromberg-Carlson to bring in engineers to continue to service such equipment until April, 1970, before the new equipment was in proper operating order; and that further, the defendant responded to every service complaint submitted by the plaintiff and in each occasion restored the telephone service within a short period of time and in no occasion more than 24 hours. The plaintiff's evidence admits that the defendant normally responded to complaints and corrected the trouble, but further contends that shortly thereafter the complaints would frequently reoccur. The Commission's telephone engineer testified as to his investigation and testing of defendant's telephone equipment during the period from November, 1969, to February, 1970, and testified that such equipment was causing interruptions and service problems but that the operation of such equipment had been improved materially by February, 1970.

Based upon the testimony and the evidence of record, the Commission makes the following

FINDINGS OF FACT

(1) That the plaintiff is properly before the Commission on his complaint as a customer of a public utility operating under franchise of the Utilities Commission, and the defendant is properly before the Commission as a public utility company holding a franchise for telephone service in North Carolina issued by the Utilities Commission.

(2) That the telephone service offered by the defendant to the plaintiff at his residence in Matthews, North Carolina, was not adequate during the period from September, 1969, through January, 1970, in that the service had many intermittent outages or interruptions in service for short periods of time, but that such interruptions or outages were not of sustained duration and on each interruption reported to the defendant, such interruption was corrected and service was restored promptly and within a reasonable time.

(3) That such interruptions and outages in service attributable in part to the installation of new central office equipment in the defendant's central office in Matthews, North Carolina, by the manufacturer Stromberg-Carlson, and that said equipment did not function satisfactorily from September, 1969, through January, 1970, but that the defendant, through its efforts and the manufacturer's engineer, were taking all reasonable measures to get such equipment in proper operation and to make reasonable efforts to improve the service; and that the defendant was making reasonable efforts to improve its service in the Matthews area through the installation of such equipment.

(4) That many of the plaintiff's complaints of telephone interruptions involved telephone calls to and from Charlotte, North Carolina, and the exchange operated there by Southern Bell Telephone & Telegraph Company, and in some instances the complaints reported to the defendant could not be traced and isolated as to whether the cause originated in Charlotte or Matthews.

(5) That the interruptions and outages in the plaintiff's telephone service have been substantially improved since January, 1970; that there is better service now and that the defendant has made all reasonable efforts to improve and correct the service to the plaintiff.

(6) That the defendant's tariff on file with the Commission governing refunds for telephone interruptions which was in effect during the period September, 1969, through January, 1970, provides as follows:

> Section 28, Revision One, Sheet 2-(15). "In View of the possibility of errors and difficulties in the transmission of messages by telephone and the impossibility of fixing in all cases the causes thereof, the subscriber assumes all risks connected with the service, as the Telephone Co. cannot guarantee uninterrupted working of its lines and instruments. In case service is interrupted otherwise than by the negligence or wilful act of the subscriber, an allowance is made, computed on the basis of the minimum monthly rate for such of the telephone service, equipment and facilities furnished as are rendered useless or inoperative. Such allowances cover the period the interruption continues after notice in writing is received by the Telephone Company. No other liability shall in any case attach to the Telephone Company."

CONCLUSIONS

The Commission concludes from the above findings and from the defendant's tariff provisions relating to refunds as above set forth that the defendant's tariff does not provide for refunds for intermittent interruptions of the type experienced according to the plaintiff's evidence, where the interruption is repaired promptly upon complaint from the

customer, and there is no sustained period of interruption of service. The plaintiff contends that his interruptions were over a sustained period of time and that notwithstanding the repair in service after each interruption that the interruptions nevertheless constituted a constructive failure of telephone service throughout the period, and that the tariff provision therefore applies for the sustained total inadequate service over the entire period. The Commission has considered the plaintiff's argument and contentions in this respect, but concludes that the evidence of the plaintiff does not sustain such contentions when each interruption of service was repaired by the defendant promptly and within a reasonable time, and particularly as in this case where some of the outages testified to by the plaintiff and his wife, Mrs. Klein, were admittedly not reported to the defendant either verbally or in writing, and that of the specific interruptions which were reported in writing that none as required by the tariff and that each of these specific reports of telephone trouble were promptly corrected. The defendant's tariff on file with this Commission does not apply to the complaints established in the plaintiff's evidence and the plaintiff has not followed the requirements of the tariff for refund in each case of interruption by filing written complaint of said service interruption.

The Commission concludes upon the above findings and conclusions that it is without authority to direct a refund from the defendant to the plaintiff based upon the facts established in this record, and the defendant's tariff on file and effective during the period involved. The Public Utilities Act recognizes the filing of tariffs and tariff regulations by the utility companies to regulate the provisions of service between utility companies and their customers in North Carolina subject to the Utilities Commission, and the tariff having been filed with the Commission as the public tariff of the defendant, the matter must be settled within the jurisdiction of the Commission in accordance with the terms of the effective tariff.

IT IS, THEREFORE, ORDERED that the plaintiff has failed to establish grounds for refund from the defendant upon the facts and the tariff rules governing the service in this proceeding, and the complaint is therefore dismissed on the merits of the proceeding, including the facts in evidence in the public hearing on said pleadings.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-283

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the A P & F Co., Inc., 1740 East Independence Boulevard, Charlotte, North Carolina 28205, for a Certificate of Public Convenience and Necessity to Provide Water Service in Eastwood Forest Subdivision, Mecklenburg and Union Counties, North Carolina, and for Approval of Rates	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on September 23, 1970

BEFORE: Commissioners Hugh A. Wells (Presiding), Miles H. Rhyne, and John W. McDevitt

APPEARANCES:

For the Applicant:

Mr. Kenneth R. Downs
Attorney at Law
715 Law Building
Charlotte, North Carolina 28202

For the Commission Staff:

Mr. Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

No Protestants.

BY THE COMMISSION: On July 7, 1970, the A F & F Co., Inc., 1740 East Independence Boulevard, Charlotte, North Carolina, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity in order to own, construct, and maintain wells, pumps and water supply lines, and to distribute and sell water to customers in Eastwood Forest Subdivision, Mecklenburg and Union Counties, North Carolina, and for approval of rates as set forth in Appendix A attached hereto.

On July 29, 1970, the Commission, being of the opinion that the application affects the interest of the using and consuming public in the area proposed to be served by the applicant and that the public should have an opportunity to intervene or protest the application, if it so desired, set the matter for public hearing on September 23, 1970, and required that notice be published by the applicant as required by law. The hearing was held at the time and place

specified in the Commission's Order of September 29, 1970. No one appeared at the hearing to protest the application, and no protest was filed.

The evidence offered by the applicant, A F & F Co., Inc., indicates that the applicant is a duly organized and existing corporation under the laws of the State of North Carolina, having been incorporated on May 31, 1965, and is authorized under its charter to engage in the construction and operation of a water system; that the area proposed to be served in the Eastwood Forest Subdivision, Mecklenburg and Union Counties, North Carolina, contains approximately 164 lots, but that the applicant as of the date of the hearing, was providing water service to only 117 residents in the subdivision for compensation.

The applicant's evidence further indicates that its investment in the water system is approximately $35,168; that with the proposed new rates as set forth in Appendix A attached hereto, the return on investment before taxes would be 3.48%; that the plans for design of the water system have been approved by the State Board of Health; that the area proposed to be served is located approximately 2 miles east of the Town of Matthews adjacent to Highway Number Old 74; that the books and records of the applicant will be kept by Bill Allen Enterprises, Inc., 1740 East Independence Boulevard, Charlotte, North Carolina 28205; that any maintenance difficulties with the water system in the area proposed to be served will be handled by Bill Allen Enterprises, Inc., Charlotte, North Carolina.

Based upon evidence adduced at the hearing and the application and exhibits filed by the applicant and entered into the record of this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) That the applicant, A F & F Co., Inc., is a duly organized and existing corporation under the laws of the State of North Carolina with its registered office at 1740 East Independence Boulevard, Charlotte, North Carolina 28205.

(2) That the area for which the applicant proposes to provide water service is in Eastwood Forest Subdivision, Mecklenburg and Union Counties, North Carolina (located approximately 2 miles east of the Town of Matthews, North Carolina).

(3) That the applicant is presently serving 117 residents in the Eastwood Forest Subdivision for compensation.

(4) That the applicant proposes to ultimately provide water service to approximately 125 customers for compensation.

(5) That the plans for the design of the water system have been approved by the State Board of Health under Serial Number 5693, dated January 24, 1966.

(6) That the applicant's investment in the water system is approximately $35,168.

(7) That the rates for water service as proposed by the applicant and set forth in Appendix A attached hereto are just and reasonable.

(8) That the applicant is financially willing, ready, and able to provide the service it proposes on a continuing basis.

(9) That public convenience and necessity requires the water service proposed by the applicant.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission concludes that there is a public need and demand for water service in the Eastwood Forest Subdivision, Mecklenburg and Union Counties, North Carolina, and that the applicant stands ready, willing, and able to provide water service to the area described in its application. The Commission further concludes that a Certificate of Public Convenience and Necessity should be issued to the applicant in order that the applicant might provide water service to the Eastwood Forest Subdivision, and concludes that the schedule of rates proposed by the applicant as set forth in Appendix A attached hereto is just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the applicant, A F & F Co., Inc., be, and the same hereby is, granted a Certificate of Public Convenience and Necessity in order to provide water service in Eastwood Forest Subdivision, Mecklenburg and Union Counties, North Carolina.

(2) That this Order shall constitute said Certificate of Public Convenience and Necessity.

(3) That the books and records of the said utility be kept in accordance with the Uniform System of Accounts estatlished by the Commission for water utilities.

(4) That the schedule of rates attached hereto as Appendix A is hereby deemed to be a tariff filed, pursuant to G.S. 62-138, which said tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A
DOCKET NO. W-283
A F & P Co., Inc.

WATER RATE SCHEDULE
Residential Service

RATE - Minimum $5.00 for first 3,000 gallons, plus $1.60 per 1,000 gallons in excess of 3,000 gallons per month.

CONNECTION CHARGES - $297.50 per tap.

RECONNECTION CHARGES

NCUC Rule R7-20 (f) - $4.00
NCUC Rule R7-20 (g) - $2.00

BILLS DUE - Ten days after date rendered.

DOCKET NO. W-281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Cregg Bess, Inc., 902 Bessemer City Road, Gastonia, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in Craig Gardens Subdivision, Gaston County, North Carolina, and for Approval of Rates	)) RECOMMENDED) ORDER) GRANTING) CERTIFICATE)

HEARD IN: Gaston County Courthouse, Gastonia, North Carolina, at 10:30 a.m., Friday, October 16, 1970

BEFORE: Hearing Commissioner Miles H. Rhyne

APPEARANCES:

For the Applicant:

Julius T. Sanders
Sanders and LaFar
Attorneys at Law
First Federal Building
Gastonia, North Carolina

For the Commission Staff:

William Anderson
Assistant Commission Attorney

North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

PAYNE, COMMISSIONER: On or about March 10, 1970, the North Carolina Utilities Commission received information that Cregg Bess, Inc., was operating a water system in the Craig Gardens Subdivision, Gaston County, North Carolina, and was in violation of G.S. 62-3. Upon subsequent investigation, the Commission issued a Show Cause Order on June 26, 1970, to Cregg Bess, Inc., to show cause, if any there be, why a penalty of up to $1000 per day should not be invoked for each day that it had failed to comply with the North Carolina Public Utilities Law, as provided in G.S. 62-3.

On July 13, 1970, Cregg Bess, Inc., filed with this Commission an application for a Certificate of Public Convenience and Necessity in order to provide water service in the Craig Gardens Subdivision. By Order issued July 16, 1970, the Show Cause Order was dismissed. In the application filed for Craig Gardens Subdivision, the applicant seeks a Certificate of Public Convenience and Necessity to own and operate a water distribution system to serve customers in the Craig Gardens Subdivision, Gaston County, North Carolina, and for approval of rates as set forth in Appendix A attached hereto.

On September 15, 1970, the Commission being of the opinion that the application affected the interest of the using and consuming public in the area proposed to be served by the applicant and that the public should have an opportunity to intervene or protest the application if it so desired, set the matter for public hearing on October 16, 1970, and required the notice to be published by the applicant, as required by law. The Commission received some thirty (30) protests to this proceeding and the proposed rates, and requested that the hearing scheduled for October 16, 1970, in Raleigh, be changed to Gastonia, North Carolina. By order issued October 6, 1970, the hearing in this matter was rescheduled for Friday, October 16, 1970, at 10:30 a.m., in the Gaston County Courthouse, South Street, Gastonia, North Carolina. The hearing was held at the time and place specified in the Commission's Order of October 6, 1970. There were no residents of the Craig Gardens Subdivision who appeared at the hearing to protest the application and the proposed rates.

The evidence offered by the applicant, Cregg Bess, Inc., indicates that the applicant is a duly organized and existing corporation under the laws of the State of North Carolina, having been incorporated on September 8, 1970, and is authorized under its charter to engage in the construction and operation of a water system; that the area proposed to be served in the Craig Gardens Subdivision, Gaston County, North Carolina, contains approximately 55 lots, but that the applicant, as of the date of the hearing, was providing service to only 16 residents in this

subdivision for compensation. The applicant's evidence further indicates that its investment in the water system was approximately $5,185.00 at the date of the hearing, but since that time approximately $3500.00 additionally has been invested in this system; that the plans for the design of the water system have been approved by the North Carolina State Board of Health; that said water system is located 6 miles south from the City of Gastonia adjacent to Highway No. 274; that the books and records of the applicant will be kept by Helen J. Bess, 902 Bessemer City Road, Gastonia, North Carolina, in accordance with the North Carolina Utilities Commission Rule R7-35, uniform system of accounts for water utilities; that maintenance and service for said water system will be provided by Cregg A. Bess and T. H. Stacey Water Pump Service, Gastonia, North Carolina.

Based upon the evidence adduced at the hearing and the application and exhibits filed by the applicant and entered into the record of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That the applicant, Cregg Bess, Inc., is a duly organized and existing corporation under the laws of the State of North Carolina with its registered office at 902 Bessemer City Road, Gastonia, North Carolina.

2. That the area for which the applicant proposes to provide water service is Craig Gardens Subdivision, Gaston County, North Carolina, located 6 miles south from the City of Gastonia, North Carolina.

3. That the applicant is presently serving 16 customers in the Craig Gardens Subdivision for compensation.

4. That the applicant proposes to ultimately provide water service to approximately 55 customers for compensation in the subdivision.

5. That plans for the design of the water system have been approved by the North Carolina State Board of Health.

6. That the applicant's investment in the water system is approximately $8700.00.

7. That the rates for water service, as proposed by the applicant and set forth in Appendix A attached hereto, are deemed to be just and reasonable.

8. That the applicant is financially willing, ready and able to provide the service it proposes on a continuing basis.

9. That public convenience and necessity requires the water service proposed by the applicant.

10. That the applicant owns and has control of the well lots for said subdivision and also has additional well sites available if they are required.

11. That the existing well and storage facilities are sufficient to provide adequate water service to residents of the Craig Gardens Subdivision.

Based upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

The Commission concludes that there is a public need and demand for water service in the Craig Gardens Subdivision, Gaston County, North Carolina, and that the applicant stands ready, willing and able to provide water service to the area described in the application; that the Commission further concludes that a Certificate of Public Convenience and Necessity should be issued to the applicant in order that the applicant might provide water service in the Craig Gardens Subdivision, and concludes that the schedule of rates proposed by the applicant and set forth in Appendix A attached hereto is just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the applicant, Cregg Bess, Inc., be, and the same hereby is, granted a Certificate of Public Convenience and Necessity in order to provide water service in the Craig Gardens Subdivision, Gaston County, North Carolina.

2. That this order shall constitute said Certificate of Public Convenience and Necessity.

3. That the books and records of the applicant shall be kept in accordance with the uniform system of accounts established by the Commission for water utilities.

4. That the schedule of rates attached hereto as Appendix A is hereby deemed to be a tariff filed pursuant to G.S. 62-138, which said tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A
DOCKET NO. W-281
CREGG BESS, INC.
CRAIG GARDENS SUBDIVISION

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

RATE - $5.00 monthly

CONNECTION CHARGES - None

RECONNECTION CHARGES:

NCUC Rule R7-20 (f) - $4.00
NCUC Rule R7-20 (g) - $2.00

BILLS DUE

Ten days after date rendered, the first of each month.

DOCKET NO. W-208, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Colony Park Utilities Company, 208 Foster Street, Durham, North Carolina, for an Amendment to its Certificate of Public Convenience and Necessity in order to provide sewer service in the Hunters Wood Subdivision, Durham County, North Carolina, and for approval of rates	) RECOMMENDED ORDER GRANTING ADDITIONAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVING RATES

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Wednesday, November 26, 1969, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners Clawson L. Williams, Jr., and Marvin R. Wooten

APPEARANCES:

For the Applicant:

E. K. Powe
Powe, Porter & Alphin
Attorneys at Law
P. O. Box 3843
Durham, North Carolina

For the Protestants:

Jack L. Chandler
3420 Pinafore Drive
Durham, North Carolina 27705
For: Himself

Houston V. Blair
3403 Ogburn Court
Durham, North Carolina 27705
For: Himself

For the Commission's Staff:

Larry G. Ford
Associate Commission Attorney

WOOTEN, COMMISSIONER: This proceeding arises on application filed on September 5, 1969, by Colony Park Utilities Company (Applicant), 208 Foster Street, durham, North Carolina, for a certificate of convenience and necessity to provide sewer service in the Hunters Wood Subdivision, Durham County, North Carolina, and for approval of rates. By order dated September 25, 1969, the Commission, considering it to be a matter of public interest, deemed it feasible to have the matter publicized in the proper manner and ordered a Public Notice to be published in a newspaper having general coverage in the area affected, once a week for two preceding weeks prior to October 23, 1969. After receiving protests the Commission, by order dated November 4, 1969, ordered the matter set for public hearing at this time and place with notice to all parties.

The applicant offered in evidence the testimony of three witnesses, to wit: 1. Nolan E. Wiggins, Jr., a Professional Engineer specializing in the Sanitary and Civil Engineering Field, of Durham, North Carolina, who designed the proposed sewer facilities in this case. 2. Fred Jackson Herndon, Durham County, North Carolina, who has been in the business of developing land and building houses for sale since 1946 through his Company, Herndon Building Company, which company is the developer of Hunters Wood Subdivision. Mr. Herndon is also president of and a stockholder in the applicant corporation, which has been operating water and sewer facilities in Durham County since 1963 under certificates granted by this Commission. 3. J. C. Millsapps, of the Department of Water Resources, State of North Carolina, Raleigh, North Carolina, testified that his department had issued its Permit Number 1685 on October 3, 1969, approving the construction, and operation of a sewer and domestic waste disposal facility by the applicant which is in accord with the system, authority for the construction and operation of which is here sought.

Additionally, the applicant offered a number of exhibits by number and by reference, all of which are a part of the record and are here considered by this Commission.

At the conclusion of the applicant's testimony and exhibits, two citizens from Durham County were present and testified on their behalf. They were Jack L. Chandler, 3420 Pinafore Drive, Durham, North Carolina, and Houston V. Blair, 3403 Ogburn Court, Durham, North Carolina. Each of these gentlemen testified, in effect, that they knew the applicant and that the applicant was a corporation of good corporate reputation with a record of good service and experience in its limited operation. They further testified that there was a need for sewer service in the subdivision for which authority is here sought to serve, but that in their opinion such service should be afforded on a uniform countywide basis by the county, State or other governmental unit for the health, safety and protection of the people of the county. Taking the position that even though the applicant here was fit, willing and able to afford the services for which it applied for authority, that no service would be proper or adequate without the same covering the full and entire county. Subsequent to the hearing, Houston V. Blair filed a brief in which he stated that the protestant further feels that the evidence in this case falls far short of having competent, material and substantial evidence to support a conclusion that the public convenience and necessity requires or will require the system already established here, to be granted a certificate. Mr. Blair concluded his brief by stating: "The protestant does not wish to propose findings of fact and conclusions of law. However, he withdraws his protest and accepts such order as the Commission so enters."

The evidence adduced justifies the following

FINDINGS OF FACT

1. Petitioner, Colony Park Utilities Company, is a duly created and existing North Carolina corporation and a duly authorized public utility engaged in the distribution of water service to the public in certain areas of Durham County, North Carolina, with headquarters at 208 Foster Street, Durham, North Carolina.

2. The petitioner is properly before the Commission, which has jurisdiction over the subject matter of the proceedings.

3. By previous authorizations from this Commission, petitioner now operates a water distribution system in the Hunters Wood Subdivision, Durham County, North Carolina. In addition, the petitioner provides other utility service to other developments in Durham County in accord with certificates heretofore issued by this Commission.

4. The North Carolina Department of Water and Air Resources issued its permit on October 3, 1969, granting authority to the applicant here, for the construction and operation of approximately 1,340 lineal feet of 8-inch wide sewers, and an 8,800 G.P.D. domestic waste disposal facility, consisting of a septic tank, a dosing tank with two (2) sump pumps and 3,000 lineal feet of 3-feet wide nitrification trench to serve Hunters Wood Subdivision.

5. That the applicant here, Colony Park Utilities Company, has contracted with Herndon Building Company, which is the developer of the Hunters Wood Subdivision, for the furnishing of sewer services in accord with appropriate laws and regulations to said subdivision, which said contract was entered into on September 4, 1969.

6. Hunters Wood Subdivision is located in the Northeast Creek Drainage Area of Durham County. It is also within the area which, according to the Research Triangle Planning Commission, it is planned to serve by a central collection system and wastewater treatment plant. No stream is available for effluent disposal; therefore, the applicant here requested of the Department of Water and Air Resources approval of a central treatment facility using subsurface disposal of effluent. An area with suitable percolation rate was located and an 8,800-gallon per day facility was approved by said department on the basis of 25 dwellings at 350 gallons per day per unit. A central facility was approved in order that an easy connection could be made to the county collection system when it becomes available. This treatment facility is considered as interim until this connection is made.

7. The charges proposed by the applicant in this case for connection charges in the amount of $450 and for monthly charges of $3.00 per month are found to be just, reasonable and otherwise lawful in that the same are based upon and relate to the recovery of cost and investment without profit. The evidence further shows that the cost of service to the homeowner in this development under the proposed sewer system would be approximately 50% of such cost which would be incurred by the utilization of individual septic tanks, which are not in this particular area as suitable as the system here proposed.

8. The proposed sewer facilities in this case have heretofore been approved by the Durham County Health Department.

9. The petitioner is solvent financially and is ready, willing and able to provide the service it proposes on a continuing basis.

10. That the public convenience and necessity requires or will require the sewer services by the applicant, as applied for, in addition to other existing authorized service

located in the county not otherwise available to the development here involved.

Based upon the foregoing findings of fact and the careful consideration of the entire record, Chairman Westcott and Commissioner Wooten recommend the following

CONCLUSIONS

We conclude and hold that the Applicant, Colony Park Utilities Company, has borne the statutory burden of proof that the public convenience and necessity reasonably requires, or will require the proposed sewer service; that the applicant is fit, willing and able to provide this service proposed on a continuing basis, and that the applicant is, therefore, lawfully entitled to have issued to it a certificate of public convenience and necessity authorizing it to construct, own, and operate a sewer system in the development known as Hunters Wood Subdivision, located in Durham County, North Carolina.

We further conclude that the certificate of public convenience and necessity authorizing the applicant to construct, own and operate a sewer system in the development known as Hunters Wood Subdivision, located in Durham County, should be limited to the extent heretofore approved by the North Carolina Department of Water and Air Resources to twenty-five (25) dwellings or separate customers in said development, without prejudice to the applicant's filing a future application for additional authority if future circumstances should dictate.

We further conclude that the applicant's proposed rates and charges for sewer services are just and reasonable and should be approved and established as applicant's lawful rates and charges.

Applicant is likewise entitled to approval of its contract with the developer of Hunters Wood Subdivision.

Accordingly, IT IS ORDERED:

1. That the Petitioner, Colony Park Utilities Company, 208 Foster Street, Durham, North Carolina, be, and it is, hereby authorized to construct, own and operate sewer disposal facilities to be located in the Hunters Wood Subdivision in Durham County, North Carolina, for twenty-five (25) dwellings or separate customers, for the design and purpose of providing sewer service to the twenty-five families, separate customers, or members of the public in said subdivision in Durham County, North Carolina, the territory embracing the subdivision referred to being more particularly described on the map introduced into evidence in these proceedings and hereby referred to and made a part hereof for particularity.

2. That the limitation of twenty-five dwellings or separate customers specified in Ordering Paragraph 1 above is made without prejudice to the right of the applicant at any future time to file application for additional authority to serve additional customers or dwellings in said subdivision.

3. That the contract between Herndon Building Company and the applicant which is filed and made a part of the evidence in these proceedings be, and the same is, hereby approved.

4. That the applicant be, and it is, hereby authorized to file and make effective on one day's notice rates as reflected in Appendix A hereto attached and made a part hereof, said rates being hereby approved as lawful rates for the applicant in the area and territory affected, to wit: Hunters Wood Subdivision, Durham County, North Carolina.

5. That this order of itself be and constitute the certificate of public convenience and necessity without necessity of further order or formal certificate.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of January, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

Commissioner Clawson L. Williams, Jr., took no part in the decision in this case.

APPENDIX A

Colony Park Utilities Company
208 Foster Street
Durham, North Carolina
(Hunters Wood Subdivision)

1. Monthly sewer rates - $3.00 monthly per customer.

2. Connection charge - $450, per lot connection fee for individual lot owners.

DOCKET NO. W-286

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by John R. Gamble, Jr., M.D., P. O. Box 250, Lincolnton, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in Newcastle Subdivision, Lincoln County, North Carolina, and for Approval of Rates	))))))	RECOMMENDED ORDER APPROVING APPLICATION

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on September 30, 1970, at 10:00 a.m.

BEFORE: Hugh A. Wells, Hearing Commissioner

APPEARANCES:

For the Applicant:

John R. Gamble, Jr., M.D.
P. O. Box 250
Lincolnton, North Carolina 28092
Appearing for Himself

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

No Protestants.

WELLS, COMMISSIONER: This matter came on for hearing before the above Hearing Commissioner at the above indicated time, date, and place upon application of John R. Gamble, Jr., of Lincolnton, North Carolina, for a Certificate of Public Convenience and Necessity to provide water service in Newcastle Subdivision, Lincoln County, North Carolina, and for approval of rates. On August 24, 1970, the Commission entered an order setting the matter for hearing at the above indicated time, date, and place, said order requiring that notice to the public be mailed or hand delivered to all customers being provided water service in Newcastle Subdivision and that the applicant, John R. Gamble, Jr., file with the Commission a Certificate of Service, and further ordering that the applicant furnish certain information to the Commission relating to the equipment and operation of the system.

Dr. Gamble appeared and testified on his own behalf at the hearing and introduced certain exhibits relating to the description of the area to be served and the function and maintenance of the system, as well as equipment used in the system.

David S. Creasy of the Commission's Staff testified as to the Staff's investigation of the system and its proposed operation by the applicant.

Based upon the evidence adduced at the hearing and the exhibits attached to the application, the Commission makes the following

FINDINGS OF FACT

1. The applicant operates and engages in the public utility business of furnishing water service under the laws of the State of North Carolina, operating as John R. Gamble, Jr., M.D., Newcastle Subdivision. The applicant's business address is Lincolnton, North Carolina.

2. The books and records of this utility as they pertain to the providing of water service to Newcastle Subdivision will be kept and maintained by the applicant's wife, Mrs. John R. Gamble, Jr., at the residence of the applicant in Lincolnton, North Carolina.

3. The area to be provided water service by the applicant in this docket is Newcastle Subdivision, as said area is shown on a recorded plat of said subdivision, dated April 15, 1968, and recorded in Plat Book 535 at page 553 in the Lincoln County Registry.

4. Said area is immediately adjacent to the City of Lincolnton, but does not have any other public water supply presently available to it.

5. The applicant's present investment in said water system is in the approximate sum of $1,700.00. Applicant's revenues from said water system for the year 1969 were in the amount of $105.50 and the expenses for the same period incurred in operating said system were in the amount of $98.04. The water system presently has five (5) connected customers and it is anticipated that the total number of customers to be served from said system at full development will not be more than twenty-nine (29). The system obtains its bulk water supply from the Town of Lincolnton through a master meter. The town supply is of good quality and meets acceptable standards of the North Carolina Department of Public Health and the United States Public Health Drinking Water Standards.

7. The applicant proposes a flat rate of $4.50 per month. The present rate being charged is in the amount of $3.50. The proposed flat rate of $4.50 per month is just and reasonable and should be allowed.

8. Maintenance and repair service to the system will be provided under contract between applicant and Willis Plumbing Company of Lincolnton, North Carolina.

9. Notice required in the Commission's order dated August 24, 1970, was properly disseminated.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

There is a demand and public need for water service in Newcastle Subdivision, Lincoln County, North Carolina, and applicant stands ready, willing and able to provide said water service to the area described hereinbefore, and to provide maintenance and repairs to said system through satisfactory contractual arrangements.

The Commission concludes that a Certificate of Public Convenience and Necessity should be issued to the applicant in order that applicant might provide public water service to Newcastle Subdivision. The Commission further concludes that the schedule of rates proposed by the applicant and set forth in Appendix A of this order should be approved.

IT IS, THEREFORE, ORDERED THAT:

1. Applicant, John R. Gamble, Jr., M. D., be, and hereby is, granted a Certificate of Public Convenience and Necessity for the construction, ownership, operation and maintenance of a public water distribution system located in Newcastle Subdivision, Lincoln County, North Carolina, as said subdivision is described in the recorded plat hereinabove referred to.

2. This order shall in itself constitute the Certificate of Public Convenience and Necessity.

3. The books and records of applicant shall be kept in accordance with the Uniform System of Accounts established and adopted by this Commission for water utilities.

4. The schedule of rates marked Appendix A and attached to this order is hereby deemed to be a filed tariff under G.S. 62-38, which tariff is hereby authorized to become effective on one (1) day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A

DOCKET NO. W-286
John R. Gamble, Jr., M.D.
Newcastle Subdivision
Lincolnton, North Carolina

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

RATE: Flat Rate - $4.50 per month per customer, payable monthly on or before the tenth day of each and every month.

CONNECTION CHARGES:

$10.00 (Customers will be required to construct their own tap and install their own meter - connection charge is to cover the cost of inspection and patching of pavement by Gamble.)

RECONNECTION CHARGES:

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

DOCKET NO. W-290

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of William J. Timberlake, t/a Hasty Pump Sales and Service, Route 5, Highway 64 East, Raleigh, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in Bentley Wood Subdivision, Wake County, North Carolina, and for Approval of Rates	) ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on December 8, 1970, at 2:00 p.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), Marvin R. Wooten and John W. McDevitt

APPEARANCES:

For the Applicant:

Richard Gamble
Johnson & Gamble
Attorneys at Law
Post Office Box 1777, Raleigh, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Post Office Box 991, Raleigh, North Carolina

No Protestants

BY THE COMMISSION: On October 1, 1970, William J. Timberlake, t/a Hasty Pump Sales and Service, Route 5, Highway 64 East, Raleigh, North Carolina, filed application for Certificate of Public Convenience and Necessity to own, construct and maintain wells, pumps, water supply lines and

to distribute and sell water to customers in Bentley Wood Subdivision, Wake County, North Carolina, and for approval of rates as set forth in Appendix A attached hereto.

On October 26, 1970, the Commission, being of the opinion that the application affects the interest of the consuming public, set the matter for hearing on December 8, 1970, and required that applicant publish notice of said hearing as required by law. The hearing was held at the time and place specified in the Commission Order. No one appeared at the hearing to protest the application.

The evidence offered by the applicant indicates that Bentley Wood Subdivision is a new development in Wake County; that the applicant proposes to serve 28 customers in said subdivision; that as of the date of the hearing the applicant was providing water service to four residents at no cost; that applicant and Environmental Development Corporation, developers of Bentley Wood Subdivision, entered into a contractual arrangement whereby William J. Timberlake, t/a Hasty Pump Sales and Service would install, own and maintain said water system; that applicant requests approval of rates as set forth in Appendix A attached to this Order based upon cubic feet for the reason that applicant intends to install meters which measure consumption of water by cubic feet; that the system contains one well yielding 70 GPM with a 5,000-gallon hydropneumatic pressure tank and further contains distribution lines of 6-inch pipe; that the only alternative for residents in Bentley Wood Subdivision for water service would be installation of individual wells; that applicant's investment in the water system, which is the subject of this proceeding, will amount to approximately $18,000 rather than $14,300 as indicated in the original application on Exhibit "G"; that the applicant stated the reason for the additional investment expense was because of additional labor costs and the installation of better quality pipe for distribution; that said water system can be identified by territorial description contained in Book of Maps 1970, Vol. 1, p. 49, Wake County Register of Deeds.

The Commission records indicate receipt of a copy of letter dated October 21, 1970, indicating well site approval from the State Board of Health addressed to William J. Timberlake. Although applicant stated at the hearing that he did not recall receiving such a letter, it would appear to the Commission that the well site has been approved by the State Board of Health.

Mr. Tom Dixon of the Commission's Engineering Staff testified that he had personally inspected the water system which is the subject of this proceeding and had observed actual installation of a portion of such system. Mr. Dixon further testified that a sample of water tested at the site indicated that the water met the requirements of the U. S. Public Health Drinking Water Standards and that, in his opinion, said water system was adequate in design to meet

the needs of the 28 customers proposed to be served by the applicant.

Based upon the evidence adduced at the hearing and the application and exhibits filed by the applicant and entered into the record of this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) That the applicant operates and engages in public utility business of furnishing water service under the laws of the state of North Carolina as William J. Timberlake, t/a Hasty Pump Sales and Service, William J. Timberlake being the individual sole owner.

(2) That the area proposed to be served is Bentley Wood Subdivision, Wake County, North Carolina.

(3) That the applicant ultimately proposes to serve 28 customers in said subdivision.

(4) That the plans for the design of proposed water system have been approved by the State Board of Health.

(5) That the water system contains one well yielding 70 GPM with 5,000 hydropneumatic pressure tank and further contains distribution lines of 6-inch pipe.

(6) That applicant's investment in said water system will amount to approximately $18,000.

(7) That the water from the well meets U. S. Public Health Drinking Water Standards.

(8) That the rates for water service proposed by applicant and attached hereto as Appendix A are deemed to be just and reasonable.

(9) That the applicant is financially ready, willing and able to provide the water service proposed on a continuing basis.

(10) That there is no other available water supply to the potential residents of Bentley Wood Subdivision except by way of individual wells.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission is of the opinion that applicant has demonstrated that there is a public need and demand for water service in Bentley Wood Subdivision, Wake County, North Carolina, and that the applicant stands ready, willing and able to provide water service to the residents of

Bentley Wood Subdivision. The Commission is further of the opinion that a Certificate of Public Convenience and Necessity should be issued to the applicant in order that applicant might provide water service to Bentley Wood Subdivision and concludes that the schedule of rates proposed by the applicant, as set forth in Appendix A attached hereto, is just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED as follows:

(1) That the applicant William J. Timberlake, t/a Hasty Pump Sales and Service, be, and the same hereby is, granted a Certificate of Public Convenience and Necessity in order to provide water service in Bentley Wood Subdivision, Wake County, North Carolina.

(2) That this Order shall constitute said Certificate of Public Convenience and Necessity.

(3) That the books and records of the applicant shall be kept in accordance with the uniform system of accounts established by the Commission for water and sewer utilities.

(4) That the schedule of rates attached hereto as Appendix A is hereby deemed to be a tariff filed pursuant to G.S. 62-130, which said tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This 16th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A
DOCKET NO. W-290
HASTY PUMP SALES & SERVICE

WATER RATE SCHEDULE
Residential Service

RATE: Minimum $4.50 for first 400 cubic feet with minimum of $4.50, plus $.65 for each additional 100 cubic feet thereafter.

CONNECTION CHARGES: $2.00 plus security deposit of $10.00

RECONNECTION CHARGES: NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

DOCKET NO. W-274

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Heater Utilities, Inc., for a)
Certificate of Public Convenience and Neces-) RECOMMENDED
sity to Provide Water Service in Ossipee,) ORDER
North Carolina, and for Approval of Rates)

HEARD IN: The Community Building, Ossipee, North Carolina, June 2, 1970, at 10:00 a.m.

BEFORE: Hugh A. Wells, Commissioner

APPEARANCES:

For the Applicant:

Henry H. Sink, Esquire
Parker, Sink and Powers
P. O. Box 1471, Raleigh, North Carolina 27602

Protestants:

Mr. Howard Steelman
Route 1
Elon College, North Carolina
For: Himself

Mr. H. C. McDanial
Route 1
Elon College, North Carolina
For: Himself

Mr. Bruce Foster
Box 5, Altamahaw, North Carolina
For: Himself

Mr. C. E. Coffey
Route 1
Elon College, North Carolina
For: Himself

Mr. Raymond Fargis
Route 1
Elon College, North Carolina
For: Himself

WELLS, COMMISSIONER: Application was filed on February 27, 1970, by Heater Utilities, Inc., 323 South West Street, Cary, North Carolina, wherein the Applicant seeks a Certificate of Public Convenience and Necessity in order to provide water service in Ossipee, Alamance County, North Carolina, which area is shown on a map attached to the Application and marked Exhibit "A." Also attached to the Application is a tariff setting forth the proposed rates.

The Commission's Order of March 11, 1970, entitled "Notice of Application for Public Utility Franchise," was sent to each customer by mail, said notice providing that the matter would be set for public hearing if protests or interventions were received by the Commission on or before April 11, 1970. Protests were received and the Commission issued an Order on May 4, 1970, entitled "Order Setting Hearing," establishing the time and place for a hearing in the matter. This Order was mailed to each protestant by the Commission, and the hearing was held at the time and place specified in the Order.

At the hearing, the Applicant offered in evidence the testimony of two witnesses, to wit:

(1) Mr. Ray Ferguson, Plant Manager of Burlington Mills, testified as follows:

a. That the water being supplied had high iron content, low pressure, and pipelines freezing.

b. That Burlington Mills wanted someone with more experience in the water business that could do a better job of maintaining water service.

c. That the system has not operated at a profit, and that full cost accounting would show a loss.

d. That the water system presently serves approximately 108 houses plus the mill.

e. That the water rate is $6.75 per quarter, per house.

(2) Mr. R. B. Heater, President of Heater Utilities, Inc., testified as follows:

a. That Heater Utilities was now operating seven (7) other water systems and had 50 years experience in ground water supply.

b. That Burlington Mills contacted him, and that he studied the water system and found it to be antiquated and poorly designed.

c. That he planned to install treatment facilities and to improve the water pressure during the first year.

d. That he planned to raise the elevated water tank as a long-range project.

e. That the estimated cost of immediate improvements was approximately $5,000.00.

f. That there would be no charge to existing customers for installing meters.

Five Protestants testified on their own behalf. These Protestants testified, in effect, (1) that the water pressure was low at times, (2) that there was no water at times, (3) that the water had a bad taste and dirty color at times, especially in summer. Some of the Protestants advised that they were not opposed to someone else besides Burlington Mills operating the water system, and that they would not object to some increase in water rates if the water was improved. Some of the Protestants stated that the proposed rates were too high, and that there were many retired people who could not afford a higher rate. They pointed out that Elon College charges $3.00 per month for the first 4,000 gallons, and Gibsonville charges $2.00 per month for the first 3,000 gallons.

Based upon the evidence received at the hearing, the verified statements contained in the Application and attachments thereto, and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

(1) The Applicant is a duly organized and existing corporation under the laws of the State of South Carolina, is domesticated in North Carolina, and is authorized under its Articles of Incorporation to engage in the public utility business of furnishing water service. The Corporation's principal office is 323 South West Street, Cary, North Carolina 27511.

(2) That Applicant is presently operating public utility water systems in South Carolina, and has applied for a Certificate of Public Convenience and Necessity to operate two other public utility water systems in North Carolina.

(3) Ossipee is located on North Carolina Highway No. 87, approximately one-half mile south of Altamahaw in Alamance County. The area to be served is shown on a map prepared by W. T. Hall, C. E., as recorded in Book 2, Page 135, Register of Deeds for Alamance County. There is presently no other water system that can reasonably supply the area described. There are approximately 108 residential water users on the existing system, plus buildings owned by Burlington Mills.

(4) The Applicant has obtained title to the water system and to the well and storage tank sites from Burlington Mills, and has obtained necessary easements from property owners for operation and maintenance of the system.

(5) The Applicant proposes to make improvements in the water system to correct problems related to low pressure and to high iron content, and to make improvements required by the N. C. State Board of Health for its approval.

(6) The existing water system does not meet with the approval of the State Board of Health, but the Board of Health recommends that the system be accepted for public utility purposes so that needed improvements can be made. The Board of Health has suggested that the following be completed within one year: chlorination of both wells, improved drainage around well site #2, and certain improvements proposed on the water system plans submitted to the Board of Health, and as required for its approval. A copy of the plans is attached to the Application.

(7) The net book cost, based on the estimate of original cost less depreciation, was not submitted on this record by the applicant. The applicant paid Burlington Mills nothing for the water system.

(8) The annual revenue at the minimum rate would produce approximately $1700.00, including projected revenue from commercial customers. The annual operating expenses, less depreciation, on current cost of plant, would be approximately $6,000.00. The Applicant also projects an additional annual expense of $240.00 for interest expense.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission concludes that there is a demand and a public need for water service in Ossipee Village, and that the Applicant stands ready, willing and able to provide water service to the area. The Commission is of the opinion that a Certificate of Public Convenience and Necessity should be issued to the Applicant in order that the Applicant might provide water service in Ossipee, North Carolina. The Commission is further of the opinion that the schedule of initial rates should be filed pursuant to G.S. 62-138.

IS IS, THEREFORE, ORDERED that the Applicant, Heater Utilities, Inc., be granted a Certificate of Public Convenience and Necessity for ownership, operation and improvement of a water system located in Ossipee, Alamance County, North Carolina, which area and location is more particularly described in Applicant's Exhibit "A" attached to the Application and made a part hereof by reference, the granting of said certificate being specifically conditioned upon the applicant's compliance with the provisions of this Order.

IT IS FURTHER ORDERED that this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

IT IS FURTHER ORDERED that the books and records of the Applicant be kept in accordance with the Uniform System of Accounts established by this Commission for water utilities,

and that the Applicant enter on its books as an acquisition adjustment an amount equal to the estimated net original cost which shall be filed with the Commission within sixty (60) days of the date of this Order for approval.

IT IS FURTHER ORDERED AS FOLLOWS:

(1) That the Applicant begin metering water sold to Burlington Mills and all other commercial customers within sixty (60) days from the date of this Order.

(2) That the Applicant apply the minimum authorized rate to all residential customers until such time as meters are installed on all residential services, and that a minimum of thirty (30) days' written notice be given to each residential customer before converting from the minimum rate to the metered rate.

(3) That the Applicant complete measures necessary to correct low pressure problems in the water system within one year from the date of this Order, and that the measures to be taken shall include cross-connections between the 4" main on the east side of Main Street and the 2" main on the west side of Main Street, and installation of an air compressor on the 1000-gallon pressure tank at Well No. 1.

(4) That the Applicant complete measures necessary to correct problems related to high iron and manganese content in the water within one year from the date of this Order, and that the measures to be taken shall include flushing the mains and tanks as often as is required to remove excess iron residue from the system, installing an aeration type treatment unit for iron removal, and connecting mains from both supply wells to the aeration treatment unit so that only treated water passes through the distribution mains and storage tanks.

(5) That the Applicant complete the installation of chlorination facilities on the water system within one year from the date of this Order, and that the installation shall include a new pumphouse, a 100 g.p.m. pump, and hydrochlorinator, and that the facilities shall be installed so that only chlorinated water passes through the distribution mains and storage tanks.

(6) That the Applicant make all improvements necessary to satisfy State Board of Health requirements within one year from the date of this Order, and that the improvements to be made shall include installation of a sample tap and a screened floor drain at Well No. 2, installation of a drainage ditch around the pumphouse at Well No. 2, and installation of an access hatch cover with an overhanging lip on the roof of the 15,000-gallon elevated tank.

(7) That the Applicant take measures necessary to protect the plumbing at the wells and storage tanks from freezing.

(8) That the Applicant take measures necessary to raise the 15,000-gallon elevated storage tank in order to provide adequate water pressure throughout the system, and that the work be completed within five (5) years from the date of this Order.

(9) That the Applicant submit a report at 90-day intervals on the status of the improvements to be made, and that a minimum of four reports shall be submitted, and that the first report shall be due 90 days from the date of this Order.

(10) That the schedule of rates as shown on the tariff attached to the Application and made a part hereof by reference is hereby deemed to be filed as a tariff schedule under G.S. 62-138, and which tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of July, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-274, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Heater Utilities, Inc., 323 South West Street, Cary, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in the Green Pines Subdivision, Wake County, North Carolina, and for Approval of Rates	)	ORDER GRANTING CERTIFICATE

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on July 2, 1970, at 9:30 a.m.

BEFORE: Hugh A. Wells, Commissioner (Presiding), and John W. McDevitt and Miles H. Rhyne, Commissioners

APPEARANCES:

For the Applicant:

Henry H. Sink, Esquire
Parker, Sink and Powers
P. O. Box 1471, Raleigh, North Carolina 27602
For: Heater Utilities, Inc.
Mr. R. B. Heater and Mr. Robert McCamy

For the Protestants:

Mr. Wayne L. Barnette
212 Westover Drive
Route 1
Knightdale, North Carolina
For: Himself

Mr. Billy W. Veazey
209 A Westover Drive
Knightdale, North Carolina
For: Himself

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Raleigh, North Carolina

WELLS, COMMISSIONER: Application was filed by Heater Utilities, Inc., 323 South West Street, Cary, North Carolina, on April 3, 1970, wherein the applicant seeks a Certificate of Public Convenience and Necessity in order to own, construct and maintain wells, pumps, water supply lines and to distribute and sell water to customers in Green Pines Subdivision, Wake County, North Carolina, and for approval of rates as set forth in the application.

Order was entered by the Commission on April 24, 1970, entitled "Notice of Application for Public Utility Franchise," advising that the matter would be set for public hearing if protest or intervention were received by the Commission on or before May 15, 1970. The Notice further stated that if no protests or interventions were filed, the Commission would determine the application on the facts set forth therein and the public records available to the Commission, without holding a public hearing.

The Commission received protests from 12 residents of the Green Pines Subdivision protesting the application. By Order dated May 26, 1970, the Commission set the matter for public hearing, establishing the time and place for a hearing in the matter. This Order was sent to each protestant by the Commission, and the hearing was held at the time and place specified in the Order.

At the call of the hearing, applicant offered in evidence the testimony of two witnesses, to wit:

Mr. R. B. Heater, President of Heater Utilities, Inc., testified that he operated nine (9) utility systems in North Carolina and South Carolina over the past 15 to 18 years; that the developer of Green Pines Subdivision entered into a contract with Heater Utilities, Inc., to provide water service in Green Pines Subdivision, the contract required approval of the Utilities Commission; that Heater Utilities, Inc., filed a rate schedule, Exhibit C; that there are two

drilled wells yielding approximately 32 gallons per minute, Well No. 2 is connected to a 550 hydropneumatic tank and to the first section of the water system in the development; that the storage capacity and wells will be increased as the need for water develops in this subdivision, additional well sites are available for expansion, an elevated tank is proposed; that the estimated investment in the water utility system will be $75,000.00; that there is no provision for fire protection in the subdivision.

Robert McCamy, an employee of Realty Sales and Investment Company, testified that Realty Sales and Investment Company, the developers of Green Pines Subdivision, conveyed to Heater Utilities, Inc., four (4) lots for well sites; that an agreement has been signed between the Realty Sales and Investment Company and Heater Utilities, whereby the realty company will install the water mains and services at their expense and Heater Utilities will reimburse the realty company at the rate of $90.00 per connection as tap-on fees are made for each resident to cover the cost of laying the service laterals and furnishing the meter box and yoke; and that the realty company will transfer the ownership of the lines, after they have been installed and paid for to Heater Utilities, Inc.

Two protestants testified on their own behalf. These protestants testified, in effect, that they were afraid their wells would go dry after Heater Utilities placed his Well No. 2 in operation, since his well was at a deeper depth and the protestant's wells were in close proximity; and that they objected to the proposed overhead storage tank for fear it would distract from the beauty of the subdivision.

Based upon the evidence received at the hearing, the verified statements contained in the application and the attachments thereto, and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

(1) That applicant as a duly organized and existing corporation under the laws of the State of South Carolina is domesticated in North Carolina, and is authorized under its Articles of Incorporation to engage in the public utility business of furnishing water service. The corporation's principal office in North Carolina is located at 323 South West Street, Cary, North Carolina 27511.

(2) That the applicant is presently operating public utility water systems in South Carolina and North Carolina.

(3) That the area which is to be provided with water service in this application is the Green Pines Subdivision, which is located on U.S. 64 east of Raleigh, North Carolina, and is recorded in the Book of Maps 1970, Page 15, Wake County Registry. There are approximately 20 customers that

can be served from the present system, the water system as proposed will supply water to 125 customers.

(4) That the applicant has submitted to the Commission all the necessary data with his application that is required before a certificate is granted including a schedule of proposed water rates.

(5) The applicant proposes to make extensions and improvements to the water system as new customers are added. The applicant further states that he will correct the water in Well No. 2 to sequest or reduce the iron content down to the amount specified in Public Health Service Drinking Water Standards for 1962 water quality.

(6) The well sites and water plans for the water system have been approved by the State Board of Health under Serial No. 7333 dated March 10, 1970. A copy of the plans is attached to the application marked Exhibit A. The well sites are located in areas which are residential in nature and should therefore be structured and maintained in a safe, neat and attractive manner, compatible with the environment of the neighborhood in which they are situated. Future plans call for an elevated storage tank to be constructed in an area removed from residences and adjacent to a commercial or shopping area. The construction of such a tank in the midst of a residential area or immediately adjacent to existing residences would be unsafe and environmentally unsound and should not be permitted.

(7) That the applicant has a net worth of approximately $84,000.00.

(8) That the water service has been requested by Realty Sales and Investment Company to provide service to 125 lots.

CONCLUSIONS

The Commission concludes that there is a demand and a public need for water in the Green Pines Subdivision, and that the applicant stands ready, willing and able to provide water service to the area described. The Commission is of the opinion that a Certificate of Public Convenience and Necessity should be issued to the applicant in order that the applicant might provide water service in Green Pines Subdivision. The Commission is further of the opinion that the schedule of initial rates should be filed pursuant to G.S. 62-138.

IT IS, THEREFORE, ORDERED THAT:

(1) The applicant, Heater Utilities, Inc., be, and hereby is, granted a Certificate of Public Convenience and Necessity for ownership, operation and maintenance of a water system located in the Green Pines Subdivision, Wake County, North Carolina, which area and location is more particularly described in applicant's Exhibit "A" attached

to the application and made a part hereof by reference, the granting of said certificate being specifically conditioned upon the applicant's compliance with the provision of this Order.

(2) The Order in itself shall constitute the Certificate of Public Convenience and Necessity.

(3) The books and records of the applicant shall be kept in accordance with the Uniform System of Accounts established by this Commission for water utilities, and the applicant shall enter on its books as an acquisition adjustment, an amount equal to the estimated net original cost which shall be filed with the Commission within sixty (60) days of the date of this Order for approval by the Commission.

(4) The applicant shall construct and maintain its well sites in a safe, neat and attractive manner. Any elevated storage tank shall be located in an area not generally residential in character and not immediately adjacent to existing residences. Plans for any such tank shall be submitted to the Commission at least ninety (90) days prior to beginning construction.

(5) The applicant shall take the necessary steps to correct the high iron content in Well No. 2 to conform to the Public Health Service Drinking Water Standards - 1962.

(6) The schedule of rates, as amended herein, attached to this Order, is hereby deemed to be filed as a tariff schedule under G.S. 62-138, which tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THIS COMMISSION.
This the 13th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

TARIFF

COMPANY Heater Utilities, Inc. SYSTEM Water
SUBDIVISION(s) SERVED
Green Pines Subdivision

WATER RATE SCHEDULE
Residential Service

RATE: $5.00 min. per month for first 3,000 gals. of water
.60 per 1,000 gallons of additional water used.

CONNECTION CHARGES: $135.00 Connect fee for 3/4 or 5/8 meter. For a larger meter, the connect fee will be cost plus 20%.

RECONNECTION CHARGES:
NCUC Rule R7-20(f) - $4.00 - NCUC Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

Issued by: Heater Utilities, Inc. Effective: On one day's notice
Name of Company
Mr. R. B. Heater
Officer

Issued to comply with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 1.

DOCKET NO. W-274, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Heater Utilities, Inc.,	)	
323 South West Street, Cary, North Carolina,	)	ORDER DENYING
for a Certificate of Public Convenience and	)	CERTIFICATE
Necessity in order to provide water service	)	OF PUBLIC
in Colonial Hills and Park Subdivision,	)	CONVENIENCE
Orange County, North Carolina	)	AND NECESSITY

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on August 25, 1970

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

Henry H. Sink
Parker, Sink & Powers
Attorneys at Law
P. O. Box 1471, Raleigh, North Carolina

For the Respondent:

Alonzo Brown Coleman, Jr.
Winston, Coleman & Bernholz
Attorneys at Law
Churton Street
Hillsborough, North Carolina
For: James J. Freeland

For the Intervenor:

Lucius M. Cheshire
Graham & Cheshire
118 N. Churton Street
Hillsborough, North Carolina
For: Town of Hillsborough

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WELLS, COMMISSIONER: On July 2, 1970, Heater Utilities, Inc., filed an application with the Commission for a certificate of public convenience and necessity to provide water service in the Colonial Hills and Park Subdivision near Hillsborough, North Carolina.

The Commission being of the opinion that the application affects the interest of the using public in the Colonial Hills and Park Subdivision, set the matter for hearing on July 23, 1970, by Order of July 16, 1970, and required that notice of said hearing be published by the applicant in a newspaper having general circulation in the areas for which the service is proposed.

On June 8, 1970, in Docket No. W-273, the Commission issued a Show Cause Order with respect to James J. Freeland, T/A Colonial Hills Water Works, to show cause why penalty of up to $1,000 per day should not be envoked for each day that he has failed to comply with the Commission's Order under G.S. 62-310, in not obtaining a certificate of public convenience and necessity in that Mr. Freeland was then supplying water service in the Colonial Hills and Park Subdivision and having in excess of 25 customers. Hearing was set by Order on July 3, 1970. At that hearing, R. B. Heater, President of Heater Utilities, Inc., testified that his Company had entered negotiations with Mr. Freeland with a view toward taking over and improving the existing water system and service in the Colonial Hills and Park Subdivision. Shortly thereafter, Heater Utilities, Inc., filed the application for public convenience and necessity which is the subject of this proceeding. At the hearing on July 23, 1970, in this matter, Heater Utilities, Inc., presented evidence which tends to show that the Company had engaged in an engineering study with respect to the feasibility of providing water service to the affected area; that the Company proposed to utilize 4 of the 5 existing wells in the area; that 5000 feet of 4-inch mains and 4300 feet of 2-inch mains were proposed to be installed; that the Company proposed to serve 173 customers of Colonial Hills and Park Subdivision; that it was unable to test the supply of the 4 wells which it proposes to use without actually closing down such wells entirely which was impractical; that Heater Utilities, Inc., received deeds of transfer from James J. Freeland with respect to the well sites; that the estimated cost of improvements to the existing system amounted to $20,681 in addition to the proposed tap fees; that the rates for service would be $5 minimum for 3000 gallons and based on a graduated scale of reduced cost for usage and that a tap fee of $50 would be imposed upon existing users at the time of Heater's taking over the system and a tap fee of $135 for any new customer thereafter

who may desire to tie onto the system; that the company proposed to have a local representative of the subdivision to handle customer problems and that the pump facilities would be inspected monthly, and that complaints would be handled through the Company's Cary Office or by mail.

The evidence presented by Heater Utilities, Inc., further indicates certain minimum deficiencies from a design standpoint with respect to the existing system and that contamination was indicated in certain of the wells, thereby resulting in difficulties in complying with the requirements of the North Carolina State Board of Health.

On July 23, 1970, immediately prior to the hearing, the Commission received a letter from Mayor F. S. Cates of the Town of Hillsborough which indicated that the Town would be willing to supply water for the Colonial Hills Subdivision and that the Town had received an indication from some residents who desired that the Town furnish water service to the area. No representative from the Town of Hillsborough was present at the July 23, 1970, hearing.

Mr. Charles Rundgren, Sanitary Engineer of the North Carolina State Board of Health, who was present at the hearing for another purpose, testified that he was familiar with the water system of the Town of Hillsborough. Mr. Rundgren testified that the Town of Hillsborough could provide water service to the affected area if it expanded its treatment plant capacity but that as of that date, the Town had not submitted any plans or specifications to the State Board of Health.

On July 27, 1970, the Town of Hillsborough filed a petition for intervention in this proceeding which was allowed by Order of the Commission on July 28, 1970. The Order further provided that Docket No. 274, Sub 2, be reopened for the purpose of taking testimony on behalf of the Town of Hillsborough upon the question of the proposed furnishing of water service in the Colonial Hills and Park Subdivision, and set the matter for hearing on August 25, 1970.

At the resumed hearing, Mayor Cates testified on behalf of the Town of Hillsborough that the town was presently considering plans for expansion of its water capacity from 500,000 gallons per day to 2,500,000 gallons per day. He further indicated that several of the property owners in the affected areas approached Town officials prior to the hearing on July 23, which resulted in the Mayor's letter to the Commission heretofore mentioned; that with respect to the Colonial Hills and Park Subdivision, the Town was considering two proposals involving estimates for furnishing water service to those areas, one estimate being $88,000 for which said amount does not include expenses for installation of hydrants, and a second estimate of $103,000 which would involve continuing the new water line to Rock House Road; that the Town has received approval and signed commitments

for 100 water taps in the affected areas which amount to approximately 55% of the property owners in the area, there being a total of 173; that the Town's proposal was that the water line to be established be increased from 6 inches to 12 inches; and that the initial cost for each property owner would be $315 under the town's proposed system.

Mr. Cates further testified that the Town has arranged to tie on to the Orange-Alamance water system; that the expense for a tie-on water line was estimated to be $12,000; that the Town would have access to treated water under such an arrangement and that the tie-on could be made within 60 to 90 days. He further testified that this source of treated water could be used until projected completion of the Town's proposed plant in November, 1971. Mr. Cates testified that several residents in the area have raised some $20,000 in the nature of a loan in addition to their agreement to the proposed tap fee; that the Orange County Commissioners have agreed to loan $28,000 toward establishing a 12-inch line; that the estimates involved in the Town's proposed system were submitted to Rose & Pridgen, the engineering firm which represents the Town of Hillsborough.

Mr. Cates further indicated that the Town has an excess of 500 million gallons of water in storage in Hillsborough and Lake Orange reservoir and that the Town's present water capacity is 777,000 gallons per day with an average current usage of approximately 600,000 gallons per day.

Several property owners in the affected area were present at the August 25, 1970, hearing. Some of them indicated that they would prefer to receive water service from the Town of Hillsborough and some indicated that they would prefer to receive water service from Heater Utilities, Inc. The substance of the testimony of those favoring Heater Utilities, Inc., would seem to indicate that such persons would prefer to pay $50 as an initial expense and that they felt that Heater Utilities, Inc., might be able to correct the current problems with the existing system sooner than the Town of Hillsborough. Those favoring the Town of Hillsborough's proposed water system indicated that they believed that the availability of a municipal water system and supply would increase property values in the affected areas; allow lower insurance premiums because of potential fire protection, although hydrants would have to be installed by the property owners at additional expense; and that a municipal water system would be a more permanent solution to the problems encountered in the affected areas than the proposal offered by Heater Utilities, Inc.

Based upon the application and the record herein, the Commission makes the following

FINDINGS OF FACT

(1) That the water system operated by James J. Freeland, T/A Colonial Hills Water Works, has resulted in substantial

difficulties in water service to the residents of Colonial Hills and Park Subdivision in Hillsborough, North Carolina, because of minimum deficiencies from a design standpoint and the existence of contamination with respect to certain of the wells.

(2) Heater Utilities, Inc., proposes to utilize 4 of the 5 existing wells in its plans to take over the existing system from Mr. Freeland.

(3) Heater Utilities, Inc., proposes to utilize 4 of the 5 existing wells in its plans to take over the existing system from Mr. Freeland.

(4) That Heater Utilities, Inc., has been unable to test the water supply of the 4 wells it proposes to use.

(5) That Heater Utilities, Inc., estimates cost of improvements to be $20,681 plus tap fees.

(6) That Heater Utilities, Inc., proposes to utilize only 4-inch and 2-inch water mains to provide water service to the 173 property owners in the Colonial Hills and Park Subdivision.

(7) That somewhat less than 50% of the property owners in the Colonial Hills and Park Subdivision desire to have Heater provide water service to the affected areas.

(8) That somewhat in excess of 50% of the property owners in the Colonial Hills and Park Subdivision favor water service by the Town of Hillsborough.

(9) That the Town of Hillsborough has indicated its willingness to and capability of furnishing water service to the property owners in the Colonial Hills and Park Subdivision.

(10) That the Town of Hillsborough proposes to increase the size of main from 6 inches to 12 inches in the affected areas.

(11) That the Town is presently engaged in an expansion program with respect to its water capacity to increase same from 500 thousand gallons per day to 2 1/2 million gallons per day.

(12) That the Town has sufficient indication that it can tie on to the Orange-Alamance system which would permit it to have access to treated water within 60 to 90 days until such time as its proposed water distribution system and expansion of treatment plant is completed.

(13) That the Town of Hillsborough has a substantial amount of raw water supply in storage of approximately 500 million gallons in Hillsborough and Lake Orange reservoir.

(14) That the Town of Hillsborough has indicated its willingness and capability to provide water service in the affected areas within 60 to 90 days at a cost of $315 for each property owner.

Based upon the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission is not unaware of substantial individual difficulties encountered in the past and in recent days by the property owners of Colonial Hills & Park Subdivision with respect to the water system.

The application of Heater Utilities, Inc., with respect to the establishment of 5000 feet of 4-inch main and 4300 feet of 2-inch main is regarded by the Commission as minimum from a design standpoint and raises substantial questions as to whether or not such lines would be adequate to provide water service in the affected areas. Additionally, Heater Utilities, Inc., proposes to utilize 4 of the 5 existing wells. It has been unable to test the supply of water in the affected areas because it has been impractical to shut down these wells; consequently, much uncertainty exists with respect to whether or not an adequate supply of water exists in the affected areas. It would appear that Heater Utilities, Inc., cannot offer the substantial quantity and volume of water supply which the Town of Hillsborough can apparently offer. Further, a municipal system would offer the possibility of additional fire protection in the affected areas and the possibility of lower insurance premiums.

The Commission is of the opinion that a municipal system and supply which the Town of Hillsborough has indicated its willingness to provide to property owners in the affected areas would constitute a more permanent solution to the substantial problems which the residents of Colonial Hills and Park Subdivision have encountered. The record indicates that the availability of city water would have a tendency to increase property values.

The Commission recognizes that with respect to providing water service the Town of Hillsborough is not subject to regulation by the Utilities Commission and the provisions of G.S. 62-110 do not apply to municipalities.

In applying for a certificate of public convenience and necessity under G.S. 62-110, Heater Utilities, Inc., has the burden in this proceeding to establish that public convenience and necessity requires the public utility services it proposes. That burden has not been sustained in this case. It would appear that less than one-half of the 173 property owners in Colonial Hills and Park Subdivision desire water service from Heater Utilities, Inc. Consequently, the applicant has failed to show public

convenience and necessity with respect to the area it proposes to serve in its application. Additionally, the water system proposed by Heater Utilities, Inc., appears to have features which are minimum from an engineering design standpoint and that the availability of water supply in the area is virtually unknown.

Based upon the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED as follows:

(1) That the application of Heater Utilities, Inc., for certificate of public convenience and necessity to provide water service in the Colonial Hills and Park Subdivision in Orange County, Hillsborough, North Carolina, be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This 28th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-274, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Heater Utilities, Inc.,	) RECOMMENDED
323 South West Street, Cary, North Carolina,	) ORDER DENYING
for a Certificate of Public Convenience and	) CERTIFICATE
Necessity to Provide Water Service in	) OF PUBLIC
Whispering Pines Subdivision, Orange County,	) CONVENIENCE
North Carolina, and for approval of Rates	) AND NECESSITY

HEARD IN: Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, at 10:00 a.m., on September 3, 1970

BEFORE: Hearing Commissioner Hugh A. Wells

APPEARANCES:

For the Applicant:

Henry H. Sink
Parker, Sink & Powers
Attorney at Law
P. O. Box 1471, Raleigh, North Carolina 27602

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Post Office Box 991, Raleigh, North Carolina

No Protestants

WELLS, COMMISSIONER: On July 10, 1970, Heater Utilities, Inc., 323 South West Street, Cary, North Carolina, filed an application with the Utilities Commission for a certificate of public convenience and necessity in order to own, construct and maintain wells, pumps, water supply lines and to distribute and sell water to customers in Whispering Pines Subdivision, Orange County, North Carolina, and for approval of rates as set forth in Appendix A attached hereto.

On July 28, 1970, the Commission, being of the opinion that the application affects the interest of the using and consuming public in the areas proposed to be served by Heater Utilities, Inc., and that the public should have an opportunity to intervene or protest the application if it so desired, set the matter for hearing on September 3, 1970, and required notice be published by the applicant as required by law. The hearing was held at the time and place as specified in the Commission's Order of July 28, 1970. No one appeared at the hearing to protest the application.

The evidence offered by the applicant, Heater Utilities, Inc., indicates that Heater Utilities, Inc., is a South Carolina corporation which domesticated in the State of North Carolina on December 10, 1969; that the area proposed to be served in Whispering Pines Subdivision contains approximatley 122 lots; that as of the date of the hearing in this matter, Heater Utilities, Inc., had five (5) actual customers in said Subdivision and three (3) potential residential users connected to the system but not utilizing water service because each residence was unoccupied as of the date of the hearing; that Heater Utilities, Inc., ultimately proposes to serve approximately 122 residents; that one well has been installed in the Subdivision which is 6 1/4 inches in diameter and will yield approximately 55 gallons per minute; that the pump pressure setting is 50-70 PSI; that two 550 hydropneumatic tanks will be utilized as storage facilities; that such existing well is located on Lot 28; that Heater Utilities, Inc., has ownership to additional well site in the Subdivision; that the existing well should serve approximately 55 families and that when the quantity of water being used at a future date indicates the first well is not adequate to be a major reserve supply available, Heater Utilities, Inc., proposes to drill additional wells when they are needed and to increase the size of the hydropneumatic storage tanks; that the owner of Whispering Pines Subdivision is James J. Freeland; that Heater Utilities, Inc., has an agreement with Mr. Freeland to sell additional well sites which may later appear to be necessary to Heater Utilities, Inc.; that the distribution mains will be 2 inches with the exception of a 6-inch line in the cul de sac; that arrangements for the serving of the needs for the water consumers in Whispering Pines Subdivision will be handled by the Cary office of Heater Utilities, Inc., and at a future date an agent within the

Subdivision or close to the Subdivision is proposed for the handling of any maintenance difficulties which may be encountered; that all water service in the Subdivision will be metered and billings for such service will be handled from the Cary office; that the investment of the water which is the subject of the proceeding as of the date of the hearing was approximately $2,000 with a proposed investment in the completed water system of approximately $45,734.

The evidence of the Commission Staff indicates that Staff Engineer, David Creasy, examined all of the particulars of the application of Heater Utilities, Inc., in this proceeding and that the water system as proposed appears to be adequate for the immediate needs of Whispering Pines Subdivision, and will be adequate for the completed system when such changes are made as testified to by B. B. Heater on behalf of Heater Utilities, Inc.

At the conclusion of the evidence, it appeared to the Hearing Commissioner that the Commission's Order of July 28, 1970, and notice to the public attached thereto included "sewerage service" in addition to the water service proposed in this proceeding and that the proposed rate schedule was labeled "water and sewer rate schedule." It further appeared to the Hearing Commissioner that the application submitted by Heater Utilities, Inc., did not refer to, mention or include sewer services and that the proposed tariff filed with the application was labeled "water service" and did not include sewer services in the rates submitted.

Further, it appeared that mention of "sewer service" in the Order and notice to the public was inadvertently made in preparation of the Order and notice to the public; consequently, the Hearing Commissioner was of the opinion that it was necessary to require publication of corrected notice to the public and that the matter should be reset for hearing in the event any protests were received by the Commission after publication of the corrected notice. On September 4, 1970, the Commission entered an Order requiring this corrected notice be published in a newspaper having general circulation in the area for which the service is proposed and that an affidavit of republication be filed. The Order further provided that unless protests were received by the Commission within 15 days from the date of the last publication and corrected notice, this matter would be considered upon the record adduced at the hearing on September 3, 1970, without the necessity of further hearing. Notice to the public was published on August 5 and 11, 1970, and affidavit of publication filed with the Commission on September 10, 1970. Publication of corrected notice to the public was published by the applicant on September 12 and 19, 1970, and affidavit of publication was filed with the Commission on September 25, 1970.

Based upon the evidence adduced at the hearing and the application and exhibits filed by the applicant entered into

the record of this proceeding, and the records of the Commission, and no protests having been received by the Commission after publication of corrected notice to the public required by Commission's Order of September 4, 1970, the Hearing Commissioner makes the following

FINDINGS OF FACT

(1) That the applicant operates and engages in the public utility business of furnishing water service as a South Carolina corporation having domesticated in the State of North Carolina on December 10, 1969, operating as Heater Utilities, Inc.

(2) That the books and records of the applicant Heater Utilities, Inc., as they pertain to Whispering Pines Subdivision will be kept and maintained in the applicant's office in Cary, North Carolina.

(3) That the area to be provided water service by the applicant is Whispering Pines Subdivision, Orange County, North Carolina.

(4) That approximately 122 customers will ultimately be served by the system owned and operated by the applicant in Whispering Pines Subdivision.

(5) That as of September 3, 1970, the applicant was then serving five (5) water customers in Whispering Pines Subdivision with three (3) residential users connected to such water system but not utilizing the service.

(6) That the water system presently contains one well yielding approximately 55-gallons per minute and two 550-gallon hydropneumatic storage tanks.

(7) That the estimated investment for the completed water system in Whispering Pines Subdivision is stated by the applicant to be $45,734.

(8) That the water system proposed by the applicant has been approved by the State Board of Health.

(9) That the applicant proposes to charge $5 minimum per month for the first 3,000 gallons of water and $.60 per 1,000 gallons for all amounts over 3,000 gallons per month, and such tap fees, connection and reconnection charges as outlined in Appendix A attached to this order.

Based upon the foregoing Findings of Fact, the Hearing Commissioner makes the following

CONCLUSIONS

The Hearing Commissioner is of the opinion that there is a demand and public need for water service in the Whispering Pines Subdivision, Orange County, North Carolina, and that

the applicant stands ready, willing and able to provide the water service to the area described in its application.

The Hearing Commissioner concludes that a certificate of public convenience and necessity should be issued to the applicant in order that the applicant might provide water service to Whispering Pines Subdivision and further concludes that the schedule of rates proposed by the applicant as set forth in Appendix A attached to the Order should be approved.

IT IS, THEREFORE, ORDERED as follows:

(1) That the applicant, Heater Utilities, Inc., be, and the same hereby is, granted a certificate of public convenience and necessity for the construction, ownership, operation and maintenance of a water distribution system in Whispering Pines Subdivision.

(2) That the books and records of the applicant should be kept in accordance with the uniform system of accounts established by the Commission for water utilities.

(3) That the schedule of rates attached hereto as Appendix A is hereby deemed to be filed a tariff schedule pursuant to G.S. 62-138, which said tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This 5th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-274, SUB 3
HEATER UTILITIES, INC.
(Whispering Pines Subdivision)

WATER RATE SCHEDULE
Residential Service

RATE:

$ 5.00 Minimum per month for first 3,000 gallons of water
.60 per 1,000 gallons for all over 3,000 gallons per month
$135.00 Tap on fee for 3/4 X 5/8 Meter
4.00 Reconnect fee if service discontinued for default in payment of bill

RECONNECTION CHARGES: NCUC Rule R2-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered

DOCKET NO. W-291

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Cloyd L. Propst Water Supply, 965 22nd Street, N. E., Hickory, North Carolina 28601, for a Certificate of Public Convenience and Necessity to Provide Water Service in Whit-Fry Heights Subdivision, Catawba County, North Carolina, and for Approval of Rates	) ORDER) GRANTING) CERTIFICATE) AND APPROVAL) OF RATES

HEARD IN: The Hearing Room of the Commission on Tuesday, November 24, 1970, at 3:00 p.m., in Raleigh, North Carolina

BEFORE: Commissioners John W. McDevitt, Miles H. Rhyne, and Marvin R. Wooten, Presiding

APPEARANCES:

For the Applicant:

M. V. Yount
Attorney at Law
122 2nd Street, N. W.
Hickory, North Carolina

No Protestants.

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
N. C. Utilities Commission
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: By application filed with the North Carolina Utilities Commission, Cloyd L. Propst Water Supply, 965 22nd Street, N. E., Hickory, North Carolina 28601, in this case seeks a Certificate of Public Convenience and Necessity in order to provide water service in the Whit-Fry Heights Subdivision, Catawba County, North Carolina, and for approval of rates.

In consideration of the application, the Commission by order dated October 26, 1970, set the matter for hearing at the captioned time and place. Said order, among other things, required the applicant to publish notice of the hearing in a newspaper having general circulation in the area for which service is proposed. The applicant appeared, as directed, and was represented by counsel. The evidence in support of the application tends to show that notice of hearing was published, as required, for two weeks, namely, November 6 and 9, 1970, in the Hickory Daily Record, a

newspaper having general circulation in the area proposed to be served; that the system here proposed is one located in the community in which the applicant lives; that the supply system is located on property owned by the applicant; that the applicant established this system at the request of the customers who had previously been supplied water from a defunct system; that the applicant's system includes the distribution portion of the previous water system; that the applicant's water supply system has been approved by the State Board of Health, except as to that portion underground which could not be inspected by them which was pre-existing; that said system has been approved by the Engineering Staff of this Commission; that the applicant has made a substantial investment in order to supply the water needs of the community here involved; that the only alternative for service by the customers of the applicant's system would be individual water systems placed on the individual properties of the customers of the applicant; that the applicant will receive the complaints from customers directly, and will do all the billing for the water services; and that the applicant has made adequate and sufficient arrangements with a reputable plumbing and well company to provide necessary corrective action to satisfy customer complaints and to render good and adequate water service to the community here involved.

Mr. Tom Dixon, of the Commission's Engineering Staff, testified regarding the Staff investigation of this system and the matter of public convenience and necessity.

In consideration of the evidence adduced at the hearing, the verified statements and exhibits attached to and made a part of the application, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is operating an existing water system in the community for which authority is here sought and is furnishing water service as a public utility in this connection.

2. That the applicant is an individual, a citizen and resident of the State of North Carolina, and is the sole owner and operator of the water system here involved.

3. That the area which is to be served consists of 26 individual residential lots located just east of the city limits of the City of Hickory, North Carolina, and just north of U. S. Highway 70-A.

4. The water system contains one well yielding 35 gallons per minute with a 3000-gallon hydropneumatic pressure tank, distributing water through a 3" and 2" network of galvanized mains. Total investment is $12,463.13.

5. That the water system has been approved by the State Board of Health and that water in the system meets the U. S. Public Health Drinking Water Standards - 1962.

6. That the applicant proposes a flat rate monthly charge for water service of $5.00, plus a connection charge of $200.00, and reconnection charges of $4.00 and $2.00 in accord with N.C.U.C. Rule R7-20(f) and N.C.U.C. Rule R7-20(g), respectively.

7. That the books and records of the water supply company will be kept according to the Uniform System of Accounts promulgated by the North Carolina Utilities Commission, and separate from any other books and records.

8. That public convenience and necessity requires the issuance of a certificate for which application is herein made and that the applicant is fit, willing and able to furnish the service for which authority is here sought.

CONCLUSIONS

From the evidence adduced, the Commission concludes that there is a demand and need for water service in the Whit-Fry Heights Subdivision, Catawba County, North Carolina; that the applicant is ready, willing and able to provide water service to the area for which application is made; and that the rates and charges proposed in the application appear to be just and reasonable and approval therefor should be granted on one day's notice to the public.

IT IS, THEREFORE, ORDERED:

1. That the applicant, Cloyd L. Propst Water Supply, be, and it is, hereby granted a Certificate of Public Convenience and Necessity for the construction, ownership, operation and maintenance of a water distribution system for service to the Whit-Fry Heights Subdivision, Catawba County, North Carolina, which area is fully described in the application and by reference made a part hereof, and that this order in itself shall constitute such Certificate of Public Convenience and Necessity.

2. That the books and records of the applicant shall be kept in accordance with the Uniform System of Accounts established and adopted by this Commission for water utilities.

3. That the schedule of rates attached hereto as Appendix A is hereby deemed to be filed as a tariff schedule pursuant to G.S. 62-138, which said tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-291
Cloyd L. Propst Water Supply
965 22nd Street, N. E.
Hickory, North Carolina

WATER RATE SCHEDULE

RESIDENTIAL SERVICE

RATE: Monthly Charge: $5.00 Flat Rate.

CONNECTION CHARGE: $200.00

RECONNECTION CHARGES:

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

DOCKET NO. W-299

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Sedgefield Realty Company, 1330 Linwood Road, Gastonia, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in Park Place Subdivision, Gaston County, North Carolina, and for Approval of Rates	)	RECOMMENDED ORDER GRANTING CERTIFICATE

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 29, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

No Protestants.

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

WESTCOTT, CHAIRMAN: Application in this matter was filed by Sedgefield Realty Company, 1330 Linwood Road, Gastonia, North Carolina, on August 4, 1970, wherein applicant seeks a Certificate of Public Convenience and Necessity to own and operate a water distribution system to serve customers in Park Place Subdivision, Gaston County, North Carolina, and for approval of rates as set forth in Exhibit C attached to and made a part of the application. In consideration of the application, the Commission by order dated August 25, 1970, set the matter for hearing at the captioned time and place. Said order, among other things, required applicant to publish notice of the hearing in a newspaper having general circulation in the area for which service is proposed. Applicant appeared, as directed, and was represented by counsel.

The evidence in support of the application tends to show that notice of hearing was published, as required, for two weeks, namely, August 31 and September 7, 1970, in The Gastonia Gazette, a newspaper having general circulation in the area proposed to be served; that applicant employed Clyde H. Robinson, a consulting engineer with the firm of Robinson & Sawyer, Inc., to design and supervise the construction of a water system consisting of one well with a capacity of 60 gallons per minute, with a pressure of 45 psi, and 3" and 2" galvanized mains throughout the development, said well and hydropneumatic pressure tank being located in an area in the development not less than 100 feet from any lot proposed to be occupied by a dwelling; that Park Place Subdivision is approximately four miles from the water system of the City of Gastonia and cannot be feasibly served at this time by any other existing water system; that the system has been approved by the State Board of Health for use in rendering water service to Park Place Subdivision, with each residence using a septic tank for sewage disposal; that the subdivision when completed will consist of 45 residences. Applicant now has invested in said water system approximately $14,000 and has contracted with Parker and Cloninger Plumbing Company for any repairs to the distribution system and with Lewis Well Company for any maintenance necessary to the pumping system and electrical system attached thereto. Applicant proposes to furnish each customer with the name and telephone number of Sedgefield Realty Company, who will receive complaints and do all billing for water services, and the names and telephone numbers of the above plumbing company and well company in case repairs are necessary when Sedgefield Realty Company may be closed during non-office hours.

In consideration of the evidence adduced at the hearing, the verified statements and exhibits attached to and made a part of the application, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That applicant is a duly organized and existing corporation under the laws of the State of North Carolina and is authorized to engage in the public utility business of furnishing water service.

2. That the principal officers are J. S. Jacobs, Jr., President, Marshall A. Rauch, Vice President, and Linda Durham, Secretary.

3. That the area which is to be served consists of 45 residential lots located approximately four miles from the City of Gastonia, adjacent to U.S. Highway No. 321, as shown on the map of the system attached to and made a part of the application.

4. That the water system contains one well yielding approximately 60 gallons per minute, one 3,000-gallon hydropneumatic tank, a distribution system of 3" and 2" galvanized mains which is adequate to serve the proposed 45 residences in Park Place Subdivision.

5. That the water system has been approved by the State Board of Health and that water in the system meets the U.S. Public Health Drinking Water Standards - 1962.

6. That applicant proposes to charge $3.50 for the first 3,000 metered gallons of water, plus 70¢ per thousand gallons for all over 3,000 gallons.

7. That the connection fee of $100 per tap will be charged Sedgefield Realty Company by the water system operations.

8. That reconnection charges as promulgated by the Rules and Regulations of the North Carolina Utilities Commission will be observed.

9. That the books and records of the company will be kept according to the Uniform System of Accounts promulgated by the North Carolina Utilities Commission, and separate from Sedgefield Realty Company's real estate operations.

10. That public convenience and necessity requires the issuance of the certificate for which application is herein made.

CONCLUSIONS

From the evidence adduced the Commission concludes that there is a demand and need for water service in the Park

Place Subdivision, Gaston County, North Carolina; that the applicant is ready, willing and able to provide water service to the area for which application is made; and that the rates and charges proposed in the application appear to be just and reasonable and approval therefor should be granted on one day's notice to the public.

IT IS, THEREFORE, ORDERED:

1. That applicant, Sedgefield Realty Company, be, and it hereby is, granted a Certificate of Public Convenience and Necessity for the construction, ownership, operation and maintenance of a water distribution system for service to the Park Place Subdivision in Gaston County, North Carolina, which area is fully described in the application and by reference made a part hereof, and that this order in itself shall constitute such Certificate of Public Convenience and Necessity.

2. That the books and records of applicant shall be kept in accordance with the Uniform System of Accounts established and adopted by this Commission for water utilities.

3. That the schedule of rates attached hereto as Appendix A is hereby deemed to be filed as a tariff schedule pursuant to G.S. 62-138, which said tariff schedule is hereby authorized to become effective on one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-299
Sedgefield Realty Company
Park Place Subdivision
Gastonia, North Carolina

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

RATE: Monthly Charge: $3.50 first 3,000 gallons
.70 per thousand over 3,000 gallons

CONNECTION CHARGE: $100.00 per tap

RECONNECTION CHARGES:

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

DOCKET NO. W-215, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Coastal Plains Utilities Company - Application for Increase in Residential Water Rates at Wilmington Beach and Hanby Beach) ORDER ESTABLISHING WATER RATES

HEARD IN: The Utilities Commission Hearing Room, Raleigh, North Carolina, on May 26, 1970, at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt (Presiding), Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Applicant:

James M. Kimsey and
W. T. Joyner, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
P. O. Box 109, Raleigh, North Carolina

For the Commission's Staff:

Edward B. Hipp
Commission Attorney

McDEVITT, COMMISSIONER: An application was filed on February 26, 1970, by Coastal Plains Utilities Company for adjustment of water rates to customers at Wilmington Beach and Hanby Beach in New Hanover County, North Carolina. The matter was declared to be a general rate increase and public hearing was scheduled and held as captioned.

Thirteen customers of the utility company appeared and testified in opposition to the amount of the proposed increases, quality of water, lack of fire protection, and the change in billing procedure whereby each trailer or housing unit located on a lot is classified as a separate residential customer and billed accordingly.

Mr. Alton E. Howard, a Certified Public Accountant, testified that he examined the books and records of Coastal Plains Utilities Company without performing a certified audit, accepting and using information furnished by officers of the company as the basis for his financial statements and testimony; that the balance sheet at December 31, 1969, reflected net utility plant at $46,506 which was arrived at by deducting accumulated depreciation of $36,867 from total utility plant in service of $83,373; that the net book value of utility plant at acquisition was $29,827; that Mr. John Drewry, President of Coastal Plains, exchanged land in Wake County reportedly valued at $75,000 for the water systems at

Wilmington Beach and Hanby Beach; that operating results for the year ending December 31, 1969, reflect a loss of $16,898; that projected revenue for the year 1970, based on the proposed rates, would amount to $26,448, operating expense would amount to $30,334, resulting in a net loss of $3,886; that the Original Cost Rate Base is $46,506; the Replacement Cost Rate Base, determined and furnished by Allie C. Moore, is $74,860 and the Fair Value Rate Base, determined by Mr. Moore is $61,000; that the replacement cost, determined and supplied by Mr. Moore, is $148,752, less computed depreciation of $73,892, resulting in net replacement cost of $74,860; that there is a negative rate of return regardless of the rate base used in calculating rate of return; that he did not know how Mr. Moore arrived at the $300 weekly charge for his services and did not examine supporting documentation of various items of expense.

Mr. G. Allie Moore, Jr., Vice-President, testified that Coastal Plains acquired the Wilmington Beach and Hanby Beach Water System in 1965; that the company also operates water systems in the Brookfield Subdivision in New Hanover County; the Cedar Hills Subdivision, Lee County, North Carolina, and the Lake Elizabeth system located in Columbia, South Carolina; that he and Mrs. Pauline Bartlett, the Office Manager and Bookkeeper, are the only full-time employees of the company; that hourly labor is employed as required; that the water system supplying Wilmington and Hanby Beaches consists of 38,968 feet of water mains varying in size from two to four inches in diameter; that there are numerous risers providing access to water, but there are no fire hydrants; that Coastal Plains is willing to operate at the proposed rates in anticipation of additional customers and increased revenues; that the system serves 358 customers of which 76 are on a flat-rate basis; that the cost of connecting or reconnecting a customer in the area is $12.00; that the remainder of the proposed $30.00 reconnection fee consists of $3.00 for meter cleaning and $15.00 as an incentive to remain connected to the system on a year-round basis; that the $250 tap charge covers cost of the water main, tap, corporation cock, fittings, meter box, meter and related costs; that in his opinion the $5.00 minimum monthly rate will result in increased seasonal disconnections and justifies the $30.00 reconnection fee as a deterrent; that the existing rate schedule under which one customer may have had four to six trailers on a lot and paid a minimum of $7.50 per quarter for water service was changed in August 1969 without filing a tariff in accordance with Utilities Commission rules and regulations, based upon his interpretation of Commission rules; that each trailer, apartment or housing unit should be treated as a separate customer; that he does not propose to install and use a meter for weekend and seasonal customers unless, in his judgment, they are expected to use in excess of the minimum; that under the proposed rate schedule, meters will be read monthly.

Mr. N. B. Peele, Utilities Commission Staff Accountant, testified that he made an examination of the books and records of Coastal Plains and prepared a report dated May 21, 1970, setting forth the pro forma operating results for the calendar year 1969; that his examination revealed a loss from operations for the period; that a negative rate of return results regardless of the rate base used in making the calculation; that the average monthly consumption per customer is 4,956 gallons.

Mr. David Creasy, Utilities Commission Staff Engineer, testified that he inspected the Wilmington Beach and Hanby Beach water systems and found the systems to be essentially as described and shown in the applicant's exhibits and various Commission official records.

Based upon the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. The applicant is a North Carolina corporation engaged in supplying water to 358 customers in the Wilmington Beach and Hanby Beach area, New Hanover County, North Carolina, under a Certificate of Public Convenience and Necessity granted by the North Carolina Utilities Commission on June 8, 1966.

2. The applicant's existing water rate schedule is as follows:

Rate applicable to all accounts.

Rates:

$30.00 per year minimum (Payable Quarterly in advance Trailers payable yearly in advance) Allows 1500 cu. ft. per quarter.	
Excess - First 2000 cu ft. per quarter	40¢ per 100 cu. ft.
Excess - All above this per quarter	30¢ per 100 cu. ft.

Connection Charge:

3/4" lateral	$50.00
Over 3/4" lateral	$50.00 plus cost of meter over standard meter.

Reconnection Charge: $ 4.00

Bills Due:
All bills for service are due ten days after bill is rendered.

Deposits:
$5.00 deposit may be charged at the discretion of the company.

3. The applicant's proposed water rate schedule is as follows:

Rate applicable to all accounts.

Rates:	
For the first 4,000 gallons	5.00
For the next 5,000 gallons	.75 per 1,000
For the next 5,000 gallons	.65 per 1,000
Over 14,000 gallons	.50 per 1,000

Connection Charge:	
3/4" lateral	250.00
Over 3/4" lateral	250.00 plus cost of meter over standard meter.

Reconnection Charge: 30.00

Bills Due:
All bills for service are due ten days after bill is rendered.

Deposits:
$5.00 deposit may be charged at the discretion of the company.

4. Operating revenue for the twelve-month period ending December 31, 1969, amounted to $12,969 and operating expenses amounted to $29,624, resulting in an operating loss of $16,555.

5. Gross operating revenue for the year 1970, based upon the proposed rates, are estimated to be $27,628. Operating expenses, including depreciation of $4,386, is estimated to be $30,348, which will result in an operating loss for the period of $2,720.

6. Applicant's books and records reflect that total utility plant in operation at December 31, 1969, was $83,373, less depreciation reserve of $36,867, resulting in net utility plant in service of $46,506.

7. Applicant developed and presented a replacement cost analysis study to show that at current prices, replacement of the existing plant would cost $148,752, less computed depreciation of $73,892, resulting in net replacement utility cost of plant in service of $73,860.

8. The existing rates and charges for water service do not yield sufficient revenues to cover operating expense and provide a reasonable return on investment.

9. Maintenance of applicant's water system is required on a continuous basis to serve its 358 customers. Many residents of Wilmington and Hanby Beaches are seasonal or temporary, who benefit from the presence and existence of a permanent water system and a guaranteed water supply.

Seasonal disconnections adversely affect applicant's revenue without a corresponding reduction of operating expenses. To maintain the system on a year-round basis, all customers must share in the expense of maintaining and operating the system on a year-round basis. Under the circumstances, the $5.00 minimum monthly rate is reasonable for the average monthly consumption of 4,000 gallons of water. The proposed connection charge of $250.00 for 3/4" lateral is unreasonable and should be reduced to $150.00. The proposed reconnection charge of $30.00 is unjust and unreasonable and should be revised to $10.00.

CONCLUSIONS

The applicant experienced an operating loss of $16,555 under existing water rates for the year ending December 31, 1969. Under the proposed rates, which are in certain respects unjust and unreasonable and should be modified accordingly, the applicant would show a pro forma operating loss of $2720; however, it is recognized by the applicant and it is the opinion of the Commission that significant growth is anticipated which under reasonable rates will result in increased revenue and more favorable operating results. Meanwhile, the provision for depreciation more than offsets the near term estimated loss and the Commission is of the opinion and concludes that certain operating expenses can and should be reduced in the future, thus further improving operating results. Utilizing its Original Cost Rate Basis of $46,506, its Replacement Cost Rate Base of $74,860, or its Fair Value Rate Base of $61,000, applicant's operation would have resulted in a negative rate of return.

The applicant made an unauthorized change in its billing procedure in August 1969, which adversely affected customers having more than one housing unit per lot and in the course of the hearing, stipulated that it would immediately revert to compliance with its present rate schedule. Neither the present rate schedule nor the proposed schedule makes provision for commercial water rates and any charge inconsistent with the approved water rate schedule is unlawful.

The Commission is further of the opinion and concludes that the existing water rate schedule is not compensatory and does not provide a fair return. The proposed water rate schedule is unjust and unreasonable in certain respects and should be revised as hereinafter ordered to provide just and reasonable rates and charges.

IT IS, THEREFORE, ORDERED: That the proposed rate schedule be, and it is, hereby modified and approved as shown in Exhibit B attached hereto and made a part hereof and the rates and charges set forth in Exhibit B shall constitute the lawful rates and charges for water service in the Wilmington Beach and Hanby Beach Water System of Coastal Plains Utilities Company.

IT IS FURTHER ORDERED: That Coastal file the approved tariff to be effective on one day's notice subsequent to September 1, 1970.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

EXHIBIT B

COASTAL PLAINS UTILITIES COMPANY
TOWNS OF WILMINGTON BEACH & HANBY BEACH, NORTH CAROLINA

MONTHLY WATER RATE SCHEDULE

Service under this schedule is applicable to all customers.

RATES:

Metered	
For the first 4,000 gallons	$5.00 (Minimum)
For the next 5,000 gallons	.75 per 1,000
For the next 5,000 gallons	.65 per 1,000
Over 14,000 gallons	.50 per 1,000

RATES: Flat Rate 5.00 for unmetered service

NEW INSTALLATION CHARGE:

3/4" lateral	$150.00
Over 3/4" lateral	Actual cost of installation

RECONNECTION CHARGE: 10.00

BILLS DUE:
All bills for service are due ten days after bill is rendered.

DEPOSITS:
As allowed in Chapter 12 - Customer Deposit for Utility Services of the Rules and Regulations of the North Carolina Utilities Commission.

CONTRACT PERIOD - Service under this schedule shall be on an annual contract basis providing for a minimum payment of $5.00 per month for water service.

DOCKET NO. W-200, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of LaGrange Water Works Corporation,	)	ORDER
271 Reilly Road, Fayetteville, North Carolina,	)	APPROVING
for Approval of Rate Schedule to Increase	)	RATE
Residential Water Service	)	SCHEDULE

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on March 4, 1970, at 2:00 p.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

George B. Herndon, Jr.
Nance, Collier, Singleton, Kirkman & Herndon
Attorneys at Law
Drawer 1210
Fayetteville, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: The matter in this docket arises upon the application filed with this Commission on January 5, 1970, of LaGrange Water Works Corporation (hereinafter applicant) seeking approval of an increased rate schedule affecting all of its water customers in Subdivisions known as LaGrange, Simmons Heights, Braxton Hills, Valley Forge, Welmar Heights, and Borden Heights Sections 1 and 2, all located in Cumberland County, North Carolina. The Commission being of the opinion that the application affected the interest of the using and consuming public in the franchised area served by the applicant and that the public should have an opportunity to protest and intervene in the matter if it so desired, by order dated January 12, 1970, suspended the tariff, set the matter for hearing, declared the same to be a general rate case pursuant to G.S. 62-137, directed the Accounting Staff of the Commission to make an examination of the books and records of the applicant and directed that appropriate notice be given to the public in a newspaper having local general circulation. The case, for good cause shown, was continued to the time and place set out in the caption.

In presenting its case the applicant offered Mr. D. P. Bruton, President, who testified regarding the need by the applicant for the increased rates applied for as a "barebones" proposal. Additionally, the applicant tendered Mr. Dan T. Barker, CPA, for cross-examination by the staff. Mr. John Stevens, Cumberland County Health Official in charge of water companies, testified regarding the level and quality of service rendered by the applicant and rated the same as average or better than average. The applicant concluded its case by adopting as its own the accounting reports of the Commission Staff entitled "LAGRANGE WATER WORKS CORPORATION, Docket No. W-200, Subs 1 and 2, Report Setting Forth Pro Forma Operating Results as of December 31, 1969," and "LAGRANGE WATERWORKS CORPORATION, DOCKET NO. W-200, SUB 3, Report Setting Forth Pro Forma Operating Results as of December 31, 1970," which were filed and are a part of the record in this case.

The staff presented evidence through its Accounting Director, Mr. S. J. Painter, who testified in detail regarding the reports above referred to.

There were four customers of the applicant who appeared to protest the proposed rate increase, at least in part, and to ask certain questions regarding the same and raised some questions regarding charges previously made by the applicant for water service in the past.

Upon consideration of the record, the Commission makes the following

FINDINGS OF FACT

1. That the applicant, LaGrange Water Works Corporation, is now, and has been for a number of years, engaged in the business as a public utility of selling and distributing water to the public in Cumberland County, North Carolina; that in supplying such service it is under the jurisdiction of this Commission; that the said applicant presently furnishes water to the public in Subdivisions known as LaGrange, Simmons Heights, Braxton Hills, Valley Forge, Welmar Heights, and Borden Heights Sections 1 and 2, located in Cumberland County, North Carolina; and that certain of the water systems located in the aforementioned subdivisions were started initially by the applicant, while others were acquired by the applicant from their founders, some of which were operating under certificates of public convenience and necessity issued by this Commission.

2. That the rates and charges heretofore used by the applicant are not uniform in all subdivisions; that some of the rates and charges presently in effect have heretofore been approved by this Commission, while others have heretofore been assessed without Commission approval; and the applicant is here applying for uniform rates applicable throughout all of its service area in each of the subdivisions above named.

3. That the applicant's various water systems in the various subdivisions are similar in nature and the investments are likewise proportionately approximately the same.

4. That the rates and charges which the applicant here proposes are as follows:

WATER RATE SCHEDULE
Residential Service

RATE

$4.00 for first 3,000 gallons and $.50 for each 1,000 gallons thereafter.

CONNECTION CHARGES: $250.00 per service installed

RECONNECTION CHARGES

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered.

5. That the present operations of the applicant are "loss operations," in that the applicant's operating revenues are not sufficient to cover its operating expenses.

6. That the applicant's net investment in water plant is $100,945 which contemplates deductions for depreciation reserves, acquisition adjustments, and contributions in aid of constructions; that a reasonable allowance for working capital of 1/6 of operating expenses would be $5,075; and that the applicant's total net investment in water plant plus reasonable allowance for working capital is $106,020.

7. That a careful review of the applicant's operations indicate that its pro forma operating revenues using the proposed uniform rate for the calendar year 1970 will be $51,494; that after appropriate deductions for accounting computations, the applicant's pro forma net operating income for return for the calendar year 1970 is $6,549; that the applicant's pro forma net operating income for return will yield a 6.18 percent rate of return on its total net investment in water plant plus allowance for working capital.

8. That the original cost of the property used and useful by the applicant in rendering its water service to the public amounts to $295,532; that the reserve for depreciation is $35,269; that the original cost less depreciation, acquisition adjustments, and contribution in aid of construction leaves a net investment in water plant of $100,945; and that the fair value of the property of the applicant used and useful in rendering the service for which an increase in rates is asked is $100,945.

9. That the proposed rates and charges in this case will yield no more than a fair rate of return on applicant's investment and the rates and charges specified are just, reasonable and otherwise lawful.

Based on the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

1. G.S. 62-30(3) provides that this Commission shall have general supervision over the rates charged and the service rendered by the water companies whose operations consist of selling and distributing water to 25 or more customers. Applicant has been engaged for a number of years in furnishing water to the residents of several subdivisions in Cumberland County, North Carolina. The furnishing and distribution of an adequate and safe water supply to the public is essential and necessary. The applicant has been furnishing water, as hereinbefore set out, at a minimum return on its investment, or at a loss. The increases sought in this case are fair and reasonable and should be allowed.

2. The Commission further concludes that a uniform system of rates and charges by LaGrange Water Works Corporation in all of the subdivisions in which it affords water service is fair and appropriate and in the public interest.

3. During the course of the hearing in this case, there was some indication that the applicant may have heretofore billed some of its customers improperly; accordingly, we conclude, without making any finding in that connection, that the Commission Staff should make an appropriate investigation regarding the same and report its findings to the Commission for such action, if any, as may be appropriate.

IT IS, THEREFORE, ORDERED:

1. That the application of LaGrange Water Works Corporation to put into effect certain schedule of rates and charges, as set out in this proceeding, be, and the same hereby is, approved.

2. That the applicant, LaGrange Water Works Corporation, be, and it is, authorized to put into effect for all billings on and after April 1, 1970, the rates and charges contained in and shown on the schedule hereinbefore set out in Paragraph 4 of the Findings of Fact.

3. That the suspension of the tariff heretofore ordered by this Commission be, and the same is, hereby dissolved and vacated and the rates hereinabove approved are allowed to become effective on all billings on and after April 1, 1970.

4. That the Commission Auditing and Engineering Staff shall make appropriate investigation regarding the charges heretofore made by the applicant to its customers and report their findings to the Commission for appropriate action.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-173, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Montclair Water Company, P. O. Box 3665, Fayetteville, North Carolina, for Approval of Rate Schedule to Increase Residential Water and Sewer Rates	) ORDER) APPROVING) RATE) INCREASE

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on March 5, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott and Commissioners Miles H. Rhyne and Marvin R. Wooten (Presiding)

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr.
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
P. O. Box 1688
Fayetteville, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
N. C. Utilities Commission
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: The matter in this docket arises upon the application filed with this Commission on December 3, 1969, of Montclair Water Company (hereinafter applicant), Fayetteville, North Carolina, seeking approval of an increased rate schedule affecting all of its water and sewer customers in Subdivisions known as Chesnutt Hills, Devonwood, Loch Lomond and Montclair Subdivisions, all located in Cumberland County, North Carolina.

The Commission, being of the opinion that the application affected the interest of the using and consuming public in the franchised area served by the applicant and that the public should have an opportunity to intervene or protest the application if it so desired, by order dated January 5, 1970, suspended the tariff filing herein, set the matter for hearing, instituted an investigation into the justness and reasonableness of the proposed rates and services, declared this proceeding a general rate case pursuant to G.S. 62-133, directed the Accounting Staff of the Commission to make an examination of the books and records of the applicant and directed the applicant to have notice published in a newspaper having general circulation in the affected areas once a week in the two preceding weeks prior to February 16, 1970, and that the Affidavit of Publication be filed with the Commission.

In presenting its case the applicant offered the testimony of Mr. J. W. Pate, Jr., applicant's Vice-President and General Manager, who testified regarding the need by the applicant for the increased rates applied for and also testified regarding the trended costs and values of plant in service. Additionally, the applicant offered testimony of Mr. Phil Haigh, CPA, and Mr. W. C. Moorman, Water and Sewer Engineer, both of whom testified in support of the applicant's rate increase in this case.

The staff presented evidence through its Accounting Director, Mr. S. J. Painter, who testified in detail regarding his accounting investigation and his accounting and pro forma adjustments and projections in this case which were filed by the staff as exhibits and are a part of the record.

There were no protestants present to offer any evidence in this case, though the Commission had received some letters of protest prior to the hearing.

Upon consideration of the record, the Commission makes the following

FINDINGS OF FACT

1. That the applicant, Montclair Water Company, is now, and has been for a number of years, engaged in the business as a public utility of selling and distributing water and affording sewer service to the public in Cumberland County, North Carolina; that in supplying such services, it is under the jurisdiction of this Commission; that the applicant presently furnishes water and sewer service to the public in Subdivisions known as Chesnutt Hills, Devonwood, Loch Lomond and Montclair Subdivisions, located in Cumberland County, North Carolina; and that all of the water and sewer systems located in the aforementioned subdivisions were founded and operated by the applicant under certificates of public convenience and necessity issued by this Commission.

2. That the rates and charges heretofore made by the applicant are uniform in all subdivisions and have heretofore been approved by this Commission.

3. That the applicant's various water and sewer services in the various subdivisions are similar in nature and the investments are likewise proportionately approximately the same.

4. That the rates and charges which the applicant here proposes are as follows:

WATER AND SEWER RATE SCHEDULE

Residential Service

RATE	Water	Sewer
First 3,000 gal. per month	$3.50 (minimum bill)	$1.75 (minimum bill)
Next 5,000 gal. per month	$ .55 per M Gallons	0.275¢ per M Gallons
All over 8,000 gal. per month	$ .30 per M Gallons	$ .15¢ per M Gallons

(A charge of 0.50¢ per customer is made to defray cost of installation and maintenance of street lighting system in Devonwood and Loch Lomond Subdivisions)

CONNECTION CHARGES - None

RECONNECTION CHARGES
N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE - Ten days after date rendered.

5. That the present operations of the applicant are "loss operations," in that the applicant's operating revenues are not sufficient to cover its operating expenses; and that upon approval of the rates and charges here applied for, based upon present operations, the same will not produce sufficient additional operating revenues to cover present operating expenses, but would only constitute some relief in connection therewith.

6. That the applicant's net investment in water and sewer plant after appropriate accounting adjustments is $101,295 which contemplates deductions for depreciation reserves and contributions in aid of construction; that a reasonable allowance for working capital of 1/6 of operating expenses would be $4,428; and that applicant's total net investment in water and sewer plant plus reasonable allowance for working capital is $105,723.

7. That the applicant's operations, after accounting and pro forma adjustments, using the proposed uniform rate for

the test period ended June 30, 1969, produces a loss of $1,570.

8. That the trended and fair value of the total net investment in water and sewer plant plus an allowance for working capital is established by the staff at $105,786 and by the applicant at $155,897.

9. That the existing water and sewer plant at June 30, 1969, will accommodate approximately 1,236 water customers and 577 sewer customers; that the customers actually served at June 30, 1969, were 815 water and 230 sewer customers; that approximately 34% of the water plant is therefore idle and approximately 60% of the sewer plant is idle; and that therefore the charging of idle plant depreciation against revenues has the effect of distorting operating income.

10. That it is anticipated that by June 30, 1972, customers will have increased sufficiently to warrant the present plant investment and create such utilization as would justify the depreciation charges; and that based upon speculative projections and pro forma adjustments in connection therewith the rates herein approved are anticipated to produce a rate of return of 13.45% or less, depending upon the accuracy of such speculative predictions, for the fiscal year ending June 30, 1972; and that the rates herein applied for and approved, at the present level of applicant's operations, will produce a net operating loss.

11. That the proposed rates and charges in this case will not yield a rate of return on the applicant's investment and the rates and charges specified are therefore not unjust or unreasonable and are therefore lawful; that the anticipated increased utilization of plant installed will improve the operating revenues and income substantially and to an extent which will have the net effect of producing a reasonable rate of return for the applicant at an early date.

Based on the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

1. G.S. 62-30(3) provides that this Commission shall have general supervision over the rates charged and the services rendered by water and sewer companies whose operations consist of affording such services to 25 or more customers. Applicant has been engaged for a number of years in the furnishing of water and sewer service to residents of several subdivisions in Cumberland County, North Carolina. The furnishing and distribution of an adequate and safe water supply and the affording of sewer service to the public is necessary and essential. The applicant has been furnishing water and sewer service, as hereinbefore set out, at a loss, and the increases here sought are considered to be fair and reasonable and such as should be approved and allowed at this time.

2. The Commission further concludes that a uniform system of rates and charges by the applicant in all of the subdivisions in which it affords water and sewer service is fair and appropriate and in the public interest.

3. In view of the fact that early improvement in increased utilization of plant margin is anticipated to improve the operating income picture for the applicant, we conclude it appropriate to approve the rates here applied for, thereby granting relief to the applicant in its present "loss operation," with anticipated improvement to an extent sufficient to provide a fair and reasonable rate of return; and we finally conclude that the Commission and its staff should keep the rate of return of the applicant under annual surveillance by review of the annual reports filed by the applicant with this Commission in order that the Commission may upon its own motion take appropriate action to remedy any unreasonable increase in the applicant's rate of return which might occur.

IT IS, THEREFORE, ORDERED:

1. That the application of Montclair Water Company to put into effect a certain schedule of rates and charges for water and sewer service, as set out in this proceeding, be, and the same is, hereby approved.

2. That the applicant, Montclair Water Company, be, and it is, authorized to put into effect for all billings on and after April 1, 1970, the rates and charges contained in and shown on the schedule hereinbefore set out in Paragraph 4 of the Findings of Fact.

3. That the suspension of the tariff heretofore ordered by this Commission be, and the same is, hereby dissolved and vacated and the rates hereinabove approved are allowed to become effective on all billings on and after April 1, 1970.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. S-6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Park Utility Company, 605 German Street, Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Sewer Service in Crystal Park Subdivision, Cumberland County, North Carolina, and for Approval of Rates	) ORDER) GRANTING) CERTIFICATE) AND) APPROVING) RATES

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, October 1, 1970, at 11 a.m.

BEFORE: Chairman Harry T. Westcott, Presiding, and Commissioners John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

N. Hector McGeachy and R. W. Pope
McGeachy, Pope, Reid & Lewis
Attorneys at Law
Fayetteville, North Carolina
For: Park Utility Company

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

No Protestants.

WESTCOTT, CHAIRMAN: This cause came on for hearing upon application filed on September 11, 1970, by Park Utility Company, wherein applicant seeks authority to construct, own, and operate a sewer service in Crystal Park Subdivision, Cumberland County, North Carolina.

Notice to the public of the time and purpose of the hearing was given on September 23 and September 29, 1970, in The Fayetteville Observer, a newspaper having general circulation in the area proposed to be served. Crystal Park Subdivision is located approximately one mile south of the City of Fayetteville and approximately two miles from the City of Hope Mills. Park Utility Company in this application is proposing to install a sewer collecting and treatment facility to serve approximately 400 mobile homes or low-cost housing units. Water service within the Crystal Park Subdivision is furnished by LaFayette Water Corporation under a Certificate of Public Convenience and Necessity issued by this Commission.

In support of the application, applicant offered the testimony of Mr. Walter C. Moorman, a Civil Engineer, who designed the sewage service system and plans and specifications for the disposal of waste sewage, the plans having been approved by the North Carolina Department of Water and Air Resources and by the North Carolina State Board of Health. The testimony of this witness tends to show that it is not practical to use septic tanks for sewage disposal in the area proposed to be served.

Witness Bill W. Haigh, of the Accounting Firm of Haigh and Von Rosenberg, offered testimony relating to the proposed tariff, a pro forma balance sheet, an estimated income statement, and a statement showing the investment for 95 services in the first stage of development, and testified to the effect that applicant does not propose to charge a connection fee to anyone who purchases a lot for occupancy within the proposed area.

Witness Ralph Johnston, Treasurer of Park Utility Company, testified as to his experience in managing Brookwood Park and Brookwood Sales Corporation, and to the effect that he has had five years' experience in said operations and that he will supervise the operation of Park Utility Company.

Witness J. S. Harper, Secretary and a stockholder of Park Utility Company, testified as to the Agreement between the developer and the applicant and as to the monthly charge for service, wherein applicant seeks $6.00 per month per customer and a reconnection charge of $15.00.

In addition to the oral testimony, applicant offered for the record ten exhibits in support of its application, all of which are a matter of record in this proceeding.

FINDINGS OF FACT

1. Park Development Corporation is a North Carolina corporation with its office in Cumberland County, North Carolina.

2. Park Utility Company is a North Carolina corporation incorporated on the 19th day of May, 1970, and, among other things, is authorized to construct, own, maintain, and operate water and sewer systems.

3. The design and proposed operation of the sewer system, the subject of this application, have been approved by the Department of Water and Air Resources and by the State Board of Health.

4. The plans submitted for approval by this Commission are adequate to serve the area as proposed in the instant application.

5. The rendition of sewer service in the area proposed by the application is and will be a matter of convenience and necessity to members of the public residing in said area.

6. Applicant is solvent financially and ready, willing and able to provide the service it proposes on a continuing basis.

7. The rates and charges proposed by applicant in its tariff filing and as set forth in Appendix A hereto attached are just and reasonable and should be approved.

CONCLUSIONS

We conclude and hold that the applicant, Park Utility Company, has borne the statutory burden of proof that public convenience and necessity reasonably requires, or will require, the proposed sewer service. We conclude that the applicant is fit, willing and able to provide this service on a continuing basis, and that applicant is, therefore, lawfully entitled to have issued to it a Certificate of Public Convenience and Necessity authorizing it to construct, own, operate and maintain a sewer system in the development known as Crystal Park Subdivision located in Cumberland County, North Carolina. We further conclude that the applicant's proposed rates and charges for sewer service are just and reasonable and should be approved and established as applicant's lawful rates and charges.

IT IS, THEREFORE, ORDERED:

1. That the applicant, Park Utility Company, 605 German Street, Fayetteville, North Carolina, be, and it is hereby, authorized to construct, own, operate and maintain sewer collection and disposal facilities in the Crystal Park Subdivision in Cumberland County, North Carolina, the territory embracing the subdivision referred to being more particularly described on the map introduced in evidence in these proceedings and hereby referred to and made a part hereof.

2. That the applicant be, and it is hereby, authorized to file and make effective on one day's notice rates as reflected in Appendix A hereto attached and made a part hereof, said rates being hereby approved as lawful rates for the applicant in the area and territory affected, to wit: Crystal Park Subdivision, Cumberland County, North Carolina.

3. That the books and records of the applicant should be kept in accordance with the Uniform System of Accounts established by the Commission for sewer utilities.

4. That this order of itself be and constitute the Certificate of Public Convenience and Necessity without necessity of further order or a formal certificate.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

APPENDIX A
DOCKET NO. S-6
PARK UTILITY COMPANY
CRYSTAL PARK SUBDIVISION
CUMBERLAND COUNTY, NORTH CAROLINA

SEWER RATE SCHEDULE
Residential Service

RATE - $6.00 per month per customer

CONNECTION CHARGES - Inside the Service Area: None
- Outside the Service Area: $500.00*

* Applicable only to land contiguous with Crystal Park and limited to a distance of 100 feet from said Park and limited to connection on an existing gravity line. In the event that a customer is a distance in excess of 100 feet from Crystal Park such service will be provided upon payment of the cost of such service, said cost being multiples of $500.00 per 100 foot distances and if later customers tap on or connect to such extension, the original customer will be refunded accordingly from payment received from such later customer.

RECONNECTION CHARGES - $15.00 (Subject to Rule R10-16(f) of Rules and Regulations)

BILLS DUE - Ten days after date rendered

DOCKET NO. W-43, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
LaFayette Water Corporation, Fayetteville, North Carolina - Application for an Amendment to Tariff Schedule) ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on Tuesday, January 20, 1970, at 10:00 a.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne

APPEARANCES:

For the Applicant:

Herbert Thorp, Esq.
Rose, Thorp & Rand
Attorneys at Law
P. O. Box 1239, Fayetteville, North Carolina

For the Commission Staff:

Larry G. Ford, Esq.
Associate Commission Attorney

WEILS, COMMISSIONER: This matter came on to be heard and was heard before the Commission upon application filed on November 4, 1969, by LaFayette Water Corporation, Fayetteville, North Carolina (applicant), to amend its tariff schedule on file with the North Carolina Utilities Commission (Commission) as last amended by order of the Commission on July 24, 1969, in Docket W-43, Sub 5. By order dated November 18, 1969, the Commission concluded that the application affected the interest of the consuming public and that the public should have opportunity to intervene or protest the application, and upon such conclusion the Commission ordered that notice to the public of the application be promulgated and such notice was promulgated on November 18, 1969, setting forth the proposed amended tariff submitted by the applicant, the notice providing that unless written protest to the granting of the amended tariff was received by the Commission on or before December 20, 1969, the amended tariff would be considered and determined by the Commission without hearing on the basis of the verified representations of the applicant and the public records on file with the Commission; and that if protests were filed the matter would be determined upon public hearing. The number of protests to the application were timely received by the Commission, and by order of the Commission dated January 5, 1970, notice was promulgated that a public hearing on the application would be held in the Hearing Room of the Commission at 1 West Morgan Street, Raleigh, North Carolina, on Tuesday, January 20, 1970, at 10:00 a.m.

The applicant offered in evidence the previously filed verified statement of W. E. Godwin, Jr., President of the applicant corporation, styled "Amended Tariff, LaFayette Water Corporation, W-43, Sub 5, Exhibit 'A'." Mr. Godwin's affidavit consisted of approximately two and one-half pages of information of a general nature pertaining to the various items of the proposed amendment to the tariff with particular emphasis on alleged costs being incurred by the applicant in connection with the making of initial connections, the transferring of services, reconnections following discontinuance of service for nonpayment of bills and reconnections following discontinuance of services where the customer apparently had interfered with the physical facilities of the applicant; and also relating to the need for a minimum period of time for requiring payment of tap-on fees prior to the actual tapping installation.

Mr. Godwin's oral testimony consisted principally of a recapitulation of the information set forth in his above referred to affidavit. No other testimony or evidence was submitted on behalf of the applicant.

No protestants were present at the hearing and no affidavits on behalf of protestants were filed previous to the hearing.

The Commission's Staff presented no prepared testimony or exhibits but tendered R. J. Nery, a member of the Commission's Engineering Staff whose functions relate to public utilities engaged in the distribution of water, for examination by the applicant or the Hearing Commissioners. Mr. Nery's testimony was of a general nature relating to the functions of water utilities generally and as these functions generally related to the services and functions of the applicant.

The evidence adduced at the hearing justifies the following

FINDINGS OF FACT

1. Applicant, LaFayette Water Corporation, is a duly created and existing North Carolina corporation and a duly authorized public utility engaged in the distribution of water service to the public in certain areas of Cumberland County, North Carolina.

2. The applicant is properly before the Commission and the Commission has jurisdiction over the subject matter of the proceedings.

3. Appropriate and proper notice was given to the public of these proceedings.

4. Pursuant to previous orders of the Commission applicant now operates a water distribution system in various areas of Cumberland County and provides water service to the public in said areas pursuant to tariffs previously filed with and appropriately considered and approved by the Commission.

5. The proposed tariff schedule filed in this docket and considered at this hearing disclosed the following proposed fees or charges:

(a) Connection fee. $10.00
This proposed fee would be charged to all persons seeking service from the applicant.

(b) Transfer fee. $10.00
This proposed fee would be charged where an existing customer moves from one address to another address on the applicant's system.

(c) Reconnection charge. $10.00
This proposed charge would be levied where the applicant had discontinued service because of nonpayment of an existing bill.

(d) Reconnection charge. $10.00
This proposed charge would be made where the applicant had discontinued service and the customer had broken the lock and restored service to himself.

(e) Reconnection charge. $ 3.00
Plus reasonable labor costs
This proposed charge would be levied where the applicant had discontinued service and the customer had broken the lock and the lock valve to restore service to himself.

(f) Tapping fees.
This proposed amendment to the tariff would require all persons seeking tap-ons at new construction to pay the approved tap-on fee ($250) ten days in advance of the date of installation.

6. Applicant serves approximately 3,500 retail customers. His present fees and charges of the nature of the requested fees and charges in the proposed amended tariff consist of a $2.00 connection fee at the time of initial connection and a $4.00 reconnection fee upon restoration of service following discontinuance of service for nonpayment of a bill. The applicant's present accounting methods are not such as to distinguish between revenues received for water services and those received from other fees and charges - either with regard to past revenues received or future revenues which might be received under the proposed amended tariff. Mr. Godwin was able to give the Commission very general estimates of revenues which might be produced as a result of the proposed amended tariff, and his testimony and exhibit did not contain any information with regard to present revenues being received from such sources.

7. Applicant did not introduce sufficient evidence to carry the burden of proof to show that the proposed amended tariff is just and reasonable and upon which the Commission could find that the proposed amended tariff would be just, reasonable and in the public interest.

Based upon the foregoing Findings of Fact the Commission makes the following

CONCLUSIONS

The Commission concludes and holds that the applicant, LaFayette Water Corporation, has failed to show that the proposed amended tariff submitted by it and under consideration in this docket is just and reasonable and that the public convenience and necessity reasonably requires the granting of the proposed amended tariff.

The Commission further concludes that it is evident from the record in these proceedings that some just and

reasonable charges might be justified to offset the cost of providing connections, transfers, reconnections and repairs of the types under consideration in this docket but that the applicant has not provided the Commission with the kind of evidence upon which the Commission could find and establish reasonable levels for such charges. The Commission should, therefore, deny the applicant's proposed amended tariff, without prejudice.

Accordingly, IT IS ORDERED:

That the applicant's proposed amended tariff be and hereby is denied without prejudice.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-172, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Approval of Tariff by Mid-Atlantic Utility Company for Providing Sewerage Services Only in Parkwood Subdivision, Durham County, North Carolina) RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on December 3, 1969

BEFORE: Commissioners John W. McDevitt, Presiding, Clawson L. Williams, Jr., and Marvin R. Wooten

APPEARANCES:

For the Applicant:

McNeill Smith
Smith, Moore, Smith, Schell & Hunter
Attorneys at Law
700 Jefferson Building
Greensboro, North Carolina

For the Protestants:

James T. Hedrick
Newsom, Graham, Strayhorn & Hedrick
Attorneys at Law
Central Carolina Bank Building
Durham, North Carolina
For: Parkwood Association, Inc.

For the Commission's Staff:

Larry G. Ford
Associate Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

McDEVITT, COMMISSIONER: On October 2, 1969, Mid-Atlantic Utility Company (hereinafter referred to as Mid-Atlantic) filed an application for approval of tariff charges for sewerage services in Parkwood Subdivision, Durham County, North Carolina. Mid-Atlantic has held a certificate of convenience and necessity for the operation of water and sewerage systems in Parkwood since June 15, 1960. The North Carolina Utilities Commission, by Order in Docket No. W-172, Sub 11, granted Mid-Atlantic's petition to be released from its obligation to furnish water to Parkwood Subdivision upon completion of construction of waterlines whereby the City of Durham will assume responsibility for furnishing water to Parkwood Subdivision.

Although Mid-Atlantic will no longer furnish water service to Parkwood, it will continue furnishing sewerage services to the Parkwood residents inasmuch as the City will not furnish sewerage services.

Mid-Atlantic requests approval of the following tariffs for sewerage service:

SEWER RATE SCHEDULE
Residential Service

Rate:
*0 to 300 cu. ft. $1.00 per 100 cu. ft. ($5.00 minimum)
*Above 300 cu. ft. $0.60 per 100 cu. ft.

*As metered for water service by the City of Durham.

CONNECTION CHARGES: None

RECONNECTION CHARGES: $10.00

BILLS DUE: Ten days after date rendered

Public hearing was scheduled and held as captioned notice thereof having been published in the Durham Morning Herald in accordance with Commission requirements.

Based upon the application, public hearing, and the Commission records, the Commission makes the following

FINDINGS OF FACT

(1) Mid-Atlantic Utility Company is a corporation duly formed and existing under the laws of the State of North

Carolina with its principal office in Greensboro, North Carolina.

(2) Mid-Atlantic is a water and sewer utility operating under the laws of North Carolina and has been for the past eight years furnishing water and sewer services to the residents of Parkwood Subdivision.

(3) Mid-Atlantic also holds a certificate of convenience and necessity from this Commission to operate water and sewerage systems in the Salem Woods Subdivision, Winston-Salem, North Carolina, and a sewerage system in Bent Creek Subdivision, Asheville, North Carolina.

(4) Mid-Atlantic has entered into an agreement whereby the City of Durham will furnish water to the residents of Parkwood and release Mid-Atlantic from this necessity and obligation.

(5) Mid-Atlantic will continue to operate and maintain the sewerage system in Parkwood for approximately 585 customers.

(6) Mid-Atlantic proposes to charge the following rates for sewerage services:

*0 to 300 cu. ft. $1.00 per 100 cu. ft. ($5.00 minimum)
*Above 300 cu. ft. $0.60 per 100 cu. ft.

*As metered for water service by the City of Durham.

CONNECTION CHARGES: None

RECONNECTION CHARGES: $10.00

BILLS DUE: Ten days after date rendered

(7) The proposed rates for sewerage services is based on water consumption and would have produced gross revenues of $43,173 if they had been in effect for the 12-month period ending August 1969. Pro forma operating expenses aggregated $39,198 resulting in a pro forma net operating income of $3,975.

(8) The operation and maintenance procedures and records of Mid-Atlantic are inadequate and deficient. Equipment is lacking to measure effluent flow to the treatment plant.

(9) Separate records are not maintained for water and sewerage services. Direct charges are recorded but joint operating and maintenance expenses are not allocated between classes of service or by subdivisions.

(10) Mid-Atlantic is presently charging the following rates for both water and sewerage services:

PARKWOOD WATER AND SEWERAGE
Residential Rates

0 to 10,000 gal.	$1.10 per thousand ($5.00 minimum)
Above 10,000 gal.	$0.70 per thousand

(11) The serviceman maintaining the operation of the sewerage system is on an annual compensation rate of $7,500. Approximately 12 1/2% of his time is spent performing non-utility work for the developers of Parkwood.

(12) The proposed rates filed by the Applicant are unjust, unreasonable and, therefore, should not be allowed.

CONCLUSIONS

Under the North Carolina General Statutes public utilities are entitled to recover, through rates approved by the Utilities Commission, reasonable operating expenses and a fair profit. The Commission concludes that the proposed rates should be reduced to reflect accounting adjustments effecting a more equitable allocation of the serviceman's salary, a reduction in insurance expense and taxes, and that the following schedule of rates would be just and reasonable, and produce profit of $2,165.

PARKWOOD SEWERAGE RATES

*0 to 500 cu. ft.	$0.80 per 100 cu. ft. ($4.00 minimum)
*Above 500 cu. ft.	$0.50 per 100 cu. ft.

*As metered for water service by the City of Durham.

CONNECTION CHARGES: None

RECONNECTION CHARGES: $10.00

BILLS DUE: Ten days after date rendered

The depreciation expense allowance will provide adequate reserve for future renewals and replacements over the estimated life of the plant. The Applicant is not burdened with debt obligations and under its system and purpose of operation does not require large earnings. The rates fixed by the Commission in this Order should be put into effect when the City of Durham begins furnishing water services to the Parkwood Subdivision, said rates and charges being set forth in Appendix A attached to this Order.

IT IS, THEREFORE, ORDERED That the rates applied for by the Applicant in this docket are hereby declared unjust and unreasonable and are hereby disapproved and disallowed.

IT IS FURTHER ORDERED That the Applicant be and is hereby authorized to charge the rates set forth in Appendix A attached hereto for its sewerage services in the Parkwood Subdivision, Durham, North Carolina.

IT IS FURTHER ORDERED That the Applicant be and is hereby authorized to charge such rates effective when the City of Durham begins furnishing water services to the Parkwood Subdivision by filing a tariff with the Commission with the effective date as herein designated.

IT IS FURTHER ORDERED That the company establish and maintain separate and distinct records as the same relate to the Parkwood sewerage operations and, in addition, file with this Commission on an annual basis an operating report setting forth the annual results of the sewer operations in the Parkwood Subdivision.

IT IS FURTHER ORDERED That Mid-Atlantic file a plan, within 60 days of the date of this Order, showing operation and maintenance procedures for its sewerage system and shall develop a record-keeping system in order to comply with the operation and maintenance procedures filed pursuant to this clause.

IT IS FURTHER ORDERED That Mid-Atlantic shall install adequate measuring equipment at each Parkwood sewerage plant in order to determine the flow to said plant, within thirty (30) days from date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

Commissioner Marvin R. Wooten, Concurring.
Clawson L. Williams, Jr., did not participate.

APPENDIX A

PARKWOOD SEWERAGE RATES

*0 to 500 cu. ft.	$0.80 per 100 cu. ft. ($4.00 minimum)
*Above 500 cu. ft.	0.50 per 100 cu. ft.

*As metered for water service by the City of Durham

CONNECTION CHARGES: None

RECONNECTION CHARGES: $10.00

BILL DUE: Ten (10) days after date rendered

DOCKET NO. W-200, SUB 1
DOCKET NO. W-200, SUB 2
DOCKET NO. W-200, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of LaGrange Water Works Corporation,	) ORDER
271 Reilly Road, Fayetteville, North Carolina,	) REQUIRING
for Authority to Acquire the J. V. Jessup Water	) CERTAIN
and the Harrington Construction Company Water	) REFUNDS
Systems, all Located in Cumberland County, North	) BE MADE
Carolina, and for Approval of Rate Schedule to	) TO
Increase Residential Water Rates	) CUSTOMERS

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on September 16, 1970

BEFORE: Chairman Harry T. Westcott (Presiding), Commissioners John W. McDevitt, Hugh A. Wells and Miles H. Rhyne

APPEARANCES:

For the Applicant:

James R. Nance
George B. Herndon, Jr.
Nance, Collier, Singleton, Kirman & Herndon
Attorneys at Law
Drawer 1210
Fayetteville, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991
Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: On May 22, 1969, LaGrange Water Works Corporation, 271 Reilly Road, Fayetteville, North Carolina, filed an amendment in Docket No. W-200, Sub 1, to its Certificate of Public Convenience and Necessity with the North Carolina Utilities Commission in order to provide water service in Borden Heights Subdivision, Sections 1 and 2, Simmons Heights Subdivision and Welmar Heights Subdivision, all located in Cumberland County, and to increase rates. On May 28, 1969, the Commission issued an Order setting the matter for hearing with a five (5) day protest provision so that interventions or complaints could be filed. A complaint petition filed by the customers in the Simmons Heights Subdivision with respect to the proposed increased rates was received by the Commission on June 20, 1969. The matter was scheduled for hearing on July 29, 1969.

Subsequently, a joint application was filed by Harrington Construction Company, Inc., and LaGrange Water Works Corporation on July 7, 1969, requesting that the Commission approve the sale of the water properties owned and operated by Harrington Construction Company, Inc., to LaGrange Water Works Corporation. Since further data was required with the application, the Commission continued the hearing scheduled for July 29, 1969, and issued an order consolidating Docket Nos. 1 and 2.

LaGrange Water Works Corporation, on October 11, 1969, filed with the Commission a consolidated amendment to its application in these two dockets. In its amended application, the applicant withdrew its request for an increase in rates in Borden Heights, Simmons Heights and Welmar Heights Subdivisions. Consequently, LaGrange through its amended application sought an amendment to its Certificate of Public Convenience and Necessity to provide Borden Heights, Simmons Heights and Welmar Heights Subdivisions, with water service. Additionally, in the consolidated docket amendment, the applicant sought approval of the sale of the water systems of Harrington Construction Company, Inc., which systems were then operating under a Certificate of Public Convenience and Necessity issued by this Commission. In the consolidated docket, the applicant's amendment also requested approval by the Commission for LaGrange to acquire the properties owned by J. V. Jessup and authority to serve Deerwood Subdivision. The consolidated amendment did not pertain in any way to an increase in rates.

The Commission by order of November 12, 1969, set the consolidated docket for hearing in this matter and required that notice of hearing be published by the applicant as required by law. The notice of hearing set forth the date, time and place of the hearing and indicated to the public that if no interventions or protests were filed by December 5, 1969, on the consolidated application, the Commission would determine the application on the facts set forth in such application and public records available to the Commission without holding public hearing. No interventions or protests were filed by December 5, 1969.

On December 29, 1969, the Commission entered an Order authorizing LaGrange to purchase the water systems owned by Harrington Construction Company, Inc., cancelled and terminated the Certificate of Public Convenience and Necessity held by Harrington Construction Company, Inc., in Docket No. W-199, approved the purchase by LaGrange Water Works Corporation of the J. V. Jessup properties, namely, Borden Heights, Simmons Heights and Welmar Heights Subdivisions, and authorized LaGrange to serve Borden Heights, Simmons Heights, Welmar Heights, Deerwood, Braxton Hills and Valley Forge Subdivisions, all located in Cumberland County.

The Commission's Order of December 29, 1969, further ordered that LaGrange Water Works Corporation be authorized to charge the same rates in Borden Heights, Simmons Heights, and Welmar Heights Subdivisions as previously charged by J.V. Jessup.

On January 5, 1970, the applicant filed with the Commission an application seeking approval of an increased rate schedule effective on all of its customers in Borden Heights, Simmons Heights, Welmar Heights, Braxton Hills and Valley Forge Subdivisions. The Commission, being of the opinion that the application affected the interest of the using and consuming public in the franchised areas served by the applicant and that the public should have an opportunity to protest or intervene in the matter if it so desired, suspended the tariff, set the matter for hearing, declared the same to be a general rate case pursuant to the provisions of G.S. 62-137, directed the Commission's Accounting Staff to make an examination of the books and records of the applicant and required that notice be given to the public as required by law.

By Order of March 10, 1970, the Commission authorized the applicant to place into effect on its billings for water service in the respective subdivisions in Docket No. W-200, Sub 3, and approved the following rate schedule effective April 1, 1970:

WATER RATE SCHEDULE
Residential Service

RATE: $4.00 for first 3,000 gallons and $.50 for each 1,000 gallons thereafter

CONNECTION CHARGES: $250.00 per service installed

RECONNECTION CHARGES: NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE: Ten days after date rendered

The Order of March 10 further indicated that during the course of the hearing in Sub 3 held on March 4, 1970, there was some indication that the applicant may have prior to that time billed some of its customers improperly. Accordingly, the Commission's order concluded, without making any finding in that connection that the Commission Staff make an investigation regarding the apparent improper billing and report findings of such investigation to the Commission for such action as may be appropriate.

On June 15, 1970, a report was filed by the Commission's Staff indicating that the applicant had collected amounts in excess of the $4.00 per month flat rate which had been previously charged by J. V. Jessup with respect to the water systems in Borden Heights, Simmons Heights and Welmar Heights Subdivisions.

By letter directive of June 17, 1970, to D. P. Bruton, President of LaGrange Water Works Corporation, the Commission related results of the investigation by the Commission Staff which indicated that LaGrange had made charges in excess of the rate formerly charged by J. V. Jessup. The letter directive indicated that the Commission was of the opinion that LaGrange Water Works Corporation should refund to its customers all amounts collected above $4.00 per month per customer from the date it acquired the J. V. Jessup property until the Commission's Order establishing rates was issued in Docket No. W-200, Sub 3. A report filed by the applicant dated May 20, 1970, prepared by Dan T. Barker and Co., Certified Public Accountants, Fayetteville, North Carolina, and addressed to D. P. Bruton, which Mr. Bruton obtained at the request of the Commission Staff, indicated the excessive amount of such billings above the $4.00 per month rate and was the basis for the letter directive of the Commission dated June 17, 1970, as to the amount of $3,775.45. Refund was to be made within 30 days from the date of the letter and a report furnished to the Commission.

On July 10, 1970, the applicant filed a petition for reconsideration of the letter directive of the Commission dated June 17, 1970. By order of July 21, 1970, hearing was set upon the applicant's petition for reconsideration on September 16, 1970. The letter directive of the Commission and petition for reconsideration in the consolidated dockets No. W-200, Subs 1, 2 and 3, involved refunds only with respect to those properties formerly owned by J. V. Jessup viz. namely, Borden Heights, Simmons Heights and Welmar Heights Subdivisions located in Cumberland County. The Harrington Construction Company, Inc.'s properties and other subdivisions involved in these consolidated dockets are not in any way involved in the letter directive or the petition for reconsideration of such directive which are the subject of this Order.

The evidence of the Commission Staff presented at the hearing on the petition for reconsideration indicates that Mr. Raymond J. Nery, Chief of the Gas & Water Division of the Commission, initially received information on or about January 9, 1969, that the water system in Borden Heights, Simmons Heights and Welmar Heights Subdivision, hereinafter referred to as "Jessup properties," were in the process of being purchased by LaGrange. Mr. Nery wrote to LaGrange indicating that the Company should file an application for a Certificate of Public Convenience and Necessity and approval of rates for the water systems involved in the Jessup properties.

The Commission Staff had received information that legal title to the Jessup properties was conveyed sometime in April, 1969, although the Staff was not aware of the exact date. After an application was filed by LaGrange for the Jessup properties and the Commission issued a 5-day notice, a petition was received from certain customers served in the

Jessup properties protesting any increase in rates. Mr. Nery testified that after receipt of such protest, he notified LaGrange that the rates for the Jessup properties could not be increased until approved by the Commission. Subsequently, Mr. Nery indicated that he contacted Mr. Bruton, President of LaGrange Water Works Corporation, as to whether or not he was charging increased rates. Mr. Nery testified that on behalf of the Commission Staff, he had numerous discussions with Mr. George Herndon, Attorney for LaGrange and Mr. Bruton involving the question of LaGrange's charging any rates in excess of the rates charged by J. V. Jessup.

On July 2, 1969, the Commission staff received a letter from George B. Herndon, Jr., Attorney for LaGrange, which requested that LaGrange be allowed to continue to charge such increased charges as were then in effect and that, "if the determination of the Commission requires an adjustment with the property owners, that LaGrange hold these collections, or a part thereof, in escrow for adjustment after determination has been made with the property owner." Mr. Nery testified that the letter was brought to the Commission's attention in regard to Mr. Herndon's request. The hearing on rates was then set for July 29, 1969. On July 9, 1969, the request for permission to buy the Harrington properties, not involved here, was made by LaGrange. By Order of July 24, 1969, the Commission ordered that the request to purchase the Harrington properties and the request to purchase the Jessup properties be consolidated and that the hearing then scheduled for July 29, 1969, in Sub 1 be continued to a date to be reset when the application has been received from LaGrange Water Works Corporation for the establishment of uniform rates in the areas served.

On October 16, 1969, LaGrange filed a consolidated amendment to the application involving the acquisition of both the Jessup and Harrington properties and withdrew its original request for increased rates in regard to the Jessup properties. By letter of November 21, 1969, to Mr. Herndon, LaGrange was advised to cease the practice of charging any increased rates over $4.00 per month. By letter of December 1, 1969, Mr. Herndon replied that "Mr. Bruton has agreed to give credit on his records for all charges above the $4.00 flat rate per month." The Commission's Order dated December 29, 1969, which was made on the basis of the record without a hearing, since no protests or interventions were filed by the specified date in the notice to the public, authorized LaGrange to purchase the Harrington and Jessup properties and provided that "It is further ordered that LaGrange is authorized to charge the same rates in the Borden Heights, Sections 1 and 2, Simmons Heights, and Welmar Heights Subdivisions, as previously charged by J. V. Jessup . . . ." The order provided that LaGrange file with the Commission appropriate tariffs. Mr. Nery further testified that the rates charged by J. V. Jessup prior to the acquisition of the properties in question by LaGrange

was $4.00 per month flat rate. After acquisition of on or about April, 1969, LaGrange began to charge $4.00 for 4,000 gallons and $.50 for each 1,000 gallons thereafter on a metered basis. Mr. Nery testified that he requested that Mr. Bruton obtain from a certified public accounting firm information as to what the refunds would be from April, 1969, through March, 1970. The report of Dan T. Barker, Certified Public Accountant, dated May 20, 1970, indicated total billings in the Jessup properties of $12,335.45 and that said billings would have amounted to $8,560 had the rate been $4.00 per month only. The difference in these amounts was $3,775.45 which Mr. Nery testified was the basis for the Commission's letter directive of June 17, 1970. Mr. Nery further testified that this amount of overcharge was based upon the Commission's Staff information involving the acquisition by LaGrange from April, 1969, until the order of the Commission finally approving rates effective April 1, 1970, with respect to the Jessup properties. The Commission's approval of the acquisition by LaGrange of the Jessup properties was not formally entered until the order of the Commission dated December 29, 1969. The evidence of the Commission Staff indicated that approximately 200 customers had been served by J. V. Jessup in the three subdivisions which are the subject of this order and Jessup had not obtained a Certificate of Public Convenience and Necessity to operate said water systems.

Mr. Norman Peele of the Commission's Accounting Staff testified that he was assigned the responsibility of verifying the accuracy of the report of Mr. Barker, CPA, dated May 20, 1970. He testified that this was done by reviewing true copies of billing sheets for each customer. Such comparison was made with approximately 50% of the computations involved. Mr. Peele further testified that should the Commission decide to refund amounts from January through March, 1970, from the date of the Commission's Order approving the acquisition of the Jessup properties and granting LaGrange a Certificate of Public Convenience and Necessity dated December 29, 1969, until the order approving rates entered on the Jessup properties effective April 1, 1970, said order being dated March 10, 1970, that the amount of refunds in excess of $4.00 flat rate for the months of January, February and March, 1970, would be $817.65.

No testimony was offered by LaGrange at the hearing on the petition for reconsideration of the Commission's letter directive requiring that refunds be made in the amount of $3,775.45. LaGrange did offer explanatory comments through counsel in regard to its understanding of what transpired regarding the numerous telephone discussions and interchange of letters by Mr. Nery of the Commission Staff and Mr. Bruton of LaGrange. Mr. James Nance indicated to the Commission basically that his client's understanding was that he would make refunds regarding the difference between the former Jessup rates and the rates actually being charged but that he was going to refund the difference between the

rates finally approved by the Commission and the rates actually being charged.

Based upon the evidence adduced at the hearing, the application and exhibits filed by the applicant, and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

(1) That the applicant LaGrange Water Works Corporation is a corporation duly existing under the laws of the State of North Carolina and having its principal office at 271 Reilly Road, Fayetteville, North Carolina.

(2) That LaGrange is presently serving approximately 200 customers in the Borden Heights, Sections 1 and 2, Simmons Heights and Welmar Heights Subdivisions located in Cumberland County, which said water systems were formerly owned by J. V. Jessup, having been operated by Jessup without a Certificate of Public Convenience and Necessity from the Commission.

(3) That the Commission Staff received information on or about January 9, 1969, that the water systems located on the Jessup properties were to be sold to LaGrange.

(4) That the Jessup properties were sold to LaGrange on or about April, 1969, but the exact date of the actual acquisition by LaGrange is not reflected on this record.

(5) That approval of the acquisition by LaGrange of the Jessup properties was not formerly entered by the Commission until the Commission's Order of December 29, 1969.

(6) That the Commission's Order of December 29, 1969, approving the transfer of J. V. Jessup properties to LaGrange and granting to LaGrange a Certificate of Public Convenience and Necessity to serve Borden Heights, Simmons Heights and Welmar Heights Subdivisions, Cumberland County, provided that LaGrange was authorized to charge the same rates in the Jessup properties as had been previously charged by J. V. Jessup.

(7) That the rates charged by J. V. Jessup prior to the acquisition of said properties by LaGrange was $4.00 per month per customer on a flat rate basis.

(8) That after the acquisition of the Jessup properties by LaGrange, LaGrange charged a rate of $4.00 for 4,000 gallons and $.50 for each additional 1,000 gallons on a metered basis in Borden Heights and Welmar Heights Subdivision and $4.00 for 4,000 gallons in Simmons Heights Subdivision.

(9) That the application was filed by LaGrange on May 22, 1969, requesting authority to increase rates for water service to the Jessup properties.

(10) That protests were received from residents in Simmons Heights Subdivision objecting to increased rates.

(11) That the Commission Staff engaged in numerous telephone conversations and exchanges of correspondence through Mr. Raymond J. Nery with Mr. D. P. Bruton and George Herndon, Attorney for LaGrange, both present at the hearing on September 16, 1970, in regard to rate increases by LaGrange with respect to the Jessup properties without Commission approval.

(12) That the Commission received letters dated July 2 from George Herndon, Attorney for LaGrange, requesting that LaGrange be allowed to continue billing at the rates then existing; i.e., $4.00 for 4,000 gallons and $.50 for each additional 1,000 gallons with the exception of Simmons Heights Subdivision which had a flat rate of $4.00 for 4,000 gallons, and the letter from Mr. Herndon on behalf of LaGrange indicated that if determination of the Commission required an adjustment to the property owners that LaGrange would hold collections in escrow for adjustment after determination.

(13) That on October 13, LaGrange filed an application consolidating Docket W-200, Subs 1 and 2, relating to the acquisition of the Harrington properties, not involved here, and the Jessup properties, and withdrew its request for new rates for the Jessup properties.

(14) That on November 21, 1969, the Commission Staff being in receipt of information that increased rates were being charged in regard to water system in Jessup properties, advised Mr. Herndon, Attorney for LaGrange, to cease the practice of charging such increased rates as to any amounts over $4.00 per month.

(15) That on December 1, 1969, Mr. Herndon by correspondence with Mr. Nery of the Commission Staff, indicated that Mr. Bruton had agreed to give credit on his records for all charges above the flat rate of $4.00 per month.

(16) That on December 29, 1969, the Commission entered an Order approving the acquisition by LaGrange of the Jessup properties and allowed the amendment to LaGrange's Certificate of Public Convenience and Necessity in order that LaGrange might serve Borden Heights, Simmons Heights and Welmar Heights Subdivisions, being the Jessup properties.

(17) That the Order of the Commission dated December 29, 1969, expressly and clearly provided that LaGrange was

authorized to charge the same rates for water service in the Jessup properties as previously charged by J. V. Jessup.

(18) That although the Commission's Order of December 29, 1969, required that LaGrange charge only that rate that had been previously charged by J. V. Jessup, viz. $4.00 per month per customer, LaGrange continued to charge rates for water service in the Jessup property areas exceeding the $4.00 per month flat rate.

(19) That on June 17, 1970, the Commission by letter directive ordered that LaGrange make refunds to its customers in the Jessup property areas and that such refunds be made within 30 days from the date of the Commission's letter directive totaling $3,775.45, being the amount based upon the overcharges from April, 1969 through March, 1970, or from the apparent date of the actual acquisition of the Jessup properties by LaGrange until the Commission's approval of rates under the Certificate of Public Convenience and Necessity granted to LaGrange to serve said properties.

(20) That the amount of refund which would be involved for the months of January, February and March, 1970, being the months from the date of the Commission's order of December 29, 1969, and the Commission's order finally approving rates effective April 1, 1970, would amount to $817.65.

(21) That it would be unfair and inequitable to require LaGrange to refund $3,775.45 because the exact date of the acquisition is not apparent in the record.

(22) That it is reasonable and equitable to require LaGrange to refund to its customers in the Borden Heights, Sections 1 and 2, Simmons Heights and Welmar Heights Subdivisions, Cumberland County, all amounts collected by LaGrange above $4.00 per month per customer for the months of January, February and March, 1970, amounting to a total aggregate refund of $817.65.

Based on the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS

The Commission is of the opinion that it is fair and equitable to require LaGrange to refund to its customers in the Borden Heights, Simmons Heights and Welmar Heights Subdivisions, all amounts collected by LaGrange over $4.00 per month per customer on a flat rate basis, said amount being the amount previously charged by J. V. Jessup in regard to the water service in the respective subdivisions, and that said refunds should be made for the months of January, February and March, 1970, amounting to a total of approximately $817.65.

The Commission expresses its concern that Mr. Bruton, President of LaGrange, should have been aware that the rates for the water service in the Jessup properties should not have been increased until such time as such increases were finally approved by the Commission; however, the Commission is not unaware that based on the record taken at the hearing afforded LaGrange on its petition for reconsideration of the Commission's letter directive of June 17, 1970, it is apparent that because of numerous telephone discussions which transpired by the members of the Commission Staff, Mr. Bruton, President of LaGrange and Mr. George Herndon, Attorney for LaGrange, that a substantial possibility exists that LaGrange could have been misinterpreted earlier directives of the Commission Staff in the spring and summer of 1969, that no increase should have been instituted by LaGrange in water rates for the Jessup properties. It is the opinion of the Commission that there can be no misunderstanding that the Commission's Order of December 29, 1969, clearly and expressly authorized LaGrange to charge no more than the rates previously charged by J. V. Jessup, viz. $4.00 per month per customer on a flat rate basis. Consequently, the Commission concludes and is of the opinion that LaGrange should be required to refund to its customers in the three subdivisions formerly owned by J. V. Jessup for which LaGrange was granted a Certificate of Public Convenience and Necessity and acquisition by LaGrange from Jessup was approved on December 29, 1969, any amounts in excess of $4.00 per month per customer for the months of January, February and March, 1970.

It is noted that LaGrange did not offer testimony on its petition for reconsideration of the letter directive of the Commission dated June 17, 1970, but rather statements were offered on behalf of LaGrange by counsel. Consequently, LaGrange failed to go forward with its evidence having the burden of proof under its petition for reconsideration; however, notwithstanding this defect, the Commission has considered this matter on the basis of the record in consolidated Docket No. W-200, Subs 1, 2 and 3, and has reached the above described conclusions and opinions in an effort to reach a fair and equitable result both with respect to the customers served by LaGrange and LaGrange Water Works Corporation.

IT IS, THEREFORE, ORDERED as follows:

(1) That LaGrange be, and the same hereby is, required to provide refunds to the customers who received water service from LaGrange in Borden Heights, Sections 1 and 2, Simmons Heights, and Welmar Heights Subdivisions, located in Cumberland County, North Carolina, any and all amounts over $4.00 per month per customer on a flat rate basis being the rate formerly charged by J. V. Jessup and such refunds be made for the months of January, February through March, 1970, amounting to approximately $317.65.

(2) That said refunds be made by LaGrange within 30 days from the date of this Order.

(3) That a report be filed by LaGrange with the Commission no later than December 14, 1970, setting forth the manner such refunds were made and indicating the name of each customer entitled to a refund during January, February, and March, 1969, the amount refunded to each customer and the total amount refunded for the period.

ISSUED BY ORDER OF THE COMMISSION.
This 14th day of October, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-202, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Mr. & Mrs. Leroy Hawks, et al., Route 6, Hickory, North Carolina, Complainants	)
vs.	) RECOMMENDED ORDER DISMISSING COMPLAINT
Fred D. Rozzelle, 1232 - 10th Street, N. E., Hickory, North Carolina Defendant	)

HEARD IN: City Council Chambers, City of Hickory, Hickory, North Carolina, on August 7, 1970, at 10:30 a.m.

BEFORE: Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Complainant: None

For the Defendant:

Fred D. Rozzelle
1232 10th Street, N. E.
Hickory, North Carolina

For the Commission Staff:

David Creasy, Engineer
North Carolina Utilities Commission
Raleigh, North Carolina

WOOTEN, HEARING COMMISSIONER: This proceeding arises upon the complaint of Mr. and Mrs. Leroy Hawks, et al., Hickory, North Carolina, hereinafter referred to as complainants, against Fred D. Rozzelle, Hickory, North Carolina, hereinafter referred to as defendant, concerning muddy water and low water pressure in Clearview Acres Subdivision, Catawba County, North Carolina (known as Clearview #2).

The complaint of the complainants was received by the Commission on May 4, 1970, and was properly served on Fred D. Rozzelle on June 25, 1970, by Commission Inspector Dan G. Fisher, along and in accord with the order of this Commission dated June 11, 1970, which said order directed the defendant to satisfy the demands of the complainants or file answer thereto within ten (10) days after service of the same. Answer was not filed by the defendant and by order dated July 20, 1970, the defendant was directed to appear before the Commission at the captioned time and place to show cause, if any there be, why the Commission should not apply to the Superior Court for the statutory penalty of $1,000 per day for failure of defendant to comply with Commission's order of June 11, 1970.

Upon the call of this matter for hearing, none of the complainants were present to offer testimony or evidence regarding the status of the water service here involved. It is particularly noted that the complainants received a copy of the order setting this matter for hearing and were further notified of the hearing time and place by Commission Engineer David Creasy on the date preceding the hearing and still no one appeared in support of the position of the complainants in this matter. The Commission specifically set this case for hearing in Hickory, in order to afford to the complainants a convenient forum in which to air and have corrected their problems, and yet none of the complainants chose to avail themselves of the opportunity thereby afforded.

The defendant appeared and testified that he had taken the necessary steps to correct the water pressure and to clear the muddy water conditions complained of, and that said

steps had been taken prior to the time of our hearing. The defendant further testified that some of the complaining customers were customers who were many months behind in the payment of their water bills; that the customers and others unknown tampered with the fittings and valves of the water system creating and causing some of the problems complained of; that he had been unable to discuss the complaints with many of the complainants because of their refusal to answer their door; that he had locked his well house and that the customers or others unknown would break the lock and disturb the settings, thereby creating and causing some of the problems complained of; and that he would be willing to give to the customers this particular water system, provided they would take it over and operate it and pay their back bills.

David Creasy, Commission Engineer, was present and testified for the staff that he had inspected the water system on the day prior to the hearing; that he discussed with some of the customers their problems on the day prior to the hearing; that his inspections and discussions revealed that the problems that had existed before were corrected and that the only remaining problem was lower than desirable pressure in the water system.

Mr. Creasy further testified that the water pressure needed some improvement and suggested as an initial step in this direction would be the replacement of the three quarter-inch water hoses connecting the filtering tanks to the water system with one-inch diameter hoses, which the defendant readily agreed to do immediately.

Based upon the evidence, the Commission makes the following

FINDINGS OF FACT

1. That the complaint of the complainants has heretofore been substantially and adequately satisfied.

2. That the water system requires the immediate replacement of the three quarter-inch hoses connecting the filtering tanks to the water system with one-inch diameter hoses.

Based upon the above, the Commission makes the following

CONCLUSIONS

We conclude that the defendant has substantially and adequately complied with the orders heretofore issued by this Commission and that the complaints heretofore filed should, therefore, be dismissed, except that the defendant should immediately replace the three quarter-inch hoses connecting the filtering tanks to the water system with one-inch diameter hoses in this case.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the complaint in this case be, and the same, is hereby dismissed as satisfied.

2. That the defendant shall forthwith, replace the three quarter-inch hoses connecting the filtering tanks to the water system in this case with one-inch diameter hoses.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. W-61, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Southeastern Water and Utilities Company - Application for Authority to Transfer Shares of Common Stock to General Utilities & Industries, Inc.	) ORDER) APPROVING) STOCK) TRANSFER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on August 11, 1970, at 2:00 p.m.

BEFORE: Commissioners Hugh A. Wells (Presiding), Marvin R. Wooten and Miles H. Rhyne

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
P. O. Box 1406, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

WELLS, COMMISSIONER: By joint application filed with the Commission on July 14, 1970, Leslie B. Cohen, President and sole stockholder of Southeastern Water and Utilities Company, sought approval of the transfer of all of the outstanding capital stock of Southeastern Water and Utilities Company, as Transferor, to General Utilities & Industries, Inc., as Transferee.

The Commission being of the opinion that the application affects the interest of the public who purchase their water from Southeastern Water and Utilities Company set the matter for hearing at the above-mentioned time and place.

FINDINGS OF FACT

1. Southeastern Water and Utilities Company is engaged in the operation of water utilities in the State of North Carolina.

2. All of the outstanding stock of Southeastern Water and Utilities Company is issued in the name of Leslie B. Cohen, President.

3. Other corporations under Leslie B. Cohen's control are engaged in similar activities in South Carolina.

4. It is proposed that the activities in North Carolina and South Carolina will be expanded by the acquisitions of additional facilities and may be extended to other states.

5. The ability to expand the activities of these companies by acquiring existing water and water and sewer facilities or to engage in the construction of new facilities depends greatly on the availability of large sums of capital.

6. In order that these sums may be more readily available, it is proposed to create and establish in General Utilities & Industries, Inc., a Delaware corporation, a holding company to acquire all of the shares now controlled by Leslie B. Cohen in all the various corporations engaged in similar activities.

7. General Utilities & Industries, Inc., will prepare consolidated financial statements and thereby effect greater efficiency in operations and greater possibilities of securing the required financing.

8. General Utilities & Industries, Inc., proposes, subject to approval of this Commission, to issue 300,000 shares of the one cent par value common stock to be exchanged for 1,526.9 shares of the $10 par value common stock of Southeastern Water and Utilities Company.

9. Only the stock control of Southeastern Water and Utilities Company will change with the present sole stockholder owning the majority of shares of General Utilities & Industries, Inc.

CONCLUSIONS

It appears from the application and the evidence entered at the hearing that Leslie B. Cohen is the owner of all of the issued and outstanding shares of the common stock of Southeastern Water and Utilities Company, a public utility

engaged in the operation of water systems in the State of North Carolina and will continue to operate under the same name and maintain separate records in North Carolina.

It further appears that the purpose of the acquisition of control is to form an operating group of corporations similarly engaged in the same type of business located in North Carolina and adjacent states in an effort to effect greater efficiency and possibilities of securing additional financing.

Upon consideration thereof, the Commission is of the opinion and concludes that the change of control of Southeastern Water and Utilities Company to General Utilities & Industries, Inc., is justified by the public convenience and necessity as contemplated under G.S. 62-111(a) and that the application should be approved.

IT IS THEREFORE ORDERED:

That the change of control of Southeastern Water and Utilities Company through the transfer of all of the issued and outstanding shares of common stock from Leslie B. Cohen, as Transferor, to General Utilities & Industries, Inc., a Delaware corporation, as Transferee be, and the same is hereby, approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of August, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. W-10, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Water Company, Inc., of Kannapolis,) ORDER
North Carolina, for Authority to Abandon the Water) DENYING
Service Which it is Providing in and Around the) RELIEF
Unincorporated City of Kannapolis, North Carolina) SOUGHT

HEARD IN: Hearing Room of the Commission, Raleigh, North Carolina, on January 22, 1970

BEFORE: Chairman Harry T. Westcott (Presiding), and Commissioners John W. McDevitt, Marvin R. Wooten, Miles H. Rhyne and Hugh A. Wells

APPEARANCES:

For the Applicant:

George Goodwyn
Fountain & Goodwyn
Attorneys at Law

102 E. St. James Street
Tarboro, North Carolina

For the Commission Staff:

Larry G. Ford
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: This cause came on to be heard and was heard by the Full Commission at the time and place set forth in the caption, upon petition of Water Company, Inc., of Kannapolis, North Carolina (hereinafter called applicant), seeking authority to abandon the water service which it is providing in and around the unincorporated City of Kannapolis, North Carolina, furnishing water to between 700 and 800 customers.

The applicant offered the testimony of three witnesses, E.B. Durham (applicant's general manager), Robert A. McClary (Certified Public Accountant), and Mrs. Margie Kincaid (applicant's secretary and bookkeeper), all of whom testified that the applicant's operation was not producing sufficient revenues to pay operating expenses and thus the same is a "loss operation."

Based upon the evidence adduced at the hearing and the records of this Commission, the Commission makes the following

FINDINGS OF FACT

1. That the applicant is a North Carolina corporation engaged in business in this State as a public utility, is subject to the jurisdiction of, and regulation by this Commission, and is properly before this Commission in a matter over which the Commission has appropriate jurisdiction.

2. That public convenience and necessity demands and requires the continued furnishing and supplying of water to the 700 - 800 water customers of the applicant.

3. That no other water service or supply, by a public utility or otherwise, is available to applicant's 700 - 800 customers at this time, and that public convenience and necessity demand and require that the applicant continue to furnish and supply water to its customers (the public) in its certificated area.

4. That the applicant's present operating revenues are sufficient to pay reasonable out-of-pocket operating expenses.

5. That the applicant has operated its water utility for many years at a profit.

In the light of the evidence, records of the Commission and the above findings of fact, the Commission makes the following

CONCLUSIONS

1. That public convenience and necessity demands and requires continued water supply and service to the applicant's 700 - 800 customers, in that no other water service or supply is available to said customers of the applicant at this time; and that there is a reasonable probability of applicant realizing sufficient revenue from its water service to meet its expenses, in that at the present time the applicant's revenues are sufficient to cover its reasonable out-of-pocket operating expenses.

2. We further conclude that this Commission is without power and authority to grant the relief petitioned for, for the reason that public convenience and necessity still requires such service and that there is a reasonable probability of this public utility realizing sufficient revenues to meet its reasonable out-of-pocket operating expenses.

3. We finally conclude that this Commission should dismiss and disallow the petition in this case, without prejudice, at this time.

IT IS, THEREFORE, ORDERED:

1. That the petition in this matter be, and the same is, hereby dismissed and disallowed, at this time and without prejudice.

2. That the petition in this case be, and the same is, hereby dismissed and this case discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March, 1970.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Mary Laurens Richardson, Chief Clerk

DOCKET NO. WU-82

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Western Union Telegraph Company - Rate Increase Application) ORDER GRANTING RATE INCREASE

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on October 13, 1970, at 10:00 a.m.

BEFORE: Chairman Harry T. Westcott (Presiding) and Commissioners John W. McDevitt, Miles H. Rhyne, and Hugh A. Wells

APPEARANCES:

For the Applicant:

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For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

WESTCOTT, CHAIRMAN: This matter came on for hearing before the Commission upon the filing by The Western Union Telegraph Company of its proposal to increase its intrastate rates and charges. Revised tariffs were filed on March 11, 1970, with effective date on statutory notice of April 19, 1970, and the Commission, concluding that the proposed increase in rates affected the public interest, suspended the tariffs until December 31, 1970, and set them for investigation in order to determine whether the increased rates were just and reasonable. By Order of May 18, 1970, the Commission, at the request of the Company, extended until May 22, 1970, the time for filing information required by the Commission's Order of March 18, 1970. On June 5, 1970, the Commission set this matter for hearing on October 13, 1970, in the Commission Hearing Room, Raleigh, North Carolina, and the hearing was held at that time. No protests or objections were filed opposing the proposed increase. At the conclusion of the evidence, the submission of briefs was waived by the Company and the Commission staff.

The Company's evidence at the hearing tends to show that, based upon actual results for the year 1969, a deficit

ensued on its North Carolina intrastate operations in the amount of $116,028.

The Company's exhibit, Schedule C-2, tends to show that the Company projected $181,878 of additional revenues if the proposed rates are allowed to go into effect, and indicated a profit of $93,281 for intrastate operations in the State of North Carolina based upon 1969 operations with applicable adjustments.

Based on 1969 test year, the Company projected that the rate of return for intrastate operating results in the State of North Carolina after adjustment for known changes and the proposed tariff revisions would be 5.5% based on an original cost rate base; 4.8% based on the fair value rate base using the Consumer Price Index; and 4.2% based on a fair value rate base utilizing the Gross National Product Deflator.

Upon consideration of the entire record, the evidence and testimony presented and received during the course of the hearing, the Commission makes the following

FINDINGS OF FACT

(1) That The Western Union Telegraph Company is a corporation duly organized and existing under the laws of the State of New York with its principal office at 60 Hudson Street in the City and State of New York, and is engaged in the business of offering communication service by telegraph and radio throughout the United States.

(2) That the applicant proposes to make the following rate revisions:

(a) An increase in the basic rate of the Telegram classification of messages for 15 words or less from $1.70 to $2.25, with no change in the additional word rates.

(b) An increase in the basic rate of the telegraphic portion of Money Order messages to coincide with the Telegram category.

(c) An overall increase in the fees for Money Orders of approximately 16 percent.

(d) An increase in the Tel(T)ex terminal handling charge from $1.25 to $1.40 per message.

(e) Elimination of the TCCS-Telex discount.

(3) That the proposed increase is designed to produce $181,878 additional gross revenues, of which $98,231 will be accrued to the Company's use.

(4) That the books and records of the applicant are kept on an original cost basis according to the Uniform System of Accounts.

(5) That the Company offered evidence to show that the original cost, North Carolina rate base, is $1,771,000, which includes materials and supplies and cash working capital.

(6) That the Company's evidence tends to show that the fair value of its allocated North Carolina Utility plant was arrived at by trending original cost by the use of Gross National Product Deflator and Consumer Price Index.

(7) That the applicant's pro forma gross revenue that could be derived from intrastate services for the calendar year ending December 31, 1969, is $1,471,782. Operating expenses, including pro forma adjustments as shown on applicant's Exhibit 7, Schedule C-2, amounted to $1,316,520. The pro forma operating income after Federal income taxes amounted to $98,281 and provides a rate of return of 5.5% on original cost rate base of $1,771,000, and 4.8% on a Consumer Price Index rate base of $2,028,000, and a 4.2% rate of return using the Gross National Product Deflator rate base of $2,338,000.

(8) That the fair value of applicant's property used and useful in rendering service to the public in North Carolina is not less than $2,000,000.

(9) That when net operating income in the amount of $98,281 is related to a fair value rate base of $2,000,000, the resultant rate of return becomes 4.9%.

(10) That in this particular case a rate of return of 4.9% is just and reasonable.

(11) That the present rates and charges heretofore in effect by applicant, when applied to its operations in North Carolina, result in an operating loss and are therefore unjust and unreasonable.

CONCLUSIONS

The rates and charges the Company proposes to make effective for those telegraph services will enable the Company to pay its own operating expenses and have approximately $98,281 in net operating income for return on its North Carolina intrastate operations.

We therefore conclude that the rates and charges filed by The Western Union Telegraph Company and under investigation in this Docket are just and reasonable and should be allowed to become effective January 1, 1971.

IT IS, THEREFORE, ORDERED:

(1) That the tariff schedule herein under investigation by the Commission Order of March 18, 1970, be approved and permitted to become effective on January 1, 1971, said rates and charges to be filed with this Commission prior to that date.

(2) That the Commission Order of Suspension and Investigation dated March 18, 1970, be and the same is hereby vacated and set aside.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of November, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

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