SIXTY-FIRST REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1971, through December 31, 1971

Harry T. Westcott, Chairman

John W. McDevitt, Commissioner

Marvin R. Wooten, Commissioner

Miles H. Rhyne, Commissioner

Hugh A. Wells, Commissioner

NORTH CAROLINA UTILITIES COMMISSION

Office of the Chief Clerk

Mrs. Katherine M. Peele
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.

LETTER OF TRANSMITTAL

December 31, 1971

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, 1971, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1971, and ending December 31, 1971.

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

Katherine M. Peele, Chief Clerk

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of the

NORTH CAROLINA UTILITIES COMMISSION
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DOCKET NO. M-100, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The revision of certain rules and regulations of the North Carolina Utilities Commission, pursuant to G.S. 62-266) ORDER

The North Carolina Utilities Commission acting under the power and authority delegated to it by law, after due consideration, hereby promulgates and adopts the following revisions to its rules and regulations relating to motor carriers and directs that the same shall be in full force and effect from and after the 1st day of July, 1971.

Amend Article 12. Specific Rules Applicable Only to Interstate Carriers, as follows:

(1) Strike the period at the end of Paragraph (b) of Rule R2-76 and insert in lieu of such period the following:

", and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of 15 months from the date the cab card is executed and shall not be later in time than the expiration date of the identification stamp placed on the back thereof."

(2) Amend Paragraph (c) of Rule R2-74 (c) by adding a sentence to read as follows:

"North Carolina identification stamps shall bear an expiration date of the 1st day of February in the succeeding calendar year."

(3) Strike Paragraph (e) of Rule R2-76 and insert new text in lieu thereof as follows:

"(e) Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the proviso to paragraph (f) of this section."

(4) Redesignate Paragraph (f) of Rule R2-76 to (g) and insert new Paragraph (f) to read as follows:

"(f) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: Provided, however, That if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier and such carrier provides a newly acquired vehicle in substitution therefor within 30 days of the date of such discontinuance, each identification stamp placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the

substitute vehicle by compliance with the following procedure:

"(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

"(2) Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and

"(3) Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon each indentification stamp appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle."

(5) Amend Paragraph (b) of Rule R2-75 by striking the amounts "$1,000" and "$2,000" therefrom and inserting in lieu thereof the amounts "$2,500" and "$5,000" respectively.

(6) Amend Paragraph (b) of Rule R2-74 by striking therefrom the following:

"The application for the issuance of cab cards shall be in the form set forth in Form C appended to and made a part of this article. The application shall be printed on the reverse side of the uniform application for registration and identification of vehicles as set forth in Form B appended hereto. The application shall be duly completed and executed by an official of the motor carrier."

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. M-100, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rules for registration of exempt interstate)
motor carriers, pursuant to G. S. 62-266) ORDER

The North Carolina Utilities Commission acting under the power and authority delegated to it by law, after due consideration, hereby promulgates and adopts the following revisions to its rules and regulations relating to motor carriers and directs that the same be in full force and effect from and after the 1st day of July, 1971.

Amend Article 13 as follows:

(1) Strike the period at the end of Paragraph (g) of Rule R2-83 and insert in lieu of such period the following:

", and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of 15 months from the date the cab card is executed and shall not be later in time than the expiration date of the identification stamp placed on the back thereof."

(2) Amend Paragraph (k) of Rule R2-83 by adding a new sentence to read as follows:

"In addition, such stamp shall bear an expiration date of the 1st day of February in the succeeding calendar year."

(3) Amend Paragraph (p) to Rule R2-83 by striking the existing language and by inserting in lieu thereof the following:

"(p) Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the proviso to paragraph (q) of this section."

(4) Redesignate Paragraph (q) of Rule R2-83 to (r) and insert new Paragraph (q) to read as follows:

"(q) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance: Provided, however, That if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier and such carrier provides a newly acquired vehicle in substitution therefor within 30 days of the date of such discontinuance, each identification stamp placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

"(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

"(2) Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and

"(3) Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon, each identification stamp appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle."

BY ORDER OF THE COMMISSION.

This the 15th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. M-100, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rule R2-37 - Proposed revision of Group 3,)
Petroleum and Petroleum Products, Liquid,) ORDER
in Bulk in Tank Trucks)

HEARD IN: The Commission's Hearing Room, Ruffin Building, Raleigh, North Carolina on July 29 and 30, 1970, at 9:30 A.M.

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

APPEARANCES:

In Support of the Proposal:

J. Ruffin Bailey
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
Appearing for: Associated Petroleum Carriers
Kenan Transport Company
O'Boyle Tank Lines, Inc.
A. C. Widenhouse, Inc.

A. W. Flynn, Jr.
York, Boyd & Flynn

P. O. Box 180, Greensboro, N. C.
Appearing for: M & M Tank Lines, Inc.
Eagle Transport Corporation

In Opposition to the Proposal:

Harry C. Ames, Jr.
Ames, Hill & Ames
Attorneys at Law
666 11th Street, N. W.
Washington, D. C. 20001
Appearing for: Central Transport, Inc.

Clawson L. Williams, Jr.
Attorney at Law
1004 Branch Banking and Trust Building
Raleigh, N. C.
Appearing for: Central Transport, Inc.
Maybelle Transport Company
Chemical Leaman Tank Lines

R. Mayne Albright
Attorney at Law
1014 Branch Banking and Trust Building
P. O. Box 1206, Raleigh, North Carolina 27602
Appearing for: Public Transport Corporation

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
N. C. Utilities Commission
Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: By order of March 25, 1970, the Commission instituted this rule making proceeding on its own motion. The order proposed to amend Group 3 of NCUC Rule R2-37 which is intended to describe the commodities which certificated and permitted carriers of petroleum and petroleum products, liquid, in bulk in tank trucks, may transport under intrastate authority which such carriers hold from this Commission.

Group 3 of Rule R2-37 presently reads as follows:

"Group 3. Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks. - This group includes gasoline, kerosene, fuel oil, liquefied petroleum gas, toluene, toluol, xylene, xylol and other petroleum products in bulk in tank trucks."

If revised as proposed in the Commission's order, the amended Group 3 would read as follows:

"Group 3. Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks. - This group includes gasoline, kerosene, fuel oil, liquefied petroleum gas, toluol,

xylene, and xylol and all commodities, except asphalt and asphalt cutback, listed under Appendix XIII to I.C.C. Ex Parte MC-45, Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, as amended through March 15, 1970."

The order describing the considered revision was served upon all intrastate certificated and permitted carriers of petroleum and petroleum products, liquid, in bulk in tank trucks, and interested carriers were invited to submit in writing for consideration, any representations in favor of or against the proposed rule change on or before April 20, 1970. The comments of a number of interested carriers were seasonably filed.

Hearing in the matter was initially set for April 29, 1970, but upon request of one of the intervenors in opposition to the amendment, said hearing was continued until July 29, 1970, and hearing was duly held on the proposed amendment on this date in the Commission's Hearing Room, Raleigh, North Carolina.

Appearing in support of the proposed amendment were the following named motor carriers: M & M Tank Lines, Inc., Eagle Transport Corporation, Associated Petroleum Carriers, Kenan Transport Company, O'Boyle Tank Lines, Inc., and A. C. Widenhouse, Inc.

Appearing in opposition to the adoption of the proposed amendment were the following named motor carriers: Central Transport, Inc., Maybelle Transport Company, Chemical Leaman Tank Lines, Inc., and Public Transport Corporation.

Appearing on behalf of the North Carolina Utilities Commission was Maurice W. Horne, Assistant Commission Attorney, Raleigh, North Carolina.

By way of background, Group 3 as initially promulgated by the North Carolina Utilities Commission effective from and after June 1, 1948, read as follows:

"Group 3. - Liquid Petroleum Products in Bulk -- This group includes gasolene, kerosene, fuel oil and other petroleum derivatives in bulk or tank trucks." (emphasis supplied).

The first substantial revision to the aforesaid rule was made after a hearing in Docket No. 4066-P in March, 1963, which was an investigation by the Commission to determine whether or not "toluene", "toluol", "xylene", and "xylol" were petroleum products. The Commission, in this hearing, did determine that the aforesaid four (4) commodities were petroleum products and they were thereafter included specifically in Group 3.

Prior thereto, the Commission, by general order had permitted all carriers holding authority to transport petroleum and petroleum products under Group 3, to have

their certificates amended if they so desired, so as to include specific authority to transport liquefied petroleum gas.

In Docket No. T-131, Sub 1, in July of 1954, the Commission issued an order in which it ruled that authority to transport petroleum products did not authorize the transportation of asphalt, in bulk, in tank trucks.

In June, 1968, due to the fact that the Commission was continually being called upon to make determinations as to whether some particular commodity was or was not a petroleum product within the meaning of Group 3 of the aforesaid Rules and Regulations of the Commission, it directed its staff to make a study of the aforesaid Rule and to come forward with a recommendation with respect to a possible amendment to Group 3 which describes petroleum and petroleum products. Thereafter, the members of the Commission's staff did make a study of this matter, and recommended to the Commission that it institute this rule making proceeding with the purpose of adopting the aforesaid proposed amendment to Rule R2-37, Group 3, as hereinabove set out. Basically, the proposal for said amendment is to include within the definition of petroleum and petroleum products, liquid, in bulk in tank trucks, all of those commodities, except asphalt and asphalt cutback, listed under Appendix XIII to I.C.C. Ex Parte MC-45, Description in Motor Carrier Certificates, 61 M.C.C. 209.

The motor carriers in support of the amendment proposed by the Commission, argue and contend that the adoption of the proposed amendment will not in any manner enlarge the authorities of those carriers authorized by the Commission to transport petroleum and petroleum products, liquid, in bulk in tank trucks; that the definition contained in Group 3 of the present rule, although it does itemize certain specific petroleum products, authorizes the transportation of "other petroleum products"; that the adoption of the proposed rule would merely substitute for the words "other petroleum products", the list of petroleum products, except asphalt and asphalt cutback, as set forth in Appendix XIII of the I.C.C. Motor Carrier Descriptions Case in Ex Parte MC-45; that "other petroleum products" or "other petroleum derivatives" have always appeared in the definition of petroleum and petroleum products as set forth in the rules and regulations promulgated by the Commission; that there is no evidence to indicate that those carriers who hold such authority have ever interpreted the rules of the Commission to mean that they were restricted to the transportation of only those commodities that are specifically named in the rule; that from time to time questions have been raised concerning the authority of a petroleum carrier to transport a petroleum product other than those specifically named in the rule; that since the rule was initially promulgated, the Commission has held, in various proceedings, that petroleum carriers could haul liquefied petroleum gas, toluene, toluol, xylene and xylol and that in none of the proceedings

involving an interpretation of the definition of petroleum products has the Commission ever stated that petroleum carriers were limited solely to the transportation of those commodities specifically named in the rule.

Those opposing the revision proposed by the Commission offered the testimony of two (2) expert witnesses in the field of chemistry, Dr. Pelham Wilder, Jr., Professor of Chemistry and Pharmacology from The Duke University Medical School, and Dr. Marion Laurence Miles, Associate Professor of Organic Chemistry at North Carolina State University. These expert witnesses concurred in their definition of petroleum products and testified that such definition should be as follows:

> "Petroleum products are defined as those derived from the mainstream of the crude oil and natural gas containing only the elements of carbon and hydrogen and unaltered by the addition of any atom or atoms of elements other than those of said carbon and hydrogen."

These expert witnesses further testified that those commodities listed in Protestants' Exhibit 2 entitled "Commodities Which Protestants Concede to be Petroleum Products" are the only commodities included in Appendix XIII which qualify as petroleum products under their definition as set forth above. They further testified that the remaining commodities listed in Appendix XIII should not be considered petroleum products because some chemical element other than hydrogen or carbon was added to produce those commodities.

It was further the testimony of these expert witnesses that all matter, except inorganic matter, can be derived from petroleum by the addition of various other chemical elements and that for this reason, the only satisfactory definition of petroleum products is the definition proposed by the Protestants as hereinabove set forth; that any other definition would not be satisfactory for the reason that there would be no logical or practical method to "draw the line" as to how many other chemical elements could be added to the hydrocarbon, which originates from the mainstream of crude oil or natural gas, before such hydrocarbon ceases to be a "petroleum product"; that if no such line were drawn virtually everything organic could be included as a petroleum product; that the commodities conceded to be petroleum by Protestants contain only the elements of hydrogen and carbon in one combination or another; that all of these commodities can be derived by the catalytic or refining process of the hydrocarbon that comes out of the crude oil stream without the addition of any foreign elements other than carbon and hydrogen; that the remaining commodities listed under Appendix XIII are not included in Protestants' Exhibit 2 entitled "Commodities Which Protestants Concede to be Petroleum Products" because all contain some foreign element other than carbon and hydrogen and are not derived solely from the refining process and

that if these remaining items were to be considered or defined as petroleum products, then any matter and all matter, except inorganic matter, could be defined as a petroleum product.

Protestants' Exhibit 2 heretofore referred to reads as follows:

"COMMODITIES WHICH PROTESTANTS CONCEDE TO BE PETROLEUM PRODUCTS

Absorption Oil
Absorption Oil Distillate
Benzene
Butadiene
Butane
Butene
Coal Spray Oil
Compressor Oil
Cordage Oil
Core Oil
Crude Petroleum Oil
Cutting Oil
Cyclohexzne
Decahydronaphthalene
Diamyl Naphthalene
Diesel Oil
Diethyl Benzene
Diisobutylene
Dodecylbenzene
Dodecyltoluene
Drain Oil Drip Oil
Ethyl Benzene
Ethylene
Floor Oil
Fuel Jet
Fuel Oils:
- Bunker C
- Commercial Medium
- Distillate
- Residual
- #4 Commercial
- #4 Low Sulphur
- #5 Cold
- #5 Low Sulphur
- #5 Oil
- #6 Oil
- #41 Commercial
- #741 Oil

Gas, Liquefied Petroleum
Gas Oil
Gasoline, Natural or blended
Harness Oil
Heptane
Isobutylene
Kerosene
Leather Oil
Lubricating Oil
Mineral Oil
Mineral Spirits
Miners Oil
Mould Oil
Naptha
Naphthalene
Paraffin Wax
Pentane
Petrolatum
Petroleum Jelly
Petroleum Oil
Petroleum Cumene
Petroleum Refinery Still Bottoms
Propane
Propellor Oil
Propylene
Range Oil
Refined Petroleum Oil
Refined Petroleum Wax
Styrene
Tetrahydronaphthalene
Toluol (toluene)
Transformer Oil
Turbine Oil
Waste Petroleum Oil
Petroleum Wax Distillate
Petroleum White Oil
Petroleum Wax Tailings
Xylene"

Briefs were filed.

Upon consideration of the record and of the evidence including the exhibits, and briefs submitted by the parties, the Commission makes the following

FINDINGS OF FACT

(1) That parties in support of the revision to Group 3 of Rule R2-37 as proposed by the Commission are authorized carriers of petroleum and petroleum products, liquid, in bulk in tank trucks, in intrastate commerce in North Carolina and are properly before the North Carolina Utilities Commission which has jurisdiction over the subject matter in this proceeding.

(2) That carriers in protest to the revision as proposed by the Commission are duly authorized carriers of petroleum and petroleum products, liquid, in bulk in tank trucks, and of either liquid commodities or liquid chemicals, in intrastate commerce in North Carolina and are properly before the Commission.

(3) That a large number of the commodities listed under Appendix XIII contain elements other than carbon and hydrogen and are not true petroleum products in the sense that they are not derived solely from the refining process and should not be included in the description of commodities listed under Group 3 of Rule R2-37.

(4) That for the guidance of the motor carriers and of the shipping public a definition of petroleum products and a list of commodities included under such definition are urgently needed and in the public interest.

(5) That the commodities in the list submitted and received in evidence as Protestants' Exhibit 2, contain only the elements of hydrogen and carbon in one combination or another and are true petroleum products, which along with a definition of "petroleum products" should be shown under Group 3 of Rule R2-37 to the end that authorized motor carriers and the shipping public may know what such carriers may legally haul in intrastate commerce in North Carolina.

(6) That the existing petroleum authorities, including the authority contained in the certificates of carriers party to this proceeding, limit the transportation of petroleum products, other than gasoline, kerosene, fuel oils and naphthas, to originations from certain specified "originating terminals", generally pipeline and marine terminals, which fact would render it unlikely that these carriers would ever have the opportunity, under their existing petroleum authority, to transport many of the commodities shown either in Appendix XIII or in Protestants' Exhibit 2 for the reason that such commodities are not shipped from the said specified "originating terminals".

CONCLUSIONS

It is a matter of record that a large number of the commodities shown in Appendix XIII to I.C.C. Ex Parte MC-45 are presently being transported by the opposing carriers under either liquid commodity authority or liquid chemical

authority granted to them by this Commission upon a showing of public convenience and necessity. It should be noted that each of these carriers or their predecessors already held petroleum authority at the time that authority to haul liquid commodities or liquid chemicals was applied for and that the additional authority was received by said carriers only after extensive and costly hearings before this Commission. It is further a matter of record that Protestants have made substantial investments in equipment specifically designed for the handling of liquid commodities, particularly chemicals, many of which commodities are included in the Appendix XIII list.

The Commission is of the opinion and concludes that to amend Group 3 to include commodities other than those which meet a reasonable definition of "petroleum products" would be discriminatory and prejudicial to Protestants in that it would have the effect of granting extremely competitive new authority to a large number of existing petroleum carriers without proper notice and hearing and a showing of public need as required by law.

To determine the issues, therefore, it is first necessary to determine which of the commodities under consideration are "petroleum products". To make such a determination, the Commission is constrained to rely to a great extent on the testimony of the expert witnesses in the field of chemistry. The qualifications of these witnesses, incidentally, have not been questioned. They define petroleum as a hydrocarbon which originates from the mainstream of crude oil and natural gas - a substance which contains only the elements of carbon and hydrogen. They offer a simple definition for "petroleum products" which has been stated hereinabove. They have further testified that the list of commodities "which protestants concede to be petroleum products" are the only commodities listed in Appendix XIII which meet their definition of "petroleum products".

It seems elementary that if petroleum consists only of carbon and hydrogen, then a product of petroleum would also consist only of carbon and hydrogen. It also follows that a commodity produced from petroleum and one or more other elements would not be a petroleum product but a <u>product of petroleum and something else</u>. This being true, the Commission concludes that the term "petroleum products" as contained in Group 3 of Rule R2-37 is intended to include only those commodities which are derived or produced directly from petroleum unaltered by the addition of elements other than carbon and hydrogen. The Commission further concludes that the definition of "petroleum products" and the list of named commodities shown in Exhibit A attached to this order should be adopted in lieu of the existing language in Group 3 of Rule R2-37 and that said rule should be amended accordingly.

IT IS, THEREFORE, ORDERED:

That Group 3 of NCUC Rule R2-37 be amended to conform with Exhibit A attached hereto and made a part hereof.

BY ORDER OF THE COMMISSION.

This the 14th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. M-100
SUB 31

EXHIBIT A

Group 3. Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks. Petroleum products are defined as those derived from the mainstream of the crude oil and natural gas, containing only the elements of carbon and hydrogen, and unaltered by the addition of any atom or atoms of elements other than those of said carbon and hydrogen.

Asphalt and asphalt cutback are not included in this group. The following named commodities are included in this group, together with any other commodities within the definition set out above:

Absorption Oil
Absorption Oil Distillate
Benzene
Butadiene
Butane
Butene
Coal Spray Oil
Compressor Oil
Cordage Oil
Core Oil
Crude Oil
Cutting Oil
Cyclohexane
Decahydronaphthalene
Diamyl Naphthalene
Diesel Oil
Diethyl Benzene
Diisobutylene
Dodecylbenzene
Dodecyltoluene
Drain Oil Drip Oil
Ethyl Benzene
Ethylene

Floor Oil
Fuel Jet
Fuel Oils:
- Bunker C
- Commercial Medium
- Distillate
- Residual
- #4 Commercial
- #4 Low Sulphur
- #5 Cold
- #5 Low Sulphur
- #5 Oil
- #6 Oil
- #41 Commercial
- #741 Oil

Gas, Liquefied Petroleum
Gas Oil
Gasoline, Natural or blended
Harness Oil
Heptane
Isobutylene
Kerosene
Leather Oil
Lubricating Oil
Mineral Oil
Mineral Spirits
Miners Oil
Mould Oil
Naptha
Naphthalene
Paraffin Wax
Pentane
Petrolatum
Petroleum Jelly
Petroleum Oil
Petroleum Cumene
Petroleum Refinery Still Bottoms
Propane
Propellor Oil
Propylene
Range Oil
Refined Petroleum Oil
Refined Petroleum Wax
Styrene
Tetrahydronaphthalene
Toluol (toluene)
Transformer Oil
Turbine Oil
Waste Petroleum Oil
Petroleum Distillate
Petroleum White Oil
Petroleum Wax Tailings
Xylene (xylol)

DOCKET NO. M-100, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition of REA Express, Inc., to Adopt	)
and Prescribe Certain Rules and	) ORDER GRANTING
Regulations with Respect to Changes in	) EXEMPTION FROM
Express Service and Facilities	) NCUC RULE R1-14

BY THE COMMISSION: On September 25, 1970, REA Express, Inc., filed a Petition for the Commission to adopt and prescribe certain proposed rules and regulations with regard to changes in express service and facilities, for the reason that regulation of REA Express, Inc.'s changes in location of facilities as though REA Express, Inc., were a rail carrier is no longer appropriate.

In support of the Petition, the petitioner recites that in 1969 a new management group purchased petitioner from its railroad owners; that use of rail service has diminished substantially with the curtailment of passenger service nationwide; that its surface transportation is now being performed through the use of motor vehicles and piggy-back service; that the use of railroad freight agents and offices has diminished substantially; and generally, that "petitioner is no longer so closely identified with the rail operations and must gear itself and its regulations to the type of operation it must now necessarily perform," and that the "regulation of petitioner under Rule R1-14, as is a railroad, has been found too cumbersome and outmoded to meet the present-day conditions in the express business, and a need for a change and liberalization of the method of regulation of petitioner has been found essential."

The Commission is of the opinion, and so concludes, that the changed circumstances in the operations of petitioner are such that petitioner should no longer be subject to Rule R1-14 captioned "Relocating, reclassifying, closing, abandoning, removing, or dismantling railroad passenger or freight stations or tracks and discontinuing passenger trains or telegraph service, and changing passenger train schedules;" but as an express company, its express agencies should be regulated in accordance with the NCUC Rules and Regulations applicable to motor common carriers,

IT IS, THEREFORE, ORDERED:

That REA Express, Inc., be, and hereby is, exempted from regulation under NCUC Rule R1-14, and as an express company, its express agents, agencies, terminals, and receiving and delivery facilities shall henceforth be regulated in accordance with any NCUC Rules and Regulations applicable to agents, agencies, terminals, receiving and shipping facilities of motor common carriers.

ISSUED BY ORDER OF THE COMMISSION.

This 16th day of March, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The revision of Rule R2-46 of the Commission's Motor)
Carrier Regulations pursuant to G.S. 62-260 (f),) ORDER
G.S. 62-261 (3), G.S. 62-266 (a) and G.S. 62-281)

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R2-46 to read as follows:

"Rule R2-46. Safety rules and regulations.
The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 [formerly Parts 290-298] and amendments thereto) and the rules and regulations adopted by the U.S. Department of Transportation relating to hazardous materials (49 CFR Parts 170-190 [formerly Parts 71-79] and amendments thereto) shall apply to all motor carriers authorized by the North Carolina Utilities Commission or the Interstate Commerce Commission to operate over the highways of the State of North Carolina, including interstate exempt carriers of passengers and freight and exempt intrastate for hire passenger carriers."

and directs that the same shall be in full force and effect from and after June 1, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The revision of Rule R2-46 of the Commission's Motor)
Carrier Regulations pursuant to G.S. 62-260(f),) ORDER
G.S. 62-261(3), G.S. 62-266(a) and G.S. 62-281 as)
amended by Chapter 586 of 1971 Session Laws)

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R2-46 to read as follows:

"Rule R2-46. Safety rules and regulations. The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment [49 CFR Parts 390-398 and amendments thereto] and the rules and regulations adopted by the U.S. Department of Transportation relating to hazardous materials [49 CFR Parts 170-190 and amendments thereto] shall apply to all motor carriers authorized by the North Carolina Utilities Commission or the Interstate Commerce Commission to operate over the highways of the State of North Carolina, including interstate and intrastate exempt carriers of passengers and freight."

and directs that the same shall be in full force and effect from and after January 1, 1972.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The revision of Rule R2-46 of the Commission's Motor Carrier Regulations pursuant to G.S. 62-260(f), G.S. 62-261(3), G.S. 62-266(a) and G.S. 62-281) ORDER

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R2-46 to read as follows:

"Rule R2-46. Safety rules and regulations. The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 [formerly Parts 290-298] and amendments thereto) and the rules and regulations adopted by the U. S. Department of Transportation relating to hazardous materials (49 CFR Parts 170-190 [formerly Parts 71-79] and amendments thereto) shall apply to all for hire motor carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of the State of North Carolina, whether common carriers, contract carriers or exempt carriers."

and directs that the same shall be in full force and effect from and after January 1, 1972.

BY ORDER OF THE COMMISSION.

This the 6th day of December, 1971.

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

DOCKET NO. M-100, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of NCUC Rule R1-13 - Petition for)
Motor Carrier to Become Self-Insurer) ORDER

The North Carolina Utilities Commission acting under the power and authority delegated to it by law, after due consideration, hereby promulgates and adopts the following revision to its rules and regulations relating to motor carriers and directs that the same be in full force and effect from and after the 15th day of July, 1971.

Amend Rule R1-13 (a) (4) by striking the existing language and by inserting in lieu thereof the following:

"(4) The amount in which the applicant proposes to become a self-insurer, and if less than the Commission's minimum insurance requirements as provided in Rule R2-36, the amount of excess insurance applicant proposes to carry."

BY ORDER OF THE COMMISSION.

This the 29th day of June, 1971.

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

DOCKET NO. M-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R2-75 (b) of the Motor)
Carrier Rules and Regulations of the) ORDER
North Carolina Utilities Commission)

The North Carolina Utilities Commission acting under the power and authority delegated to it by law, hereby amends its Rule R2-75, and in particular subparagraph (b) thereof, to read as follows:

"(b) 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 I appended to and made a part of this article and as evidence of such insurance, there shall be filed with this Commission a certificate of insurance in the form set forth in Form H appended to and made a part of this article. Contract carriers are not required to carry cargo insurance."

and directs that the same shall be in full force and effect from and after the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of August, 1971.

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

DOCKET NO. M-100, SUB 42

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R2-48.1(b) of the Motor Carrier Rules and Regulations of the North Carolina Utilities Commission) ORDER

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R2-48.1, and in particular subparagraph (b) thereof, to read as follows:

"(b) Motor carriers of household goods shall at all times apply the rates and charges as provided in the schedule of transportation of household goods as filed with the Commission."

and directs that the same shall be in full force and effect from and after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This 1st day of September, 1971.

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

DOCKET NO. M-100, SUB 43

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Transportation in Charter Service of)
Public School Students for or Under the) GENERAL
Control of the State of North Carolina) ORDER

WHEREAS, the 1971 North Carolina General Assembly has repealed § 62-260(a)(1) of the Public Utilities Act effective July 14, 1971, and

WHEREAS, it appears that from and after July 14, 1971, the transportation of passengers for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State, can only be performed by certificated carriers under franchises issued by the North Carolina Utilities Commission, and

WHEREAS, for many years prior to July 14, 1971, such transportation of passengers has been exempt under G.S. 62-260 (a) (1) from the Commission's franchise regulations, and

WHEREAS, such transportation particularly of public school students on educational tours, to and from athletic events and other school related activities has been performed by carriers holding exemption certificates issued by the Commission and by certificated carriers as exempt operations, and

WHEREAS, the Commission after due consideration is of the opinion and finds that the removal of such transportation from the exempt provisions of the Public Utilities Act has created an emergency situation by reason of the fact that a number of the public schools and State owned institutions throughout the State have already contracted with the carriers for such transportation for the present school year on the basis that said transportation would be exempt as it has always been heretofore, and

WHEREAS, the Commission is further of the opinion and finds that motor passenger carriers who have heretofore engaged in the transportation of passengers in charter service for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State, should be included in a new classification to be established by the Commission under the power and authority delegated to it by § 62-261 (11) of the Public Utilities Act and that such carriers should be granted temporary authority to engage in such transportation pending action by the Commission on applications from the individual carriers,

which must be filed within sixty (60) days from the date of this order,

IT IS, THEREFORE, ORDERED:

(1) That a new classification to be designated "transportation of passengers for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State", be, and the same is, hereby established under the power and authority delegated to the Commission by G.S. 62-261 (11).

(2) That temporary authority be, and the same is, hereby granted to carriers holding passenger certificates of exemption and certificated passenger carriers to continue the rendition of service heretofore rendered in the transportation of passengers for or under the control of the United States government, or the State of North Carolina, or any political subdivision thereof, or any board, department or commission of the State, or any institution owned and supported by the State; provided, that such carriers notify the Commission immediately of their intention to apply for a permanent franchise under the new classification and provided further that an application for such a franchise be filed with the Commission in good faith within sixty (60) days from the date of this order.

(3) That such franchise applications for permanent authority shall reflect the area or territory proposed to be served and be supported by documentary evidence of bona fide operations within the territory sought during the year immediately prior to July 14, 1971; provided, however, the Commission may require such supporting or additional evidence as it may desire as to the verity of the facts stated in the application and provided further that the Commission may deny such franchise upon a finding from competent evidence that the applicant is unfit, or otherwise disqualified, to perform the service for which application is made.

(4) That rates and charges for the service rendered under the temporary authority granted herein be, and the same are, hereby stabilized pursuant to the Executive Order of the President of the United States at levels not greater than those charged prior to August 15, 1971.

BY ORDER OF THE COMMISSION.

This the 9th day of September, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of Rules R2-74 (b), (c) and (d); R2-76 (b), (e), (f) and (g); and R2-83 (g), (k) and (p) of the Motor Carrier Rules and Regulations of the North Carolina Utilities Commission	) ORDER

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its rules as follows:

Rule R2-74 (b) - Delete the following sentences:

"The application for the issuance of cab cards shall be in the form set forth in Form C appended to and made a part of this article. The application shall be printed on the reverse side of the uniform application for registration and identification of vehicles as set forth in Form B appended hereto. The application shall be duly completed and executed by an official of the motor carrier."

Rule R2-74 - Renumber Subsection (c) as Subsection (d).

Rule R2-74 - Insert a new Subsection (c) to read as follows:

"(c) The identification stamp shall be in the shape of a square and shall not exceed 1 inch in diameter and such stamp shall bear an expiration date of the 1st day of February in the succeeding calendar year."

Rule R2-76 (b) - Strike the period at the end of Subsection (b) and insert in lieu of such period the following:

"or driveaway operation, and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of fifteen months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof."

Rule R2-76 (f) - Renumber Subsection (f) to (g).

Rule R2-76 (e) - Delete Subsection (e) in its entirety and insert in lieu thereof the following:

"(e) Each motor carrier shall destroy a cab card immediately upon its expiration except as otherwise provided in the proviso to Subsection (f) of this Rule."

Rule R2-76 (f) - Insert a new Subsection (f) as follows:

"(f) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance; provided, however, that if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier and such carrier provides a newly acquired vehicle in substitution therefor within thirty days of the date of such discontinuance, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

"(1) Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

"(2) Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and

"(3) Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substitute vehicle."

Rule R2-83 (g) - Strike the period at the end of the Subsection (g) and insert in lieu of such period the following:

"and shall enter the appropriate expiration date in the space provided below the certificate. Such expiration date shall be within a period of fifteen months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof."

Rule R2-83(k) - Insert a new sentence between the first and second sentences of Subsection (k) to read as follows:

"In addition, such stamp shall bear an expiration date of the 1st day of February in the succeeding calendar year."

Rule R2-83(p) - Delete existing Subsection (p) in its entirety and insert a new Subsection as follows:

"(p) (1) Each motor carrier shall destroy a cab card immediately upon its expiration, except as otherwise provided in the proviso to Subsection (2) of this rule.

"(2) A motor carrier permanently discontinuing the use of a vehicle, for which a cab card has been prepared, shall nullify the cab card at the time of such discontinuance; provided, however, that if such discontinuance results from destruction, loss or transfer of ownership of a vehicle owned by such carrier and such carrier provides a newly acquired vehicle in substitution therefor within thirty days of the date of such discontinuance, each identification stamp and number placed on the cab card prepared for such discontinued vehicle, if such card is still in the possession of the carrier, may be transferred to the substitute vehicle by compliance with the following procedure:

"a. Such motor carrier shall duly complete and execute the form of certificate printed on the front of a new cab card, so as to identify itself and the substitute vehicle and shall enter the appropriate expiration date in the space provided below such certificate;

"b. Such motor carrier shall indicate the date it terminated use of the discontinued vehicle by entering same in the space provided for an early expiration date which appears below the certificate of the cab card prepared for such vehicle; and

"c. Such motor carrier shall affix the cab card prepared for the substitute vehicle to the front of the cab card prepared for the discontinued vehicle, by permanently attaching the upper left-hand corners of both cards together in such a manner as to permit inspection of the contents of both cards and, thereupon, each identification stamp or number appearing on the back of the card prepared for the discontinued vehicle shall be deemed to apply to the operation of the substituted vehicle."

It is hereby ordered and directed that the foregoing amendments shall be in full force and effect from and after the date of this order.

BY ORDER OF THE COMMISSION.

This the 5th day of October, 1971.

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

DOCKET NO. M-100, SUB 45

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R1-5(d).) ORDER

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R1-5(d) to read as follows:

"Rule R1-5. Pleadings, generally. -
(d) Signature and Verification - Pleadings and amendments thereto shall be signed in ink and verified by one of the parties thereto who is acquainted with the facts.

Pleadings filed on behalf of a corporation or an association shall be signed and filed by a member of the Bar of the State of North Carolina admitted and licensed to practice as an attorney at law, and may be verified by an officer, attorney or agent thereof who is acquainted with the facts. This subsection does not apply to pleadings filed by the Commission."

and directs that the same shall be in full force and effect from and after October 1, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of September, 1971.

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

DOCKET NO. M-100, SUB 46

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Amendment to Rule R1-17, Filing of) ORDER REQUIRING
Increased Rates; Application for) STATEMENT
Authority to Adjust Rates; Statement) OF RETURN
of Return on Equity) ON EQUITY

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends its Rule R1-17 by adding a new Section e in subparagraph (b)(9) to read as follows:

"Rule R1-17(b)(9)e. The rate of return on the common stockholders' equity.--This statement is to include the total capital structure of the utility before and after the proposed increase. Ratios for each component of the capital structure are to be shown with the common stockholders' equity capital and the net income used in the rate of return on the common equity calculation clearly identifiable."

and directs that the same shall be in full force and effect from and after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of December, 1971.

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

DOCKET NO. G-100, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rule-Making Proceeding Regarding Limitations of Natural Gas Service Furnished by North Carolina Natural Gas Utilities Which Secure Their Gas Supply from Transcontinental Gas Pipe Line Corporation	) ORDER ESTABLISHING PRIORITIES FOR LIMITATIONS ON NEW SERVICE

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on May 11, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Respondents:

Jerry W. Amos
McLendon, Brim, Brooks, Pierce & Daniels
P.O. Drawer U, Greensboro, North Carolina 27402
For: Piedmont Natural Gas Company, Inc., and
Pennsylvania and Southern Gas Company

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Box 1406, Raleigh, North Carolina
For: Public Service Co. of North Carolina, Inc.

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For: North Carolina Natural Gas Corporation

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For the Intervenors:

Ralph McDonald
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For: Sanford Brick & Tile Company, Triangle Brick Company, Borden Brick Company, Cherokee Brick Company, Lee Brick & Tile Company, Chatham Brick & Tile Company

For the Commission Staff:

Edward B. Hipp
Commission Attorney
217 Ruffin Building
Raleigh, North Carolina 27602

William Anderson
Assistant Commission Attorney
217 Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: On July 21, 1970, the Commission issued an Order Instituting a Rule-Making Proceeding on Limitations of Service by Natural Gas Companies subject to its jurisdiction in North Carolina. In said Order, the Commission took note that Transcontinental Gas Pipe Line Corporation, the principal wholesale supplier of natural gas to North Carolina retail utility companies, will not be able to secure sufficient natural gas from the gas producers at the source to satisfy all the requests for gas made by the North Carolina utilities, and had submitted a program to curtail new supplies which represented its best efforts to satisfy as much of those requests for natural gas service as possible, under the circumstances existing at that time. All gas utilities in North Carolina are affected by Transco's inability to supply gas in the quantities required to meet requests for service in their respective franchised service areas.

In order to balance the supply available from Transcontinental with the demand created by their customers, certain North Carolina gas utilities requested from this Commission approval of plans to impose limitations,

restrictions, curtailments and discontinuance of natural gas service to the public within their service area.

The Commission ordered an investigation into these restrictive sales programs and, further, called on the natural gas utilities to prepare and submit engineering reports which evaluate all the possible sources of gas supply, including pipeline gas facilities for use of liquefied petroleum gas and liquefied natural gas, and any other facilities or agreements entered into which would increase the supply of natural gas for service to customers in North Carolina.

A hearing was held on this proposed rule-making proceeding on September 15, 1970. As a result of that hearing, the Commission issued an Order rescheduling further hearings on May 11, 1971, in order to receive the completed engineering studies and to have available to it information on the current status of supply and demand for natural gas service by each utility. The Commission further required a report on held requests for gas service on hand for each gas utility and required said utilities to obtain additional information on all new requests for gas service. A summary of this information was ordered to be filed monthly by each gas utility.

The Commission's Order of April 1, 1971, further provided a plan for curtailing customers' usage in North Carolina in the event the design temperature is exceeded whereby gas supplies would not be available to meet the peak day requirements or in the instance where the gas supplies were otherwise interrupted. The curtailment priorities established by the Commission in the Order in which each class of customers is to be interrupted are as follows:

a. All interruptible service
b. Large interruptible firm customers
c. Small industrial customers
d. Large commercial customers
e. Small commercial customers [see (f) below]
f. Public schools and hospitals
g. Residential customers

The Commission further required that each natural gas utility submit a plan of service priorities listing the order in which customers on its waiting list will obtain initial gas service or additional gas service as supplies become available.

HELD ORDERS

As a result of the Order issued by the Commission on April 1, 1971, the matter came on for hearing on May 11, 1971. At the hearing, the Commission Staff submitted a summary of the data filed by natural gas companies in North Carolina pursuant to Ordering Clause #2 in the Commission's

Order of April 1, 1971, pertaining to held orders. This report indicated the following:

(1) Piedmont Natural Gas Company had requests for gas service from 356 commercial customers on existing mains and 22 commercial customers not on existing mains and further had 29 requests for industrial gas service, from customers on existing mains and 2 requests for natural gas service from industrial customers not on existing mains.

All of the above requests for natural gas service were denied by Piedmont pursuant to its policy previously filed with the Commission.

(2) North Carolina Natural Gas Corporation stated that as of April 1, 1971, that it had no requests for gas service on hand.

(3) Pennsylvania and Southern Gas Company - Reidsville, North Carolina, at 10-15-71 had 180 residential requests for service. Since that time, and the date of this hearing, 50 service installations were made leaving a backlog of 130 residential service requests from existing mains. In addition thereto, Pennsylvania and Southern had 75 requests for residential service not on existing mains which would require main line extensions.

(4) Public Service Company of North Carolina report showed that it had connected 114 commercial customers and denied service to 36 and 19 of these were denied because of lack of economic feasibility, 6 because of lack of gas and 9 because the customer loads exceeded the 20 mcf per day limit contained in the Restrictive Sales Program filed by Public Service Company. Public Service accepted for gas service 26 firm industrial customers and denied service to 6. Of the 6, 2 were rejected because the projects were not feasible, 2 because no gas was available and 2 because their load limit exceeded the 20 mcf per day maximum requirement. In addition thereto, Public Service accepted for natural gas service 11 industrial interruptible customers who requested gas service. Public Service further accepted 40 schools and institutions for natural gas service. Those schools and institutions that were denied gas service were rejected for the following reasons: 11 because of lack of feasibility; 8 because no gas was available; 21 because their loads exceeded 20 mcf per day limit.

(5) United Cities Gas Company, who operates in Hendersonville, North Carolina, advised at the time of the hearing that it had no requests for gas service on hand.

ADEQUACY OF SERVICE

The Respondent gas distributing companies introduced evidence and engineering studies at the hearing relating to the supply and demand for natural gas service in their respective service areas, and the steps that are being taken

to balance supply with demand by providing peaking service either by means of (i) liquefied natural gas, (ii) liquefied petroleum gas installations, or (iii) by restrictions or curtailment of the various classes of service, as follows:

(a) North Carolina Natural Gas Corporation - North Carolina Natural Gas Corporation has no restrictive policies for new service other than to discourage conversion of existing large commercial or industrial loads or schools from oil or coal to natural gas. North Carolina Natural estimates its customers peak-day demand and its available supplies for the year 1971-72 as follows:

Year	Demand MCF/day	Supply MCF/day
1971-1972	142,741	143,000

A study of North Carolina Natural Gas supplies by outside engineers indicates that the present supply is adequate for the 1971-72 and 1972-73 periods, and that if pipeline or storage gas from Transco is not available for the year 1973-74, that North Carolina Natural should consider an installation of a small liquefied natural gas plant (1270 MMCF capacity). The plant is to be located in its pipeline system in the Fayetteville-Goldsboro area.

North Carolina Natural further advised the Commission that there should be some exceptions to item B of the Commission's Order dated April 1, 1971, based on the nature of the natural gas use, such as natural gas used as feed stock in chemical plant corporation and that used in glass manufacturing. The reason being given for these exceptions is that if such plants were shut off from natural gas service below certain minimum limits, these plants would incur large shut down and large expenses with possibility of damage to the equipment itself.

(b) Pennsylvania and Southern Gas Company, North Carolina Gas Service. North Carolina Gas Service does not have sufficient natural gas to provide gas service to any new applicants for service. Transcontinental Gas Pipe Line Corporation recently allocated the following additional gas to North Carolina Gas Service by its outstanding petition for more gas:

300 Mcf/day - GSS Service 20-year contract
150 Mcf/day - GSS 1-year contract

This additional gas supply was adequate only to serve held orders for service on existing mains.

The fourteen (14) customers who signed a petition which was filed with the Commission complaining concerning their inability to obtain natural gas service are beyond existing mains and did not receive gas service. An engineering study is being undertaken by North Carolina Gas Service which is to be completed by September 1971, to determine the

feasibility of installing an additional liquefied petroleum peak shaving plant in the Eden area.

(c) Piedmont Natural Gas Company, Inc. - For the four (4) years prior to the present gas shortage, Piedmont Natural Gas had an increase in growth rate of peak day requirement of 14.85% annually. Under its restrictive sales program as filed with this Commission, its growth rate will be reduced to 5.26% per year. In the year 1971-72, Piedmont will have anticipated peak day requirements of 338,202 mcf per day. The supply available to Piedmont is 339,195 mcf per day. The following are deficiencies in peak day requirements for the years listed:

	Peak Day Deficiencies	Cumulative
1972-73	21,474 MCFD	
1973-74	19,258 MCFD	40,732 MCFD
1974-75	19,303 MCFD	60,035

Piedmont's present plan is to construct an LNG plant to be completed in the year 1972 to handle the 1972-73 peak day deficiencies as listed above. The plant will store 1,000 MMCF of liquefied natural gas and will have a maximum daily send out of 100 MMCF per day. The estimated cost of this plant is $10,200,000.

(d) Public Service Company of North Carolina, Inc. - Public Service Company of North Carolina testified that it would incur the following shortages under normal growth conditions.

1971-72	59,253 Mcf per day
1972-73	82,636 Mcf per day
1973-74	107,161 Mcf per day
1974-75	130,621 Mcf per day

Public Service has inaugurated a restrictive sales program and does not provide firm gas in excess of 20 mcf per day to commercial and industrial customers, and is currently restricting industrial interruptible sales in excess of 50 mcf per day. Public Service has considered alternate supplies of peaking service such as propane air and liquefied natural gas. In a study prepared for Public Service by Stone and Webster Corporation, Stone and Webster has advised Public Service to install propane air plants at various locations on its system, so that these plants would be in operation by the heating season 1971-72. Stone and Webster further recommended to Public Service that they adopt the following program to meet the developing shortage:

1) Adopt a policy curtailing some firm sales,

2) Construct propane air plants at 1 to 5 locations in various points on Public Service's system,

3) Construct liquefied natural gas plant for the heating season 1973-74.

Public Service has entered into a tentative agreement with Stone and Webster to assist Public Service in a design and construction of an LNG Plant. The plant that is being considered by Public Service will have a storage capability of 1.2 million cubic feet and is estimated to cost approximately 10 million dollars.

(e) United Cities Gas Company - United Cities Gas Company has recently combined its purchasing of natural gas for its operation in Gaffney, South Carolina, with its operation in Hendersonville, North Carolina, and now purchases its gas under Transcontinental Gas Pipe Line CD-2 Schedule. United Cities Gas Company listed the following peak day demand and supply for its combined operations:

	Peak Day Demand	Supply
1971-72	12,250 MCFD	13,000 MCFD
1972-73	12,810 MCFD	13,000 MCFD
1973-74	13,265 MCFD	13,265 MCFD
1974-75	13,830 MCFD	13,830 MCFD

At present, United Cities Gas Company - Hendersonville, North Carolina, does not have any restrictive sales program.

DEPARTMENT OF CONSERVATION AND DEVELOPMENT

The North Carolina Department of Conservation and Development, Industrial Development Department, filed with the Commission a statement in which it requests that the Commission modify the curtailment plan previously ordered by the Commission, because of the multiplicity of different types of users within the large firm industrial classification. It states that some industrial processes such as continuous glass melting are so critical that if they are interrupted, the industry will incur exorbitantly high cost and possibly severe damage to equipment. The Department also indicated that some consideration should be given to industries who use natural gas as a raw material.

PIPELINE SUPPLY

All of the gas companies in North Carolina presented testimony and data relating to Transcontinental Gas Pipe Line Corporation's (Transco) various programs to meet the gas shortage as follows:

Drilling Fund Program. Transco has a program to advance funds to natural gas producing companies for exploration for natural gas. The repayment of these advances will be made after gas is discovered and delivered, a plan in existence at the time of the hearing for participation in the fund by North Carolina distributing companies has since been abandoned.

Liquefied Natural Gas. Transco filed with the Federal Power Commission an application in Docket No. CP70-155 to construct additional liquefied natural gas (LGN) facilities

to be located in the Hackensack Meadows, Bergen County, New Jersey. This application was approved by the Federal Power Commission on March 10, 1971, but construction is being held up because the Hackensack Meadow Commission denied Transco's request for a construction permit. Transco has appealed this action to the court. This facility will require two years for construction after all approvals are obtained. The following are the amounts of liquefied natural gas service to be provided to major North Carolina gas utilities which are included in this application:

	1971-72 MCF/day	1972-73 MCF/day
Piedmont	16,000	18,000
North Carolina Natural		15,000

Storage Program. On March 24, 1971, Transco discussed with its North Carolina customers its long term storage program. It has under consideration the utilization of a storage field which is available to them which will hold approximately 133,000,000 mcf of top storage, from which Transco will be able to deliver 1,330,000 to 2,660,000 mcf to its customers on a daily basis. Service from this storage field could be made available by 1973. Piedmont and North Carolina Natural have indicated to Transco their desire to participate in this storage service. Public Service has studies underway to determine if it is able to participate in this long term storage program.

Intrastate Purchases. Nueces (an intrastate natural gas company in the State of Texas) has applied to the Federal Power Commission (CP71-267) for approval of a one-year contract to supply Transco with up to 250,000 mcf per day at a rate of 33.5 cents per mcf. This application was approved by the Federal Power Commission subsequent to the hearing. Transco stated that without this gas, it would have to inaugurate a curtailment program to its customers up to 7% of the gas supplied to them, and the curtailment was applied to customers in North Carolina by 5% daily for the month of June 1971, and was terminated when Nueces was approved.

Other Natural Gas Supplies. At the hearing, various other alternatives were discussed, including obtaining liquefied natural gas from foreign sources for distribution in North Carolina. The engineering studies indicate that this is not a very promising source at this time. Synthetic natural gas from naphtha which is being utilized in some areas was not particularly attractive because of shortage of naphtha. Transco is now studying the manufacture of synthetic gas from crude oil and hopes to offer this service to its customers if feasible.

The Federal Government and the American Gas Association are proposing a $42,000,000 research and pilot plant coal gasification program. Under this program, the Federal Government will contribute $32,000,000 and the gas industry $10,000,000. Piedmont advised the Commission in this

hearing that it is contemplating contributing $45,124 per year for eight (8) years to American Gas Association for its study in the coal gasification and research program.

Based on the foregoing testimony and exhibits and engineering studies submitted at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) That the North Carolina Gas Utilities are unable to obtain all the natural gas needed by them to meet the demand of the consuming public.

(2) That the respective natural gas utility companies in North Carolina are not in the same position with respect to supply and demand as shown herein. Some utilities are not yet limiting any firm service and others are offering no firm service even to residential customers.

(3) That in order to balance the demand of the consuming public with the available supplies of natural gas, the North Carolina natural gas utilities which do not have adequate gas supplies must establish limitations on service to new customers and increased service to existing customers which are just and reasonable, and must construct peak shaving facilities to insure that such limitations are invoked only after all reasonable means to serve said customers have been exhausted.

(4) That the larger volume natural gas utilities, where necessary and feasible, are planning the installation of facilities for liquefied natural gas and liquefied petroleum gas peaking service in order to relieve the present gas shortage.

(5) That the curtailment program previously ordered by this Commission for curtailment of service on peak days when supply is not available for demand is unduly harmful to industrial customers who use natural gas as a raw material, or who use natural gas in a direct application where no other form of heat can be used.

(6) That Public Service had not determined, at the time of the hearing, the amount of LPG peaking service that it will provide for the year 1971-72.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That any natural gas company in North Carolina placing any limitations on sales of gas to new customers shall file within thirty (30) days with this Commission a program for sales to new customers and additional sales to existing customers as may be required because of insufficient gas supply, which program shall provide the following order of priorities for such service:

(a) Gas service to all residential customers requesting service who can be feasibly served, including multiple housing.

(b) Gas service to small commercial and small industrial users whose requirements do not exceed 20 mcf per day.

(c) Industrial customers utilizing natural gas as a raw material or in direct application of gas flame where no other heat is usable.

(d) Large commercial customers whose requirements exceed 20 mcf per day.

(e) Large industrial customers whose requirements exceed 20 mcf per day.

(f) Preferred interruptible customers.

(g) Interruptible customers.

(h) Dump schedule customers.

(2) That said natural gas utilities shall file such restrictive sales program with this Commission in accordance with paragraph 1 of this Order in tariff form, including limitations of the size of interruptible customers, if any, within thirty (30) days after the date of issuance of this Order.

(3) That all natural gas utility companies in North Carolina without sufficient gas supply for peak day demand shall install as needed sufficient peak shaving equipment to meet the needs of residential customers.

(4) That within thirty (30) days from the date of this Order, Pennsylvania and Southern Gas Company, North Carolina Gas Service, shall file with this Commission an engineering study setting forth the amount of peak shaving that it can provide for its customers in order to provide gas service to residential customers which is economically feasible.

(5) That Public Service Company of North Carolina, Inc., shall file with the Commission within twenty (20) days from the date of this Order a study indicating its estimate of its peak day under the restrictive sales program set forth herein for the year 1971-72 and the amount of peak shaving service that it proposes to install by that time period equating the supply available with the demand.

(6) That the Commission's Order issued on April 1, 1971, be modified to the extent that customers using natural gas who are adversely affected by application of the above rules may file with this Commission an application for relief from the Order of the Commission from curtailment of natural gas

service up to the point that denial of natural gas service would have a destructive influence on their operations.

(7) In the event that excess gas usage or failure of gas supply should cause gas pressure to fail or be reduced below serviceable standards, the utility shall take steps to the extent necessary to restore adequate gas pressure, but shall comply with the curtailment plan approved to the extent possible to interrupt service to customers within the priorities herein established.

ISSUED BY ORDER OF THE COMMISSION.

This 27th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Procedure for Natural Gas Rate Cases	) ORDER ADOPTING
Occasioned by Wholesale Increases	) PROCEDURE FOR FILING
Under G.S. 62-133(f)	) UNDER G.S. 62-133(f)

It appearing to the Utilities Commission that the enactment of G.S. 62-133(f) (Chapter 1092 of the Session Laws of 1971) has established special procedures for consideration of applications to increase natural gas rates occasioned by an increase in the wholesale gas rates, and that special Rules should be adopted by the Utilities Commission for such applications and filings of natural gas rate cases occasioned by such wholesale rate increases, and the Commission having considered said Chapter 1062 of the Session Laws of 1971 and the requirements for orderly procedures to establish Rules for filing of application thereunder for the protection of the public in determining whether the rates filed pursuant thereto are just and reasonable,

IT IS, THEREFORE, ORDERED that applications or tariff filings for an increase in natural gas rates filed pursuant to G.S. 62-133(f), based upon increases in wholesale prices of natural gas to the North Carolina gas distributing utility filing said application or tariff, and occasioned solely by such wholesale increases, will be considered by the Commission under the following Rules:

(1) The application or tariff filing shall be accompanied by each of the exhibits required under Rule R1-17 of the Commission's Rules, with appropriate accounting and pro forma adjustments to reflect the operations of the company for the most recent test period for which data is available, on an annualized basis for any increases in

rates allowed during said test period and for other known changes in operating revenues and expenses during the test period.

(2) The application or filing shall be accompanied by a copy of the Order from the Federal Power Commission under which said wholesale price increase has been incurred or is to be incurred, and if said wholesale price increase is not already in effect, a late filed exhibit shall be filed of the orders or documents under which it does become effective.

(3) The filing shall be accompanied by a schedule setting forth the return on equity for the company during the test period adopted.

(4) If data is filed showing fair value under Rule R1-17(b)(4), it may be based on the most recent fair value fixed by Commission Order in a general rate case heard by the Commission within three years prior to said filing, with additions and retirements made since such study on the basis of original cost or book value.

(5) The application or filing shall be accompanied by two copies of the working papers from which the exhibits filed under Rule R1-17 were prepared.

(6) The application or filing may be filed to become effective on 30 days' notice or upon the date when the wholesale rate increase becomes effective to the filing company under the Federal Power Act, whichever is later, and the Commission will review the data above described and the working papers in support thereof, and if the Commission concludes from such review that the filing will not result in increasing the company's rate of return over the rate of return most recently approved for the company in a general rate case, the Commission will consider the filing or application under G.S. 62-133(f) as a filing allowed to become effective under G.S. 62-133(f) without hearing.

(7) The company making such application or filing under this Section shall publish a notice in a newspaper or newspapers of general circulation in their service area within seven (7) days after said filing, notifying the public that said company has made such application to the Utilities Commission under the provisions of G.S. 62-133(f) to become effective on 30 days' notice or upon the same date the wholesale rate goes into effect, whichever is later, subject to review by the Utilities Commission to determine if said increase qualifies under said Section as being occasioned by an increase in the wholesale price of gas by the applicant's gas supplier.

(8) The application or filing shall be accompanied by a copy of the tariff filed by Transcontinental Gas Pipeline

Corporation with the Federal Power Commission under which the wholesale gas rate increase is placed into effect.

(9) If the Commission should find, upon review of said application or filing, that the proposed increase will result in an increase in the rate of return of the applicant over the rate of return most recently approved for the company in a general rate case, the application or filing will be suspended and set for public hearing. In considering the effect of said increase on the rate of return of said company, the Commission may consider the return on equity or the return on the fair value of the plant in service if such fair value is filed with the application, or the net investment in plant if the fair value is not so filed, or a combination of the return on equity and the return on plant.

(10) Any rate increase allowed to become effective under this Section shall contain a provision in the Order approving said increase that if the amount of the wholesale increase is reduced or the wholesale increase terminated, the applicant shall immediately file tariffs making corresponding decreases in the North Carolina retail increase. If the change is made retroactively and refunds are received from the wholesale supplier because of the change in rates, or if the filing cannot be made effective on the date when the change occurs, the North Carolina gas utilities shall place these refunds or amounts in a restricted account for further Order of the Commission. The Order shall clearly state the wholesale rate increase on which the retail increase is predicated and the effective date of said increase.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of October, 1971.

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

DOCKET NO. G-100, SUB 15

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 MISCELLANEOUS ADMENDMENTS TO THE MINIMUM FEDERAL SAFETY STANDARDS AND CORROSION OF CONTROL STANDARDS

BY THE COMMISSION: The Office of Pipeline Safety of the U.S. Department of Transportation promulgated Minimum Safety Standards for Pipeline Facilities and the Transportation of Gas in 49 CFR, Part 192.

On December 30, 1970, the North Carolina Utilities Commission issued an Order under Docket No. G-100, Sub 13, adopting the Minimum Federal Safety Standards for Natural Gas Pipeline Safety as adopted by the Department of Transportation in 49 CFR, Part 192.

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 and municipal gas facilities.

Since the issuance on August 19, 1970, of the Minimum Federal Safety Standards, 49 CFR, Part 192, the Department of Transportation has issued the following:

49 CFR Part 192 Miscellaneous Amendments
Issued November 17, 1970, 35 Fed. Reg. 223

49 CFR Part 192 - Subpart I - Corrosion Control
Issued June 30, 1971, 36 Fed. Reg. 126

The Commission is of the opinion that in many instances State Safety Standards under North Carolina Law under the authority of the Commission exceeds 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 Miscellaneous Amendments and Corrosion Control Standards as adopted by the Department of Transportation in 49 CFR, Part 192 and 49 CFR, Part 192, Subpart I, 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) The Miscellaneous Amendments to the Minimum Federal Safety Standards and the Corrosion Control Standards pertaining to gas pipeline safety and the transportation of natural gas as adopted in 49 CFR, Part 192 and 49 CFR, Part 192, Subpart I, as are in effect as of the date of this Order, be, and the same hereby are, adopted by the 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 amendment to the North Carolina safety standards.

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

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

(4) That copies of 49 CFR, Part 192 as adopted by the Commission, Chapter 62 of the General Statutes of North Carolina, and Rules and Regulations of the North Carolina Utilities Commission are herein transmitted to each municipal gas operator in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
General Investigation of Rates and Regulations)
Covering the Connection of Customer-Provided) FINAL ORDER
Equipment with Telephone Company Facilities)

PLACE: Commission Hearing Room, Raleigh, North Carolina

DATES: December 2, 1970 and May 4, 1971

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

APPEARANCES:

For the Respondents:

Harvey L. Cosper
Attorney at Law
Southern Bell Telephone and Telegraph Company
Box 240, Charlotte, N.C.

R. F. Branon
Attorney at Law
Southern Bell Telephone and Telegraph Company
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Atlanta, Georgia
Appearing for:
Southern Bell Telephone and Telegraph Company

A. H. Graham, Jr.
Newsom, Graham, Strayhorn, Hedrick & Murray
P. O. Box 2088, Durham, N. C. 27702
Appearing for:
General Telephone Company of the Southeast
General Telephone Company of North Carolina

Z. C. Brinson
Taylor, Brinson & Aycock
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Appearing for:
Carolina Telephone & Telegraph Company

For the Commission Staff:

Edward B. Hipp
Commission Attoney
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Raleigh, N. C.

William E. Anderson
Assistant Commission Attorney
217 Ruffin Building
Raleigh, N. C.

BY THE COMMISSION: The Commission, on May 18, 1970, issued its Order questioning the justness and reasonableness of tariff filings that had been filed by telephone companies under its jurisdiction consisting of rates and regulations to permit the interconnection of customer-provided equipment with the facilities of the telephone company. A general investigation of said tariffs was ordered and the companies which had filed such tariffs were required to file the following information with the Commission on or before July 15, 1970:

(a) Cost information on each interconnection unit and each maintenance service charge for which rates and charges are on file, in accordance with Appendix A attached to the Order of May 18, 1970, and made a part thereof, in support of the filed rates and charges, identifying each item by tariff references.

(b) The same information as required in (a) above but for different rates and charges if current costs or average service or location life have changed appreciably since the original filing of the present rates and charges.

(c) Justification for having installation charges or not having installation charges.

(d) Information that may be available regarding interconnection units that may have become obsolete or discontinued by the manufacturer.

(e) Manufacturers' brochures on interconnection units and other information available covering units in use by a telephone company.

(f) Specific changes needed, if any, in the text and format of Southern Bell Telephone and Telegraph Company's North Carolina General Exchange Tariff, Section A-15, entitled "Connections with Certain Facilities and/or Equipment of Others," if it should be adopted as a uniform text and format for all companies operating under the jurisdiction of the North Carolina Utilities Commission.

This matter was set for hearing on September 1, 1970, and later was reassigned for hearing on December 2, 1970. All telephone companies having said rates and regulations on file with the Commission were ordered to be prepared to give testimony in support of their filings. All other telephone companies operating under the jurisdiction of the Commission were directed to have a representative in attendance at this hearing to participate in the investigation as their interests might appear.

During the hearing, the Commission's Chief Engineer, Telephone Rate Division, Mr. V. W. Chase, reviewed in his testimony a brief history of the interconnection of subscriber-provided lines and equipment with telephone company facilities and made certain observations and recommendations as follow:

1. That until the past two years interconnection of subscriber-provided equipment with telephone company facilities had been done on a limited basis, consisting mostly of farmer-owned lines and certain governmental facilities, pipeline and transmission line utility company right-of-way communications facilities, etc.

2. That during the past two years, the matter of interconnection to subscriber-provided facilities with the telephone company facilities had reached a new era brought about by the June 29, 1968, opinion of the Federal Communications Commission in Dockets No. 16,942 and No. 17,073, sometimes referred to as the Carterfone case.

3. That the matter of wholesale interconnections is in its infancy and that in a period of time subscriber demand for interconnections of certain equipment will become a common practice.

4. That subscriber-provided equipment is now being connected to the facilities of some of the telephone companies by means of connecting devices known as "interface equipment," and by other names, for which there is a monthly rental charge. Such said equipment serves the following purposes:

(a) To exclude from telephone lines harmful voltages that can injure personnel or equipment.

(b) To prevent customer-provided equipment from introducing imbalance into telephone lines which might cause excessive cross talk or other interference in other customer's lines.

(c) To limit excessive signals from being introduced into the network by customer-provided equipment.

(d) To serve as a clear point of demarcation between customer-provided facilities and telephone company facilities.

5. That some of the telephone companies under the jurisdiction of the North Carolina Utilities Commission have filed tariffs to permit interconnection, said tariffs having variations in rates, regulations, text and format.

6. Endorsed the following conclusions relating to the interconnection of subscriber-provided equipment with facilities of the telephone companies:

(a) Uncontrolled interconnection can cause harm to personnel, network performance, and property.

(b) The signal criteria in Tariffs 260 and 263 relating to signal amplitude, waveform, and spectrum are technically based and valid and, if exceeded, can cause harm by interfering with service to other users.

(c) Present tariff criteria, together with carrier-provided connecting arrangements, are an acceptable basis for assuring protection.

(d) Present tariff criteria, together with a properly authorized and enforced program of standards development, equipment certification, and controlled installation and maintenance, are an acceptable basis of achieving direct user interconnection.

(e) Innovation by carriers need not be significantly impeded by a certification program. Opportunities for innovation by users would be increased.

(f) Mechanisms are needed to promote the exchange of information among carriers, users, and suppliers.

7. That interconnection of subscriber-provided equipment with the facilities of the telephone companies can best be regulated in North Carolina by relying upon appropriate tariffs filed in such detail and clarity that they may be readily understood, and that said tariffs of the various telephone companies should be uniform in text and format and should reflect reasonable uniformity as to rates.

8. Recommended that the Commission call on all parties to show why the text and format of Southern Bell Telephone and Telegraph Company's North Carolina General Exchange Tariff, Section A-15, should not be used as a uniform text and format for all companies operating under jurisdiction of the Commission during the hearing (December 2, 1970).

9. That the proceedings be recessed for approximately 60 days for three purposes:

(a) To develop format and text for any service that any company has that is not covered by the Southern Bell tariff heretofore mentioned.

(b) That an effort be made to establish no more than three sets of rates for each service that can be reasonably supported by cost that may be used for the various size companies, recognizing the limited experience that anyone has had with interconnection by means of interface equipment.

(c) That administrative material be prepared to describe the services in more detail, with sketches to illustrate the connection arrangement.

10. That the telephone companies jointly develop the items in nine (9) above for presentation at the next session of the hearing.

In other testimony offered at the hearing, Mr. John Stephenson of the Triangle University Computation Center questioned the need for any "interface equipment" other than a jack for connection purposes. Mr. Sanford Smith of the City of Greensboro questioned the inconsistencies in charges and requirements of interconnection service. Mr. Boyd M. Guttery, General Rate Administrator, Southern Bell Telephone and Telegraph Company, supported the need for an interface device to connect subscriber-provided equipment to the facilities of the telephone companies but questioned the desirability of uniform tariffs as to text and formats, and uniformity of rates for said service, as did Mr. Sam E. Wahlen, General Commercial Engineer of General Telephone Company of the Southeast.

The various representatives of the telephone companies in attendance at the December 2, 1970, hearing were called upon for comments. Some agreement was expressed for uniformity of tariff text and format, but generally opposition was expressed to any uniformity of rates.

Based upon the testimony and evidence of record at the conclusion of the December 2, 1970, hearing, the Commission made the following findings of facts:

1. That tariffs consisting of rates and regulations which have been filed by certain telephone companies under the jurisdiction of the Commission cover the interconnection

of subscriber-provided equipment with facilities of the telephone companies.

2. That interest exists on the part of various telephone subscribers to connect facilities which they will provide to the facilities of the telephone companies.

3. That adequate regulation in the form of tariffs is needed to properly regulate the connection of subscriber-provided equipment with facilities of the telephone companies.

4. That additional time was needed to properly study regulations for connecting subscriber-provided equipment with facilities of the telephone companies.

Based upon the testimony and evidence of record at the conclusion of the December 2, 1970, hearing, the Commission made the following conclusions:

That it is desirable to have reasonable uniformity of text, format and rates in tariffs covering the connection of subscriber-provided equipment with the facilities of the telephone companies.

That adequate tariffs are needed to cover interconnection service and that additional time was needed to consider the possible revision of the tariffs now on file covering interconnection service and such tariffs as may be filed hereafter.

THE COMMISSION THEREFORE ORDERED ON FEBRUARY 22, 1971, AS FOLLOWS:

1. That the hearing of December 2, 1970, in this proceeding be continued until May 4, 1971, at 10:00 A.M. at which time further evidence was to be received as thereinafter ordered, the hearing to be held in the Commission's Hearing Room, 1 West Morgan Street, Raleigh, North Carolina.

2. That the telephone companies operating under the jurisdiction of the Commission jointly develop a uniform tariff in text and format to cover, item by item, all interconnection arrangements then authorized, for one or more of said companies using the Southern Bell Telephone and Telegraph Company, Section A-15 of its General Subscribers Services Tariff as a model, the resulting tariff to be one that the Commission may consider for adoption by those companies offering one or more of the interconnection arrangement.

3. That said telephone companies develop rate schedules for each service covered in Item (2) above with supporting data for each schedule of rates, the schedules to be for exchanges having total company station as of December 31, 1970, as follow:

(a) Over 1,000,000 stations
(b) 50,000 - 999,999 stations
(c) 10,000 - 49,999 stations
(d) 0 - 9,999 stations

4. That said telephone companies consider preparing administrative materials to describe the services, and prepare same if found to be practical after said consideration.

5. That said telephone companies be ordered to be represented at the May 4, 1971, hearing as covered in Item 1 above and be prepared to offer testimony on Items 2, 3, and 4 above, or to concur with such spokesmen for the industry as the industry may select to testify in its behalf.

6. That said telephone companies may consult with the Commission Staff in preparation of the foregoing, but it shall be the telephone companies' final responsibility to prepare the materials required in Items 2, 3, and 4 above.

7. That a copy of the Order be served on each telephone company under the jurisdiction of this Commission.

On May 4, 1971, the recessed hearing was reconvened to receive further evidence in accordance with the Commission's Order of February 22, 1971, heretofore referred to. Mr. A.H. Graham, Jr., Attorney at Law, representing General Telephone Company of the Southeast, explained that as an outgrowth of the Commission's February 22, 1971, Order in this Docket, the companies in an effort to respond to the requirements placed on them by the Commission formed what they refer to as the Ad Hoc Interconnection Committee to develop the data and suggestions embraced in the Order. Mr. Graham explained that Mr. Sam Wahlen of the General Telephone Company, who testified at the hearing on December 2, 1970, was Chairman of the Committee and was present prepared to present the material developed by the Ad Hoc Committee. Mr. Graham emphasized that Mr. Wahlen had testified in the previous hearing as the General Commercial Engineer for General Telephone Company of the Southeast and was testifying in the recessed hearing solely in the capacity as a member of the Interconnection Ad Hoc Committee.

Mr. Wahlen testified that his Committee was comprised of representatives from telephone companies in North Carolina. That the representatives were Mr. William F. Dyer of Southern Bell Telephone & Telegraph Company, Mr. Roy Hepler of Central Telephone Company, and Mr. Earl Wooten of Carolina Telephone and Telegraph Company and that the purpose of the Committee was to assist the companies in complying with the Commission's February 22, 1971, Order. In response to Paragraph 2 of the Commission's Order of February 22, 1971, Mr. Wahlen presented a proposed uniform tariff. In response to Paragraph 3 of the Commission's Order, Mr. Wahlen presented rate schedules as developed by

the Committee, and in response to Paragraph 4 of the Commission's Order, Mr. Wahlen presented administrative material prepared by the Committee to describe the interconnection service as offered by the various telephone companies in North Carolina.

In commenting on the rate schedules as presented, Mr. Wahlen offered the following remarks: "The Committee worked for some time on this aspect of the order and obtained copies of the cost studies for these services that were submitted to the Commission in compliance with its original request. After reviewing the cost studies and placing the rates for each company in the proper classification, according to the size of the company, we found that there was considerable disparity between the rates that the companies charged for similar services. In order to comply with the Commission Order, the Committee examined the rate levels and used its judgment in arriving at rates that would be representative of the rate ranges for each service where more than one company filed rates for that service. We do not present these rates as being the proper rates for these services. These representative rates are not based on the cost studies because each company's cost was found to be different and the Committee did not feel that it could substitute its judgment for the judgment of the management of each operating telephone company". Mr. Wahlen stated that there were other telephone companies present who wished to personally voice their concern or present other testimony in this matter.

By cross examination of Mr. Wahlen by Mr. Z. C. Brinson, Attorney at Law, representing Carolina Telephone and Telegraph Company, Mr. Wahlen testified that the exhibits he presented were the work product of the Committee and that the Committee was not charged with coming up with an endorsement of anything, but as in accordance with the Order, to develop materials to present at the hearing. Mr. Wahlen further testified that the Committee's report was that of the North Carolina Independent Telephone Association and did not necessarily represent the views of the companies who happen to be the employers or the members of the Ad Hoc Committee.

Mr. James W. Hevener, Revenue Earnings Director for General Telephone Company of the Southeast, followed Mr. Wahlen to the stand. Mr. Hevener testified that his Company agreed completely with the establishment of a uniform format for tariffs involving customer-owned equipment interconnected to telephone facilities, but did not agree that the various telephone companies in North Carolina should be required to file a tariff containing a uniform text and rate. Mr. Hevener testified that his Company agreed that the various telephone companies in North Carolina could be encouraged to use the standard text to the extent that it is practical to do so. He stated that they opposed having the use of a standard text for all companies in North Carolina being a mandatory requirement. The type

customers being served and their requirement for interconnection he said would vary widely between localities throughout the State of North Carolina. Further, that in view of this variation, occasions will arise requiring specific text not necessarily applicable on the statewide basis. He further testified that his Company is opposed to the use of uniform rates for all telephone companies in North Carolina to cover the interconnection of customer-owned equipment to telephone-owned facilities. He stated that his Company's opposition to the establishment of uniform rates is based primarily on the variance in cost of providing the communications service and interconnection capability with customer-provided equipment in various localities.

Following the conclusion of Mr. Hevener's testimony and cross examination, various spokesmen for the telephone companies offered their viewpoint on uniform format, uniform text and uniform rates as follows:

Mr. Z. C. Brinson, Attorney at Law, representing Carolina Telephone and Telegraph Company, stated that his client is willing to adopt uniform format and text but does not believe that uniform rates on interconnection services are in the best interest of the public and that the industry should not be required to adopt uniform rates.

Mr. R. F. Branon, Attorney at Law, representing Southern Bell Telephone and Telegraph Company, stated that Southern Bell had no objection to the use of its tariff as a model for the telephone companies but hoped that the Commission would continue its policy to receive revisions or additional material by individual companies since such charges and changes in materials are necessary to meet the needs of the customers in the area in which these companies operate. He further contended that his client did not endorse the use of uniform rates to be used for all telephone companies operating in the State of North Carolina.

Mr. Victor Jamison of the Oldtown Telephone System stated that his Company concurred with the views expressed by Mr. Hevener.

Mr. Phil Widenhouse, Concord Telephone Company; Mr. William C. Harris, Lexington Telephone Company; Mr. I. L. Grogan, Lee Telephone Company; Mr. S. E. Leftwich, Central Telephone Company; Mr. Arnold H. Snider, Eastern Rowan Telephone Company and Mid-Carolina Telephone Company; Mr. S. M. Suther, Mooresville Telephone Company; Mr. A. L. Groce, North Carolina Telephone Company; Mr. W. C. Hilton, North State Telephone Company; and Mr. J. B. Teal, United Telephone Company, all concurred in statement made by Mr. Brinson of the Carolina Telephone and Telegraph Company.

Mr. Tom Bingham of the Citizens Telephone Company and Mr. Ed Guffey of Western Carolina Telephone Company and Westco Telephone Company stated that their companies concurred in

the idea of uniform format and text, but not with uniform rates.

Mr. Edward B. Hipp, Commission Attorney, appearing in behalf of the Commission Staff advised the Commission that the Staff did not wish to go forward at that time but requested a further recess of the proceedings so that public notice might be given to those subscribers who might be affected by this proceeding and to give the Staff additional time to analyze the positions taken by the companies which had not been known until the hearing on this date. Mr. Hipp stated that he thought that the Staff did concur in the provisions of the Order establishing a rate group by the size of the company on the basis that the company certainly should have uniform rates within the company for these services because they were unique and distinct from the services afforded in particular exchanges. Mr. Hipp stated that the rates, to the extent that they are based on the cost data that had been filed with the Commission, do reveal that there are differences primarily between the independent companies and Southern Bell Telephone and Telegraph Company, that there was not much difference between the rates of the nine smaller companies and the five larger companies that had filed rates, that the big difference between the rates filed by Bell and the independent companies was the cost of the equipment from the supplier as available to Bell and not to the independents. He further stated that the Staff had advocated a uniform format consistently throughout the proceeding and that uniform format was desirable so that the customers in North Carolina could know what to expect if they wanted to provide their own equipment and what the rules would be for the company furnishing the connecting device. During the course of the hearing, representatives of the telephone companies raised the question as to how the text for new service items would be developed if the Commission were to require that all companies adhere to a uniform text. The question covered who would originate the new text, what recourse companies would have to appeal the text if they did not agree with it and how the text might be changed.

Based upon the testimony and evidence of record, the Commission makes the following

FINDINGS OF FACTS

The same findings of facts are herein again found as in the Commission's February 22, 1971, Order in this proceeding and heretofore recited in this Order.

CONCLUSIONS

The same conclusions are herein again found as in the Commission's February 22, 1971, Order in this proceeding and heretofore recited in this Order.

THE COMMISSION THEREFORE ORDERS AS FOLLOWS:

1. That the format and text of Southern Bell Telephone and Telegraph Company's North Carolina General Subscriber Services Tariff Section A-15, hereto attached as Appendix A*, shall be used as a uniform format and text by all companies under the jurisdiction of this Commission for the purpose of offering services whereby subscriber-provided equipment may be connected to telephone company owned equipment. That said companies shall incorporate all interconnecting equipment in Section 15 (or 15 including an alphabetical letter) of their respective tariffs by filings with this Commission within sixty (60) days of the date of this Order. Each company may file only that interconnection equipment which it now offers using the same numerical sequence contained in Appendix A. For any equipment contained in Appendix A but not offered by a specific company, the companies shall insert "Reserved for Future Filings" by the applicable paragraph number for unused paragraphs.

2. That each company complying with Ordering Clause One (1) above shall insert its existing rates and charges for each service. By transmittal letter or otherwise, a cross reference shall be provided on the initial filing to show from where a service offering is taken from the existing tariff and to where in the new filing.

3. Companies having a special interconnection service offering for an individual subscriber shall transfer this service offering to the new Section 15 where it will become a general offering within six months from the date of this Order. Future filings for special interconnection offerings for individual subscribers shall be transferred to Section 15 within six months from the effective date of the original filings unless expressly permitted by the Commission to extend the period longer.

4. That the Commission Staff's request for a continuance in this proceeding is hereby denied and this Docket is hereby closed.

5. That a copy of this Order shall be sent to parties of record including all telephone companies under the jurisdiction of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

*See official Order in the Office of the Chief Clerk.

DOCKET NO. E-7, SUB 124

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for a Certificate of Public Convenience and Necessity under Chapter 287, 1965 Session Laws of North Carolina (G.S. 62-110.1) Authorizing Construction of New Generating Capacity Near Its Cowan's Ford Dam in Mecklenburg County, North Carolina (McGuire Nuclear Station)	) ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

PLACE: Commission Hearing Room, Ruffin Building, Raleigh, North Carolina

DATE: March 5, 1971 and March 8, 1971

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

APPEARANCES:

For the Applicant:

Carl Horn, Jr.
George W. Ferguson, Jr.
W. Larry Porter
Duke Power Company
Post Office Box 2178
Charlotte, North Carolina 28201

For the Intervenor:

Arnold M. Stone
Sanders, Walker & London
900 Law Building
Charlotte, North Carolina
For: Carolina Environmental Study Group, Inc.
Mrs. Gayle Waller

For the Commission's Staff:

Edward B. Hipp and William E. Anderson
Commission Attorneys
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION. This proceeding was instituted on December 17, 1970, by the filing of Application by Duke Power Company (DUKE) for a Certificate of Public Convenience and Necessity under G.S. 62-110.1 to construct new generating capacity on a site adjacent to Lake Norman near its present Cowan's Ford Dam in Mecklenburg County, North Carolina. By Order of the Commission dated December 30, 1970, Notice of the Application was required to be published

in newspapers of general circulation in Mecklenburg County. On January 26, 1971, the Commission, on its own motion, issued an Order setting public hearing on the Application for March 5, 1971, in the Commission Hearing Room, Raleigh, North Carolina. The Order further stated that Duke would have the burden of proof to support its Application by testimony of qualified witnesses together with exhibits and data and to establish for the record through competent testimony and evidence justification for the proposed plant from economic, power supply requirements, reliability, and environmental viewpoints.

Under the Application for a Certificate of Public Convenience and Necessity, Duke proposes to construct two nuclear fueled steam-electric generating units each with a nominal rating of 1150 megawatts, with Unit No. 1 to be completed to load fuel by June 1, 1975 and be in commercial operation by November 1, 1975, and Unit No. 2 to be completed approximately one year later. The Application provides that cooling water for the steam plant will be drawn through two intakes from Lake Norman designed to draw water from the bottom of the lake and from the 40-foot depth foot level, to be returned to the lake through methods and at temperatures alleged to be compatible with the enjoyment of recreation and fish and wildlife propagation, and in compliance with water quality standards of the North Carolina Board of Water and Air Resources, and construction permits of the U.S. Atomic Energy Commission (AEC).

Under date of February 23, 1971, Petition to Intervene was filed by the Carolina Environmental Study Group, Inc., and an Order Allowing Intervention was issued by the Commission on the 26th day of February.

On March 2, 1971, the Commission received a letter requesting subpoena duces tecum for appearance for Mr. W.S. Lee, Vice President - Engineering, Duke Power Company, Charlotte, on behalf of the Carolina Environmental Study Group, Inc. Subpoena was issued by the Commission on March 2, 1971.

Public hearings were held in the Commission Hearing Room, Raleigh, North Carolina, on March 5, 1971, and on the afternoon of March 8, 1971, with counsel for all parties appearing and participating as shown heretofore. The Applicant offered testimony and exhibits of its witnesses, Mr. William S. Lee, Vice President - Engineering, for Duke, and Dr. Charles M. Weiss, Professor of Environmental Sciences and Engineering, College of Public Health, the University of North Carolina, Chapel Hill, North Carolina. The Carolina Environmental Study Group, Inc., offered testimony of its Secretary, Mrs. Gayle S. Waller, 1233 Biltmore Drive, Charlotte, North Carolina, in protest to the granting of a Certificate of Public Convenience and Necessity. The Utilities Commission Staff, through co-operation with the North Carolina State Board of Health and the North Carolina Department of Water and Air Resources

offered the statements and testimony of Mr. Dayne H. Brown, Chief, Radiological Health Section, State Board of Health, and a written statement by Mr. E. C. Hubbard, Assistant Director, North Carolina Department of Water and Air Resources.

Testimony of Applicant's Witnesses

Mr. William S. Lee: Mr. William S. Lee testified and offered evidence as to the economic justification, power supply requirements, reliability, and environmental impact of the proposed McGuire Nuclear Plant (sometimes referred hereinafter as the McGuire Nuclear Station, McGuire Plant, or McGuire Units 1 and 2).

In reference to predicted power needs and available sources for Duke's total system, Mr. Lee testified that the probable peak load based on average weather conditions is expected to grow at an annual rate of about 9.5% over a ten-year period and that this compares to a growth rate of about 10.5% based on actual experience between 1965 and 1970 and an average annual growth rate of 9% between 1960 and 1970. Mr. Lee testified that in regard to 1976 and 1977, the years in which the proposed McGuire Nuclear Station Units 1 and 2 are to become commercial, Duke's predicted peak load for the summer of 1976 is 10,833 megawatts (MW), and that with the addition of McGuire Unit 1 at 1150 MW prior to that summer, the system capability would be 14,172 MW resulting in a reserve capability of 3,339 MW. Mr. Lee further testified that allowing for the demands created by extreme weather, for the possible outage of the largest unit on the system, for other outages and capacity reduction consistent with Duke's experience on a multi-unit system, and an allowance for other contingencies including forecast errors or severe outages, this reserve capability of 3,339 MW, which includes the McGuire Unit 1, would closely match the required reserve of 3,348 MW, which Mr. Lee alleged to be necessary for reliable service. Mr. Lee testified that at the summer peak of 1977, the time McGuire Unit 2 consisting of 1,150 MW is proposed to go into service, the total reserves will be 3,460 MW, against a reserve requirement of 3,469 MW.

In reference to the geographic location and justification of the proposed site, Mr. Lee testified that the McGuire site is located in Northern Mecklenburg County on a South shore of Lake Norman immediately East of the Cowan's Ford Dam. He further testified that this site is near the geographic center of the Duke service area and that its location is essentially at the intersection of existing major 230 KV transmission routes extending from near Durham, North Carolina on a Northeast edge of Duke's service area to Anderson, South Carolina, on the Southwest and from Hickory and Elkin, North Carolina, in the North to Newberry, South Carolina, in the South, that the site is also at the hub of Duke's developing 500 KV transmission system.

On an economic basis, Mr. Lee testified that taking full advantage of the transmission system which is now in existence or being built will effect considerable savings in transmission line costs. He testified that compared to an alternate site on Lake Norman, the saving in transmission plant investment would be approximately 11 million dollars and that compared to another possible location in South Carolina, which is similar to the McGuire site in that a minimum of transmission plant is required, the saving in transmission at McGuire would be approximately 5.8 million, but at that alternate site additional investment of 18 million would be required for cooling water facilities.

In reference to whether or not adequate generating capacity is available either from sources on the Duke system or available from adjacent systems as an economic alternative to construction of the McGuire Nuclear Station, Mr. Lee testified that there are no hydro sites on the Duke system with sufficient head or stream flow to support 2,300 MW of firm generation nor is there sufficient power available for 1976 and 1977 outside Duke's system which would eliminate the necessity of constructing the McGuire Plant.

In reference to justification of nuclear fuel as the fuel source of the proposed plant, Mr. Lee presented comparative cost studies which were made for a nuclear plant, a coal fired plant, and for a plant fueled with imported residual or crude oil. These studies showed that a plant using nuclear fuel would result in lowest system cost by a substantial margin. Mr. Lee testified that to be competitive with nuclear, oil would have to be available in future at 31 cents per million Btu whereas the best quotations received at the time of the decision in late 1969 indicated oil supply at 37 cents per million Btu, plus possible escalation in future years. To be competitive with nuclear, coal would have to be available on a delivered basis at 28 cents per million Btu. Mr. Lee stated that Duke's system-wide cost of coal burned in December, 1969, was 31 cents per million Btu and based on then current market conditions was being evaluated at 36 cents but had actually increased to 47.6 cents per million Btu in December, 1970. At the time of the study, Duke estimated the capitalized value of savings with the two unit nuclear plant at over 50 million when compared to oil and over 80 million when compared to coal. Using fuel costs data as of January, 1971, Duke estimated the capitalized value of savings to be 167 million dollars for coal and 376 million dollars for oil.

Mr. Lee testified the estimated construction cost of the McGuire Station is $372,220,000 with initial loads of nuclear fuel at a cost of $59,168,000. Mr. Lee further testified that generation costs are estimated to be 5.95 mills per Kwh. Mr. Lee testified that operating and maintenance labor and supplies expense for the proposed

plant would be about equal to that required for a coal fired plant.

In reference to availability of nuclear fuel, Mr. Lee testified that Duke had negotiated long-term contracts for the supply of uranium and that these contracts plus options cover all of the uranium required for operation of the two proposed nuclear units through the 1970's plus about 60% of the requirements for operation during the period 1980 through 1985. Mr. Lee testified that while there are no plants of this size presently in operation, the McGuire Nuclear reactor systems will be the 12th and 13th essentially duplicate systems to be supplied by Westinghouse and that this repetitive experience in design is expected to provide further increases in reliability. Mr. Lee stated that Duke expected the frequency of forced outages of McGuire units to be about the same as for fossil units of comparable size and that annually each McGuire unit will undergo a three to four-week shutdown for refueling on a scheduled basis. Even though no units of the size of the proposed McGuire Station are now in operation, Mr. Lee testified that similar units with a slightly less megawatt rating are in operation.

Mr. Lee next testified regarding the environmental impact of the proposed plant and the status of all permits required for construction and operation of the proposed McGuire units. He testified that an Application had been filed with the Atomic Energy Commission on September 18, 1970, for a construction permit for the two McGuire units. The AEC, Mr. Lee testified, has regulatory jurisdiction over design, construction, and operation of the proposed plant with regard to the nuclear aspects relating to assurances of public health and safety; that approval has not yet been received from the AEC for a construction permit; and that assuming approval of the construction permit, further application must be filed with the AEC for operating licenses for the two units. He further testified that these operating licenses include the license for each of the plant operators and senior operators, licenses to own and possess nuclear materials in the form of nuclear fuel and license to use gamma ray sources in non-destructive testing of piping and other materials during construction and maintenance.

Mr. Lee testified that the Federal Power Commission has licensing jurisdiction over hydroelectric generating facilities on Lake Norman and specifically the Cowan's Ford Dam which impounds Lake Norman; that the license for this FPC Project No. 2232 was issued September 17, 1958, and included the Cowan's Ford development plus ten other hydroelectric developments on the Catawba-Wateree River in North and South Carolina; that the original license for a term of 50 years from date of issue reserves seven sites for thermal electric generating stations, three of which were located on Lake Norman; that on July 31, 1961, the Application was made for a license amendment covering a fourth thermal plant site on Lake Norman and requesting

permission to build a low level in-take structure that will serve the proposed McGuire Station; and that at the time of constructing the Cowan's Ford Dam by Order issued October 2, 1961, the FPC approved the in-take structure and use of Lake Norman waters for the purpose of cooling waters for the condensers proposed in this Application.

With respect to State Agencies, Mr. Lee testified that in addition to a Certificate of Public Convenience and Necessity being necessary from the State Utilities Commission, the Board of Water and Air Resources, through the North Carolina Department of Water and Air Resources, regulates the control of water and air pollution in the State. He further testified that Duke Power Company had applied for the following:

1. A permit for the discharge of warmed cooling water into Lake Norman.

2. Certification that there is reasonable assurance that this discharge will not violate the applicable water quality standards.

3. A permit to construct the small dam impounding the auxiliary pond in accordance with the Board's responsibility for review of dam safety in those cases where dams are not subject to other licensing jurisdiction.

Mr. Lee stated that the permits and certification approving these systems have been issued by the Department of Water and Air Resources. He further testified that at the appropriate time additional applications will be filed with that Board for permits covering conventional severage and waste treatment facilities, first to serve the temporary construction activities and later to serve the plant. Mr. Lee testified that any effluents from these facilities will fully comply with the water quality standards of the receiving body.

Mr. Lee testified that the North Carolina State Board of Health has responsibilities in the areas of vector control, sanitation, environmental radioactivity, and other public health matters. He testified that the Company and the Radiological Health Section, State Board of Health, have consummated an Agreement of co-operation with respect to surveillance of radiological emissions.

In reference to local zoning requirements, Mr. Lee testified that the McGuire site was zoned for this use several years ago by the Charlotte-Mecklenburg Planning Commission.

In regard to the environmental justification of the geographical location on Lake Norman, Mr. Lee testified that the proposed McGuire site offers no disadvantages and two major advantages - the first advantage being that Duke can

utilize the cool waters in the bottom of Lake Norman as the source of condenser cooling water and the temperature of the water return to the Lake in the summertime will be lower than possible at any other cooling lake site on the Duke system, and the second advantage is due to the close proximity of this site to Duke's largest 500/230 KV system transmission substation which would minimize the land required for delivery of the plant output to the system when compared to any alternate location. Mr. Lee testified that the output of the proposed McGuire plant would be delivered over two 500 KV transmission lines .6 miles in length to the 500/230 KV system transmission substation located South of the plant and across N. C. Highway 73. He further stated that there would be two 230 KV transmission lines of similar length between the substation and the plant to supply start-up power.

In reference to plans for disposal of waste heat including any studies made for beneficial use of such heat, Mr. Lee testified that only a small portion of the Lake would feel the extra warmth of the discharged water and that in this area the waste heat would be quickly given up to the atmosphere by the combined cooling effects of evaporation, radiation, and conduction. Mr. Lee further testified that a research program conducted on Lake Norman with the assistance of scientists at Johns Hopkins University, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, and the Division of Inland Fisheries of the North Carolina Wildlife Resources Commission clearly shows the beneficial effects of this waste heat on the fishery resources of this Lake. He testified that the objective of this program was to determine the effect of a similar cooling water system at Duke's Marshall Steam Station located on Lake Norman at a site 17 miles North of the McGuire site. Mr. Lee quoted from the Wildlife Resources Commission's 1969-1970 biennium report to Governor Scott which stated, "A study of the effects of the warmed water discharges upon Lake Norman fishes, undertaken during the 1966-1968 biennium, has continued. Results to date indicate no significant effects upon the reservoir as a whole, but certain localized effects have become quite obvious. Thermal enrichment of the waters in the cove receiving the discharge now permit the overwintering survival of threadfin shad, which has increased the forage-fish potential of the reservoir as well as stimulating an extremely popular sport fishery - particularly for striped bass and white bass." Mr. Lee testified that after the McGuire units are placed in service, Duke will continue this study to establish that the thermal effects are consistent with the forecasts that serve as a basis for future siting of power plants.

In regard to radiation from the proposed nuclear reactors, Mr. Lee testified that the emissions from the McGuire Nuclear Plant will comply with the safety regulations of the AEC and that the dosage from the McGuire Plant of one

millirem per year to a person next to the plant is less than 1/100 of that allowed by one of AEC's guidelines.

On cross-examination by Commission Staff Counsel, Mr. Lee testified that the proposed nuclear fuel source would be more compatible with the environment than any alternative fuel source because of the inherent air polluting gases and fly ash resulting from the burning of coal when coal is used as a fuel source. Also, Mr. Lee testified that thermal effects from use of cooling water for the condensers would be no different except that the nuclear plant would use more water but would heat it to the same temperature as fossil plants; and that the nuclear plant would not require large land space for the storage of coal and ash resulting from burning the coal.

Extensive and thorough cross-examination was conducted of Mr. Lee by Counsel for the Intervenor, Carolina Environmental Study Group, Inc. The record will show that many of the questions related to safety of the proposed nuclear plant, the ability of Duke to design and operate a 1,150 MW unit, the possibility that AEC may refuse licenses to Duke to build and operate the plant thus requiring Duke to build plants using alternate fuel sources, the possibility that fuel reprocessing facilities may not be available because of economic and environmental reasons, the possible dangers and problems of transporting nuclear fuel and nuclear wastes, and the correctness of the cost studies used in justifying the decision to install nuclear fueled units.

Dr. Charles M. Weiss, Professor of Environmental Sciences and Engineering, College of Public Health, the University of North Carolina, Chapel Hill, North Carolina: Dr. Weiss testified that based on the studies previously carried out at the Marshall Plant which is on Lake Norman and those studies in which he has personally participated, it is his opinion that no significant adverse effect on the aquatic biology will occur in the so-called mixing zone to be caused by the releasing of heated water used for cooling at the McGuire Nuclear Plant into Lake Norman.

Witnesses Presented by the Commission Staff

Mr. Dayne H. Brown, Chief, Radiological Health Section, State Board of Health: Mr. Brown testified that the State Board of Health maintains an effective program for the protection of the citizens of North Carolina from exposure to radiation; that this program was established under the provisions of Chapter 104 C, North Carolina Atomic Energy, Radioactivity and Ionizing Radiation Law, of the North Carolina General Statutes, and the Agreement between the U.S. Atomic Energy Commission and the Governor of North Carolina; that the North Carolina Radiation Protection Program is administered by the Radiological Health Section of the Sanitary Engineering Division; and that this program includes licensing of radioactive material, registration of

x-ray equipment, monitoring of environmental radioactivity and responding to radiation emergencies.

Mr. Brown further testified that the radiation protection aspects of the proposed McGuire Nuclear Station are specifically under the jurisdiction of the AEC but that the State Board of Health's responsibilities and concern for the protection of North Carolina citizens require consideration of any possible public health hazards related to this facility.

Mr. Brown testified that his Staff has reviewed the Preliminary Safety Analysis Report of Duke for the McGuire Station and believes that the normal planned releases of radioactive effluents will result in environmental concentrations well below the limits which have been established by the Federal Radiation Council for protection of the public; that in order to ensure that environmental concentrations of radioactivity are well below these limits, the State Board of Health will supplement the surveillance program of Duke by maintaining independent radiation surveillance around the proposed facility and that this independent program will include surveillance of air, water, milk and direct radiation exposure at locations in the environs of the facility.

Mr. Brown further testified that based on review of the radiation protection aspects of the proposed McGuire Nuclear Station, the State Board of Health does not object to the issuance of a Certificate of Public Convenience and Necessity to construct and operate the Duke Power Company McGuire Nuclear Station at Lake Norman in Mecklenburg County.

Statement of North Carolina Department of Water and Air Resources: A statement from the North Carolina Department of Water and Air Resources confirming Applicant Witness Lee's testimony regarding the Department's issuance of the necessary permits for construction of the McGuire Plant was offered and received into evidence as Staff Exhibit No. 1.

Witnesses for the Intervenor

Mrs. Gayle Waller, Secretary, Carolina Environmental Study Group; Residence - 1233 Biltmore Drive, Charlotte, North Carolina: Mrs. Waller testified that reactors require 50% more cooling water than conventional plants; that the question of how to disperse such large quantities of heated waters without harmful effects is a question of importance; that studies of the effects should be available to the public particularly since Duke began conducting studies in 1959; that the Commission should withhold any decision until such studies are thoroughly examined by experts who receive no benefits from industry or would suffer no recrimination for a knowledgeable opinion; that Lake Norman directly serves the water systems of Davidson and Huntersville and downstream Charlotte and because of this reason, radioactive

effluents concern the public as well as heat discharges; and while planned and purposeful radioactive leakage into the cooling water may be at "permissible" levels, the long life of some of the isotopes seems to be overlooked as well as the reconcentration factor.

Mrs. Waller further testified that the McGuire Plant is sited in an area which has the worst air inversion factor in the East and is only 16 miles from the center of Charlotte; that there has never been a reactor with as little discharge as this nor with the proposed efficiency; that Duke has not furnished anything but conjectures on fuel costs and supplies, efficiency, economies, safety, reprocessing plants and waste storage; and that the future of the nuclear fission is based on conjecture.

Mrs. Waller further testified that a Certificate should not be granted to Duke until the Company produced its environmental studies.

Based upon the entire record of this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. That Duke Power Company is a Corporation organized and existing under the Laws of the State of North Carolina, and is a public utility operating in North and South Carolina where it is engaged in the business of generating, transmitting, distributing and selling electric power and energy.

2. That the Atomic Energy Commission and the North Carolina State Department of Health, through a working agreement with the AEC, have primary responsibility in ensuring public safety from radiation exposure generally as affected by the design and operation of the proposed nuclear plant; and that an Application has been made but that the AEC has not yet held hearings or granted a permit authorizing construction of the proposed plant.

3. That in regard to the normal planned releases of radioactive effluents, the State Board of Health finds that these releases will result in environmental concentrations well below the limits established by the Federal Radiation Council for protection of the public; that to ensure that these limits are maintained, the State Board of Health will conduct on-going and independent radiation surveillance programs around the proposed facility; and the Commission finds that the project meets all safety requirements so established.

4. That the Department of Water and Air Resources, through its agreement with the U.S. Environmental Protection Agency, has primary responsibility over the use and/or pollution of the water and air resources generally of the State; that said Department has studied the environmental

effects of the proposed McGuire Plant on Lake Norman and has issued permits authorizing the use of cooling water in the plant's operations as outlined in the Application; and the Commission finds that the project meets all environment requirements so established.

5. That while the AEC, the State Board of Health, and the Department of Water and Air Resources, have primary jurisdiction in the establishment, review, and surveillance of the design and operation of the proposed plant as it might affect the public from radiation exposure and as it might affect the water and air resources of the State, the Utilities Commission retains the over-all responsibility of determining whether Public Convenience and Necessity is to be served by construction and operation of the McGuire Plant.

6. That the proposed McGuire Nuclear Units of 1,150 MW each, if now in operation, would be the largest nuclear units in service; that, however, these units are the 12th and 13th essentially duplicate systems to be supplied by Westinghouse; that similar units of less megawatt rating are in operation; that the estimated construction cost of the McGuire Station is $372,220,000 with initial loads of fuel at a cost of $59,168,000; that based on all considerations, economic as well as environmental, there is no other alternate fuel for generation or site location more suitable than those chosen for the McGuire Station; that Duke will not be able to adequately serve its certificated area if the total amount of power proposed to be supplied by the McGuire Station is not available by the latter half of the 1970's; that Duke has the financial ability to pay for the construction and installation of the proposed units; and the Commission finds that public convenience and necessity requires the construction of the generation facility.

CONCLUSIONS

The Commission concludes that public convenience and necessity require construction and installation by the Company of the new generating capacity hereinafter described, subject to compliance with all design and safety standards which may be imposed by the AEC or the State Board of Health in regard to protection of the public from radiation exposure, and by the N.C. Department of Water and Air Resources for protection of the environment.

In arriving at this conclusion, the Commission has considered the testimony and evidence offered by experts from the State Board of Health and the Department of Water and Air Resources and the responsibility delegated by Law to the AEC in the areas of protection of the public from radiation hazards. Considering the evidence presented and based on the radiation limitations set by the Federal Radiation Council and administered by the AEC and the State Board of Health, the Commission concludes that the proposed McGuire Nuclear Station will not have any significant

adverse effect on its environs and that, conversely, it will emit much less volume of gases and particulate matter than similar sized coal fueled steam plants.

The Commission also considered, in arriving at its conclusions, the Company's projected power requirements for 1976 and 1977 and while it is not convinced that the Company will require the amount of reserve margin indicated during those years, we have concluded that growth of power use in the Company's service area will continue at such a rate that the units will be required at least by 1977 and 1978 and that the Company should proceed to design and construct these units as planned in the Application. The Commission concludes that based on current fuel cost and cost considerations as developed in this record, these proposed units are the most economical and dependable type of generating units the Company can provide to meet its expected growth in demand, and that the site chosen is the most suitable from an economic and environmental standpoint.

The Commission further concludes that it will retain overall jurisdiction over the design of the plant, as well as its operation, and will require the backfitting of technological advancements, as they become available, that provide reasonable additional protection necessary for the public health and safety or protection of the environment.

IT IS, THEREFORE, ORDERED:

That a Certificate of Public Convenience and Necessity be, and it is hereby, granted to Duke Power Company for the construction of McGuire Nuclear Power Plant, having a nominal output of 2,300 megawatts, to be located on Lake Norman near the Applicant's Cowan's Ford Dam in Mecklenburg County, North Carolina, as applied for in this proceeding subject to the following conditions:

1. The plant will be constructed and operated in strict accordance with all applicable Laws and Regulations, including the construction and operation licenses to be issued by the Atomic Energy Commission and the permits issued by the North Carolina Department of Water and Air Resources.

2. Duke Power Company shall on a continuing basis promptly furnish the Commission with copies of reports made by and for the Company bearing on (a) the ecology of Lake Norman, (b) the effect of the operation of McGuire Nuclear Plant on the environments, and (c) technological improvements in the construction and operation of generating facilities. Also, the Company shall on a continuing basis make available for inspection by the Commission Staff all projections and studies made by or for the Company regarding system load projections, system generation outage and reliability records (or studies), its generation site studies (including a listing of possible sites held by any Company-owned affiliates), data on nuclear and fossil fuel

sources including suppliers and costs and any contracts executed in regard to fuel obtainment, and data on disposal of fuel wastes.

3. During the month of January of each year, beginning with the year 1972, Duke shall furnish the Commission with a progress report, which shall provide information upon which the Commission may evaluate the current status of the construction of said facility and time at which it is anticipated said facility, or any part thereof, might become operational for the generation of electric energy.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-13, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Nantahala Power and Light Company's Acquisition of Facilities from Bemis Hardwood Lumber Company) ORDER PERMITTING ACQUISITION OF CERTAIN DISTRIBUTION FACILITIES OF BEMIS HARDWOOD LUMBER COMPANY

BY THE COMMISSION: The above entitled matter comes before the Commission in an Application filed by Nantahala Power and Light Company (hereinafter sometimes called Nantahala) for authority to acquire certain facilities for the distribution of electrical energy now owned by Bemis Hardwood Lumber Company (hereinafter sometimes called Bemis) together with perpetual rights of way and easements to maintain, construct and reconstruct those facilities across the lands of Bemis in Graham County. Bemis has at times supplied electric energy to 25 to 30 families on these distribution facilities which contain approximately 2,300 feet of line and all necessary hardware and equipment for the distribution of electrical energy. Nantahala, in this transaction, will expend no funds for such transfer or conveyance, but will own outright, absolutely free and clear of all liens and encumbrances, existing or inchoate, all of the personal property, fixtures, or appurtenances to real estate described above, the consideration being its acceptance of the property and its agreement to maintain and operate the same as a part of its electric distribution system for the benefit of the public. The area in question is within the territory now certificated by this Commission to Nantahala by its Order in Docket No. ES-40, dated April 8, 1969, or which Nantahala has a franchise from the Town of Robbinsville, North Carolina.

IT IS, THEREFORE, ORDERED:

1. That Nantahala Power and Light Company be, and is hereby, authorized to acquire, own and control certain electric distribution facilities heretofore owned by Bemis Hardwood Lumber Company as described above.

2. That Nantahala Power and Light Company be, and it is, authorized to establish for the customers served by said distribution facilities, its schedules of rates and charges, riders and conditions of service which have heretofore been authorized to be established by this Commission for the territory served by Nantahala within the State of North Carolina, upon acquisition of the properties of said Bemis Hardwood Lumber Company.

3. That the entries to be recorded on the books of the Nantahala Power and Light Company shall reflect the acquisition of said electric properties in accordance with the Uniform System of Accounts.

4. That Nantahala Power and Light Company, within sixty (60) days from the date of acquisition of said properties, submit to the Commission copies of journal entries recording the acquisition of said properties.

5. That subject distribution facilities be inspected for conformity of service as outlined in the Rules and Regulations of the North Carolina Utilities Commission and corrected wherever deficiencies exist.

6. That this order hereby constitutes a Certificate of Public Convenience and Necessity authorizing the ownership and operation of the electrical distribution system within the area heretofore described.

7. That a copy of the attached Notice shall be mailed to each of the customers served by Bemis Hardwood Lumber Company.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-13, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Nantahala Power and Light Company's)
Acquisition of Facilities from Bemis) NOTICE
Hardwood Lumber Company)

BY THE COMMISSION: Notice to the Public: Public notice is hereby given that Nantahala Power and Light Company, a public utility engaged in distributing and selling electric energy, filed an Application with the North Carolina Utilities Commission on July 2, 1971, for authority to acquire certain distribution facilities now owned by Bemis Hardwood Lumber Company, together with perpetual rights of way and easements, for the purpose of maintaining, constructing and reconstructing those facilities across the lands of Bemis in Graham County such as may be necessary for public convenience and necessity. This Commission has authorized the acquisition of these certain distribution facilities and rights of way and easements and has authorized their transfer and conveyance to the accounting systems of Nantahala Power and Light Company.

Nantahala Power and Light Company is further authorized to implement its schedules of rates and charges, riders, and conditions of service which have heretofore been authorized by this Commission for the territory served within the State of North Carolina.

Notice to the public is further given of their right to be heard by the Commission on any question of rates or services that may now exist or occur in the future within the jurisdiction of the Commission, as provided by the General Statutes of North Carolina and as stated in the Rules and Regulations established by the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 125

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Virginia Electric and Power Company -) ORDER GRANTING
Application for Authority to Sell and) AUTHORITY TO SELL
Lease Back Combustion Turbines) AND LEASE BACK
) COMBUSTION TURBINES

This cause is before the Commission upon an Application of Virginia Electric and Power Company (hereinafter called "Vepco") filed July 6, 1971, wherein authority is sought by Vepco to sell and lease back combustion turbine generating units as described below.

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. Vepco is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, with its general offices in Richmond, Virginia, and is authorized to engage in the business of generating, transmitting, distributing and selling electric power in the State of North Carolina. It is a public utility under the laws of North Carolina and as such is subject to the jurisdiction of this Commission.

2. Vepco's construction program during 1971 is anticipated to require expenditure of about $371.9 million, of which about $300 million must be raised through the sale of Vepco's securities together with the proposed sale and lease back.

3. Vepco now owns and has, or will soon have, in operation in Virginia and North Carolina, 28 combustion turbines that it uses for peaking and emergency generation on its electric system. These turbines are described in Schedule A of Exhibit 9 of the Application. Two of these turbines are located in North Carolina.

4. Vepco proposes to sell and lease back these turbines for the purpose of obtaining funds to finance the cost of its construction program, including repayment of outstanding short-term debt incurred for that purpose. The long-term effect of the proposed transaction will be to reduce sales of Vepco's securities that would be otherwise required to finance its construction program.

5. The proposed sale and lease back arrangement, which is described in the Application, is as follows:

(a) Vepco would, by execution and delivery of Bills of Sale (Exhibit D of Exhibit 9 of the Application), transfer title to the 26 turbines located in Virginia to United Virginia Bank/State Planters and the two turbines located in North Carolina to The Planters National Bank and Trust Company, a national bank located in North Carolina. United Virginia Bank/State Planters and The Planters National Bank and Trust Company (the Owners) would thereupon lease to Vepco the turbines so transferred to them (the Equipment) under separate net leases (the Leases, Exhibit B of Exhibit 9 of the Application), each having an initial term of approximately 20 years and granting Vepco the option of extending each such Lease for two successive extended terms of five years each. Each Owner would acquire the Equipment so to be transferred to it for its own account, subject to the matters set forth below, but would make no investment in the Equipment.

(b) Each Owner would obtain all funds required to pay for the installed cost less depreciation of the Equipment to be transferred to it by issuing its certificates of interest (the Certificates of Interest,

Schedule C of Exhibit 9 of the Application) to VEL Equipment, Inc., a Delaware corporation (VEL). All of VEL's authorized capital stock would be owned by an employee of Goldman, Sachs & Co., a New York partnership, which is a registered broker-dealer under the Securities Exchange Act of 1934, as amended. Such Certificates of Interest would evidence cash advances to the Owner issuing the same equal to 100% of such installed costs less depreciation and would assign to VEL such Owner's rights as lessor under the Lease to which it is a party until such advances were repaid through the repayment of the Notes described below. Each Owner would create, for the benefit of the Certificates of Interest and the Notes, a security interest in the Equipment acquired by it by entering into a Security Agreement (Schedule D of Exhibit 9 of the Application) relating thereto.

(c) VEL would undertake, on a best efforts basis, to obtain all the funds it would advance to the Owners by issuing its self-liquidating, fixed interest-bearing notes (the Notes, Schedule B of Exhibit 9 of the Application) limited in aggregate principal amount to $46,500,000, in a private placement with institutional lenders. The funds advanced by VEL to the Owners would be used to purchase the Equipment from Vepco, which would use the funds in its construction program or to reduce short-term indebtedness incurred for that purpose. The long-term effect will be to reduce sales of Vepco's securities otherwise required to finance its construction program. The Notes would mature at the expiration of the initial term of the Leases and would be issued as provided in a Collateral Trust Indenture (the Indenture, Exhibit A of Exhibit 9 of the Application) from VEL to Irving Trust Company, as trustee (the Trustee). The Notes would be secured under the Indenture by an assignment to the Trustee of (i) all the rights of VEL under the Certificates of Interest, including the right to receive all rents and other sums payable by the Company as lessee under the Leases, and (ii) the rights of VEL as secured party under the Security Agreements mentioned above. The Notes would be further secured by a Collateral Agreement (Exhibit C of Exhibit 9 of the Application) between Vepco and the Trustee by which the Company would agree to pay VEL's taxes, if any, to pay its administrative and operating expenses, to furnish financial information to the holders of the Notes, to remove all liens, encumbrances or charges which interfere with the application upon the Notes of all amounts required to be paid by Vepco as lessee under the Leases, and to make all such payments under the Leases directly to the Trustee for application upon the Notes as provided in the Indenture. Vepco would not guarantee the Notes.

(d) During the term of the Leases Vepco would have the absolute and uncontrolled right to use the Equipment in its electric utility operations, subject only to the conditions of the Leases, and Vepco would exercise the same control over the operation and management of the Equipment as it now exercises as owner. The Leases would not impair

Vepco's ability to perform its service to the public as an electric utility. Neither of the Owners will render any service to the public as a utility or exercise any of the rights and privileges or bear any of the duties or obligations of a public utility, and therefore neither Owner shall be considered a public utility by reason of the proposed transactions.

(e) Each Lease would be a completely net lease under which Vepco would be responsible for maintaining, operating, repairing, replacing and insuring the Equipment and for paying all taxes and other costs arising out of the ownership, possession and use thereof. Rental payments during the first 10 years of the Leases would be in amounts sufficient to pay interest only on the Notes. The exact interest rate will be determined through negotiations with Goldman, Sachs & Co., but will not exceed 8 3/4%. During the second 10 years the rental payments would be in amounts sufficient to pay such interest and to amortize 100% of the principal amount of the Notes. After the tenth year of the initial term of the Leases, Vepco will have the right under each Lease to purchase any of the Equipment subject thereto, in the event that Vepco determines it is no longer economically useful, at a price equal to the then unpaid principal of the Notes allocable thereto, plus accrued interest thereon. After the tenth year and before the twentieth year of said initial term, Vepco will also have the right to make such a purchase for any reason at the same price, plus an amount equal to the premium payable at such time in respect of a prepayment of the Notes. Each such purchase price would be applied by the Trustee to the prepayment of the Notes.

6. Vepco proposes to levelize rent expense (net of income tax effect) by accruing additional rent expense during the first 10 years of the Leases when rental payments will be low and amortizing the accumulated accruals over the last 10 years of the Leases when rental payments will be high. Vepco also proposes to use "off balance sheet accounting" by accounting for the transaction as a lease rather than as a purchase. Vepco will assume the risks of ownership, but the lease payments are such that it will not build up a material equity in the Equipment.

7. Expenses and fees to be paid by Vepco in connection with the negotiation and consummation of the transactions described in this Order or in the Application are estimated not to exceed $363,500.

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 Vepco;

(b) compatible with the public interest;

(c) necessary and appropriate for and consistent with the proper performance by Vepco of its service to the public;

(d) reasonably necessary and appropriate for such purposes;

and that the transaction will not impair its ability to properly perform its service to the public.

IT IS, THEREFORE, ORDERED that Virginia Electric and Power Company be, and it is hereby authorized, empowered and permitted, subject to the limitations contained in paragraph 2 below:

1. To enter into the sale and lease back and related transactions described in this Order and in the Application, including the assumption of the obligations set out in the Lease and the Collateral Agreement in respect of the Notes, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transactions.

2. To negotiate with Goldman, Sachs & Co. for the sale of the $46,500,000 Notes at an interest rate not to exceed 8 3/4%.

3. To devote the proceeds of the transactions described in the Order to the purposes set forth in the Application.

4. To levelize rent expense, use "off balance sheet accounting", and recognize the lease as a lease rather than as a purchase for accounting purposes, all as set forth in the Application.

IT IS FURTHER ORDERED that neither of the Owners will render any service to the public as a utility or exercise any of the rights and privileges or bear any of the duties or obligations of a public utility, and therefore neither Owner shall be considered a public utility by reason of the transactions described above.

IT IS FURTHER ORDERED that Vepco file with this Commission, within thirty (30) days after consummation of the transactions described in this Order and in the Application, a report setting forth the final terms of such transactions (including the price received by Vepco for the Equipment and the expenses of the transactions), and within such time Vepco shall file with this Commission a copy of the Bill of Sale, Lease, Collateral Agreement and all other instruments, documents and agreements entered into by Vepco that are material to the transaction in the final form in

which the same are executed; and 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 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 Vepco from compliance with any law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 130

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Virginia Electric and Power) ORDER GRANTING AUTHORITY
Company - Application for) TO LEASE AN IBM SYSTEM
Authority to Lease an IBM) 370/MODEL 155 COMPUTER
System 370/Model 155 Computer)

This cause is before the Commission upon an Application of Virginia Electric and Power Company (hereinafter called "VEPCO") filed December 16, 1971, wherein authority is sought by VEPCO to lease an IBM System 370/Model 155 Computer.

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

FINDINGS OF FACT

1. VEPCO is a corporation duly organized and existing under the laws of the Commonwealth of Virginia, with its general offices in Richmond, Virginia, and is authorized to engage in the business of generating, transmitting, distributing and selling electric power in the State of North Carolina. It is a public utility under the laws of North Carolina and as such is subject to the jurisdiction of this Commission.

2. The Company proposes to negotiate with the Computer Leasing Division of Itel Corporation (Itel), a California corporation, an arrangement under which Itel will secure (i) a party who will acquire the Equipment and provide 20% of its purchase price (the Owner), and (ii) a private institutional lender who will finance the remaining portion of the Owner's acquisition of the Equipment pursuant to a security and loan agreement (the Loan Agreement) with the

Owner in the form as attached as Exhibit B to the application.

3. The Lease would be for a term of eight years. During this time the Company would have the absolute right to use the Equipment in its electric utility operations at its offices, subject only to conditions of the Lease. The Lease would be a completely net lease under which the Company would be responsible for maintaining, repairing and replacing the Equipment and for paying all taxes and other costs attributable to its ownership, possession or use. Rental payments would consist of (i) basic rent payable in equal monthly installments and in no case less than an amount required on any rental payment date to make payment in full of all installments of principal and interest at their stated maturity due at such time under the security and loan agreement (Basic Rent), plus (ii) supplemental rent consisting of (A) the amounts which, when added to Basic Rent, will equal all payments due the lender under the Loan Agreement, and (B) interest on such amounts and on Basic Rent not paid when due.

4. The interest rate under the Loan Agreement would be no greater than 7-3/4% without the further approval of this Commission. The Company would have the right at the end of the Lease term to acquire the Equipment for its fair market value at the time. The Company would have the right to terminate the Lease after three years upon payment of an amount, if any, by which (i) a termination payment specified in the Lease should exceed (ii) the amount for which the Owner, using best efforts, could resell the Equipment, less the reasonable expenses of such resale.

5. Assuming an interest rate of 7-3/4% the Company's monthly payments of Basic Rent under the Lease would be $19,923. These payments would be charged to the expenses of each of the various user departments within the Company on the basis of each such department's use. Itel would receive its fee from the Owner, not the Company, and the Company would pay for no counsel fees other than those of its own counsel.

6. It is estimated that the Company's expenses in consummating the proposed transaction would amount to about $1,500.

7. Based on a study of leasing proposals submitted by five companies conducted by VEPCO the proposal submitted by Itel Corporation will result in an estimated savings of $345,000 over a five year retention period when compared to VEPCO's out-right purchase of the same equipment.

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 VEPCO;

(b) compatible with the public interest;

(c) necessary and appropriate for and consistent with the proper performance by VEPCO of its service to the public;

(d) reasonably necessary and appropriate for such purposes; and that the transaction will not impair its ability to properly perform its service to the public.

IT IS, THEREFORE, ORDERED that Virginia Electric and Power Company be and it is hereby authorized to consummate the proposed lease of an IBM System 370/Model 155 Computer from the Itel Corporation in accordance with the terms of the Computer Equipment Lease attached as Exhibit A to filed application of December 16, 1971 and made a part of this order by reference.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 193

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Carolina Power & Light)
Company for Authority to Adjust and) ORDER
Increase its Electric Rates and Charges)

PLACE: Commission Hearing Room, Raleigh, North Carolina

DATE: November 3, 4, 5, 6, 7, 9, 10, 11, 12, and 13, 1970

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

APPEARANCES:

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For the Using and Consuming Public:

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BY THE COMMISSION: This proceeding was instituted on April 22, 1970, with the filing by Carolina Power & Light Company (hereinafter called "CP&L") of an Application for authority to increase its electric rates and charges for all metered retail customers in North Carolina. Metered customers includes all customers of the Company with the exception of certain flat rate schedules for street lights, traffic signals, and area lighting service. The original Application was for an across the board flat rate increase of 10.5% on all metered customers' bills, plus an increase in the minimum bill from $1.30 to $2.00, and elimination of one frozen schedule R-1C.

By Order of the Commission entered May 18, 1970, the original proposed increase of 10.5% was suspended and set for investigation and hearing on September 29, 1970.

On June 18, 1970, CP&L filed an Amendment to the Application to increase the across the board flat rate increase from 10.5% to 14%.

By Order of July 3, 1970, the amendment was allowed and the amended rate increase of 14% was suspended and set for hearing and CP&L was ordered to publish Notice of hearing in newspapers of general circulation in the CP&L service area.

The Application contends that the increases are filed due to overall rate of return requirements and general revenue needs arising from general increases in operating expenses, including increases in the cost of coal for steam generation of electric power and increases in the cost of capital for the company's construction program due to increased interest rates on company bonds. The increase of approximately 14% would produce additional annual revenue from metered North Carolina retail customers in the amount of $17,810,567.

On May 29, 1970, CP&L filed a Motion and Notice and Application for interim rate adjustment seeking to increase its rates in the amount of 4% as an interim emergency increase pending hearing and determination of the general rate Application.

The Application and Motion for interim rate increase was set for hearing and duly heard on June 19, 1970. The Attorney General, Robert Morgan, intervened for the using

and consuming public on June 11, 1970, and was represented at the hearing.

After receiving testimony regarding the said interim emergency rate increase of 4%, the Commission entered its Order on June 30, 1970, allowing the interim emergency rate increase to become effective on bills rendered on and after July 1, 1970. The 4% interim emergency rate increase was based upon rapid increases in the price of coal, and increases in interest rates and a decline in the company's earnings and was estimated to produce $2,900,000 of additional revenue from customers in North Carolina for the last six (6) months of 1970.

Petitions to intervene were filed in protest to the proposed rate increases, and the Commission entered Orders allowing interventions of North Carolina Textile Manufacturers Association, North Carolina Oil Jobbers Association, North Carolina Mining Association, Inc., Electricities of North Carolina, International Minerals and Chemicals Corporation, the City of Raleigh, and the United States of America were entered. Various procedural Motions and Orders were subsequently entered relating to setting the date of the hearing and continuances and postponements thereof and pre-trial conference was held on October 26, 1970, and final Order on pre-trial conference entered on October 28, 1970, establishing the procedures for the hearing.

Testimony and exhibits of the applicant CP&L were duly filed in advance of the hearing and testimony of the expert witnesses of the protestants and Staff reports were duly filed ten days in advance of the public hearing.

Public hearings were held in the Commission Hearing Room, Raleigh, North Carolina, beginning on November 3, 1970, and extending through 10 hearing days, ending on November 13, 1970, with counsel for all parties appearing and participating as shown above.

The applicant offered the testimony and exhibits of its witnesses Shearon Harris, President of CP&L, relating to the increased cost of coal and to other matters relating to CP&L's earnings; Edwin E. Utley, Director of Coal Purchasing for CP&L, testified as to the coal purchasing practices of CP&L and the prices of coal and other fuels used by CP&L; James S. Currie, Treasurer of CP&L, as expert witness in accounting and finance, testified as to the financial records and data of the company, including its proposed sale of stocks and bonds to finance the company's construction; Ernest C. North, outside engineer with Whitman Requardt Company, testified as to the trended cost of CP&L's plant in service; John S. Reilly, outside expert in utility valuation, testified as to trended cost of CP&L plant; Samuel Behrends, Jr., Director of rates for CP&L, expert witness in utility rate-making, testified as to rates and rate of return and financial position of CP&L's securities;

Paul Hallingby, Jr., outside witness from White Weld & Company, New York, expert in public utility securities, testified as to rates of return and position of CP&L's securities in the investment market; Robert R. Nathan, Economist, Washington, D.C., testified as to rate of return and utility securities; Archie K. Davis, Chairman of the Board of Directors of Wachovia Bank & Trust Company, N. A., Winston-Salem, testified as to economic conditions in North Carolina and in the investment market; L. Sanford Reis, Reis and Chandler, Security Analysts, Ridgewood, New Jersey, expert in utility securities, testified as to rate of return and investment market; and W. Reid Thompson, Vice President and General Counsel of CP&L, testified as to rates, rate of return, earning requirements and financial position of CP&L.

The protestants North Carolina Textile Manufacturers Association offered the testimony and exhibits of David A. Kosh, Utility Consultant, Washington, D.C., testifying as to rate of return of CP&L and the securities market; Jerry T. Roberts, Assistant Manager, North Carolina Textile Manufacturers Association, Charlotte, North Carolina, testifying as to the impact of proposed rates on textile mills; A. H. Grant, Vice President of Springs Mills, testifying as to the effect of the rate increase on his company; W. F. Mayhew, Jr., Manager of Indian Head Yarn & Thread, testifying as to the effect of the rate increase on his company; W. C. Gay, Assistant Treasurer of J. P. Stevens & Co., Inc., testifying as to the effect of the rate increase on his company; and C. J. Rhyne, Vice President and General Manager of Federal Spinning Corp., testifying as to the effect of the rate increase on his company.

The Utilities Commission Staff offered the testimony of Dr. Ross M. Robertson, Professor of Economics of Indiana University, as an expert witness on the rate of return of CP&L; F. Paul Thomas, Staff Accountant, testifying as to the Commission Staff audit of CP&L's books and the audit reports and exhibits contained therein; Robert K. Koger, Director of Engineering, testifying as expert witness on the allocations of plant expenses and revenues between North Carolina wholesale and retail customers; Joseph W. Smith, Director of Economics and Planning, expert in utility rate-making, testifying as to the rate of return on equity and the financial position of utility securities.

The Attorney General offered testimony of Dr. Charles E. Olson, Professor of Economics, University of Maryland, expert witness, testifying as to CP&L's accounting practices, rate of return of CP&L, and effect of CP&L rates on its return and securities; Alexander E. Wiskup, expert on accounting and economics, testifying as to the methods of accounting and computation and return and net income of CP&L; and Harvey J. Alexander, expert in evaluation of plant, testifying as to the methods of evaluating fair value of CP&L's plant and trended cost of CP&L's plant.

The International Minerals & Chemicals Association offered the testimony of Ben Robinson, testifying as to the effect of the rate increase on his company.

Feldspar Corporation offered the testimony of Carroll Rogers of Spruce Pine, testifying as to the effect of the rate increase on his company.

The applicant and the protestants and the Commission Staff all offered extensive testimony and exhibits and opinions of expert witnesses relating to the books and records of CP&L and the adjustments based upon the test period 1969 as prescribed by G.S. 62-133 and the adjustments relating to probable future revenues and expenses of CP&L under G.S. 62-133 (c).

The parties requested and were granted leave to file briefs 30 days after mailing of the transcript, and all briefs were filed and received by the Commission on or before December 29, 1970.

DIGEST OF TESTIMONY

The rate schedules of CP&L in effect at the time of the filing of the Application herein on April 22, 1970, are derived from the original tariffs of CP&L, as adjusted on an individual schedule basis during succeeding years. CP&L has not previously filed a general rate case. A fuel clause for large user rates and an adjustment in the textile rate energy clause in 1958 and 1960, respectively, were the most recent contested rate adjustments of the company. See Utilities Comm. v. Light Co. and Utilities Comm. v. Carolinas Committee, 250 NC 421 (1959) and Utilities Comm. v. Area Development, Inc., 257 NC 560 (1962).

CP&L's total North Carolina revenues during 1969 of $155,480,867 represent 83.12% of the system-wide revenues of $187,080,192. The North Carolina revenues from retail operations during 1969 of $129,291,000 represent 69% of the total company revenues, and are the only rates at issue in this proceeding, (the North Carolina and South Carolina wholesale operations being regulated by the Federal Power Commission, and the South Carolina retail operations being regulated by the South Carolina Public Service Commission).

Based upon the test year chosen, the calendar year 1969, both the company and the Commission Staff made separations of CP&L's operations between the North Carolina and South Carolina jurisdictions and separations between CP&L's wholesale sales to municipals, co-operatives and small private utilities in North Carolina and its other customers, called retail operations in North Carolina.

In making the separations between North Carolina wholesale operations and North Carolina retail operations, items such as revenue, plant specifically located and serving only customers in one state or serving only "wholesale"

customers, and expenses associated with providing service in one state or to wholesale customers are specifically assigned to the jurisdiction for the purpose of eliminating all revenues, plant and expenses not properly included in the North Carolina retail operations of CP&L over which this Commission has jurisdiction. However, because of CP&L's necessarily large investment in transmission and production plant capacity which jointly serves the company's entire system by means of a network of high voltage transmission lines, a majority of its plant investment and associated production and related plant expense must be apportioned on the basis of various allocation factors. Both the Staff and the company proceeded by first classifying the primary plant and expense accounts to Demand, Energy, and Customer related categories. In developing allocation factors for these three categories, the Staff and the company differed regarding the most appropriate basis for arriving at demand related allocation factors. Since the size of the required production and transmission plant is dictated to a very large degree by the demand upon the system, the demand related factor is by far the most significant in arriving at the amount of joint plant to be assigned to each jurisdiction.

Both the Staff and the company followed the "Average and Excess" procedure, but the company used somewhat different basis for computing demand related allocation factors. The Staff, using its allocation methods, together with various standard accounting adjustments, arrived at an original cost investment in plant devoted to North Carolina retail operations of $492,543,157, including construction work in progress, which is later subtracted in this Order, as hereinafter described. The company arrived at a figure of $499,679,192.

The total company operations of CP&L in North Carolina and South Carolina, both wholesale and retail, for the test period calendar year 1969, before adjustments, show gross operating revenues of $187,060,192, operating expenses of $144,124,536, with net operating income of $48,262,524, total investment in plant and service was $827,623,685, and after deducting accumulated depreciation and contributions in aid of construction and other standard adjustments, left net investment in electric plant of $678,181,371. After various standard adjustments for working capital, construction work in progress (no longer recognized in North Carolina and hereafter deleted from North Carolina retail rate computations, see _Lee Telephone case_, _post_) and interest during construction, the Commission Staff audit report discloses a total company system-wide rate of return under normal utility accounting practices of 6.82% on net investment, plus working capital. Staff Thomas Exhibit No. 1, Schedule 1, Col. 1.

The corresponding data for total North Carolina operations, including wholesale and retail, after certain adjustments, shows operating revenues of $151,076,995,

operating expenses of $115,915,584, net operating income $39,661,943, electric plant in service $689,818,057, adjusted for depreciation and construction work in progress with net investment in plant $564,780,147, adjusted to include working capital for total plant of $590,434,966, and with a rate of return of 6.72%. Staff Thomas Exhibit No. 1, Schedule 1, Col. 4.

North Carolina retail operations are further adjusted herein to delete construction work in progress and construction interest (in accordance with Utilities Commission and Lee Telephone Company v. Morgan, Attorney General, 277 NC 255, decided November 18, 1970).

The North Carolina retail operations of CP&L under investigation in this Docket are computed by elimination of wholesale business of CP&L in North Carolina by deduction of wholesale revenues and allocated wholesale expenses and produces the following operating data on CP&L's North Carolina retail operations during the calendar year 1969 test period at the rates then in effect; operating revenues $129,291,000, plus growth factor of $4,026,000 (from Dr. Olson's Exhibit No. 1, Schedule 4) for adjusted revenues of $133,317,000, original cost of plant in service allocated to North Carolina retail service $512,684,000, not including construction work in progress of $62,544,528, less reserve for depreciation of $105,538,000, and net allowance for working capital of $19,699,000 for net plant in service of $424,962,000.

The rate increase, as filed in the Application, would produce additional revenue on North Carolina retail business of $17,810,567 for the test period. The addition of this revenue under the proposed rates would result in a net operating income based on 41.5 cents per million BTU fuel cost, and the $4,026,000 growth factor and omitting interest charge to construction of $3,048,000, and a rate of return on net investment adjusted, omitting construction work in progress, of 8.39% on net investment in plant in service of $423,682,000 at the end of the test period and 12.95% return on equity.

The above operating statistics include many adjustments recognized in utility rate-making as hereinafter discussed and as further revealed in the testimony of the various expert witnesses and the exhibits offered into evidence at the public hearing. The figures used are principally the result of the Commission Staff audit, adjusted to remove construction work in progress and interest charged to construction, pursuant to the Lee case, supra, with the addition of an increased growth factor as proposed by the Attorney General witnesses Wiskup and Olson, with other adjustments as hereinafter further described. There is no substantial disagreement between any of the parties as to the actual revenues of CP&L, the actual system expenses of CP&L, or the actual system investment in plant of CP&L during the test period, and only minor differences as to the

allocated expenses and plant investment in North Carolina retail service. These basic figures are not controverted by any evidence of record. The Commission Staff conducted an audit of the company's books and confirmed the actual figures, as described. The expert witnesses of the Attorney General for the consuming public and the textile manufacturers had access under appropriate Orders and understandings to such books as they made known a desire to examine, and the actual revenues, expenditures and net investment are not in material dispute.

The various differences in the conclusions of the expert witnesses of CP&L, the Commission Staff, the textile manufacturers, and the Attorney General result entirely from differences in allocation, accounting and economic adjustments to the actual figures, pursuant to differences in opinions as to standard allocation methods, utility rate-making practices and recognized utility accounting practices, to arrive at North Carolina retail service. The record presents differences of opinion as to the proformed operating statistics of CP&L after such adjustments to the actual accounting data designed to establish a standard test year of operations for rate-making purposes. Adjustments, projected by the witnesses, include adjustments to bring forward known increases in revenues and expenses subsequent to the test period for "probable future revenues and expenses" under G.S. 62-133(c), including adjustments to fuel costs arising from increased costs of coal, adjustments in wages from increased wage contracts, and accounting adjustments for deferred taxes, amortization of taxes, growth factor of revenue to the end of the test period, tax effect of additional bond interest, plant held for future use, contributions to construction, deferred tax credit, cash working capital, materials and supplies, Federal tax accruals, and fuel inventory.

All of the various adjustments by the various expert witnesses are amply set forth in the testimony and exhibits of the witnesses as shown in the record herein, and all have been thoroughly considered by the Commission in arriving at its Findings of Fact and Conclusions of Law therefrom, as hereinafter set forth.

There are, however, some areas of expense which are in need of further comment. A review of CP&L's annual reports on file with the Commission indicates that CP&L has been spending money on obviously civic and charitable causes which have no relation to its operations as a public utility and to the furnishing of electric service at either retail or wholesale. The Commission takes judicial notice of these circumstances and advises that all such expenditures should in the future be considered in the light of whether they are _necessary_ expenses.

There is another area of expense which, while not dealt with as a separate item of expense in this record so as to enable the Commission to isolate it, affects the public

interest sufficiently for the Commission to take note of its existence and comment on its reasonableness. It is apparent from the record that CP&L has engaged in considerable promotional advertising in the past, particularly relating to the exclusive use of electricity for residential energy needs. It appears that CP&L is not only encouraging by promotional advertising the construction of new all-electric homes but is also encouraging the conversion of existing residential heating facilities to electrical. Considering these times of unprecedentedly high fuel costs, together with the lack of any definitive studies by CP&L of the effect of this increased cost on the over-all cost of providing service to all-electric customers (which studies are to be made for the purpose of ascertaining whether the all-electric rates are remunerative) and also considering that many of these all-electric customers install air conditioning equipment which contribute to the peak load problem of insufficient reserves anticipated by CP&L over the next few years, it does not appear that it is reasonable for CP&L to continue to engage in such promotional advertising activities and that expenses for such activities are not to be considered reasonable. The Commission, therefore, advises that for the foreseeable future promotional advertising expenses should be kept at an absolute minimum.

The Commission takes note that the expenses for rate cases should be properly amortized and not charged during any one fiscal year, and therefore directs that these expenses shall be amortized over a period of five years.

The Commission is advertent to the need for continued and expanded research and development in the electric utility industry and to the need for those in the industry to be sharply aware of the environmental problems associated with the production, transmission and distribution of electricity. While the Commission cannot from this record find any precise level of necessary or reasonable expenditure on the part of CP&L in either of these areas, the Commission is nonetheless convinced from this record and from its official files and records upon which it may rely that the company should be encouraged to expand expenditures for research and development and that it should carry on a continued program of inquiry and investigation into the means by which its activities may be carried on in a manner compatible to the public's broad interest in the protection and improvement of the environment.

FAIR VALUE EVIDENCE

G.S. 62-133(b)(1) provides that the Commission shall ascertain the fair value of the plant in service of CP&L at the end of the test period, considering original cost, replacement cost, which may be based upon trended cost, and such other factors as the Commission deems available.

Following the determination of the fair value of CP&L plant and service, G.S. 62-133 provides that the Commission shall fix a rate of return which shall provide a reasonable profit to CP&L stockholders "<u>considering changing economic conditions and other factors as they then exist, to maintain its facilities and service in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to existing investors</u>". G.S. 62-133(b)(4).

In considering the first factor prescribed by the statute in determining fair value, i.e., original cost, less depreciation, the original cost of CP&L's investment in plant is not disputed. There is no substantial dispute as to the retail allocations made by the Commission Staff engineers for that portion of the plant devoted to North Carolina retail service, so that the original cost plant in service, as computed by the Staff as $512,684,000, is not disputed by the intervenors, and is substantially in harmony with the allocations made by CP&L to North Carolina retail plant in service of $513,879,862. The depreciation allowance, as described in G.S. 62-133(b)(1), of "that portion of the cost which has been consumed by previous use recovered by depreciation expense" was audited by the Commission Staff and the depreciation rates found not to require any adjustments (See Staff Thomas Exh. 1, p. 7) and is allocated to North Carolina retail in the amount of $105,538,109, and after standard adjustments for the test period, including working capital (and construction work in progress, which is eliminated in this Order), resulted in net original cost of plant in service of $492,543,157. (Staff Koger Exh. 2-A)

CP&L offered expert testimony and exhibits of the replacement costs of the property as "determined by trending such reasonable depreciated costs to current cost levels, or by any other reasonable methods" based on use of Handy-Whitman Trended Costs Index, producing a trended cost index factor for the total CP&L plant of 39% over the original cost, resulting in CP&L evidence of depreciated trended cost of $659,415,050. A substantial portion of the CP&L plant was built within the last two years prior to the test period and during the test period and its replacement cost is very little, if any, more than original cost. CP&L's annual reports filed with the Commission show $186,069,768 in system-wide plant additions in the three years 1967, 1968 and 1969. See <u>Lee case</u> (supra), 277 NC at p. 269. An additional portion of the CP&L plant consists of the hydroelectric plants and older steam plants of small size compared to modern design generators, and resulted in trended cost which the Commission finds exceeds the actual fair value of the plant as compared to the replacement of such plant by plant of modern design of large capacity similar to the more recent CP&L plant. For this reason, the Commission finds that such plant does not have a fair value

properly related to the trended cost of such plant as shown by CP&L's trended cost evidence arrived at by taking the old plant as actually built and applying increases of the materials and labor involved in constructing outmoded plant based on today's materials and prices. For the above reasons, the Commission has considered the fair value of the CP&L plant is not represented by the trended cost of the existing plant and lies between such trended cost and the original cost, as found by the Commission in the Findings of Fact and Conclusions, as hereinafter set forth, but not as close to trended cost as contended for in the company testimony.

CONSTRUCTION PROGRAM

The evidence discloses a program for construction of additional generating capacity in the CP&L system of such substantial size that it is a factor in the consideration in this proceeding under G.S. 62-133 due to its impact upon the needs of CP&L to compete in the capital market for funds necessary for the construction program. CP&L has estimated its expected growth in demand for electric power to require doubling the plant capacity by 1976, at triple the cost of its present investment. To meet this demand, the company has planned installation of new generating capacity in the next seven years, requiring estimated expenditure of $1,400,000,000 for new plant from 1970 through 1976. CP&L Thompson Exh. 2. The basic generating stations for this new plant are already planned, and the initial plants designed and proposed with ten new generating units scheduled for completion by 1976, with one or more plants being completed each year from 1970 through 1976, and with either planning or construction money required for all plants at various stages over the seven years. Construction of the main station generating plants requires from three to five years for planning and construction. Interruption of the construction program at any time would produce delays in meeting the estimated electric demand. The company's ability to maintain adequate service to the public is dependent upon completion of this construction program as planned.

The construction program will require $1,200,000,000 of new investment funds from the sale of common stocks, bonds and preferred stock, with a balance of $200,000,000 to be derived from internally generated accumulated earnings and depreciation reserves from 1970 to 1976.

The company contends that investors in utility bonds will not purchase an issue if the earnings of the company do not cover the interest requirements of the bonds at least two times before income taxes. The times interest coverage record of the company has declined from 3.38 times interest in 1969 to 2.47 times interest in 1970, and 1.99 times forecast for 1971 under present earnings trends. The CP&L evidence contends that the interest coverage will be down to the minimum times interest in the near future under the

present earnings trend, and no further bonds could be sold under the market coverage requirements. Under those circumstances, the construction program could proceed only to the extent of internally generated funds or the sale of additional stock.

FUEL COSTS

The decline in the interest coverage ratio follows the decline in earnings of the company during 1969 and the first three quarters of 1970 following the test period. This recent decline in earnings is based primarily upon increases in coal costs and interest expense, as the revenues of the company have continued estimated annual growth, based upon growth in electric demand. The other increases in expenses arise from a variety of increased costs during an inflationary period, including increased wage costs, but the increased cost of coal has been the major factor which has caused the decline in net income. The cost of coal and cost of fuel is expressed in cents per million BTU, and is further expressed in terms of cost of burned coal for a given period for some studies as compared with cost of coal delivered within a given period for other studies, all in terms of the delivered cost to the plants at which the coal is burned, including transportation.

During 1969, the sources of electric energy generated by CP&L were as follows:

Steam plants	95.0%
Hydroelectric	4.1%
Other	0.9%

CP&L Annual Report 1969

The basic price of coal delivered to the average CP&L plant from 1965 to 1968 was in the range of 26.84 to 30.03 cents per million BTU. During 1969, the price of burned fuel was 31.98 cents per million BTU. By April 1970, the price of total coal purchased was 36.63 cents per million BTU, and continued to rise until August 1970, the total purchased coal price was 48.36 cents per million BTU, including spot coal purchased at 55.73 cents per million BTU. The record contains voluminous testimony and exhibits relating to the price of coal, but the essential explanation for the increase in price was that demand began to exceed supply, and the price went up. Coal operators began reducing exploration and opening of new mines when nuclear fuel became a factor in electric generation beginning in 1968, and in 1969 the export of coal from the eastern region through Norfolk was increased substantially to Japan and to Western Europe for steel production. In 1970, the Mine Safety Act went into effect and substantially increased the cost of producing coal, and removed from the production certain marginal mines which could not comply with the coal safety standards. The result was a shortage of coal, accompanied by an increase in demand for export and for

increased electric consumption, and the coal producers began raising prices as the demand increased.

CP&L has 66% of its coal supply under long-term contract, but the contracts contain escalating clauses for certain wage rates and other increases and some of the mines producing for such contracts have failed to meet the production requirements, so that at times only 50% of the coal requirements were delivered under the contracts.

There is no dispute as to the actual price CP&L has paid for coal. There has been dispute as to whether CP&L exercised good management practices in not securing coal at prices below those paid. There is no evidence that the prices paid by CP&L were not market prices for coal then being offered on the market. The primary dispute is that CP&L should have enforced its contracts and should have placed more of its coal requirements under long-term contract before the price increases.

The expert witnesses for all parties, including protestants, Commission Staff, and CP&L have agreed that known increases in the price of coal should be considered in the probable future expenses of CP&L for operation of plant under G.S. 62-133(c).

The Commission finds as hereinafter set forth that the coal price in August of 48.36 cents per million BTU (55.73 cents per million BTU spot coal price) is not a reasonable figure for total fuel cost anticipated in the future. The evidence is not convincing that the market will maintain this rapidly accelerated price. The Commission therefore has adopted the price for fuel cost of 41.5 cents per million BTU as the proper price for use in computing CP&L's fuel expense. The record shows that the Hartsville nuclear station will come into service in 1971, with 730,000 KW capacity, and the Sutton plant will be converted to bunker oil in 1971 at 33 cents to 34 cents per million BTU for foreign oil. The price of nuclear fuel will thus soon be a factor in CP&L's total fuel cost at 24 cents per million BTU, along with such natural gas as is available on an interruptible basis at 34.73 cents per million BTU. The operation of the combustion turbines with 78.84 cents per million BTU oil will gradually be phased out as the peak demand is covered by adequate reserve capacity in the nuclear and coal-fired steam stations.

INTEREST CHARGES

The outstanding bonds and preferred stock of CP&L have interest rates varying from 3 1/8% on $15,000,000 of bonds due in 1979, up to 6 7/8% on $40,000,000 of bonds due in 1998, and 9% on $50,000,000 of bonds sold in 1970. One 2 7/8% issue of $15,000,000 is due in 1981. The average cost of interest or imbedded interest cost on long-term bonds was 4.72% on December 31, 1969, and 5.73% in 1970. The substantial increase in interest charges for the more

recent bond issues will produce an increase in imbedded cost of debt as the vast amounts of new debt are issued to cover the construction program, and the old bonds mature and are retired and new debt becomes the total debt in a higher range. The interest charges for CP&L during the test period, on a total company basis were $14,543,350 on $309,030,000 of long-term bonds and debentures, plus $5,855,400 on $66,767,098 of short-term notes at average 8.7% interest. CP&L contends that this compares with interest charges estimated for 1970 of $24,083,000 and estimated interest charges in 1971 of $32,103,000 and 1972 of $42,441,000. The interest charges must be covered by the times interest earned formula (see prior discussion). The rising interest charges have a severe effect on earnings left for equity ownership, as the profit to the stockholders required under G.S. 62-133(b)(4).

The various expert witnesses testifying on rate of return and finances of CP&L have expressed differences of opinion as to a fair rate of return on equity to provide a fair profit for stockholders under this requirement. The expert opinion varies from the opinion of Hallingby of CP&L as 15.89% on equity down through Nathan as CP&L's outside economic expert as 14.5 - 15%, and Reis at 13.5%; Mr. Smith of the Commission Staff in a range from 11.59 to 12.25%; Dr. Robertson in a range from 11.23 to 12.44%; and Dr. Kosh of the Textile Manufacturers of 10.75%.

Each of the experts' opinions is supported by studies and exhibits as found in the record, based upon CP&L's needs to attract capital required in the market and secure funds for the construction program on a basis fair to the customers and to its existing investors. G.S. 62-133(b)(4).

Based upon all of the expert opinions and testimony and the exhibits and the record, the Commission is of the opinion and finds, as will be hereinafter set forth, that a fair rate of return on common equity would be 12% based upon the existing economic circumstances and the expectation of investors and potential investors upon comparing CP&L securities and the quality of such securities with other securities that are available on the securities market.

Based upon the entire record, the Commission makes the following:

FINDINGS OF FACT

1. That Carolina Power & Light Company is duly organized as a public utility company under the laws of North Carolina, holding a franchise from the Utilities Commission to furnish electric power in a major portion of the State of North Carolina under rates and service regulated by the Utilities Commission as provided in Chapter 62 of the General Statutes.

2. CP&L supplies electric service at retail in 200 communities, each having an estimated population of 500 or more, and wholesale service is supplied to 24 municipalities; electric service is furnished to 541,574 customers at December 31, 1969. For the calendar year 1969, average revenues per kilowatt hour sold to residential, commercial and industrial customers were 1.64 cents, 1.52 cents and 0.86 cents, respectively. The average annual kilowatt hour use per residential customer was 9,027 for the calendar year 1969. Total North Carolina revenues for the test period amounted to $155,480,867, which represents 83.12% of system-wide revenues.

3. That CP&L has invested in utility plant in service for its North Carolina retail customers as of the end of the test period, December 31, 1969, electric plant in service of an original cost of $512,684,000.

4. That the portion of said plant which has been consumed by previous use recovered by depreciation expense is $105,538,000.

5. That CP&L received contributions to construction on said plant from its customers of $1,883,000, to be deducted from CP&L's investment in plant.

6. That the net investment at original cost of CP&L's plant in service under G.S. 62-133(b)(1), being original cost less contributions to construction and the portion consumed by previous use recovered by depreciation is $405,263,000.

7. That a necessary part of said original cost includes cash working capital of $10,022,000, based on 45 days of operating and maintenance expense (as a reduction from the 2 months expenses in the company exhibits and the Staff report) and materials and supplies of $14,052,000, from which the Commission deducts Federal income tax accruals of $4,375,000, giving net original cost of net investment and working capital allowances of $424,962,000. This excludes from original cost the construction work in progress at the end of the test period attributable to North Carolina retail service of $62,544,528 and the plant held for future use of $95,872, which is included in the service plant in the Uniform System of Accounts for electric companies, but which is excluded here based upon the decision of the Supreme Court in the _Lee Telephone Company case_, 277 NC 255 (supra) (1970).

8. That the cost of fuel to CP&L as a probable future operating expense under G.S. 62-133(c) is 41.5 cents per million BTU.

9. That CP&L's revenue under present rates on an annualized basis for customers served at the end of the test period for North Carolina retail service was $133,317,000. The reasonable operating expenses of CP&L during the test

period, using cost of fuel at 41.5 cents per million BTU, are $105,935,000. The operating revenues, as found, includes $4,026,000 of growth factor to increase the actual revenues of $129,291,000 during the test period by the amount estimated for the customers added during the year to annualize the revenue from customers served at the end of the test period.

10. That trending the original cost to current cost levels, less depreciation, under G.S. 62-133(d)(1), gives trended cost of $592,573,011, and under the statute is found to be the replacement cost of the N.C. retail plant in service based on this method.

11. That the Commission finds that the fair value of CP&L's retail property in North Carolina, considering original cost less depreciation and considering replacement cost by trending original cost by current cost levels and considering the condition of the property and the outmoded design of some of the older plants, is $445,610,000.

12. That the actual investment currently consumed through reasonable actual depreciation during the test period was $13,463,000.

13. That the net operating income for return at the end of the test period, as adjusted to fuel cost of 41.5 cents per million BTU was $27,382,000, and produced a rate of return on the original cost of plant in service less depreciation of 6.44% and a rate of return on equity of 6.92% and a rate of return on the fair value of CP&L's property in service of 6.14%, and such rate of return is found to be insufficient to provide a fair profit to CP&L's stockholders under G.S. 62-133(b)(4) considering changing economic conditions and is insufficient to allow CP&L to compete in the market for capital funds on terms which are reasonable and fair to its customers and existing investors.

14. That the rate of return necessary on the fair value of CP&L property, with sound management, to produce a fair profit for its stockholders, considering the economic conditions as they exist, to maintain its facilities and service in accordance with its obligation to its customers and to compete in the market for capital funds on a reasonable basis to customers and stockholders, is 7.70%, which rate of return will produce $15,080,000 of additional gross revenue from North Carolina retail electric service and will provide a return on equity to the common stockholders of 12%, by providing net income for common stockholders of $16,380,000 on equity of $136,502,000, and requires an increase of 11.86% over the rates for all metered customers of CP&L in effect prior to the Application of the interim rates allowed in this proceeding, and an increase of 11.66% in the total rates in effect at said time, and being 84.66% of the rate increase applied for in the Application.

15. That the minimum bill increase to $2.00 a month and the elimination of Schedule R-1C are just and reasonable, for the reasons hereinafter set forth.

CONCLUSIONS

The Application of CP&L in this proceeding seeks an increase under the proposed rates to produce $17,810,567 of additional revenue from its customers on metered rates at the end of the test period on an annualized basis. Based upon the Findings of Fact above, the Commission finds and concludes that the total amount applied for is not supported by the record and would produce a return greater than that found to be just and reasonable. The following Tables, based upon the Findings of Fact, show the calculations for the $15,080,000 additional revenue found to be reasonable from the records in this proceeding:

I. CAROLINA POWER & LIGHT CO. - N. C. RETAIL OPERATIONS
NET OPERATING INCOME AND NET INCOME DERIVATIONS
FOR TEST PERIOD - YEAR END DECEMBER 31, 1969
($000's)

Item	Present Rates	Increase Approved	At Approved Rates
Gross Operating Revenues	$129,291	$	$
Add: Revenues from annualizing usage of year end customers (a)	4,026		
Adjusted Gross Operating Revenues	$133,317	$15,080	$148,397
Operating Expenses:			
Coal costs used-M/BTU	41.5¢		41.5¢
Fuel for Generation	$ 43,136		$ 43,136
Purchased Power	4,223		4,223
Wages, Benefits & Materials	25,738		25,738
Total Operation & Maintenance Exp.	$ 73,097		$ 73,097
Depreciation	$ 13,463	$	$ 13,463
Taxes other than Income	12,969	905	13,874
Income Taxes-State	730	850	1,580
Income Taxes-Federal	4,919	6,395	11,314
Investment Tax Credit (Normalized)	778		778
Investment Tax Credit (Amortized)	(1,111)		(1,111)
Income Taxes Deferred in prior yrs.	(474)		(474)
Deferred Income Taxes	1,564		1,564
Total Operations Expenses	$105,935	$ 8,150	$114,085
Net Operating Income For Return	$ 27,382	$ 6,930	$ 34,312

Net Other Income	$ (754)		$ (754)
Income available for fixed charges	26,628		33,558
Fixed Charges:			
Interest on long term debt	12,958		12,958
Interest on short term debt	3,772		3,772
Net Premium-Dis. on long term debt	12		12
Less: Interest charged construction	(3,048)		(3,048)
Total Fixed Charges	13,694		13,694
Net Income Before Preferred Dividends	12,934		19,864
Preferred Dividends	3,484		3,484
Net Income for Common Stockholders	$ 9,450	$ 6,930	$ 16,380
Common Stockholders Equity	$136,502		$136,502
Rate of Return on Common Stockholders Equity	6.92%		12.00%

(a) $4,026 Additional revenues based on Intervenor's witness Olson method of calculating growth factor which has related fuel cost, taxes and other expenses reflected in operating expenses.

II. CAROLINA POWER & LIGHT CO. - N.C. RETAIL OPERATIONS REASONABLE CAPITAL STRUCTURE AND EMBEDDED COST
($000's)

Type Capital	Amount	Total %	Embedded Cost and Return %	Over-All Cost Rate %	Annual Interest and Return Requirement
Long Term Debt	$226,142	52.45	5.73	3.00	$ 12,958
Preferred Stock	54,283	12.59	6.42	.81	3,484
Common Equity:					
Common Stock & Earned Surplus	136,502	31.65	12.00	3.80	16,380
Sub Total	416,927				
Accumulated Depr. (Income Taxes):					
From Accelerated amortization	6,789	1.57	0	0	0
From Liberalized depr.	7,522	1.74	0	0	0
Total Capitalization	$431,238	100.00		7.61	
	A		B		

A-Based on Weighted average projected capital structure for period 1970-1972 as projected by CP&L witness Thompson Exhibit No. 3

B-Long term Debt and Preferred Stock Embedded Cost as of 10-31-70.

CAROLINA POWER & LIGHT CO. - N.C. RETAIL OPERATIONS
RATES OF RETURN ON NET INVESTMENT - YEAR END 1969
($000's)

	ORIGINAL COST		FAIR VALUE	
	Present Rates	Approved Rates	Present Rates	Approved Rates
Electric Plant in Service	$512,684	$512,684	$	$
Less: Reserve for Depr.	(105,538)	(105,538)		
Contributions in aid of construction	$ (1,883)	$ (1,883)		
Net Investment in Plant	$405,263	$405,263		
Working Capital Allowance:				
45 Days Expense-Cash Allow.	10,022	10,022		
Materials and Supplies	$ 14,052	$ 14,052		
Less: Federal Income Tax Accruals	$ (4,375)	$ (5,441)		
Net Working Capital Allow.	$ 19,699	$ 18,633		
Total Net Investment and w/c allowance	$424,962	$423,896	$445,610	$445,610
Net Operating Income For Return	$ 27,382	$ 34,312	$ 27,382	$ 34,312
Rates of Return on Net Investment	6.44%	8.09%	6.14%	7.70%

1. The Commission concludes that 84.66% of the amount applied for in the proposed rate increase is necessary to provide a fair rate of return to CP&L on the fair value of its property.

2. The rates proposed by CP&L are found to be unreasonable and unjust to the extent that they produce any increases in annualized revenue on the metered customers at the end of the test period in excess of $15,080,000.

3. CP&L has begun cost of service studies to measure the differentials in cost and other factors affecting the classification of rates by end use of electricity, but such studies require two years to complete and are reserved for future investigation and review after they are completed and filed with the Commission, pursuant to Order entered herein on October 2, 1970.

4. The Commission concludes from all of the evidence and all of the testimony and the entire record herein that the earnings of CP&L, as adjusted to the 41.5 cents per million BTU cost of fuel, and as actually experienced in 1970 under said cost, have been reduced by increases in the cost of coal and by increases in interest expense and wage costs and other expenses to such an extent that its ability to sell additional bonds and common and preferred stock sufficient to finance necessary construction of additional plant are placed in jeopardy under the present rates.

5. The ability of CP&L to provide adequate service in its service area and to construct needed plant to meet the increased demand for electric current and the law requires that its earnings be maintained at a level so as to attract the capital necessary for such program. The increased cost of coal and the increased interest costs are amply shown in the record.

6. The reasonable capital ratio of common stock to debt capital for the present economic conditions for CP&L is 52.45% debt, 12.59% preferred stock, and 31.65% common stock, with the balance of 3.3% from deferred income taxes.

MODIFIED RATE INCREASE

The evidence before the Commission, and the Findings and Conclusions of the Commission as hereinabove set forth, find that CP&L has not carried the burden of proving that the entire rate increases proposed are just and reasonable, and that only a part of the rate increases proposed have been supported by the evidence of record. The Commission finds, as hereinabove set forth in its Findings and Conclusions, that CP&L has proved that only 84.66% of the total increase applied for is just and reasonable under the North Carolina rate-making formula. CP&L having thus failed to sustain the reasonableness of the entire increase proposed, the Commission concludes that the increase required to provide a fair rate of return on the fair value of CP&L property as

found above should be derived from a flat rate across the board percentage increase on all metered customers, plus the increase on the minimum bill from $1.30 a month to $2.00 a month, and the elimination of Schedule R-1C. The Commission finds and concludes from the evidence of record that the present minimum bill of $1.30 a month is insufficient to cover the cost of service involved, and the increase to $2.00 a month is just and reasonable. The Commission further finds and concludes that said present Schedule R-1C is unreasonable and discriminatory as a rate available only to existing customers, and should be eliminated.

The Commission therefore concludes that the revenue needs approved in this proceeding shall be secured by a flat percentage increase on all CP&L's metered rates sufficient to provide the $15,080,000 increase required to provide a fair rate of return on the fair value of CP&L property as found by the Commission in this proceeding, and the rate increase as applied to CP&L will result in a flat rate increase of 11.86% on all of CP&L's metered rate schedules. This increase includes the interim rate increase heretofore approved by the Commission by Order of June 30, 1970, and upon placing the 11.86% flat rate increase into effect on billings on February 1, 1971, as hereinafter provided, the interim rate increase approved on June 30, 1970, shall be cancelled and terminated, and the sole rate increases remaining in effect shall be the 11.86% increase on all metered rates in effect prior to the filing of the Application on April 22, 1970, the increase in the minimum bill and the elimination of Schedule R-1C.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective with all service rendered on and after February 1, 1971, the applicant Carolina Power & Light Company is authorized and permitted to put into effect increased rates and charges across the board by a flat rate increase on all metered customers of the company in the amount of 11.86% on all metered rates of the company, including all components of each rate schedule so that the total monthly bill to each metered customer will be increased by the same uniform 11.86% increase, and to increase the minimum charge to $2.00 per month, as filed, and eliminate Schedule R-1C. The billings at said 11.86% increased rates, and the refunds for all amounts collected in excess thereof as hereinafter provided, shall commence at the earliest feasible time for correcting the billing procedures of the company after receipt of this Order. Such increase in rate schedules shall produce no more than total annualized additional revenue as of the end of the test period of $15,080,000, being 84.66% of the increased revenue sought under the proposed rates of $17,810,567, and amended schedule of rates and charges shall be filed with the Commission no later than seven (7) days after the receipt of this Order, reflecting such 11.86% increase. The interim rate increase averaging approximately 4% on metered customers is hereby cancelled effective with the application

of the 11.86% increase on service rendered after February 1, 1971.

2. Carolina Power & Light Company shall make a refund to any of its retail metered customers billed for electricity sold since February 1, 1971, at a rate in excess of the 11.86% increase approved herein, said refund to be the difference between said approved rate and the approximately 14% rate increase placed into effect by the company under Undertaking for refund filed pursuant to G.S. 62-135, effective on electricity sold on and after February 1, 1971, with interest at 6%, and report all said refunds to the Commission.

3. The rates prescribed in this Order shall remain in effect for no longer than the time required to complete Carolina Power & Light Company's cost of service studies as prescribed in this proceeding and until investigation and Order of the Commission determining the effect of said studies on the rates of CP&L as a factor affecting the reasonableness of said rates after notice and hearing on the results of such cost of service studies.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of February, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 120

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company for a General)
Increase in Rates and Charges for Electric Rates) ORDER

PLACE: Commission Hearing Room, Ruffin Building, Raleigh, North Carolina

DATE: October 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, November 2, and 3, 1970

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

APPEARANCES:

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For the Commission Staff:

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BY THE COMMISSION: This proceeding was instituted on April 24, 1970, with the filing by Duke Power Company (hereinafter called "Duke") of an Application for authority to adjust and increase its electric rates and charges for retail customers in North Carolina, the Application being in two parts. In Part I, Duke applied for authority to increase its various retail electric rate schedules in such a manner to increase the revenue of the company in an amount of approximately 18%. The increases were based on allegations of general revenue needs, but were distributed among classes of customers in part upon the basis of a flat 12% increase in all schedules and in part upon a common factor for the increased cost of fuel in each schedule. In Part II, Duke applied for an emergency interim increase in said rates, using the same rate formula to produce a revenue increase to the company of approximately 4.2%, pending final hearing and determination of the Application under Part I. The approximate 4.2% interim increase in Part II is included in and is a part of the total increase applied for of approximately 18% in Part I of the Application.

The approximate 18% applied for would produce approximately $37,225,000 in additional North Carolina retail gross revenues, and the approximate 4.2% of interim emergency increase would produce $8,900,000 of additional gross revenue.

By Order entered on May 7, 1970, the Commission suspended the rate increases and set them for investigation and hearing and required that notice of hearing be published in newspapers of general circulation in the Duke service area.

Petitions to intervene were filed in protest to the rate increases and Orders duly entered allowing intervention of North Carolina Textile Manufacturers Association, North Carolina Mining Association, the City of Durham, North Carolina Oil Jobbers Association, City of Statesville, Electricities of North Carolina, International Minerals and Chemicals Corporation, and Houston V. Blair, a residential customer in Durham. The Attorney General intervened as of right on behalf of the using and consuming public pursuant to G.S. 62-20.

Part II of the Application relating to interim emergency relief was heard before the Commission on May 19, 1970, in public hearing with testimony offered by Duke and participation by the intervenors in the case at the time of said hearing. By Order entered May 26, 1970, the Commission approved the interim emergency increase, as filed, to produce approximately 4.2% increase on an annual basis,

computed on rate schedules as filed therein and as hereinafter more fully described.

On May 29, 1970, the Attorney General filed Notice of Appeal from the Order of the Commission of May 26, 1970, allowing the interim emergency rate increase and Motion and Petition for issuance of Writ of Supersedeas and Stay of Execution in the North Carolina Court of Appeals.

The North Carolina Court of Appeals entered Judgment on June 29, 1970, dismissing the appeal of the Attorney General from the interim Order of the Commission.

Various procedural Motions and Orders were filed in the proceeding, including continuances of date of hearing from time to time, an Order approving exchange of information on August 18, 1970, an Order for report on cost of service studies entered September 28, 1970, and Order on final pre-trial conference entered on October 15, 1970. Testimony and exhibits of the applicant Duke were duly filed 30 days in advance of the hearing, and testimony of the expert witnesses of the protestants and Staff reports were duly filed 10 days in advance of the public hearing.

Public hearings were held in the Commission Hearing Room, Raleigh, North Carolina, beginning on October 20, 1970, and extending through 12 hearing days, ending on November 3, 1970, with counsel for all parties appearing and participating as shown above.

The applicant offered testimony and exhibits of its witnesses, William S. Lee, Chief Engineer of Duke; Robert E. Frazier, treasurer of Duke; John B. Gillett, outside engineering cost expert, testifying to trended plant costs; William T. Robertson, Director of fuel purchasing for Mill Power Supply Company, subsidiary of Duke; Dr. Walter A. Morton, professor of economics, University of Wisconsin, outside expert on economic matters, testifying as to rate of return; Robert Burke, outside witness from Moody's Financial Services, testifying as to acceptance of Duke securities in the financial markets; Daniel W. Gardiner, outside witness from Clark Dodge & Company, Securities Analyst, testifying as to the position of Duke's securities in the financial markets; Alvord D. Stearns, Manufacturers Hanover Trust Company, New York, expert in public utility securities analysis, testifying as to the securities and security requirements of Duke's securities; Glen A. Coan, Vice President of Duke in charge of rates, testifying as to the rate structure and rate requirements of the proposed increase; C. E. Poovey, Director of Forecast & Budget Division for Duke, testifying as to the forecast and budget requirements of Duke; William H. Grigg, Vice President of Duke for Finance, testifying as to the financing of Duke's construction program by sale of stocks and bonds; and William P. McGuire, President of Duke, testifying as to the coal purchases of Duke and the construction program and financial requirements of Duke.

The Textile intervenors offered the testimony and exhibits of Thomas Ingram, Executive Vice President, Textile Manufacturers Association, in protest to the increase in rates to textile mills; Jack C. Childers, President, Erlinger Mills, Lexington, testifying to the effect of the increase on his company; Leonard Moretz, President, Carolina Mills, testifying to the effect of the increase on his mill; W. C. Gay, Assistant Treasurer of J. P. Stevens Company, Greensboro, testifying as to the effect of the increase on his company; Louis S. Morris, President of Cone Mills of Greensboro, testifying to the effect of the increase on his company; W. A. Stevens, Manager of costs, Cannon Mills, Kannapolis, testifying to the effect of the increase on his company; Robert W. Twitty, President of Marion Manufacturing Association, testifying as to the effect of the increase on his company: and the testimony of Dr. David A. Kosh, Washington, D. C., expert in utility economics and rate-making, testifying as to rate of return of Duke and its accounting practices and related issues.

The Utilities Commission Staff offered the testimony of Dr. Ross M. Robertson, Professor of Economics of Indiana University, relating to the rate of return of Duke; Jesse Kent, Staff Accountant, testifying as to the Commission Staff audit of Duke's books and the audit report and exhibits contained therein; Robert K. Koger, Chief Engineer of the Commission Staff, testifying as expert witness on the allocations of plant expenses and revenue between North Carolina wholesale and North Carolina retail customers; Joseph W. Smith, Chief of Economics and Planning, testifying as to the rate of return on equity and financial position of utility securities.

The Attorney General offered testimony of Dr. Charles E. Olson, Professor of Economics, University of Maryland, expert witness testifying as to Duke's accounting practices, rate of return of Duke, and effect of Duke's rates on its return and on its securities; Alexander E. Wiskup, expert on accounting and economics, testifying as to the methods of accounting and computation and return and net income of Duke; and Harvey J. Alexander, expert in evaluation of plant, testifying as to the methods of evaluating fair value of Duke's plant and trended cost of Duke's plant.

The protestant Houston V. Blair testified on his own behalf as a customer of Duke, objecting to certain promotional practices of Duke and the impact of the rate increase upon him as a residential customer.

The applicant and the protestants and the Commission Staff all offered extensive testimony and exhibits and opinions of expert witnesses relating to the accounting treatment and rate-making effect of the intercorporate transactions of Duke with its subsidiaries, Crescent Land & Timber Corporation, Mill Power Supply Company, and its contracts with Erwin Industries for the development of a real estate

development in South Carolina and a real estate development in Durham County.

At the close of all of the evidence, the protestant, Textile Manufacturers, entered Motions of record to dismiss the Application, to disallow the expenses of Duke's advertising program to disallow payments to Mill Power Supply for coal purchase expenses, and to require Duke to divest itself of ownership of Crescent Land & Timber Corporation, and to make certain accounting adjustments with respect to this subsidiary. Certain other protestants joined in the Motion as appears in the record. The Commission denied the Motion to Dismiss and took the other Motions under advisement.

Also at the close of the hearing, the Attorney General moved to strike the references to growth factor of 1.615 used by Duke and the Staff, to disallow the 1/6 cash working capital, to compute deferred tax credit at zero cost, to strike the references to construction work in progress and interest on work in progress, to take judicial notice of the uniform partnership act, and to take notice of G.S. 62-22 authorizing and directing coordination between the State Board of Assessment and the Utilities Commission. Certain of the other protestants joined in said Motions as shown by the record. The Commission took the respective Motions under advisement.

The parties requested and were granted leave to file briefs 30 days after mailing of the transcript. An extension of time to file briefs was further allowed to December 14, 1970, and all briefs were filed and received by the Commission on or before December 14, 1970.

DIGEST OF TESTIMONY

The rate schedules of Duke in effect upon the filing of this Application were established in 1966. The last general rate increase of Duke was heard by the Commission in Docket No. E-7, Sub 6, decided by Order of April 16, 1952, published in Volume 1951-52 N.C.U.C. 1162 (Exceptions overruled, 1952-53 N.C.U.C. 883). The published opinion sets forth the rates thus fixed beginning at 1952-53 N.C.U.C., p. 1180. Duke subsequently filed six limited decreases in specific rate schedules up to and including the changes encompassed in the rates as in effect in 1966, which remained in effect in North Carolina up to the time of the interim increase in this proceeding.

Based on the test year chosen, both the Company and the Commission's Staff made separations of Duke's operations between the North and South Carolina jurisdictions and separations between Duke's sales to municipals, co-operatives, and small private utilities (the so-called "wholesale" operations) in North Carolina and its other customers (called "retail" operations) in North Carolina. None of these separations and allocations methods are

susceptible to "mathematical exactitude". While the Company's and the Staff's methods are not identical, the results of the two methods do not differ in material respects.

Such items as revenues, plant specifically located and serving only customers in one state or serving only "wholesale" customers, and/or expenses associated with providing service in one state or to wholesale customers can be specifically assigned to a jurisdiction for the purpose of eliminating all revenues, plant and expenses not properly includable in the North Carolina retail operations of Duke over which this Commission has jurisdiction. However, because of Duke's necessarily large investment in transmission and production plant capacity which jointly serves the Company's entire system by means of a network of high voltage transmission lines, a majority of its plant investment and associated production and related plant expense must be apportioned on the basis of various allocation factors. Both the Staff and the Company proceeded by first classifying the primary plant and expense accounts to Demand, Energy, and Customer related categories. In developing allocation factors for these three categories, the Staff and the Company differed regarding the most appropriate method for arriving at demand related allocation factors. Since the size of the required production and transmission plant is dictated to a very large degree by the demand upon the system, the demand related factor is by far the most significant in arriving at the amount of joint plant to be assigned to each jurisdiction.

The Staff followed the "Average and Excess" procedure while the Company used the "Maximum Non-coincident" method for developing demand related allocation factors. The Staff, using its allocation methods together with various standard accounting adjustments, arrived at an original cost investment in plant devoted to North Carolina retail operations of $900,572,000. The Company arrived at a figure (substantially similar to the Staff's figure) of $905,702,000.

The total Company operations of Duke in North and South Carolina, both wholesale and retail, for the test period calendar year 1969, before adjustments, show gross operating revenues of $342,241,641, operating expenses of $266,050,510, with net operating income of $76,191,131. The total investment in electric plant and service was $1,424,020,081, and after deducting accumulated depreciation and contributions in aid of construction and other standard adjustments, left net investment in electric plant of $1,277,397,828. After various standard adjustments for working capital, construction work in progress (no longer recognized in North Carolina and hereafter deleted from North Carolina retail rate computations, see <u>Lee Telephone case, post</u>) and interest during construction, the Commission Staff audit report discloses a total company system-wide rate of return under normal utility accounting

practices of 6.94% on net investment, plus working capital. Staff Kent Exhibit No. 1, Schedule 1, Col. 1.

The corresponding data for total North Carolina operations, including wholesale and retail, which account for 70% of Duke's system revenues, after certain adjustments, shows operating revenues $241,537,000, operating expenses $189,639,000, net operating income $51,897,000, electric plant in service $939,951,000, adjusted for depreciation and construction work in progress with net investment in plant $889,311,000, adjusted to include working capital for total plant of $936,312,000, and with rate of return 6.77%. Staff Kent Exhibit No. 1, Schedule 1, Col. 6. When further adjusted to delete construction work in progress and construction interest (in accordance with Utilities Commission and Lee Telephone Company v. Morgan, Attorney General, 277 NC 255, decided November 18, 1970), the result is a net investment in plant at original cost of $723,180,000, and rate of return on net investment in plant in service of 7.29%.

The North Carolina retail operations of Duke, which are the only services involved in this Docket, are computed by elimination of wholesale business of Duke in North Carolina (regulated by the Federal Power Commission) by deduction of wholesale revenues and allocated wholesale expenses, produces the following operating data on Duke's North Carolina retail operations during calendar year 1969 test period, at the rates then in effect; operating revenues, $216,696,000, plus growth factor of $6,689,000 (from Dr. Olson's Exh. 1, Schedule 5) for adjusted revenues of $223,385,000; total operating expenses of $176,755,000 based on 40 cents per million BTU cost of fuel; net operating income $46,630,000 (omitting interest during construction), original cost of plant in service allocated to North Carolina retail service $900,572,000, not including $185,822,000 of construction work in progress, less reserve for depreciation of $282,021,000, and allowance for working capital of $36,862,000, for net plant $651,756,000, with rate of return after certain accounting adjustments as shown in the record of 7.15% on net investment in utility plant in service. (See Table herein, rates of return, post). If cost of fuel is priced at 35.2 cents per million BTU and the Staff growth rate of 1.615% is used, the corresponding rate of return on this net plant is 7.50%.

The rate increases, as filed in the Application, would produce additional revenue on North Carolina retail business of $37,225,000 for the test period. The addition of this revenue under the proposed rates would result in a net operating income based on 35.2 cents per million BTU fuel cost and the 1.615% growth factor and omitting interest charge to construction, of $66,148,000, and a rate of return on net investment adjusted, omitting construction work in progress, of 10.13% on net investment in plant in service, of $652,817,000 at the end of the test period.

The above operating statistics include many adjustments recognized in utility rate-making as hereinafter discussed and as further revealed in the testimony of the various expert witnesses and the exhibits offered into evidence at the public hearing. The figures used are principally the result of the Commission Staff audit, adjusted to remove construction work in progress and interest charged to construction pursuant to the Lee case, supra, with the addition of an increased growth factor as proposed by the Attorney General witnesses Wiskup and Olson, with other adjustments as hereinafter further described. There is no substantial disagreement between any of the parties as to the actual revenues of Duke, the actual system expenses of Duke, or the actual system investment in plant of Duke during the test period, and only minor differences as to the allocated expenses and plant investment in North Carolina retail service. These basic figures are not controverted by any evidence of record. The Commission Staff conducted an audit of the Company's books and confirmed the actual figures, as described. The expert witnesses of the Attorney General for the consuming public and the textile manufacturers had access under appropriate Orders and understandings to such books as they made known a desire to examine, and the actual revenues, expenditures and net investment are not in material dispute.

The various differences in the conclusions of the expert witnesses of Duke, the Commission Staff, the textile manufacturers, and the Attorney General result entirely from differences in accounting adjustments and economic adjustments to the actual figures, pursuant to differences in opinions as to standard allocation methods, utility rate-making practices and recognized utility accounting practices and standard allocation methods to arrive at North Carolina retail service. The record presents differences of opinion as to the proformed operating statistics of Duke after such adjustments to the actual accounting data designed to establish a standard test year of operations for rate-making purposes. Adjustments, projected by the witnesses, include adjustments to bring forward known increases in revenues and expenses subsequent to the test period for "probable future revenues and expenses" under G.S. 62-133(c), including adjustments to fuel costs arising from increased costs of coal, adjustments in wages from increased wage contracts, and accounting adjustments for deferred taxes, amortization of taxes, growth factor of revenue to the end of the test period, tax effect of additional bond interest, amortization of land profit, plant held for future use, contributions to construction, deferred tax credit, cash working capital, materials and supplies, Federal tax accruals, fuel inventory, and certain adjustments to the capital account arising from transactions of Duke with its subsidiaries, Crescent Land and Timber Corporation and Mill Power Supply Company.

All of the various adjustments by the various expert witnesses are amply set forth in the testimony and exhibits

of the witnesses as shown in the record herein, and all have been thoroughly considered by the Commission in arriving at its Findings of Fact and Conclusions of Law therefrom, as hereinafter set forth.

There are, however, some areas of expense which are in need of further comment. Duke's depreciation expense is somewhat high in our judgment. There is a need for Duke to engage in depreciation studies from which the Commission may later conclude the reasonableness of the depreciation expenses being used by Duke.

Certain adjustments were made by the Commission's Accounting Staff relating to political and civic contributions and functions. A review of Duke's annual reports on file with the Commission indicates that Duke has been spending on an annual basis sums substantially larger than those selected by the Commission's Staff and used as the basis for its adjustment. It appears that very large amounts of money are being spent by Duke on obviously civic and charitable causes which have no relation to its operations as a public utility and to the furnishing of electric service at either retail or wholesale. The Commission takes judicial notice of these circumstances and advises that all such expenditures should in the future be considered in the light of whether they are _necessary_ expenses.

There is another area of expense which, while not dealt with as a separate item of expense in this record so as to enable the Commission to isolate it, affects the public interest sufficiently for the Commission to take note of its existence and comment on its reasonableness. It is apparent from the record that Duke has engaged in considerable promotional advertising in the past, particularly relating to the exclusive use of electricity for residential energy needs. It appears that Duke is not only encouraging by promotional advertising the construction of new all-electric homes but is also encouraging the conversion of existing residential heating facilities to electrical. Considering these times of unprecedentedly high fuel costs together with the lack of any definitive studies by Duke of the effect of this increased cost on the over-all cost of providing service to all-electric customers (which studies are to be made for the purpose of ascertaining whether the all-electric rates are remunerative) and also considering that many of these all-electric customers install air conditioning equipment which contribute to the peak load problem of insufficient reserves anticipated by Duke over the next few years, it does not appear that it is reasonable for Duke to continue to engage in such promotional advertising activities and that expenses for such activities are not to be considered reasonable. The Commission, therefore, advises that for the foreseeable future promotional advertising expenses should be kept at an absolute minimum.

The Commission takes note that the expenses for rate cases should be properly amortized and not charged during any one fiscal year, and therefore directs that these expenses shall be amortized over a period of five years.

The Commission is advertent to the need for continued and expanded research and development in the electric utility industry and to the need for those in the industry to be sharply aware of the environmental problems associated with the production, transmission and distribution of electricity. While the Commission cannot from this record find any precise level of necessary or reasonable expenditure on the part of Duke in either of these areas, the Commission is nonetheless convinced from this record and from its official files and records upon which it may rely that the Company should be encouraged to expand expenditures for research and development and that it should carry on a continued program of inquiry and investigation into the means by which its activities may be carried on in a manner compatible to the public's broad interest in the protection and improvement of the environment.

FAIR VALUE EVIDENCE

G.S. 62-133(b)(1) provides that the Commission shall ascertain the fair value of the plant in service of Duke at the end of the test period, considering original cost, replacement cost, which may be based upon trended cost, and such other factors as the Commission deems available.

Following the determination of the fair value of Duke's plant and service, G.S. 62-133 provides that the Commission shall fix a rate of return which shall provide a reasonable profit to Duke's stockholders "_considering changing economic conditions and other factors as they then exist, to maintain its facilities and service in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to existing investors._" G.S. 62-133(b)(4).

In considering the first factor prescribed by the statute in determining fair value, i.e., original cost, less depreciation, the original cost of Duke's investment in plant is not disputed. There is no substantial dispute as to the retail allocations made by the Commission Staff engineers for that portion of the plant devoted to North Carolina retail service, so that the original cost plant in service, as computed by the Staff as $900,572,000, is not disputed by the intervenors, and is substantially in harmony with the allocations made by Duke to North Carolina retail plant of $905,702,000. The depreciation allowance, as described in G.S. 62-133(b)(1), of "that portion of the cost which has been consumed by previous use recovered by depreciation expense" was audited by the Commission Staff and the depreciation rates found not to require any

adjustments (See Staff Kent Exh. 1, p. 9) and is allocated to North Carolina retail in the amount of $282,021,000, and after standard adjustments for the test period, resulted in net original cost of plant in service of $655,556,000.

Duke offered expert testimony and exhibits of the replacement costs of the property as "determined by trending such reasonable depreciated costs to current cost levels, or by any other reasonable methods" based on use of Handy-Whitman Trended Costs Index, producing a trended cost index factor for the total Duke plant of 135% over the original cost, resulting in Duke evidence of depreciated trended cost of $844,000,000. A substantial portion of the Duke plant was built within the last two years prior to the test period and during the test period and its replacement cost is very little, if any, more than original cost. Duke's annual reports filed with the Commission show $390,705,558 in system-wide plant additions in the three years 1967, 1968 and 1969. See Lee case (supra), 277 NC at p. 269. An additional substantial portion of the Duke plant consists of the older hydroelectric plants and older steam plants of small size compared to modern design generators, and resulted in trended cost which the Commission finds exceeds the actual fair value of the plant as compared to the replacement of such plant by plant of modern design of large capacity similar to the more recent Duke plant. For this reason, the Commission finds that such plant does not have a fair value properly related to the trended cost of such plant as shown by Duke's trended cost evidence arrived at by taking the old plant as actually built and applying increases of the materials and labor involved in constructing outmoded plant based on today's materials and prices. For the above reasons, the Commission has considered the fair value of the Duke plant is not represented by the trended cost of the existing plant and lies between such trended cost and the original cost, as found by the Commission in the Findings of Fact and Conclusions, as hereinafter set forth.

CONSTRUCTION PROGRAM

The evidence discloses a program for construction of additional generating capacity in the Duke system of such substantial size that it is a factor in the consideration in this proceeding under G.S. 62-133 due to its impact upon the needs of Duke to compete in the capital market for funds necessary for the construction program. Duke has estimated its expected growth in demand for electric power at 9.5% annually. To meet this demand, the company has authorized installation of 8,616,002 KW of new generating capacity in the next seven years, requiring estimated expenditure of $1,716,300,000 for new plant from 1970 through 1974. Duke Frazier Exh. 3. This more than doubles the present generating capacity and the present plant investment. The basic generating stations for this new plant are already planned, and the initial plants designed and proposed with thirteen new generating units scheduled for completion by

1977, with one or more plants being completed each year from 1970 through 1977, and with either planning or construction money required for all plants at various stages over the seven years. Construction of the main station generating plants requires from three to five years for planning and construction. Interruption of the construction program at any time would produce delays in meeting the estimated electric demand. The Company's ability to maintain adequate service to the public is dependent upon completion of this construction program as planned.

The construction program will require $1,217,700,000 of new investment funds from the sale of common stocks, bonds and preferred stock, with a balance of $519,000,000 to be derived from internally generated accrued earnings and depreciation reserves from 1970 to 1974. Duke Frazier Exh. 3.

The present outstanding bonds of the Company contain requirements that no new bonds shall be issued if the earnings of the Company do not cover the interest requirements of the bonds at least two times before income taxes. The times interest coverage record of the Company has declined from 6.07 times interest in 1965 to 3.13 times interest at the end of the test period, December 30, 1969. The Duke evidence contends that the interest coverage will be down to the minimum 2 times interest under the present earnings level early in 1971, and no further bonds could be sold under the present indenture requirements. Under those circumstances, the construction program could proceed only to the extent of internally generated funds or the sale of additional stock.

FUEL COSTS

The decline in the interest coverage ratio follows the decline in earnings of the Company during 1969 and the first three quarters of 1970 following the test period. This recent decline in earnings is based primarily upon increases in coal costs and interest expense, as the revenues of the Company have continued estimated annual growth, based upon growth in electric demand. The other increases in expenses arise from a variety of increased costs during an inflationary period, including increased wage costs, but the increased cost of coal has been the major factor which has caused the decline in net income. The cost of coal and cost of fuel is expressed in cents per million BTU, and is further expressed in terms of cost of burned coal for a given period for some studies as compared with cost of coal delivered within a given period for other studies, all in terms of the delivered cost to the plants at which the coal is burned, including transportation.

During 1969, the sources of electric energy sold by Duke were as follows:

Steam plants	87.97%
Hydroelectric	5.13%
Combustion Turbines	1.85%
Purchased and net interchange	5.05%

Staff Kent Exh. 1, p. 3.

The basic price of coal delivered to the average Duke plant from 1965 to 1968 was in the range of 26 to 28 cents per million BTU. During 1969, the price of burned fuel increased to 32.3 cents per million BTU. By March 1970, the price of purchased coal was 34.5 cents per million BTU, and continued to rise until July 1970, the purchased coal price was 42.89 cents per million BTU, and spot coal was being purchased at 50 cents per million BTU. The record contains voluminous testimony and exhibits relating to the price of coal, but the essential explanation for the increase in price was that demand began to exceed supply, and the price went up. Coal operators began reducing exploration and opening of new mines when nuclear fuel became a factor in electric generation beginning in 1968, and in 1969 the export of coal from the eastern region through Norfolk was increased substantially to Japan and to Western Europe for steel production. In 1970, the Mine Safety Act went into effect and substantially increased the cost of producing coal, and removed from the production certain marginal mines which could not comply with the coal safety standards. The result was a shortage of coal, accompanied by an increase in demand for export and for increased electric consumption, and the coal producers began raising prices as the demand increased.

Duke had 80% of its coal supply under long-term contract during the test period, and 87% under contract in June 1970, but the contracts contain escalating clauses for certain wage rates and other increases and some of the mines producing for such contracts have failed to meet the production requirements.

There is no dispute as to the actual price Duke has paid for coal. There has been dispute as to whether Duke exercised good management practices in not securing coal at prices below those paid. There is no evidence that the prices paid by Duke were not market prices for coal then being offered on the market. The primary dispute is that Duke should have enforced its contracts and should have placed more of its coal requirements under long-term contract before the price increases.

The expert witnesses for all parties, including protestants, Commission Staff, and Duke have agreed that known increases in the price of coal should be considered in the probable future expenses of Duke for operation of plant under G.S. 62-133(c).

The Commission finds as hereinafter set forth that the latest coal price in August of 45 cents per million BTU (50 cents million BTU spot coal price) is not a reasonable figure for total fuel cost anticipated in the future. The evidence is not convincing that the market will maintain this rapidly accelerated price. The Commission therefore has adopted the earlier price for fuel cost of 40 cents per million BTU as the proper price for use in computing Duke's fuel expense. The Application shows that the three Oconee nuclear stations will come into service in 1971, 1972 and 1973 respectively, each with 886,300 KW capacity. The price of nuclear fuel will thus soon be a factor in Duke's total fuel cost, along with such natural gas as is available on an interruptible basis at the Lee station at 34.74 cents per million BTU. The operation of the combustion turbines with 76.57 cents per million BTU oil and 38.78 cents per million BTU gas will gradually be phased out as the peak demand is covered by adequate reserve capacity in the nuclear and coal-fired steam stations.

FUEL FACTOR IN DUKE'S PROPOSED RATES

Duke's increase in expenses is attributed to the alleged increased cost of coal more than any other factor and is given by Duke as the reason Duke has based the proposed rate increase upon a 2 factor formula of adding .06 cents on every KWH of each rate schedule, and then adding 12% to the block as the percentage increase for general increased costs. This, in effect, computes a portion of the increase for the various rate schedules, based upon the amount of energy consumed, which is related directly to the increase in coal costs, and another factor for other increased expenses, including increased wages and interest charges.

INTEREST CHARGES

The outstanding bonds and preferred stock of Duke have interest rates varying from 2.65% on $40,000,000 of bonds due in 1977, up to 8% on $75,000,000 of bonds issued in 1969 due in 1999, and 8.73% on $100,000,000 of bonds sold in August 1970, due 2000. One 3% issue of $40,000,000 is due in 1975. The average cost of interest or imbedded interest cost on long term bonds was 5.12% on December 31, 1969, and 5.86% in August 1970. The substantial increase in interest charges for the more recent bond issues will produce an increase in imbedded cost of debt as the vast amounts of new debt are issued to cover the construction program, and the old bonds mature and are retired and new debt becomes the total debt in a higher range. The interest charges for Duke during the test period, on a total company basis were $33,761,563 on $663,750,000 of long term bonds and debentures, plus $10,976,514 on $129,135,464 of short term debt at 8.5% interest. Duke contends that this compares with interest charges estimated for 1970 of $52,301,000 and estimated interest charges in 1971 of $68,252,000 and 1972 of $80,273,000. The interest charges must be covered by the times interest earned formula (see prior discussion). The

rising interest charges have a severe effect on earnings left for equity ownership, as the profit to the stockholders required under G.S. 62-133(b)(4).

The various expert witnesses testifying on rate of return and finances of Duke have expressed differences of opinion as to a fair rate of return on equity to provide a fair profit for stockholders under this requirement. The expert opinion varies from the opinion of Mr. Grigg as Treasurer of Duke as 14% on equity down through Dr. Morton as Duke's outside economic expert as 13 1/2%; Mr. Smith of the Commission Staff in a range from 12.0% to 12.5%; Dr. Robertson in a range from 11.33% to 12.89%; and Dr. Kosh of the Textile Manufacturers of 10.5%.

Each of the experts' opinions is supported by studies and exhibits as found in the record, based upon Duke's needs to attract capital required in the market and secure funds for the construction program on a basis fair to the customers and to its existing investors. G.S 62-133(b)(4).

Based upon all of the expert opinions and testimony and the exhibits and the record, the Commission is of the opinion and finds, as will be hereinafter set forth, that a fair rate of return on common equity would be 12% based upon the existing economic circumstances and the expectation of investors and potential investors upon comparing Duke securities and the quality of such securities with other securities that are available on the securities market.

CRESCENT LAND AND TIMBER CORPORATION

Over a long period of years Duke has acquired large land acreage in connection with purchase of reservoir sites and potential reservoir sites. During 1969, the portion of these lands which were not devoted to utility purposes were transferred to a wholly-owned subsidiary corporation, Crescent Land and Timber Corporation. The record shows the organization of this corporation and the various transactions between Duke and this subsidiary of Duke. The Commission Staff witness Smith filed a special report and testified, based upon examination of the books and records relating to Crescent Land and Timber Corporation, as to how the books of Duke should be adjusted to reflect Duke's organization and operation of this non-utility subsidiary, by deducting the investment from Duke's equity capital account.

It seems clear that under the statutory law of North Carolina Duke has the corporate authority to engage in non-utility activities. It is clear from the record in this case, however, that Duke's entry into the real estate development field, through its wholly-owned subsidiary, Crescent Land and Timber Corporation, has brought this area of activity into serious question. It can be seen that the transactions between Duke and Crescent Land and Timber Corporation were not at arms length and that they were

carried out in such a manner as to require substantial adjustments by this Commission in order to achieve an equitable result. The activities of Duke in this area have attracted wide-spread public attention and it may be reasonably assumed that these activities could result in Duke's having to pay substantially higher prices for land acquired in the future for utility plant construction. The Commission views this matter with the utmost seriousness and is of the opinion that land transactions between Duke and its subsidiary should be carried out with primary emphasis upon Duke's need to acquire and manage land for utility purposes and with the utmost care to see that land primarily acquired for utility purposes is not later diverted to the profit of Duke's shareholders without reasonable compensating adjustments to its ratepayers.

The expert witnesses called by the respective parties had varying opinions as to how the investment in this subsidiary and its assets and expenses should be accounted for in this rate proceeding.

When Duke completed transfer of all non-utility lands to Crescent Land and Timber Corporation in 1969, it acquired equity ownership in the amount of $21,641,032, in exchange for the open notes and advances theretofore made from Duke to Crescent Land and Timber Corporation (CL&T). The Commission concludes that the most appropriate accounting adjustment and accounting treatment would be to treat Crescent Land and Timber Corporation as having been spun off from the utility business of Duke and that the stockholders' equity be reduced by all expenditures for lands going into CL&T.

In thus excluding the enterprise as not being a public utility, the investment therein is withdrawn from the investment which the ratepayers are called upon to support.

Duke Power Company, through its interest-free cash advances and land transfers, had an investment in Crescent Land and Timber Corporation as of December 31, 1969, of $21,641,032. The exact breakdown of this investment and its apportionment to the North Carolina retail operations of Duke is as follows:

Type Investment	Total Co.	Allocation Factor	N.C. Retail
Cash advances	$10,601,705		
Land transfers to CL&T	11,039,327		
Total	$21,641,032	62.64%*	$13,555,942

*Based on gross plant ratio between Total Company and N.C. Retail operations.

The above investment of $21,641,032 as of December 31, 1969, should be reflected on Duke's books of account as an investment in Associated Companies Account No. 123 and

represented by capital stock no-par value of Crescent Land and Timber Corporation.

As of December 31, 1969, the capital structure of the North Carolina retail operations was adjusted for the $13,555,942 investment by Duke in CL&T by its inclusion on a no cost basis, as shown below:

Type Capital	Amount ($0000's)	Per Cent of Total	Embedded Cost %
Long term debt	$415,773	53.53	5.86
Preferred stock	97,092	12.50	6.84
Common Equity	241,909	31.15	12.00
CL&T investment	13,556	1.75	0
Deferred investment tax credit	8,298	1.07	0
Total	$776,628	100.00	

By assigning a no cost basis to the investment in Crescent Land and Timber Corporation, the ratepayers are not required to provide any return on this wholly unrelated investment.

No service shall be rendered to Crescent Land and Timber Corporation by Duke employees without compensation from Crescent to Duke.

Based upon all of the evidence of record, including the testimony and exhibits of all parties, the Commission makes the following

FINDINGS OF FACT

1. That Duke Power Company is duly organized as a public utility company under the laws of North Carolina, holding a franchise from the Utilities Commission to furnish electric power in a major portion of the State of North Carolina under rates and service regulated by the Utilities Commission as provided in Chapter 62 of the General Statutes.

2. That Duke has invested in utility plant for service of its North Carolina retail customers as of the end of the test period December 31, 1969, electric plant in service of an original cost of $900,572,000.

3. That the portion of said plant which has been consumed by previous use recovered by depreciation expense is $282,021,000.

4. That Duke received contributions to construction on said plant from its customers of $3,657,000, to be deducted from Duke's investment in plant.

5. That the net investment original cost of Duke's plant in service under G.S. 62-133(b)(1) being original cost less contributions to construction and the portion consumed by previous use recovered by depreciation is $614,894,000.

6. That a necessary part of said original cost includes cash working capital of $21,619,000 based on 45 days of operating and maintenance expense as a reduction in the 2 months' expenses in the Company exhibits and the Staff report and materials and supplies of $19,882,000, from which the Commission deducts Federal tax accruals of $4,639,000, giving net original cost of $651,756,000. This excludes from original cost the construction work in progress at the end of the test period attributable to North Carolina retail service of $185,822,000, and the plant held for future use of $245,000, which is included in the service plant in the Uniform System of Accounts for electric companies, but which is excluded here based upon the Lee Telephone Company case, 277 NC 255 (supra) (1970).

7. That the probable future cost of fuel to Duke as an operating expense is 40 cents per million BTU.

8. That Duke's revenue under present rates on an annualized basis for customers served at the end of the test period for North Carolina retail service was $223,385,000. The reasonable operating expenses of Duke during the test period, using cost of fuel at 40 cents per million BTU, are $118,404,000. The operating revenues, as found, includes $6,689,000 of growth factor to increase the actual revenues of $216,696,000 during the test period by the amount estimated for the customers added during the year to annualize the revenue from customers served at the end of the test period.

9. That trending the original cost to current cost levels, less depreciation under G.S. 62-133(d)(1), gives trended cost of $844,000,000, and under the statute is found to be the replacement cost of the plant based on this method.

10. That the Commission finds that the fair value of Duke's utility property in North Carolina, considering original cost less depreciation and considering replacement cost determined by trending original cost to current cost levels and considering the condition of the property and the outmoded design of some of the older plants, is $735,096,000.

11. That the actual investment currently consumed through reasonable actual depreciation during the test period was $28,336,000.

12. That the net operating income for return at the end of the test period as adjusted to fuel cost of 40 cents per million BTU was $46,630,000, produces a rate of return on the net original cost of plant less depreciation of 7.15%, and a return on equity of 7.72% and a rate of return on the fair value of Duke's property in service of 6.34%, and such rate of return is found insufficient to provide a fair profit to Duke's stockholders considering changing economic conditions, and is insufficient to allow Duke to compete in

the market for capital funds on terms which are reasonable and fair to its customers and existing investors.

13. That the rate of return necessary on the fair value of Duke property, with sound management, to produce a fair profit for its stockholders, considering the economic conditions as they exist, to maintain its facilities and service in accordance with its obligation to its customers and to compete in the market for capital funds on a reasonable basis to customers and stockholders, is 7.75%, which rate of return will produce $22,502,000 of additional gross revenues on North Carolina retail electric service, and will provide a return on equity to the common stockholders of 12%, by providing net income of $29,028,000 on equity of $241,909,000, and requires an increase in rates to produce 60.44% of the increases applied for, an increase of 10.38% over the rates in effect prior to the application of the interim rates allowed in this proceeding.

CONCLUSIONS

The Application of Duke in this proceeding seeks an increase under the proposed rates to produce $37,225,000 of additional revenue from the customers at the end of the test period on an annualized basis. The following tables based on the Findings of Fact, show the calculations for the $22,502,000 found to be reasonable from the records in this proceeding:

NET OPERATING INCOME AND NET INCOME DERIVATIONS
DUKE POWER CO. - N.C. RETAIL OPERATIONS
FOR TEST PERIOD-YEAR END DEC. 31, 1969 ($000's)

Item	At Present Rates	Increase Approved	At Approved Rates
Gross Operating Revenues	$216,696	$	$
Add: Revenues from annualizing usage of year and customers(a)	6,689		
Adjusted Gross Operating Revenues	$223,385	$22,502	$245,887
Operating Expenses:			
Fuel Costs Used - M/BTU	$ .40		$ .40
Fuel For Generation	72,229		72,229
Purchased Power	6,582		6,582
Wages, Benefits & Materials	39,593		39,593
Total Operation & Maintenance Expense:	$118,404		$118,404
Depreciation	$ 28,336		$ 28,336
Taxes Other Than Income	21,383	$ 1,350	22,733
Income Taxes - State	1,153	1,269	2,422
Income Taxes - Federal	6,471	9,543	16,014
Investment Tax Credit-Normalized	3,364		3,364
Investment Tax Credit-Amortized	(2,356)		(2,356)
Total Operating Expenses:	$176,755	$12,162	$188,917

Net Operating Income for Return	$ 46,630	$10,340	$ 56,970
Net Other Income	1,286		1,286
Dues & Contributions disallowed in operating expenses	(41)		(41)
Miscellaneous Deductions	(583)		(583)
Income Available For Fixed Charges	$ 47,292		$ 57,632
Fixed Charges:			
Interest on Long Term Debt	$ 24,364		$ 24,364
Interest on Short Term Debt	6,876		6,876
Less: Interest Charged Construction	(9,277)		(9,277)
Total Net Interest Charges	21,963		21,963
Net Income Before Preferred Dividends	25,329		35,669
Preferred Dividends	6,641		6,641
Net Income For Common Stockholders	$ 18,688		$ 29,028
Common stockholder's Equity	241,909		241,909
Rate of Return on Common Stockholder Equity	7.72%		12.00%

(a) $6,689,000 additional revenues based on Intervenor's witness Olson method of calculating growth factor which has related fuel cost, taxes and other expenses reflected in operating expenses.

REASONABLE CAPITAL STRUCTURE AND EMBEDDED COST
DUKE POWER CO. - N.C. RETAIL OPERATIONS
($000's)

TYPE CAPITAL	AMOUNT	TOTAL %	EMBEDDED COST AND RETURN %	OVER-ALL COST RATE %	ANNUAL INTEREST AND RETURNS REQUIREMENTS
Long Term Debt	$415,773	53.53	5.86	3.14	$24,364
Preferred Stock	97,092	12.50	6.84	.86	6,641
Common Equity	241,909	31.15	12.00	3.73	29,028
Sub Total	$754,774				
Crescent Land Investment	13,556	1.75	0	0	0
Deferred Investment Tax Credit	8,298	1.07	0	0	0
	$776,628	100.00		7.73	$60,033
	A		B		

A- Based on Capital Outstanding as of 12-31-69.
B- Long Term Debt and Preferred Stock Embedded Cost as of 8-31-70.

DUKE POWER CO. - N.C. RETAIL OPERATIONS
RATES OF RETURN ON NET INVESTMENT-YEAR END 1969
($000's)

	ORIGINAL COST		FAIR VALUE RATE BASE	
	PRESENT RATES	APPROVED RATES	PRESENT RATES	APPROVED RATES
Electric Plant in Service	$900,572	$900,572	$	$
Less: Reserve for Depr.	(282,021)	(282,021)		
Contributions to Construction	(3,657)	(3,657)		
Net Investment in Plant	$614,894	$614,894		
Working Capital Allowance:				
45 Days Expense-Cash Allowance	21,619	21,619		
Materials & Supplies	19,882	19,882		
Less: Federal Income Tax Accruals	(4,639)	(6,229)		
Net Working Capital Allowance	$ 36,862	$ 35,272		
Total Rate Base-For Return	$651,756	$650,166	$735,096	$735,096
Net Operating Income for Return	46,630	56,970	46,630	56,970
Rates of Return on Net Investment	7.15%	8.76%	6.34%	7.75%

1. The Commission concludes that only 60.44% of this proposed rate increase is necessary to provide a fair rate of return to Duke on the fair value of its property.

2. The rates proposed by Duke are found to be unreasonable and unjustified to the extent that they produce any increases in annualized revenue on the customers at the end of the test period in excess of $22,502,000.

3. The Commission finds that the relationship between Duke and its subsidiaries Mill Power Supply and Crescent Land and Timber are not supported by written contracts, and that such arrangements are, in effect, verbal contracts between two legal entities, notwithstanding parent and subsidiary corporations, and that in the interest of good utility accounting and regulation should be reduced to writing and filed with the Commission for public examination and audit.

4. Duke has begun cost of service studies to measure the differentials in cost and other factors affecting the classification of rates by end use of electricity, but such studies require two years to complete and are reserved for future investigation and review after they are completed and filed with the Commission pursuant to Order entered herein on September 28, 1970.

5. The Commission concludes from all of the evidence and all of the testimony and the entire record herein that the earnings of Duke, as adjusted to the 40 cents per million BTU cost of fuel, and as actually experienced in 1970 under said cost, have been reduced by increases in the cost of coal and by increases in interest expense and wage costs and other expenses to such an extent that its ability to sell additional bonds and common and preferred stock sufficient to finance necessary construction of additional plant are placed in jeopardy under the present rates.

6. The ability of Duke to provide adequate service in its service area and to construct needed plant to meet the increased demand for electric current and the law requires that its earnings be maintained at a level so as to attract the capital necessary for such program. The increased cost of coal and the increased interest costs are amply shown in the record. Increased interest charges tend to cause investors in common equities to seek earnings on equity commensurate with the increase in cost of interest.

7. The reasonable ratio of common stock to debt capital for the present economic conditions for Duke is 53.53% debt, 12.5% preferred stock, and 31.15% common stock.

MODIFIED FLAT RATE INCREASE

The increases proposed by Duke in this proceeding are based as heretofore described on a 2-part formula consisting of a .06 cents increase per KWH plus a 12% across the board flat rate increase.

The Textile Manufacturers Association and others have objected to the method of computing such increase as containing partial fuel clause component without proper and complete cost of service studies to determine the cost of fuel in such proposed increases.

The evidence before the Commission, and the Findings and Conclusions of the Commission as hereinabove set forth, find that Duke has not carried the burden of proving that the entire rate increase proposed is just and reasonable, and that only part of the rate increases proposed have been supported by the evidence of record. The Commission finds, as hereinabove set forth in its Findings and Conclusions, that Duke has proved that only 60.44% of the total increase applied for is just and reasonable under the North Carolina rate-making formula. Duke having thus failed to sustain the reasonableness of the entire increase proposed, the

Commission concludes that the increase required to provide a fair rate of return on the fair value of Duke property as found above should be derived from a flat rate across the board percentage increase rather than from a modified form of the method of increasing the rates used by Duke, i.e., the 2-part fuel factor and combination rate increase. The Commission therefore concludes that the revenue needs approved in this proceeding shall be secured by a flat percentage increase on all Duke's rates sufficient to provide the $22,502,000 increase required to provide a fair rate of return on the fair value of Duke property as found by the Commission in this proceeding, and the rate increase as applied to Duke will result in a flat rate increase of 10.38% on all of Duke's rate schedules. This 10.38% increase includes the interim rate increase heretofore approved by the Commission by Order of May 26, 1970, and upon placing the 10.38% flat rate increase into effect on billings on March 15, 1971, as hereinafter provided, the interim rate increase approved on May 26, 1970, shall be cancelled and terminated, and the sole rate increase remaining in effect shall be the 10.38% increase on all rates in effect prior to the filing of the Application on April 24, 1970.

The interim emergency rate increase averaging approximately 4.2% approved by the Commission by Order of May 26, 1970, included a 2-part factor based partly on cost of fuel and partly on flat rate percentage increase. Said rate increase was authorized after full hearing and after testimony of record supporting the 2-part rate increase based upon cost of coal at the time of said hearing on the interim emergency rate increase. Notice of Appeal was given from said emergency rate increase Order and the appeal dismissed by the Court of Appeals. The Commission, in providing a flat rate increase in this proceeding, does not find that the 2-part rate increase was improper for the interim rate increase and reaffirms the basis of said interim rate increase as constituting valid rates from the time of the May 26, 1970, Order until superseded by this Order.

PROTESTANTS' MOTIONS

The Motion of the Textile Manufacturers to dismiss the Application is overruled for the reasons found above that the evidence of record supports the finding by the Commission that the present rates of Duke are inadequate, that the proposed rates of Duke are excessive, and that the 10.38% increase in rates approved herein are just and reasonable and are supported by the record. The Motion of Textile Manufacturers to disallow Duke's advertising program is disallowed for the reason that said program has been filed with the Commission and has been in effect under said filing and sufficient cause has not been shown for disallowing said program in this proceeding. The Textile Manufacturers Motion to require Duke to divest itself of ownership of Crescent Land and Timber Corporation is

disallowed, except to the extent that the action in this Order deducting the cost of Duke's investment in Crescent Land and Timber Corporation from Duke's equity cost in the electric case accomplishes this result.

The Motion of the Attorney General to strike the reference to growth factor of 1.615 has been allowed to the extent that the growth factor proposed by Dr. Olson is utilized by the Commission. The motion to strike the cash working capital used by the Company and the Staff has been allowed to the extent that said working capital is computed on 45 days' basis instead of 60 days. The Motion of the Attorney General to compute deferred tax credit at zero tax cost has been allowed by the calculations including deferred tax credit at zero cost capital. The motion to strike references to construction work in progress and interest on work in progress has been allowed to the extent that said items are deducted from the plant and the income of Duke in this Order. The Motion to take judicial notice of the uniform partnership act has been considered and it is not found that sufficient cause has been shown on the record for such notice of a partnership by the Commission in this proceeding. The Motion to take notice of G.S. 62-22 is considered by the Commission and the Commission stands ready to make available to the State Board of Assessment all information gathered for valuation of Duke's public utility properties, and the Commission has considered the testimony of such tax valuations in this record, and concludes that it has before it sufficient evidence upon which to fix the fair value of that property as provided under G.S. 62-133.

The Commission has considered the motions of the protestants relating to contracts with Duke's subsidiaries, and particularly payments made by Duke to Mill Power in the amount of $335,000 per year for services rendered in purchasing coal. Duke's testimony is that its wholly owned subsidiary, Mill Power Supply Company, provides all of the overhead expenses of the coal purchasing operation and that the $335,000 a year is in reimbursement of Mill Power in serving as purchasing agent for Duke in its coal purchases. The coal is bought in the name of Duke for Duke's account and does not pass through ownership of Mill Power. The books of Duke and of Mill Power were audited by the Commission Staff and were open and available for all protestants. Nothing in the record discloses anything except that the $335,000 per year is in reimbursement for actual cost in the purchasing office of Mill Power for purchasing coal. There is no evidence that Duke would not have had the same expense if coal was purchased by a coal purchasing office established by Duke in its own materials and supplies operation. The fuel purchased during the test period amounted to a cost of $72,229,000 at the adopted price of 40 cents per million BTU. This is the coal for a North Carolina retail operation. The Company-wide coal purchases for which the purchase costs were reimbursed were much greater. The Commission concludes that such a major item of expense requires diligence in purchasing practices

and justifies reasonable expenses in the purchasing operation. G.S. 62-51 requires that all contracts between a utility and its affiliates and subsidiaries must be filed with and approved by the Commission. The Duke testimony contends that its dealings with Mill Power and its arrangements with Crescent Land and Timber are not under formal contracts, but are internal operating arrangements which are not in contract form and could not be filed as such, but which are reported in the regular reports to the Commission. Conclusion No. 3 above requires that they be reduced to writing and filed with the Commission.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective upon bills rendered on and after March 15, 1971, for service rendered after February 15, 1971, the applicant Duke Power Company is authorized and permitted to put into effect increased rates and charges across the board by a flat rate increase of 10.38% in the rates of the Company on each block of power in each schedule, including energy and demand components of applicable schedules, so that the total monthly bill to each customer will be increased by the same uniform 10.38% increase. Such increase in rate schedules shall produce no more than total annualized additional revenue as of the end of the test period of $22,502,000, being 60.44% of the increased revenue sought under the proposed rates of $37,225,000, and such amended schedule of rates and charges shall be filed with the Commission by March 1, 1971. The interim rate increase averaging approximately 4.2% is hereby cancelled effective with application of the 10.38% increase on service rendered after February 15, 1971.

2. The rates prescribed in this Order shall remain in effect for no longer than the completion of Duke's cost of service studies and until investigation and Order of the Commission determining the effect of said studies on the rates of Duke, as a factor affecting the reasonableness of said rates, after notice and hearing on the results of such cost of service studies.

3. That the motions of the protestants at the close of the evidence, as recited in the record and set forth herein, to disallow certain expenses and to make various accounting adjustments as described in the record, are overruled except as allowed in this Order.

ISSUED BY ORDER OF THE COMMISSION.

This 12th day of February, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-34, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Appalachian State University, t/a New River Light and Power Company for an Adjustment in Its Rates and Charges	) ORDER APPROVING) INCREASES IN) RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on October 27, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Applicant:

John H. Bingham, Esq.
Attorney at Law
P. O. Box 375, Boone, North Carolina 28607

For the Commission Staff:

William E. Anderson, Esq.
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina 27602

No Protestants.

WELLS, COMMISSIONER: Pursuant to the provisions of G.S. 116-46(5)(c), on January 20, 1971, Appalachian State University, t/a New River Light and Power Company at 227 East King Street, Boone, North Carolina 28607, (hereinafter referred to as "New River" or "Applicant") filed an application seeking authority to increase its electric rates and charges to residential and commercial customers in its service area in Watauga County, North Carolina, to recover an approximate 10.6% increase in the wholesale price of electric power purchased from its supplier, Blue Ridge Electric Membership Corporation. Blue Ridge Electric Membership Corporation purchases its electric power requirements from Duke Power Company, including power for resale to New River. In accordance with a filing with the Federal Power Commission (Docket No. E-7513), Duke Power Company has increased its rate to Blue Ridge Electric Membership Corporation. This increase was made effective December 15, 1970, under bond pending the final decision of the Federal Power Commission in said docket. Blue Ridge Electric Membership Corporation has in turn increased its wholesale rate to New River effective January 1, 1971. The increase in the cost of the power purchased by New River

from Blue Ridge Electric Membership Corporation is estimated to be approximately $67,745.07 per year, based upon 12 months' sales ending June 30, 1970, the test year chosen by New River.

Applicant requested that it be authorized to increase its rates and charges in the form of a surcharge of 7.21%, being an amount sufficient to cover the increases in its cost of purchased power from its supplier. The Commission authorized this increase to become effective upon one day's notice to its customers, subject to Applicant's agreement in its filed application to refund any amounts determined by the Commission after hearing to be unjust and unreasonable. The Commission ordered that the application of Appalachian State University, t/a New River Light and Power Company be set for investigation and scheduled for hearing in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on July 8, 1971, at 9:30 A.M.; that the proceedings be declared a general rate case and that notice of hearing be published by the Applicant once a week for two consecutive weeks prior to June 11, 1971, in a newspaper having general circulation in Applicant's service area; and finally that the Applicant shall have the burden of proving that its requested increases are just and reasonable and otherwise lawful.

On April 8, 1971, at the request of Applicant, the Commission issued an Order changing the date of the hearing to November 2, 1971, to allow Applicant time to prepare an audit for the current fiscal year, to revise its accounting system, and to make proper evaluation of its plant.

On May 5, 1971, the Commission on its own Motion issued an Order changing the date of the hearing to October 27, 1971, at 10:00 A.M.

The matter was called for hearing at the time and place specified in the Commission's Order of May 5, 1971. No one appeared at the hearing to protest the rate application.

SUMMARY OF EVIDENCE

Mr. Ned R. Trivette, Vice President for Business Affairs of Appalachian State University, testified in support of the application. He stated that New River had its beginning in 1915 and grew out of the result of there being no electric power in the Boone Community. A small dam was constructed on one of the streams and power was generated for the Appalachian Training School. Power was sold to a few of the neighbors and this was the beginning of New River as it is today. The profits that were realized at the beginning went to what was called the Middle Fork Fund of Appalachian School for the purpose of scholarships, and this process continued for some time until the establishment of an endowment fund at the University. Mr. Trivette testified that an endowment fund was created by Act of the Legislature

to provide scholarships for needy students in that area and that all profits now go into this fund.

Mr. Trivette stated the philosophy of the power company to be the providing of service at rates acceptable to the Commission and to provide scholarships to needy students if profits occur. Mr. Trivette concluded his direct testimony by saying that to his knowledge New River has never asked for an increase in rates, but has previously decreased them.

Mr. Grant Ayers, Superintendent for New River, testified that his duties include the total physical operation of New River with the responsibility for maintenance and construction and partial engineering and that Southwestern Consulting Engineering in Charlotte has been retained as consulting engineers for New River since 1949.

Mr. Ayers further testified that no capital credits or dividends had been issued from Blue Ridge Electric Membership Corporation since approximately 1957.

Mr. Ayers stated that upon receiving the Staff's engineering report he called Blue Ridge Electric Membership Corporation to help him make necessary adjustments to comply with the Staff's recommendation concerning voltage and that the areas where tree trimming was advised has been contracted to Davie Tree, of Kent, Ohio, for trimming. Mr. Ayers testified that no major power outages have occurred in more than 25 years.

Mr. Ray Cohn, Vice President, Southeastern Consulting Engineers, Inc., related that his firm had been employed by New River to make rate studies, system design and structure studies, and recently a study to show the effects of the cost of wholesale power increases. He used a test year ending June 30, 1970, comparing the old and new rates to find the difference in the cost of wholesale energy and then equated this as a percentage of New River's gross revenue, effecting a 7.21% increase, which was intended to be translated into an increase in retail rates matching exactly the increased cost of purchased power. Mr. Cohn said that the effects of capital credits were not considered in his study. He explained that he had worked for a cooperative at the time capital credits were conceived and that the reason for establishing them was twofold: first, to provide a means of prorating any possible future return of profits to the cooperative's members; and second, to provide some means of prorating the return of retained earnings and net proceeds in case of liquidation proceedings.

Mr. Donald Lampke, President of Southeastern Consulting Engineers, Inc., presented the method his firm used in making an inventory of the entire physical plant of New River. They determined an original net value of the plant of $1,681,373.59.

Lynn Holaday, Director of Auxiliary Services, Appalachian State University reported that he is responsible for the general administration of those auxiliary operations that receive no State appropriation, which includes New River Light and Power Company, and that he reviews the audits made on that company. He further testified that New River has received approval from the State Auditors Office to initiate the Uniform System of Accounts as a new accounting system starting January 1, 1972. Mr. Holaday related that Blue Ridge Electric Membership Corporation has informed New River that it would not pay capital credits until a 40% equity is realized, which is not expected within the next 15 years.

Carrol Brookshire, Internal Auditor for Appalachian State University, stated that he performs audits on New River operations on a six- and twelve-month basis.

The Commission Staff offered evidence through the testimony of Michael C. Warren, Staff Accountant, and William J. Willis, Jr., Staff Electrical Engineer. The Commission Staff's audit indicates that after accounting adjustments, New River's gross operating revenues amounted to $1,093,378.52 for the test period under its existing rates, and that considering total operating expenses of $932,844.07 and an annualization factor of 2.37%, New River's operating income for return was $164,339.12. The Staff's evidence indicates net investment in utility plant for return of $1,658,672.37, resulting in a rate of return on net investment per company books of 9.91%. After consideration of the proposed rate adjustments amounting to approximately $75,887.35 and after annualization of New River's increased wholesale energy cost and certain other adjustments reflected in the Staff's audit, to which New River took no exceptions, the Staff's evidence indicates that New River would have gross operating revenues of $1,169,265.87 with total operating expenses of $1,007,512.19 and considering the annualization factor of 2.37% used to adjust revenues and expenses to year-end plant, would result in an operating income for return of $165,723.61. With certain adjustments including allowance for working capital, accumulated reserve for depreciation and utility plant in service, the Staff's evidence indicates that New River's net investment in utility plant for return after giving effect to the proposed rate request would be approximately $1,658,672.37 and would result in a rate of return on net investment of 9.97%.

The Accounting Staff recommended that, should the engineering original cost study be adopted by the Commission, the recorded entry be made as follows:

Account 101, Utility Plant in Service $1,244,158.49

Account 108, Accumulated Provisions for Depreciation of Utility Plant in Service $88,923.92

Account 116, Other Utility Plant Adjustments $1,155,234.57

The Staff further recommended that the plant adjustment resulting from the appraisal on its property be written off over a 20-year period to Retained Earnings by making the following entry:

Account 116, Other Utility Plant Adjustments $57,761.73
Account 216, Unappropriated Earned Surplus $57,761.73

A late filed exhibit of Southeastern Consulting Engineers, Inc., on its appraisal of New River's property included changes in the net investment in utility plant and necessitated alterations in the Commission's Accounting Staff's recommendations of numerical book entries. The net investment in utility plant for return is changed to $1,707,677.37 resulting in a rate of return on net investment per company books of 9.62%. An accounting correction in the annualization factor adjustment figure after proposed rate adjustments produces an operating income for return of $165,723.61 and considering the net investment in utility plant for return of $1,707,677.37 renders a rate of return on net investment of 9.69%.

The late exhibit of "Inventory and Appraisal of Electric Distribution System" affects other recommendations of the Commission's Accounting Staff and they are altered as follows:

Account 101, Utility Plant in Service $1,248,882.88

Account 108, Accumulated Provisions for Depreciation of Utility Plant in Service $88,860.49

Account 116, Other Utility Plant Adjustments $1,160,022.45

In the Staff's recommendation that the plant adjustment be written off over a 20-year period to Retained Earnings, the accounts are modified as below:

Account 116, Other Utility Plant Adjustments $58,001.12
Account 216, Unappropriated Earned Surplus $58,001.12

Mr. Warren testified that in his opinion certain accounting entries as set out below will afford a method to enable the Commission to have cognizance of the effect of patronage dividends for rate making purposes and will provide a means for consumers, whose contributions or revenues make the existence of patronage dividends possible, to be assured of receiving just consideration for their contribution to capital credits.

Accordingly, the present account balance with Blue Ridge should be recorded on the books of New River by making the following entry:

Account 124, Other Investments $484,918.50
Account 216, Unappropriated Earned Surplus $484,918.50

Then each year when notice is received of that year's dividend amount from Blue Ridge Electric Membership Corporation the entry should be used to reduce purchased power expense and increase the investment as follows:

Account 124, Other Investments	XXXX
Account 55, Purchased Power	XXXX

The results on the computations on the rate of return on net utility plant including patronage dividends after proposed gross revenue changes and after late filed property information is 9.69%.

The return on net utility plant without the inclusion of patronage dividends is 6.04%.

Replacement cost supplied by Southeastern Consulting Engineers, Inc., in Accounts 362, 364, 365, 366, 367, 368A, 368B, 369, 370 and 373, total $2,342,788.17, and when summed with information supplied by New River in Accounts 360, 361, 391, 392, 393, 394, 395, 396, 397 and 398 total $220,553.47, combine to give a replacement cost of electric utility plant in service of $2,563,341.64.

The determination of replacement net utility plant in service was established by multiplying the total replacement value of electric utility plant in service by a percentage computed from book depreciation reserve and book total plant in service which results in an amount of $2,036,870.90.

Mr. Willis testified that the Engineering Staff of the Commission after conducting a service reliability investigation, with respect to New River, made the following conclusions: (1) New River provides adequate service to its customers and maintains proper voltage according to the Commission's rules, with minor exceptions; (2) New River's metering is within the standards set by the Commission; (3) System losses are low and declining, which is generally indicative of sufficient distribution plant construction; (4) New River's adherence to the National Electrical Safety Code is good with respect to road and line clearances but needs attention given to the trimming of trees in rights-of-way areas.

At the conclusion of the hearing, counsel for the Applicant and the Commission Staff waived filing of briefs and the matter was taken under advisement by the Commission.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Applicant, New River Light and Power Company, is a business enterprise of Appalachian State University and is subject to the jurisdiction of this Commission for the purpose of fixing its rates and charges pursuant to the

provisions of G.S. 116-46(5). Appropriate notice of this application was given to Applicant's customers.

2. Applicant has experienced an increase in wholesale cost of energy purchased from its supplier, Blue Ridge Electric Membership Corporation, following a wholesale increase in cost in its energy purchases from Duke Power Company, as approved by the Federal Power Commission, which has the effect of increasing its annual operating expenses.

3. The increases requested by the Applicant would result in an additional annual gross operating revenue of approximately $75,887.35 based on the 12 months ending June 30, 1971.

4. Under Applicant's existing rates for the 12-month period ending June 30, 1971, it realized approximately $1,093,378.52 in gross operating revenues, and considering total operating expenses of $932,844.07, and a customer annualization factor of 2.37%, Applicant's operating income for return was $164,339.12.

5. Under the rates proposed by the Applicant in this proceeding it would realize gross operating revenues of $1,169,265.87 and considering projected total operating expenses of $1,007,612.19 along with the customer annualization factor, Applicant will realize operating income for return of approximately $165,484.88.

6. After appropriate accounting adjustments, including the crediting of capital credits (patronage dividends) against the cost of purchased power, as recommended by the Commission's Staff accounting witness, the Applicant experienced a rate of return on the original cost of its property (less depreciation) (net investment) of 9.62% under its existing rates. Omitting the capital credits as a credit against purchased power costs reduces the above stated rate of return to 5.97%. Based upon the proposed rate increase requested herein, Applicant would have a net investment in utility plant for return of approximately $1,707,677.37, and under the requested rates would realize a return on net investment of approximately 9.69% after giving effect to accounting adjustments, including crediting of capital credits against the cost of purchased power. Excluding the crediting of capital credits against the cost of purchased power, Applicant's rate of return on net investment under the requested rates would be 6.04%.

7. To require the Applicant to absorb the increase in wholesale energy cost imposed upon it by its supplier, Blue Ridge Electric Membership Corporation, would result in the Applicant being required to operate at a rate of return that would be less than just or reasonable or sufficient for the Applicant's utility operations.

8. The rates proposed by the Applicant are just and reasonable and will approximately offset the increased cost

of wholesale electricity imposed upon it by its supplier, Blue Ridge Electric Membership Corporation.

9. The Inventory and Appraisal of the Electrical Distribution System conducted by Southeastern Consulting Engineers, Inc., and completed in August 1971 on behalf of New River Light and Power Company is found acceptable as representing the original cost of New River's total investment of $2,115,958.81, and the accumulated depreciation of $434,585.22 is found proper in establishing a depreciated value of $1,681,373.59 for the net electric utility plant in service.

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

CONCLUSIONS

The Commission concludes that to require New River to absorb the increases in wholesale energy costs imposed upon it by its supplier, Blue Ridge Electric Membership Corporation, would result in requiring the company to operate at a rate of return that is less than just and reasonable.

The Commission is further of the opinion that the rates authorized pursuant to this Order are just and reasonable under the operating conditions which the Applicant is now experiencing, and that the increases allowed herein will permit the Applicant to maintain its facilities and services in accordance with the reasonable requirements of its customers and to reasonably meet its income requirements to maintain and improve service to its customers.

Based upon the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED as follows:

(1) That the increase in rates and charges in the form of a 7.21% increase for all classes of service as filed by the Applicant in this proceeding be, and the same hereby is, approved as being just and reasonable.

(2) That approval of Applicant's proposed rate increase 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 May 28, 1971, and therefore no refunds will be necessary under the provisions of the Undertaking unless a reduction in charges for wholesale energy occurs as a result of the Federal Power Commission's decision in FPC Docket No. E-7513 relating to Duke Power Company's filed wholesale rates and Blue Ridge Electric Membership Corporation subsequently reduces its charges to New River for wholesale energy. In such case, refunds will be made as outlined in G.S. 62-135(c) and will be equal to the computed difference in the approved and the interim wholesale cost. This total amount is to be refunded

to individual customers based on the percentage reduction in the surcharge within thirty (30) days after notice of such decision, and this Commission is to be notified immediately of any such reduction.

(3) That Capital Credits (patronage dividends) be placed in the accounting records of New River by making the proper entries into Accounts 101, 108, 116, 124, 216 and 555 as recommended by the Commission's Accounting Staff and illustrated within the body of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-15, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Pamlico Power & Light Company, Incorporated, for Increase in Rates and Charges) ORDER APPROVING INCREASES IN RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on September 27, 1971 at 2:00 P.M.

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

APPEARANCES:

For the Applicant:

George T. Davis
Attorney at Law
Swan Quarter, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On April 1, 1971, Pamlico Power and Light Company, Inc., hereinafter referred to as "Pamlico", filed an application with the Commission seeking authority to increase its electric rates and charges to residential and commercial customers in its service area in Dare and

Hyde counties in North Carolina, and more particularly, authority to increase its rates to recover approximately 9.26% increase in the wholesale price of electric power purchased from its supplier, Virginia Electric & Power Company (Vepco) as approved by the Federal Power Commission. The increase in the cost of power purchased by Pamlico from Vepco was said to be approximately $10,762 per year, based upon 12-months sales ending June 1970.

The Applicant requested that the filed tariffs be authorized to become effective on or after May 5, 1971. On April 22, 1971, the Commission Staff filed a preliminary report of its review of the proposed increases. Pamlico filed an amendment on April 29, 1971, to its rate schedules filed on April 1, 1971, making certain changes in its rate structure as originally proposed. The amendment was allowed by the Commission's Order of April 30, 1971.

By Order issued on April 30, 1971, the Commission, being of the opinion that the application affects the interest of the using and consuming public in the area served by Pamlico and that the public should have an opportunity to intervene or protest the application if it so desired, suspended the filed effective date of the application and set the matter for investigation and hearing on September 30, 1971, and required that Pamlico publish notice attached to the Commission's Order of the proposed increases by mailing such notice by first class mail to each of its customers receiving service from Pamlico, and thereafter advising the Commission in writing the date on which said notice was mailed to its customers. The Commission's Order further declared this proceeding to be a general rate case pursuant to G.S. 62-133 and directed the Accounting Staff of the Commission to make an examination of the books and records of Pamlico.

On May 14, 1971, Pamlico pursuant to the provisions of G.S. 62-135, filed undertaking requesting that the Commission authorize it to place into effect the requested increases inasmuch as the increases proposed related to the wholesale cost of electricity and increases thereon imposed by Vepco, pursuant to approval by the Federal Power Commission. Pursuant to the undertaking Pamlico agreed to refund to its customers any amounts under the application, together with 6% interest per annum, which said amounts were found to be excessive by the Commission after hearing. By Order issued May 28, 1971, the Commission approved Pamlico's undertaking and allowed the requested increases to be placed into effect by Pamlico, subject to refund, and pending final determination of the investigation and hearing on its rate application.

On July 23, 1971, the Commission issued an Order changing the date of the hearing to September 27, 1971, on its own motion and required that Pamlico mail or deliver to each of its customers notice of the rescheduled hearing.

The matter was called for hearing at the time and place specified in the Commission's Order. No one appeared at the hearing to protest the rate application.

Mr. P. D. Midgett, Jr., President and Manager of Pamlico, testified in support of its application. He stated that the Company was incorporated in 1935 and that he had position of Secretary-Treasurer until 1938. Since 1938, Mr. Midgett indicated that he has been President of Pamlico and has supervised all of its operations from the beginning. He further stated that Pamlico provides service to its customers through 260 miles of line having approximately 1600 residential customers and in excess of 200 commercial customers. He indicated that the franchised territory of Pamlico is characterized by a low density area resulting in more investment in plant being necessary per subscriber to provide service. He indicated that Pamlico's rate application was solely for the purpose of recovering increases in wholesale cost of electricity imposed upon it by its supplier, Vepco, as approved by the Federal Power Commission. He further stated that the rates requested fell short of providing for recovery of the total increase in wholesale electric cost. Under the amended application, he stated that electric users falling in lower block usage would experience certain rate reductions and that the highest increase which would be experienced by customers consuming in the range of 600 kilowatt hours would be approximately $1.20 per customer.

Mr. Midgett testified that in his opinion the replacement cost of Pamlico's properties would be approximately twice as much as the net investment reflected on the company's books and set forth in Staff Exhibit No. 1. He stated that his opinion was based upon the fact that the greater part of the lines constructed were built when the costs of obtaining properties were considerably less than they are at present time.

Mr. Midgett further stated that if the application for the requested increases relating to its wholesale energy costs was not granted, Pamlico would experience difficulty in financing which Pamlico deemed to be necessary in the immediate future to improve its facilities and service. He stated that Pamlico's immediate plans were to replace approximately 9 miles of line with a 34,500 volt line and that the cost for such improvement would be approximately $60,000. Thereafter, Pamlico intends to add an additional 12 miles of line by way of rewiring and within 3 years increase its miles of lines approximately 40 additional miles, resulting in an expense to the company in connection with this investment in plant of $100,000.

In commenting on the Commission Staff's prefiled testimony relating to system power losses, Mr. Midget indicated that system losses averaged approximately 17% and that Pamlico had changed conductors and put in capacitors in order to mitigate this problem, and further acknowledged that the

problem might be further solved by lengthening the transmission lines. Mr. Midgett indicated to the Commission that he has available to him engineering assistance and advice which is utilized in Pamlico's operations.

The Commission Staff offered evidence through the testimony of Michael C. Warren, Staff Accountant, and William J. Willis, Jr., Electrical Engineer. The Commission Staff's audit indicates that Pamlico's gross operating revenues amounted to $383,979 for the test period under its existing rates, and that considering total operating expenses of $346,862 and an annualization factor of 3.626%, Pamlico's operating income for return was $37,918. The Staff's evidence indicates net investment in utility plant for return of $621,394, resulting in a rate of return on net investment per company books of 6.10%. After consideration of the proposed rate adjustments amounting to approximately $10,871 with respect to Pamlico's wholesale energy cost and certain other adjustments reflected in the Staff's audit, to which Pamlico takes no exceptions, the Staff's evidence indicates that Pamlico would have gross operating revenues of $392,446 with total operating expenses of $357,975 and considering an annualization factor of 3.626%, would result in an operating income for return of $35,161. With certain adjustments including federal and state accruals and Pamlico's allowance for working capital, the Staff's evidence indicates that Pamlico's net investment in utility plant for return after giving effect to the proposed rate request would be approximately $614,169 and would result in a rate of return on net investment of 5.73%.

Mr. Willis testified that the engineering staff of the Commission after conducting a service reliability investigation, with respect to Pamlico, made the following conclusions: (1) Pamlico provides adequate service to its consumers but has some problems maintaining voltage standards; (2) Pamlico's metering is within the standards set by the Commission; (3) System losses are excessively high which is indicative of the need for new distribution plant construction. The reduction of system losses can effect a substantial savings in wholesale energy cost spread out over future years; (4) Pamlico's adherence to the National Electrical Safety Code is good with respect to road and line clearances but needs attention given to the height of substation bushings on voltage regulators; (5) Pamlico has taken measures to reduce system losses by purchasing and installing capacitors, balancing the loads and building new primary lines; (6) Pamlico's major causes for outages are lightning, open fuses, and the effect of tree limbs hitting or crossing lines; and (7) the distribution plant in service appears to have a high average age but is in good repair.

At the conclusion of the hearing, counsel for the Applicant and the Commission Staff waived filing of briefs and the matter was taken under advisement by the Commission.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) Applicant Pamlico Power and Light Company, Incorporated, is a duly franchised and operating public utility under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission for the purpose of fixing its rates and charges.

(2) Applicant has experienced an increase in wholesale cost of energy purchased from its supplier, Vepco, as approved by the Federal Power Commission which has the effect of increasing its annual operating expenses.

(3) The increases requested by the Applicant would result in additional annual gross operating revenues of approximately $10,871.

(4) Under Applicant's existing rates for the 12-month period ending December 31, 1970, it realized approximately $383,979 in gross operating revenues, and considering total operating expenses of $346,862 and a customer annualization factor of 3.626%, Applicant's operating income for return was $37,918.

(5) Under the rates proposed by the Applicant in this proceeding, it would realize gross operating revenues of $392,446 and considering projected total operating expenses of $357,975 along with the customer annualization factor, Applicant will realize operating income for return of approximately $35,161.

(6) The Applicant experienced a rate of return on net investment of 6.10% under its existing rate structure. After giving consideration to the proposed rate adjustments, Applicant would have a net investment in utility plant for return of approximately $614,169 and would realize a return on net investment of approximately 5.73%. The reasonable replacement cost of Applicant's utility properties as of the end of the test period amounts to approximately $1,242,788, based upon the uncontradicted testimony of Applicant's President and Manager.

(7) To require the Applicant to absorb the increases in wholesale energy cost imposed upon it by its supplier, Vepco, and approved by the Federal Power Commission, would result in the Applicant being required to operate at a rate of return that would be less than just or reasonable or sufficient under the Applicant's operations as a public utility.

(8) The rates proposed by the Applicant are just and reasonable and will not more than offset the increased cost of wholesale electricity imposed upon it by its supplier, Vepco, and approved by the Federal Power Commission.

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

CONCLUSIONS

The Commission concludes that to require Pamlico to absorb the increases in wholesale energy cost imposed upon it by its supplier, Vepco, and approved by the Federal Power Commission, would result in requiring the company to operate at a rate of return that is less than just and reasonable under its operations as a public utility.

The Commission is further of the opinion that the rates authorized pursuant to this Order are just and reasonable under the operating conditions which the Applicant is now experiencing, and that the increases allowed herein will permit the Applicant to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise and to reasonably meet its financing requirements to maintain and improve 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 the Applicant in this proceeding be, and the same hereby is, approved as being just and reasonable.

(2) That approval of Applicant's proposed rates herein 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 May 28, 1971, and therefore, no refunds will be necessary under the provisions of the undertaking.

(3) That the Order of Suspension issued by the Commission in this proceeding on April 30, 1971, is hereby vacated.

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of October, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-15, SUB 18

WELLS, COMMISSIONER, DISSENTING: The applicant in this case has not come close to carrying the burden of proof in a general rate case upon which the Commission would be justified in predicating an upward adjustment in the applicant's rates.

The findings of fact set forth in the Commission's Order are not sufficient upon which to predicate an increase in rates nor are the findings of fact based upon material, competent and substantial evidence in the record.

For instance, Finding of Fact No. 2 states that the applicant has experienced an increase in wholesale cost of energy purchased from its wholesale supplier Virginia Electric Power Company, as approved by the Federal Power Commission, which has the effect of increasing its annual operating expenses. There is not one shred of evidence in the record to indicate what, if any, action has been taken by the Federal Power Commission to allow VEPCO to increase its rates to the applicant, other than a brief statement by Mr. Midgett, the President of applicant, as follows:

> "The purpose of the request for an adjustment of the rates was specifically to offset the increase in cost of purchased power brought about by a rate increase that VEPCO applied for with the Federal Power Commission and which was approved by the Federal Power Commission approximately thirty days ago, thirty to sixty days",

and a figure included in the staff audit of $11,384.25 of increase in wholesale rates from VEPCO, with no evidence to indicate the basis upon which that figure was determined nor no reference to the proceedings before the Federal Power Commission which might have provided the basis for such a figure.

Finding of Fact No. 5 cannot possibly be justified without a determination of the increased cost of purchased power, and therefore contains the same fatal weakness as Finding of Fact No. 2.

Finding of Fact No. 7 contains the same fatal weakness, and is nothing more than an assumption of the effect of an increase in energy cost to applicant, with nothing in the record to justify it.

Finding of Fact No. 6 contains a finding that the reasonable replacement cost of applicant's utility properties as of the end of the test period amounts to approximately $1,242,788 "based upon the uncontradicted testimony of applicant's president and manager". The uncontradicted testimony alluded to in Finding of Fact No. 6 on replacement cost consists of the following exchange between applicant's counsel and the witness Midgett, to be found on Page 7 of the transcript of this case:

> "Q. ...How do the book value of the corporation assets and replacement value of the assets compare?
>
> 'A. Replacement value would be considerably more than the book value. I would estimate at least twice as much."

On cross examination relating to this testimony, the following occurred, as shown beginning on Page 11 of the transcript:

"Q. Mr. Midgett, what study, if any, did you make to determine replacement cost would be approximately twice as much as the book cost of the company's property?

'A. Primarily the fact that the greater part of this line was built back when materials were cheap. For instance, when I built the 42 miles from Englehard to Manns Harbor or the 16 miles from Englehard to Fairfield, I bought poles for $3.75 delivered and copper for 9 cents a pound. The comparable pole now costs $22 and copper costs around 68 to 70 so to start replacing it now it would be terrific."

In addition to the foregoing glaring errors in the Commission's findings of fact, there is no finding of fact as to the fair value of the applicant's property, nor has the Commission determined a rate base.

The record in this case will show that the applicant submitted no accounting testimony developed by the applicant, neither with respect to plant value and required working capital, nor with respect to operating income and expense. Early in the presentation of applicant's case, applicant's president was asked on direct examination if applicant were willing to accept and adopt the Commission's audit report, which elicited a positive answer, and applicant thereupon proceeded without making any further contribution to the record with regard to the fiscal aspects of its operation.

Admittedly the applicant's operation is small, but this is no indication that it is not extremely profitable to the applicant. The audit does not show a number of things needed to enable the Commission to determine whether the applicant's fiscal affairs are being properly managed.

The record does show, however, from the testimony of the staff's electrical engineer, that applicant's system is being operated in a manner which when judged from engineering principles indicates that the system could stand a great deal of improvement, and that if such improvements had been made before this rate case was heard, the applicant's rate of return would have been substantially affected. Mr. Willis, the staff's electrical engineer who investigated the technical aspects of the applicant's system, testified (uncontradicted) that the applicant was experiencing very heavy line losses on its system, showing that over a period of the last seven years these line losses have averaged approximately 17%, and that although the seven-year trend had indicated no change toward the worse, the line losses had not improved over the seven-year period.

Mr. Willis has the apparent qualifications to make engineering judgments of the efficiency with which applicant's system is operating. Applicant indicated in its testimony that it does not have any engineering advice available to it, except that which may have been furnished to it on an incidental basis from time to time by members of the staff of VEPCO. In spite of Mr. Willis' testimony indicating these deficiencies in the applicant's system and manner of operation, and specific recommendations on the part of Mr. Willis as to how these circumstances might be corrected and the steps the applicant needed to take in order to reduce its line losses, including a recommendation that applicant retain a consulting engineer, and despite a recapitulation of this evidence in the Commission's Order, the Commission has taken no action whatsoever to encourage or enjoin applicant to take the needed corrective actions.

The applicant has obviously traded upon the Commission's expertise and staff availability to the point of achieving its requested rate increases. It allowed the Commission's accounting staff to do all of the accounting and fiscal analysis and relied entirely upon that presentation to carry its burden in those areas; yet in the area of engineering expertise, after careful analysis and evaluation by the Commission's engineering staff, these recommendations have been brushed aside and ignored in the majority Order.

For these reasons, I feel that the majority Order must fail and that the small number of customers being served by this system are being denied the opportunity to receive electric service from this public utility at fair and reasonable rates. In addition, I gather from the engineering testimony that this system cannot be described as reliable from a long-range point of view, and that the Commission action in this case will ultimately result in a system which is not only inefficient but also unreliable.

Hugh A. Wells, Commissioner

DOCKET NO. E-19, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Roselle Lighting Company) ORDER APPROVING
Incorporated, for Increase in Rates and) INCREASE IN
Charges) RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on September 28, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Applicant:

W. Talmage Shuford, Esq.
205 Wachovia Bank Building
P. O. Box 58, Salisbury, North Carolina 28144

For the Commission Staff:

William E. Anderson, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

WELLS, COMMISSIONER: On February 15, 1971, Roselle Lighting Company, Inc., hereinafter referred to as "Roselle", filed an application with the Commission seeking authority to increase electric rates and charges to residential and commercial customers in its service area in Rowan County in North Carolina, and more particularly, authority to increase its rates for immediate relief to offset higher power cost resulting from a wholesale increase of approximately $10,320.61 (based upon the 12 months ending December 22, 1970) from the City of Landis, its supplier, who in turn received the same increase from Duke Power Company, its supplier, in accordance with a filing with the Federal Power Commission (Docket No. E-7513), which increase was made effective December 15, 1970, under bond, pending the final decision of the Federal Power Commission.

On March 1, 1971, Roselle filed an Undertaking with the Commission seeking permission to institute a surcharge on its commercial and residential rates to offset its increased cost of wholesale energy. By Order dated March 4, 1971, the Commission approved an Undertaking with refund conditions, as provided for in G.S. 62-135, sufficient to cover the increased cost of wholesale energy, in the form of a 7.3% surcharge on all current schedules except street lighting.

By a further Order issued on March 15, 1971, the Commission, being of the opinion that the application affected the interest of the using public in the area served by Roselle and that the public should have the opportunity to intervene or protest the application if it so desired, suspended the filed effective date of the application and set the matter for investigation and hearing on September 28, 1971, and required that Roselle publish notice attached to the Commission's Order of the proposed increase in a newspaper having general circulation in the area in which it provides electric service, and that Roselle send a copy of said notice to each of its customers by mail and thereafter advise the Commission of the date on which said notice was mailed to its customers.

The matter was called for hearing at the time and place specified in the Commission's Order. No one appeared at the hearing to protest the rate application.

SUMMARY OF EVIDENCE

Mr. Chester D. Zum Brunnen, a Certified Public Accountant, stated that he had been doing accounting work for Roselle since 1948 and that to the best of his knowledge no rate increase, other than the interim increase requested and granted pending final determination in this docket, had ever been requested. He testified that in the last four or five years profits had decreased steadily to the point that as of December 31, 1970, net income was $5,292.70 and as of the year ending July 31, 1971, had declined to a net loss of $801.03.

Mr. Zum Brunnen stated that the Company was in financial difficulty and that for the Company to operate efficiently, to pay a reasonable dividend and to compete in the money market, it would be necessary to receive the full 20.4% increase in rates as requested. He related that Roselle has two full-time employees and one part-time employee and that Mr. Alexander, the Manager, serves as bookkeeper and is completely in charge of the office, and that when the occasion demands it, helps the lineman.

Mr. Zum Brunnen, in discussing the financial position of Roselle, indicated that the cash position as of July 31, 1971, was a bank over-draft of $1,749.33 and that the Company was unable for the first time to meet its current obligations.

Mr. Zum Brunnen further stated that retained earnings at December 31, 1969, had decreased to $2,842.12 and that this reflects the difficulty the business has had for the last four or five years. Using the income tax method of accounting, return on net investment in electric utility was a negative rate of return at July 31, 1971, and that he was advised by a bank that no additional funds would be available. He commented that the rising cost of operation and the cost of power purchased are recurring costs and he would expect these costs year after year.

Mr. Robert E. Alexander testified that he has been an employee of Roselle since November of 1956 and that he holds the position of General Manager and Treasurer. Mr. Alexander stated that over the past five years the financial position of the Company has been "touch and go" and that it had to be "nursed" along to make ends meet; and further that in conversing with Mr. George W. Carey, Executive Vice President of the Merchants and Farmers Bank, a correspondent bank of North Carolina National Bank, he was informed that any amount over Roselle's present indebtedness of 55 to 56 thousand dollars would be very closely governed by North Carolina National Bank.

Mr. Alexander related that Roselle had been able to function in the past with one lineman because of a working arrangement with the Town of Landis, whereby labor obtained from the Town of Landis was billed to Roselle but for the safety of Roselle's individual lineman, it was necessary to hire an additional man for line work.

Mr. Alexander testified that when he asked the Town of Landis for a wholesale rate decrease in order to secure a more equitable billing arrangement to Roselle, he was informed that the Town was unanimously opposed to the proposal.

In reference to the proposed rate increase, Mr. Alexander stated that if the requested increased rates were granted, it would probably take four or five years to stabilize the Company financially.

Mr. Lampke, President of Southeastern Consulting Engineers, testified that his firm made its first association with Roselle in the middle or late 1950's. In that connection, Mr. Lampke stated that he has been impressed with the employees of Roselle for their capability and dedication to their work. In reference to the rate increase proposals, he pointed out that his firm had computed the projected increase in wholesale energy costs for the period of December 1969 through December 1970, which indicated that wholesale power costs will increase 16.4%. Mr. Lampke stated that he thought that the need for capital improvement, increased cost, together with insufficient revenues generated from the present rate schedules, were the reasons for Roselle's declining earnings.

When asked about National Electrical Code violations, Mr. Lampke responded that the majority had been corrected and others were in the process of correction.

Mr. Warren of the Commission's Accounting Staff testified regarding the Staff's audit of the Company's books and records. He testified that the Commission Staff's audit indicated that Roselle's gross operating revenues amounted to $141,576.76 for the test period under its existing rates, and that considering total operating expenses of $136,283.78, Roselle's operating income for return was $431.76. The Staff's evidence indicated a net original cost investment in utility plant of $171,935.26, resulting in a rate of return on net investment of .25%. After consideration of the proposed rate increases amounting to approximately $27,949.97, Roselle's increased wholesale energy cost and certain other normalizing adjustments reflected in the Staff's audit (to which Roselle took no exception), the Staff's evidence indicated that Roselle would have had gross annual operating revenues of $169,524.73, total operating expenses of $144,832.38, resulting in an operating income for return of $18,870.00. With certain adjustments including the effect of Federal and State tax accruals on Roselle's allowance for working

capital, the Staff's evidence indicated that Roselle's net investment in utility plant for return after giving effect to the proposed rate request would be approximately $169,362.49 and would result in a rate of return on net investment of 11.14%. (Mr. Warren stated that the variance in Roselle's exhibit showing return on net utility investment and the Staff's similar exhibit was caused by Roselle proforming capital expenditures in its adjustments.)

The Accounting Staff, in its testimony, recommended that a customer count by month for each class of customers be kept on a continual basis and that outside line activity be observed periodically so that the proper portion of lineman salaries can be capitalized when he is performing construction activities.

Mr. Clapp, Staff Engineer, testified that it appeared that Roselle is properly maintained, properly regulated, and attempts to ensure good service to its customers. He, however, offered the following recommendations to the Company:

1. That fused blades be installed in all recloser bypass switches in the substation.

2. That local lightning conditions be studied to determine the necessity of additional lightning protection.

3. That existing violations of the National Electrical Safety Code be eliminated.

4. That Roselle should negotiate a more equitable billing arrangement with the City of Landis.

5. That Roselle's service conditions be termed acceptable for the purposes of the determination of acceptability of a rate increase, but that in any Order issued, Roselle be required to follow Recommendations 1, 2, and 3.

At the conclusion of the hearing, counsel for the Applicant and the Commission Staff waived filing of briefs and the matter was taken under advisement by the Commission.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Roselle Lighting Company, Inc., is a duly franchised and operating public utility under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission for the purpose of fixing its rates and charges. Appropriate notice of this application was given to Applicant's customers.

2. Applicant has experienced an increase in wholesale cost of energy purchased from its supplier, the City of Landis, which applies the rate schedule of Duke Power Company applicable to itself for billing Roselle. The Federal Power Commission has approved the new wholesale rate schedule under bond while awaiting final determination in FPC Docket No. E-7513.

3. The test period utilized by all parties and set by the Commission in this proceeding was the 12 months' period ending December 31, 1970.

4. The original cost of Applicant's investment in electric utility plant in service on December 31, 1970, was $166,101.03 and including allowance for working capital of $5,834.23 results in a total cost of $171,935.26.

5. That the ratio of net operating income for return under the present rates as applied to the net investment in electric utility plant in service, including working capital as adjusted for tax accruals, is .25%. After giving consideration to the proposed rate adjustments, Applicant would have a net original cost investment of approximately $166,101.03 including working capital allowance of $3,261.46, resulting in a total investment of $169,362.49. The proposed rates would effect a return on said net investment of approximately 11.14%.

6. That after deducting fixed charges from income available for fixed charges, there remains a net income for equity of $7,836.10; that the common equity investment at the end of the test period was $140,710.94, producing a return on common equity under the present rates at the end of the test period of 5.57%.

7. That the Commission finds that the return on common equity of 5.57% is insufficient to compete in the market for capital funds on terms that are reasonable and fair to the Company's customers and its existing investors, and to maintain its facilities and services as they exist, and to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise.

8. To require the Applicant to absorb the increases in wholesale energy cost imposed upon it by its supplier, the City of Landis, which bills Roselle with the same rate schedule approved by the Federal Power Commission under bond in FPC Docket No. E-7513, would result in the Applicant's being required to operate at a rate of return that would be less than just or reasonable or sufficient for the Applicant's utility operations.

9. That in the absence of the Applicant's presenting any type of replacement cost data for use in arriving at a fair value determination of its used and useful plant in service, the Commission finds that the fair value of the property is

at least equal to the net original cost investment of $166,101.03 plus allowances for working capital of $3,751.31, a total fair value of $169,852.34.

10. That the rate of return necessary on the fair value of Roselle property, with sound management, to produce a fair profit for its stockholders, to maintain its facilities and services in accordance with its obligation to its customers and to compete in the market for capital funds on a reasonable basis to customers and stockholders, is 9.04%. This rate of return will produce $21,848.64 of additional operating revenues and will provide a return on equity to the common stockholder of 11.0% by providing net operating income for return of $15,359.42 on equity of $140,710.94. The production of the $21,848.64 in additional gross revenues will result in a flat 16% across-the-board increase above the rates in effect prior to the application of the temporary 7.3% surcharge allowed in this Docket under prior Order of the Commission. The increases granted herein represent approximately 81% of the total amount of increase requested by Roselle. The increases applied for by the Applicant in excess of the $21,848.64 are deemed to be and are found to be unjust and unreasonable by the Commission, and rate increases to produce the additional $21,848.64 revenues required for the rate of return approved by this Order are found to be just and reasonable.

11. That Roselle is providing reasonable, adequate and efficient electric service to its customers in its service area within Rowan County.

CONCLUSIONS

The Commission concludes that to require Roselle to absorb the increase in wholesale energy cost imposed upon it by its supplier, the City of Landis, following an increase in its rate from Duke Power Company as approved under bond in FPC Docket No. E-7513 would result in requiring the Company to operate at a rate of return that is less than just and reasonable under its operations as a public utility.

The Commission is further of the opinion that the rates authorized pursuant to this Order are just and reasonable under the operating conditions which the Applicant is now experiencing, and that the increase allowed herein will permit the Applicant to pay its increased cost of wholesale energy, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to reasonably meet its financing requirements to maintain and improve service to its customers.

It is noted by reference to the engineering files of the Commission that Roselle has been able to maintain a level of rates in the past which has closely paralleled Duke Power Company rates (Duke Power Company being the electric supplier to the north and south of Roselle.) The approval

of rates granted herein will result in rates that are higher than Duke's existing rates but lower than Duke's rates now pending before this Commission.

The Utilities Commission takes judicial notice of the President's Executive Order No. 11627, entered on October 15, 1971, establishing Phase 2 of wage and price controls under the Economic Stabilization Act of 1970 beyond the original 90-day period ending November 13, 1971, and the establishment of the Price Commission pursuant to said Order, and the rules and regulations of the Price Commission published in Volume 36, No. 220, Federal Register, November 13, 1971, §300.016, Regulated Utilities, at p. 21,793, as amended in Volume 36, No. 222, Federal Register, November 17, 1971, at p. 21,953. The Utilities Commission is further advertent to public statements of guidelines and policies of the Price Commission urging adherence to stated guidelines for price increases, and concludes that the North Carolina rate procedure, the facts found in this proceeding, and the consideration thereof by the Commission, fixes the rates in this proceeding on the basis that they will provide no more than the minimum revenues necessary to assure continued and adequate service.

The return actually earned from the rates in effect immediately prior to the price freeze on August 15, 1971, if continued without the increase approved here, would not be adequate to assure continued and adequate service, and this Commission finds and so certifies that the increases are consistent with the criteria established by the Price Commission and the documentation for such findings are set out fully in the Findings of Fact and Conclusions herein, based on evidence in record of the public hearing herein, and the rate increase approved here is authorized solely on the basis that it is necessary in order to assure continued and adequate service to the public by the Applicant, considering the Applicant's increased wholesale cost of purchased power and other expenses, and the purpose of the Economic Stabilization Act of 1970, as amended.

This Order is entered subject to the Applicant's compliance with all requirements of the Price Commission for notice of such increase and subject to such other rules and regulations of the Price Commission as may be applicable to such increase.

Based upon the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective upon bills rendered on and after February 1, 1972, for service rendered after January 1, 1972, the Applicant, Roselle Lighting Company, Inc., is authorized and permitted to put into effect a flat rate across-the-board increase of 16% on all commercial and residential rates of the Company, except street lighting rates. Such increase in rate schedules shall produce no

more than total annualized additional revenues as of the end of the test period of $21,848.64, being approximately 81% of the increased revenue sought under the proposed increases of $26,986.84. Such amended schedule of rates and charges shall be filed with the Commission by January 15, 1972. The surcharge of 7.3% is hereby cancelled effective with the application of the 16% increase on service after January 1, 1972.

2. That the approval of Applicant's 16% across-the-board rate increase herein 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 4, 1971, and, therefore, no refunds will be necessary under the provision of the Undertaking.

3. Pursuant to the testimony of the Commission's Staff Engineer, Mr. Clapp, Roselle is hereby ordered to take immediate action to accomplish the following recommendations:

a. That fused blades be installed in all recloser bypass switches in the substation.

b. That local lightning conditions be studied to determine the necessity of additional lightning protection.

c. That existing violations of the National Electrical Safety Code be eliminated.

4. If a reduction in wholesale energy costs occurs as a result of the Federal Power Commission's decision in FPC Docket No. E-7513 relating to Duke Power Company's field wholesale rates and the City of Landis subsequently reducing its charges to Roselle for wholesale energy, the flat 16% across-the-board increase granted in this Order affecting commercial and residential rates of the Company and excluding street lighting rates will be reduced by a percentage that is computed from the wholesale energy cost reduction divided by the gross operating revenues during the test period. Any changes of this nature shall be immediately reported to the Commission and decreases in rates on all residential and commercial rates (with the exception of street lighting) shall be placed on all bills within thirty (30) days from the effective wholesale energy cost reduction.

ISSUED BY ORDER OF THIS COMMISSION.

This the 10th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 118

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Virginia Electric and Power)
Company for Authority to Adjust Its) ORDER
Electric Rates and Charges)

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on February 23, 24, and 25, 1971.

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

APPEARANCES:

For the Applicant:

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For the Using and Consuming Public:

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For the Intervenors:

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For: Electricities of North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

BY THE COMMISSION: This proceeding was instituted upon Application of Virginia Electric and Power Company (hereinafter referred to as "VEPCO") on July 20, 1970, wherein authority was sought to increase VEPCO's electric rates and charges for service rendered to its retail electric customers within the State of North Carolina.

Under date of August 14, 1970, the Commission entered an order suspending the proposed rates attached and made a part of the application, ordered the same set for investigation and hearing. Subsequent orders were issued allowing intervention by the captioned intervenors, changing the original date of hearing, and on December 3, 1970, the Commission issued a modified Notice of Hearing, setting said matter for hearing at the above captioned time and place.

Among other things in the order issued prior to the date of hearing, the Commission required that notice of time and place of hearing be published in newspapers having general circulation in areas served by VEPCO in the State of North Carolina. Notice of said hearing was published once a week for two successive weeks in a space covering 1/6 of a page in the following newspapers: _The News and Observer_, Raleigh, _Daily and Sunday Herald_, Roanoke Rapids, _The Herald_, Ahoskie, _The Roanoke Beacon_, Plymouth, _The Times-News_, Jackson, _The Enterprise_, Martin County, _The Coastland Times_, Manteo, _The Daily Advance_, Elizabeth City, _The Bethel Herald_, Bethel, _The Virginian Pilot_, Norfolk, Virginia. Publishers' affidavits of said notice were offered as part of the record in this proceeding.

Among other things, applicant contends that its proposed increases are filed to help offset overall revenue requirements arising from general increases in operating expenses, increases in cost of fuel for generating electricity, and increases in cost of capital required for the company's construction program. Applicant contended that large amounts of additional capital will be needed for the construction and operation of generating and distribution facilities to meet its ever-increasing demand for additional electrical services throughout its territory.

Applicant offered testimony and exhibits of its witnesses John M. McGurn, Vice Chairman, Board of Directors and Chief Executive Officer of VEPCO; T. Justin Moore, President and Chief Operating and Financial Officer of VEPCO; Alvis M. Clement, Senior Assistant Treasurer and Assistant Secretary of VEPCO; John J. Reilly, Director of Valuation and Appraisal Services, Ebasco Services, Inc. of New York; W. W. Carpenter, Director of Utility Rates Services for Ebasco

Services, Inc. of New York; Charles F. Phillips, Jr., Lexington, Virginia, Professor of Economics at Washington and Lee University; Charles H. Frazier, Public Utility Consultant, appraisal of rate structure proposed by VEPCO, including electric water heating and space heating, the summer-winter differential proposed in VEPCO's scale of rates; Carl H. Seligson, Vice President, Research and Senior Utility Analyst, Kuhn, Loeb and Company, 40 Wall Street, New York, N.Y.; Robert S. Gay, Manager of Rates and Contracts for VEPCO.

The Utilities Commission Staff offered testimony of Joseph W. Smith, Director of Accounting and Economic Research for the Commission; Robert K. Koger, Director of Engineering of the Commission; Dr. Ross M. Robertson, Professor and Chairman of Business Economics and Public Policy, Graduate School of Business, Indiana University, Bloomington, Indiana. Intervenors did not offer either oral or documentary evidence in this proceeding.

The parties requested and were granted leave to file briefs thirty (30) days after the mailing of transcripts. The applicant and intervenor, Attorney General, filed briefs, each of which were received on March 31 and 30, respectively.

DIGEST OF TESTIMONY

Witness John M. McGurn, testified with respect to the company's growth and service since 1954, the year of the last increase in rates granted by this Commission to the company. His testimony tends to show that during the test period for this case, the 12-months sales of electricity in North Carolina were five times the 1954 total; that plant investment in North Carolina grew from about 45.1 million dollars to approximately 143.7 million dollars between 1954 and June 30, 1970; that during this period the average annual consumption of electricity per residential customer in North Carolina rose from 2,829 kilowatt-hours to 7,127 kilowatt-hours; that the average charge per residential kilowatt-hour was 2.9 cents in 1954, while said average had fallen to 1.9 cents by June 30, 1970, and further that in the event that the proposed rate schedules are approved, charges would average approximately 2.1 cents per kilowatt-hour. The witness further testified that cost of capital during the period 1954-1970, has increased substantially; that while interest cost consumed about 6% of the company's revenue dollar in 1954, at June 30, 1970, 11.7% was being consumed; that in addition, cost of electric machinery increased approximately 26%; that electric utility construction cost increased 75%; that longer construction lead times of nuclear powered and pump storage units together with environmental protection measures that company must make, have increased expenses significantly; that the most significant expense in the generating of electricity by VEPCO was fuel, which increased from a high during the calendar year 1969 of 34.46 cents per million BTU to 56.62

cents per million BTU in August, 1970; that the proposed increase in this proceeding by VEPCO does not offset the rise in coal prices and is not intended for that purpose; and that said rates are the same as those proposed and approved by the State Corporation Commission of Virginia. Mr. McGurn further testified as to the definite need for a more balanced system load factor, that is, the ability to use its generating and distribution capacity in both winter and summer to effectively utilize its investment in plant designed to meet demands which fit the customer on a year-round basis; that in intervening years, with the vastly increased use of air-conditioners, the summer load factor as compared to the winter load factor presented a sizable differential, resulting in a deteriorating yearly system load factor. The witness cited as an example that the system yearly load factor had declined from 62% in 1957, to 56.7% in 1969. Mr. McGurn and other witnesses of VEPCO testified that to improve the system load factor, the company has proposed in its filed rate schedules, summer-winter rate differentials in its various rate classifications.

Witness Moore, President of the company, testified that construction requirements for the next five-year period will require 1.9 billion dollars, and of this total, 1.4 billion dollars would have to be raised through the sale of company securities; that during 1970, two bond issues were sold, one at interest cost of 9.09% and another at 8.97% which had the effect of raising the company's embedded cost to 5.62%; that as old bonds are retired having low interest cost, increased interest cost in acquisition of new capital could only result in increase embedded cost as same are funded with funds of higher interest requirements, which action results in reducing net earnings available for common stock; that for the test year 12-months ending June 30, 1970, earnings per average share of common stock were 1.2% less than the previous year, and for the calendar year, 1970, were $1.80 per share reflecting a slight increase which in some degree showed the effect of the increase granted by the Virginia Commission in June 1970, which has jurisdiction of almost 90% of VEPCO's total operations. Other company witnesses testified as to rate of return attributed to sales of electricity in North Carolina to customers subject to jurisdiction of the Commission and that said return was 5.37% on depreciated original cost and 4.51% on a fair value rate base established by the company witnesses to be $78,507,000. Witness Clement testified that had the proposed rates been in effect for the 12-months period ending June 30, 1970, net operating income subject to jurisdiction of this Commission would have increased by approximately $630,000 and further that had this increase been in effect during the test period, the rate of return on depreciated original cost would have increased from 5.37% to 6.32%, and on fair rate base established by VEPCO, the return would have increased from 4.51% to 5.31%. Company financial witnesses recommended an overall rate of return on

investment from 8.16% to 8.50%, and a return on equity from from 12.5% to 14%.

VEPCO generates and distributes electricity in the States of North Carolina, Virginia, and West Virginia. In order to allocate the investment in property, the expenses and income applicable to retail customers in North Carolina, it was necessary for the company to make this allocation for the three jurisdictions. It was also necessary for the company to separate its operations between wholesale for resale sales of electricity, over which the Federal Power Commission has jurisdiction, and retail sales in North Carolina, over which this Commission has jurisdiction. The record indicates that the separation studies made by the company on one hand and the Commission's Engineering Staff on the other, produced essentially the same in results. The uncontradicted evidence adduced at the hearing of this cause tends to show that the rate of return on depreciated original cost before the proposed increase in rates and after the proposed increase in rates by both company's calculations and Commission's Staff calculations are within the bounds of reasonableness and are not excessive. For purposes of this opinion, the Commission will therefore use in its determination, the accounting and separations figures of the Commission's Staff. Staff witness Koger's Exhibit #3 tends to show that the net investment in plant plus allowance for working capital for North Carolina retail services classification is $66,174,465; that net operating income for return for North Carolina retail operations after pro forma adjustments was $3,718,663 and when relating said investment of $66,474,365 to net operating income for return in the amount of $3,718,663, that a rate of return on VEPCO's North Carolina property devoted to retail sales of 5.619% results. The Staff's findings showed after giving consideration to the requested increase in rates (Koger Exhibit 8), that had the rates been in effect for the 12 months' test period ending June 30, 1970, the company would have realized a rate of return of 6.615% on its depreciated original cost investment and further, when eliminating plant held for future use from net investment, the rate of return would change from 6.615% to 6.626%. The Staff testimony tends to show that return on equity based on test year pro forma operations equals 7.13% and after the proposed increase would amount to 9.52%.

Since the proposed increase is not an "across-the-board" percentage increase, it is deemed appropriate to point out the selective adjustments to the proposed rate schedules. The most significant aspect of design of the proposed rates is the summer-winter differential with higher average charges being made during the summer months. In support of the selective adjustments, company witnesses testified that load testing studies show that summer demand is higher than winter maximum by 33% for residential customers, 38% for general customers, and 17.5% for large general service customers; and that as of the time of hearing, additional winter load could be served without adding costly power

supply facilities; and further that in order for the company to improve its load factor and more effectively utilize its facilities required to meet peak demands, it is necessary that a more reasonable summer-winter balance be achieved. It therefore proposes new residential and general service rate schedules which would result in higher charges for power usage and requirements occurring during the summer months and would be based on meter readings taken between July and October of each year. The record of evidence further indicates that more than twenty electric utility companies operating in other parts of the nation have rate schedules that incorporate seasonal differentials.

The Engineering Staff of the Commission agrees with this general concept of establishing summer-winter differential rates when the loads of the electric utility show a spread in the summer-winter seasons as great as found in this case, and further agrees that the seasonal differential could improve the system load factor. (Ref. T2-p.199)

FINDINGS OF FACT

1. VEPCO is duly organized as a public utility company under the laws of Virginia and is authorized to do business in North Carolina, having territorial assignment certificates from this Commission in the State of North Carolina under rates and services regulated by this Commission under G.S. 62 of the General Statutes.

2. That on June 30, 1970, the net original cost of VEPCO utility property in services subject to jurisdiction of this Commission was $65,977,180.

3. That at June 30, 1970, the fair value of VEPCO's utility property in service, subject to the jurisdiction of this Commission, exceeded the net original cost of such property and is deemed to be not less than $70,000,000, and when applying net operating income in the amount of $3,718,663 a rate of return on this fair value rate base is 5.31%.

4. That had the proposed rates been in effect during the 12-months period ending June 30, 1970 (test period), VEPCO's rate of return on net original cost of utility property in North Carolina under the jurisdiction of this Commission would have been 6.626%.

5. That VEPCO's return on common equity at June 30, 1970, (end of test period) was 7.13%, and that said return on common equity will increase to 9.52% after giving effect to the proposed increase.

6. The selective seasonal rates proposed by VEPCO (summer-winter) are just and reasonable and are a prudent approach under these circumstances now present in the operation of VEPCO.

7. That the rate of return resulting from the application of the proposed schedule of rates produces a just and reasonable return on VEPCO's investment on property devoted for use of retail customers under the jurisdiction of this Commission.

CONCLUSIONS

G.S. 62-133, among other things provides: that in fixing rates for any public utility subject to provisions of this chapter, the Commission shall fix such rates fair to the public utilities and consumer. The Commission shall:

(1) Ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State, considering the reasonable original cost of the property less that portion of the cost which has been consumed by previous use recovered by depreciation expense, the replacement cost of the property, and any other factors relevant to the present fair value of the property. Replacement cost may be determined by trending such reasonable depreciated cost to current cost levels, or by any other reasonable method.

(2) Estimate such public utility's revenue under the present and proposed rates.

(3) Ascertain such public utility's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation.

(4) Fix such rate of return on the fair value of the property as will enable the public utility by sound management to produce a fair profit for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, 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.

(5) Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained pursuant to paragraph (3) of this subsection the rate of return fixed pursuant to paragraph (4) on the fair value of the public utility's property ascertained pursuant to paragraph (1).

The proposed rates in this proceeding will produce an additional $1,354,217 in gross revenue, $653,016 of which the company should, after revenue deductions, realize as additional net operating income (includes customer growth factor of $7,864). After adding this amount to the present net operating income and then relating the total net operating income for return to a net investment at the end of test period plus appropriate allowance for working capital ($65,977,180), the company should realize a rate of return on investment in property in the State of North Carolina applicable to North Carolina retail customers of 6.621%. The Commission finds and concludes that the amount applied for is just and reasonable, is not excessive and is fair to the company's customers in North Carolina. While the following fact is not material in the decision of the Commission, the rates in North Carolina and Virginia for retail customers have been the same for many years. The rates in this application are the same which were approved for application in Virginia by the Virginia State Corporation Commission effective July 1, 1970. The company has asserted that revenue produced by the schedule of rates now applicable in North Carolina is inadequate. However, it has been and still is applying uniform rates in its entire service area. The Commission concludes that the amount of additional revenue applied for in the proposed rates is necessary to provide a reasonable rate of return on either the depreciated original cost or fair value of VEPCO's property. It further concludes that the ability of VEPCO to provide service in its area to meet demands for electric energy, and in consideration of the applicable law requires that VEPCO maintain earnings at level to attract capital for such programs. The increased cost of operations during the test period including interest cost are shown in the record. The ratio of common stock to debt capital under present economic conditions is a reasonable ratio, and we further conclude that the rates prescribed in this Order are just and reasonable and should therefore be approved.

In approving the selective rate schedules, the Commission takes care to point out that its Findings and Order in this case should not be construed as accepting the summer-winter rate differential as being a necessarily valid rate-making device for other electric utilities operating in North Carolina. This record clearly discloses that VEPCO's North Carolina operations are quite small compared to its system-wide operations and its rate of return on its North Carolina operations is obviously low. A rejection by the Commission of the particular rate schedules proposed by VEPCO in this case could very likely ultimately result in substantially higher rates for its North Carolina customers than those approved herein, and it is primarily under these circumstances and for these reasons that we have accepted and approved the summer-winter differential in this case.

IT IS, THEREFORE, ORDERED:

That the schedules of rates filed in this proceeding by VEPCO, be and the same, are hereby approved.

It is further ordered, that the schedules of rates herein approved are authorized to be applied to all electric energy sales to its North Carolina retail customers on and after May 1, 1971.

It is further ordered, that a copy of this Order be transmitted to the company and each of the attorneys of record in this proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 200

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Carolina Power & Light Company for)
Authority to Issue and Sell 368,684 Additional)
Shares of Its Common Stock Without Par Value,) ORDER
Pursuant to Its Stock Purchase-Savings Program for)
Employees)

On March 30, 1971, Carolina Power & Light Company (Company) filed herein an application for authority to issue and sell 368,684 additional shares of its common stock, without par value, pursuant to its Stock Purchase-Savings Program for Employees.

From a consideration of the Application, its supporting data and other information on file with the Commission, 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. By action of its Board of Directors and shareholders, the Company established in 1961 a Stock Purchase-Savings Program for Employees (hereinafter sometimes referred to as

the "Program"). The nature of the Program and the manner of its operation are set out in an order of this Commission issued May 18, 1961, in Docket No. E-2, Sub 78, wherein the Company was authorized to issue and sell a total of not exceeding 50,000 shares of its Common Stock, without par value, under its Stock Purchase-Savings Program for Employees. The Program thereafter was amended pursuant to authority granted by the Commission in an order issued May 18, 1966, in Docket No. E-2, Sub 129.

3. The Commission issued an order on April 15, 1964, in Docket No. E-2, Sub 110, authorizing the Company to issue a total of not exceeding 125,000 additional shares of its Common Stock, without par value, and issued a further order on March 27, 1968, in Docket No. E-2, Sub 158, authorizing the Company to issue an additional 177,957 shares of its Common Stock, without par value, under the Program.

4. In connection with the issuance and sale of its shares of Common Stock under the Program, the Company has filed with the Securities and Exchange Commission registration statements authorized by the Commission's respective orders in Docket Nos. E-2, Sub 78, E-2, Sub 110, and E-2, Sub 158. At the time of the last such registration with the Securities and Exchange Commission (Registration No. 2-28687) the Company withdrew from registration the unissued 31,316 shares of Common Stock theretofore registered.

5. As of February 28, 1971, there were registered with the Securities and Exchange Commission 65,911 shares of Common Stock which the Company is authorized to issue and sell under the Program; however, shares of Common Stock currently are being issued and sold under the Program at the rate of approximately 6,000 shares per month. In order to have available for a reasonable period in the future a sufficient number of authorized and registered shares of its Common Stock for issuance and delivery under the Program, the Company now proposes to register, and to issue and sell under the Program, the unissued 31,316 shares of Common Stock heretofore allocated and set aside therefor and an additional 368,684 shares of its Common Stock, or a total of 400,000 shares of its Common Stock, without par value.

6. The Company proposes that, upon receipt by the Company of the consideration for such additional Common Stock as it is sold to the Trustee under the Program from time to time, said Common Stock will be credited to the Company's Common Capital Stock Account at the total amount of the proceeds derived from the sale thereof. The issuance and sale of such additional shares is authorized by the Company's Charter and has been authorized by its Board of Directors.

7. The Stock Purchase-Savings Program for Employees has been well received by the employees of the Company and has assisted it in attracting and retaining efficient employees.

Upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS OF LAW

The Company is subject to regulation by this Commission as to rates, service and security issues; the proposed issuance and sale of 368,684 additional shares of Common Stock pursuant to its Stock Purchase-Savings Program for Employees (a) is for a lawful object within the corporate purposes of the Company; (b) is compatible with the public interest; (c) is necessary or appropriate for or 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) is reasonably necessary and appropriate for such purpose.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company be and it hereby is authorized, empowered and permitted to issue and sell an additional 368,684 shares of its Common Stock, without par value, under its Stock Purchase-Savings Program for Employees;

2. That the net proceeds to be derived from the issuance and sale of said additional shares shall be used for the general corporate purposes of the Company and shall be credited to its Common Capital Stock Account; and

3. That the Company shall file with the Commission a report in duplicate setting forth the extent of employee participation in the Program, the number of shares of Stock actually sold to the Trustee and the selling price per share of each block of Stock sold, such report to be made annually until all Common Stock herein authorized has been sold.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 204

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Carolina Power & Light Company - Authority) ORDER GRANTING
to Issue and Sell $70,000,000 Principal) AUTHORITY TO
Amount of First Mortgage Bonds, ______%) ISSUE AND SELL
Series Due October 1, 2001) SECURITIES

This cause comes before the Commission upon Application of Carolina Power & Light Company (Company), filed under date of September 13, 1971, through its Counsel, Sherwood H. Smith, Jr. and Thos. E. Capps, wherein authority of the Commission is sought as follows:

To issue and sell $70,000,000 principal amount of First Mortgage Bonds, _____% Series due October 1, 2001.

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's capital stock outstanding at July 31, 1971, consists of common stock with a stated value of $226,698,800 and preferred stock having a stated value of $124,375,900.

3. The Company's existing long-term debt at July 31, 1971, amounted to $464,030,000 in First Mortgage Bonds and $134,322 in Promissory Notes. The First Mortgage Bonds were issued and pursuant to an Indenture dated as of May 1, 1940, and duly executed by the Company to Irving Trust Company of New York, as Corporate Trustee, and amended by fourteen Supplemental Indentures.

4. The Company proposes to issue and sell $70,000,000 principal amount of First Mortgage Bonds, _____% Series due October 1, 2001, to be secured under a Fifteenth Supplemental Indenture to the Mortgage and Deed of Trust dated as of May 1, 1940, substantially in the form of the draft thereof attached to the Application and identified as Exhibit A.

5. Construction expenditures for additional electric plant totaled $58,753,756 in the period from May 1, 1971, through July 31, 1971. The net proceeds from the proposed sale of First Mortgage Bonds will be applied to the reduction of short-term loans incurred for corporate purposes, primarily for the construction of additional electric plant facilities.

6. The Company proposes on or about October 12, 1971, to publicly invite sealed, written proposals for the purchase of the First Mortgage Bonds at competitive bidding on terms and conditions set forth in Exhibit C attached to the Application. The bids submitted will be opened on or about October 19, 1971, and the Company intends to accept the bid providing it with the lowest annual cost of money for the First Mortgage Bonds but will reserve the right to reject all bids.

7. The Company proposes to enter into a Purchase Agreement with the bidder or group of bidders whose bid, as to the interest rate to be borne by the First Mortgage Bonds and the price to be paid for the Bonds will provide the lowest annual cost of money. The Purchase Agreement will be in the form or substantially in the form as Exhibit D attached to the Application.

8. The expenses estimated to be incurred in the sale of the First Mortgage Bonds will approximate $91,000.

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 finds 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 as a utility and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

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 the Application:

1. To issue and sell at competitive bidding a maximum of $70,000,000 principal amount of First Mortgage Bonds, ______% Series due October 1, 2001;

2. To sell the securities to the bidder or group of bidders submitting the proposal which will provide the Company with the lowest annual cost of money;

3. To create, execute and deliver a Fifteenth Supplemental Indenture to be dated as of October 1, 1971, to the Company's Mortgage and Deed of Trust, as supplemented, conveying all or substantially all of the Company's mortgageable properties and franchises acquired since the execution and delivery of the Fourteenth Supplemental Indenture to the Mortgage and Deed of Trust, and pledging the faith, credit and property of the Company to secure payment of the Bonds;

4. To use and apply the net proceeds from the issuance and sale of the securities 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 Fifteenth Supplemental Indenture and Purchase Agreement; and

6. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated (including the interest rate to be borne by the Bonds, the price received by the Company, and the expenses associated with the sale) pursuant to the authority granted herein within a period of thirty (30) days following the transactions authorized herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of September, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 125

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company for	)	ORDER GRANTING
Authorization Under North Carolina	)	AUTHORITY TO
General Statute 62-161 to Issue and	)	ISSUE AND SELL
Sell Securities (Common Stock)	)	SECURITIES

On January 15, 1971, Duke Power Company (Company), filed an application with this Commission for authority to issue and sell a maximum of 4,000,000 shares of the Company's common stock without nominal or par value (hereinafter referred to as the "Stock"). The Company proposes to issue and sell the Stock for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of a portion of its outstanding short-term obligations incurred for such purpose.

The Company represents that upon payment of the full consideration therefor and upon issue thereof, the Stock will be fully paid and nonassessable; 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 and that then and only then, such dividends (payable in cash, stock, or otherwise) as may be determined by the Board of Directors, may be declared and paid on the common stock, from time to time out of the remaining retained earnings or net profits of the Applicant; 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 pre-emptive 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 Merrill Lynch, Pierce, Fenner & Smith, Incorporated, to act as underwriters for the public offering of the Stock for cash at a negotiated price per share that will result in proceeds to the Company of not less than 93% of the last sale price per share for the Company's common stock on the New York Stock Exchange on the day the price is negotiated. It is represented that no fee for services (other than attorneys, accountants and fees for similar technical services) in connection with the negotiation or consummation of the sale of the proposed stock or for services in securing underwriters or purchasers thereof (other than underwriters' fees negotiated with the aforesaid investment bankers) will be paid in connection with the issue and sale of the proposed 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 based upon experiences that other corporations have had in common stocks over the past few years. In addition, the Company asserts its belief that 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 fees and other costs for a negotiated sale would be approximately the same as for a competitive sale.

The Company represents that after the August 1970 sale of bonds and preferred stock, the ratio of its common stock

to total capitalization dropped to 29.8%. This is below the average of the electric industry and the Company is of the opinion that its common equity ratio should be increased to a higher level in order to prevent any impairment of outstanding senior securities and to permit future debt financing on reasonable terms. After issuance of the proposed stock and up to $100,000,000 of debt securities which the Company proposes to sell early in 1971, the common equity ratio will be 32.2% of the total capitalization.

The Company asserts its belief that it should not attempt to sell long-term debt securities until it has sold the Stock because of the declining earnings coverage of fixed charges and the necessity of raising the common equity ratio of its total capitalization.

The Company 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 an adequate margin of reserve generating capacity. The Company represents that its total regular sales for 1970 are estimated to be about 33,360,000,000 kwh. This represents an increase of 7.8% over the amount sold in 1969 and about double the amount sold seven years ago. On July 29, 1970, the Company experienced its 1970 peak load of 6,283,915 kw, an increase of 11.9% over the 1969 peak. The Company expects that this rate of growth will continue; and long-term outside financing of its current construction program is essential if applicant is to continue to be able to meet its obligations to the public to provide adequate, reliable and continuous electric service. Expenditures for the Company's construction program are projected to be $358,000,000 for 1971.

The Company further represents that at November 30, 1970, its outstanding commercial paper and bank loan obligations amounted to $124,484,000 and are expected to reach about $184,500,000 by February 15, 1971.

The Company represents that the net proceeds from the sale of 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 a portion of its outstanding short-term obligations incurred for that purpose.

Upon review and study of the verified 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 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 to issue and sell at negotiated public sale to a group of underwriters to be managed jointly by The First Boston Corporation and Merrill Lynch, Pierce, Fenner & Smith, Incorporated, a maximum of 4,000,000 shares of the Company's common stock without nominal or par value.

2. The Stock shall be sold at a price per share which will result in proceeds to the Company of not less than 93% of the last sale price per share of the Company's common stock on the New York Stock Exchange on the day the price is negotiated.

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

4. 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, the dividend rate, redemption provisions and the expenses of sale).

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 terminal result of the sale of 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 21st day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 107

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Virginia Electric and Power Company - Application to Issue and Sell Common Stock Under Its Employee Thrift Plan	) ORDER GRANTING AUTHORITY) TO ISSUE AND SELL SECURITIES) IN ACCORDANCE WITH AMENDED) EMPLOYEE THRIFT PLAN)

THIS CAUSE comes before the Commission upon an application of Virginia Electric and Power Company (Petitioner) filed under date of April 28, 1971, wherein authority is sought, effective July 1, 1971, to issue and sell, in accordance with an amended Employee Thrift Plan, Common Stock already authorized in this cause but remaining unsold.

By order dated May 19, 1969, in this cause the Petitioner was authorized to issue and sell up to 500,000 additional shares of its Employee Thrift Plan.

PETITIONER represents that Article II, Section I of the Plan as in effect at this time provides that each regular employee in active service with the Company on a full-time basis and who is at least 21 years of age, may participate in the Plan beginning on the first day of the Year of Formation coinciding with or next following the month he completes twelve months of continuous service.

PETITIONER further represents that its Board of Directors has amended Article II, Section I, effective July 1, 1971, to provide that such an employee may participate beginning on the first day of the month coinciding with or next following the month he completes twelve months of continuous service. Conforming changes have been made in Article II, Section 2. Petitioner has submitted a copy of the Plan as amended.

IT IS ORDERED, that Virginia Electric and Power Company be and it is hereby authorized, empowered and permitted, effective July 1, 1971, to issue and sell its Common Stock, already authorized in this cause but remaining unsold, in accordance with the terms and conditions of the Plan as amended and as submitted with the Company's Application under date of April 28, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. ES-52

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application of Carolina Power & Light Company and French Broad Electric Membership Corporation under Chapter 287, Public Laws 1965 [G.S. 62-110.2(c)], for Assignment of Areas in Mitchell County) ORDER ASSIGNING SERVICE AREAS

HEARD IN: The Hearing Room of the Utilities Commission, Raleigh, North Carolina, on Wednesday, January 27, 1971, at 2:00 p.m.

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

APPEARANCES:

For the Applicants:

Sherwood H. Smith
General Counsel
Carolina Power & Light Company
P. O. Box 991, Raleigh, North Carolina 27602
Appearing for: Carolina Power & Light Company

Thomas J. Bolch
Crisp, Twiggs and Bolch
Post Office Box 1549
Raleigh, North Carolina 27601
Appearing for: French Broad Electric Membership Corporation

For the Intervenors:

F. Kent Burns
Boyce, Mitchell, Burns and Smith
Post Office Box 1406
Raleigh, North Carolina
Appearing for: Humpback Mountain Corporation and Individual Intervenors Listed in Protest

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: This matter comes before the Commission on Joint Application as originally filed in this docket and amendment to Joint Application dated January 26,

1971, both filed by Carolina Power & Light Company, ("CP&L"), and French Broad Electric Membership Corporation, ("French Broad EMC"), under the provisions of Section 62-110.2 of the General Statutes of North Carolina for the assignment of electric service areas in Mitchell County, North Carolina.

On January 27, 1971, the Commission held hearing in this docket pursuant to notice of hearing published once a week for four successive weeks in a local newspaper having general circulation in Mitchell County, as required by Commission Rule R8-29, and pursuant to Commission Order entered November 16, 1970. The notice of hearing was published for four successive weeks in The Tri-County News, a weekly newspaper having general circulation in Mitchell County, North Carolina, and the Commission has been furnished an Affidavit of Publication to that effect. Harris Mining Company and Humpback Mountain Corporation and several individuals residing at Humpback Mountain Development along and near State Roads 1128 and 1129 East of Spruce Pine, North Carolina, intervened and sought assignment to CP&L. At the hearing on January 27, 1971, CP&L and French Broad EMC filed an amendment to Joint Application dated January 26, 1971, setting forth an agreement whereby the applicants have agreed to the sale and exchange of certain facilities, the exchange of certain customers, and the assignment of service areas in accordance with the requests of the Intervenors.

Upon the verified Application and amendment to Joint Application, and the records before the Commission, the Commission makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company 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 at 336 Fayetteville Street, Raleigh, Wake County, North Carolina, and French Broad EMC 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 at Marshall, Madison County, North Carolina.

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. Carolina Power & Light Company and French Broad EMC are authorized to operate, and do operate, in Mitchell 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 Mitchell County, and no electric suppliers in adjacent counties assert any claim for assignment to them by the Commission of any of the areas covered by this Application.

5. Carolina Power & Light Company and French Broad EMC conducted extended negotiations with respect to Mitchell County concerning 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 Mitchell County was filed as Exhibit A to the Application, which map through appropriate symbols and legends designated the areas which applicants request the Commission to assign to CP&L and to assign to French Broad EMC, and also designated certain areas requested to be unassigned as to any electric supplier. Exhibit A was signed by representatives of both of the applicants and shows the lines of all suppliers in Mitchell County as set out on the official Mylar map of such County as filed with the Commission.

7. The Intervenors, being Humpback Mountain Corporation and those certain individual intervenors designated in the Order of the Commission dated February 17, 1970, and Harris Mining Company, as identified in the Order of the Commission dated July 13, 1970, petitioned to be served, and to have their property (as described in their respective petitions to intervene) served by CP&L.

8. An agreement concerning the matters in issue raised by the various Intervenors has been entered into by and between CP&L and French Broad EMC, which has been set forth in the Joint Amendment to Application. CP&L has agreed to purchase, and French Broad EMC has agreed to sell, for approximately $8,500 being the present value of the facilities as measured by reproduction cost new depreciated, plus 12 months' revenue, certain electric facilities now used by French Broad EMC to serve those Intervenors on Humpback Mountain. French Broad EMC has no electric facilities on the Harris Mining Company property. French Broad EMC has agreed to purchase, and CP&L has agreed to sell, for approximately $650 being the present value of the facilities as measured by reproduction cost new depreciated, plus 12 months' revenue, a section of electric line serving one customer located near Loafers Glory community, Mitchell County; which customer has agreed to be transferred for purposes of electric service from CP&L to French Broad EMC,

and a letter signed by him evidencing this has been filed with the Commission. This latter customer and section of electric line is located at the extreme Northwestern extremity of the CP&L system in Mitchell County in an area that was otherwise proposed to be assigned to French Broad.

9. Attached as "Exhibit A-Revised", and filed with the Joint Amendment to Application, was a map showing the amended agreement between the applicants which by legend designates the areas to be assigned respectively to CP&L or to French Broad EMC, shows in color the electric lines proposed to be sold and transferred, and also designates the area to be unassigned as to these suppliers.

10. It appears that Joint Amendment to Application and transfer of facilities, exchange of customers, and assignment of electric service areas will reduce duplication of electric facilities, will assign areas in accordance with the request of the Intervenors, and will serve the public convenience and necessity.

CONCLUSIONS

The Commission finds and concludes that the assignment of areas as designated by appropriate symbols and legends on the map filed with the Amendment to Joint Application as "Exhibit A-Revised", and the respective sales and transfers of facilities, and the exchange of customers are in accordance with public convenience and necessity.

IT IS, THEREFORE, ORDERED:

That the Amendment to Joint Application of Carolina Power & Light Company and French Broad Electric Membership Corporation for area assignment be, and the same hereby is, approved; and the sale and transfer of facilities and the transfer of customers as described in the Amendment to Joint Application is hereby approved; and the areas in Mitchell 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 the respective applicants or designated as unassigned, all as shown on "Exhibit A-Revised" 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 2nd day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. ES-53, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Petition of Carolina Power & Light Company and French Broad Electric Membership Corporation under Chapter 287, Public Laws 1965 [G.S. 62-110.2(c)], for Reassignment of Electric Service Area in Yancey County	) ORDER) REASSIGNING) ELECTRIC) SERVICE) AREAS

BY THE COMMISSION: This matter comes before the Commission on Petition for Reassignment filed January 27, 1971, by Carolina Power & Light Company ("CP&L") and French Broad Electric Membership Corporation ("French Broad EMC"), under the provisions of G.S. 62-110.2(c)(2) and G.S. 62-110.2(d)(1) of the General Statutes of North Carolina, for the reassignment of electric service areas in Yancey County, North Carolina, and for the transfer of facilities and customers from CP&L to French Broad EMC.

On November 19, 1969, the Commission, in Docket No. ES-53, issued an Order assigning electric service areas based upon a joint application by CP&L and French Broad EMC filed on July 7, 1969, after due publication of notice once a week for four successive weeks in a local newspaper having general circulation in Yancey County, and after hearing before the Commission on November 14, 1969, in the Commission's Hearing Room, Raleigh, North Carolina.

On January 27, 1971, during a hearing upon the assignment of electric service areas in Mitchell County in Docket No. ES-52, CP&L and French Broad EMC filed a Petition for Reassignment of electric service areas in Yancey County, and the Commission heard evidence on the Petition for Reassignment and approved the Petition subject to publication of notice and an opportunity for members of the public to intervene. The Commission issued a form of notice to be published once a week for four successive weeks in a local newspaper having general circulation in Yancey County. The notice was so published in The Yancey Record, a weekly newspaper having general circulation in Yancey County on May 27, June 3, 10, and 17, 1971; and the Commission has been furnished an Affidavit of Publication to that effect. The notice provided that if no one filed any protest to the Petition for Reassignment on or before June 25, 1971, the Commission's approval would become final and the area will be reassigned, and the facilities and customers will be authorized to be transferred. No protest or intervention having been filed, the Commission has determined the matter set forth in the Petition as provided in the Notice, and the approval of the Commission is hereby made final.

Upon the verified Petition for Reassignment, the records of the Commission, and the matters adduced at the hearing on January 27, 1971, the Commission makes the following

FINDINGS OF FACT

1. 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 at 336 Fayetteville Street, Raleigh, North Carolina, and French Broad 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 of French Broad at Marshall, North Carolina.

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 assignment, and for the reassignment, of service areas in accordance with public convenience and necessity pursuant to Section 62-110.2 of the General Statutes of North Carolina.

3. CP&L and French Broad are authorized to operate, and do operate, in Yancey 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 Yancey 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. CP&L and French Broad conducted extended negotiations with respect to both Yancey County and Mitchell County and the designation of assigned and unassigned areas therein. As a result of these negotiations, a joint agreement was reached between the applicants covering areas in Yancey County, which areas were assigned by Order of the Commission in Docket No. ES-53 on November 19, 1969. Subsequently, pursuant to negotiations between these two suppliers concerning the assignment of electric service areas in Mitchell County in Docket No. ES-52 an agreement was reached for the reassignment of an area in Yancey County from unassignment to assignment to French Broad and for the transfer of certain facilities and customers from CP&L to French Broad.

6. Pursuant to the agreement for reassignment and transfer of facilities and customers in Yancey County, the applicants have agreed that the area along and near U.S. Highway 19 in the vicinity of Bald Creek and Swiss, Yancey County, previously designated as unassigned by Order of the Commission, in this Docket dated November 19, 1969, should be reassigned to French Broad for purposes of electric service in accordance with G.S. 62-110. It was also agreed, subject to approval by this Commission, that 55 customers, both residential and commercial, in that area now served by CP&L would be reassigned to French Broad and that certain

electric facilities owned and operated by CP&L would be sold and transferred to French Broad for approximately $42,500, being the present value of the facilities as measured by reproduction cost new depreciated, plus 12 months revenue. All of the customers involved in the proposed transfer have agreed to be served by French Broad and to cease receiving service from CP&L.

7. In Docket No. ES-52, involving the assignment of electric service areas in Mitchell County, now pending before this Commission these same two applicants have reached an agreement set forth in an Amendment to Joint Application filed in Docket No. ES-52 whereby, in Mitchell County certain areas, customers and facilities are agreed to be transferred from French Broad and assigned to CP&L; and whereby one customer and a section of electric line is agreed to be transferred from CP&L to French Broad; which agreement has been approved by this Commission.

8. French Broad has shown that it is ready, willing and able to provide adequate and dependable electric service to all of the customers proposed to be transferred to it, and French Broad now has facilities located in the area from which such service may be promptly rendered, and therefore the Commission finds that CP&L may properly discontinue service to such customers.

9. The Commission finds that such transfer of facilities and customers will eliminate duplication of facilities and will serve the public convenience and necessity.

10. A map marked "Exhibit A-Revised" showing in green the area, now unassigned, that is proposed to be assigned to French Broad and showing in color the electric lines proposed to be sold and transferred, has been filed with the Commission as a part of the record in this docket.

CONCLUSIONS

The Commission finds and concludes that the reassignment of areas as designated by appropriate symbols and legends on the map filed with the amendment to joint application as "Exhibit A-Revised," and the sale and transfer of facilities, and the exchange of customers are all in accordance with public convenience and necessity and have been agreed upon by the electric suppliers and the customers involved in accordance with Section 62-110.2(d)(1) of the General Statutes of North Carolina.

IT IS, THEREFORE, ORDERED:

That the Petition for Reassignment of Carolina Power & Light Company and French Broad Electric Membership Corporation for electric service area reassignment be, and the same hereby is, approved; and the sale and transfer of facilities and the transfer of customers as described in the Petition for Reassignment are hereby approved; and the area

in Yancey County along U.S. Highway 19 between Bald Creek and Swiss heretofore designated as unassigned be assigned to French Broad as shown on the map "Exhibit A-Revised" which is 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 2nd day of November, 1971.

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

DOCKET NO. ES-91

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Carolina Power & Light Company, Pitt & Greene Electric Membership Corporation, and Tri-County Electric Membership Corporation, under Chapter 287, Public Laws [G.S. 62-110.2 (c)], for Assignment of Electric Service Areas in Wayne County	ORDER ASSIGNING ELECTRIC SERVICE AREAS

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, December 11, 1970

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

APPEARANCES:

For the Applicants:

Sherwood H. Smith, Jr., and
Thomas E. Capps
Attorneys at Law
Post Office Box 1551
Raleigh, North Carolina 27602
For: Carolina Power & Light Co.

William T. Crisp
Crisp & Twiggs
Attorneys at Law
Post Office Box 1549, Raleigh, North Carolina
For: Tri-County Electric Membership Corp.

For the Intervenor:

George R. Kornegay, Jr.
Attorney at Law
Post Office Box 646, Mt. Olive, North Carolina
For: Ramblewood of Mount Olive, Inc.

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Post Office Box 991, Raleigh, North Carolina

BY THE COMMISSION: On May 8, 1970, joint application was filed by Carolina Power & Light Company, hereinafter referred to as "CP&L", Pitt & Greene Membership Corporation, hereinafter referred to as "Pitt & Greene EMC", and Tri-County Electric Membership Corporation, hereinafter referred to as "Tri-County EMC", under the provisions of Section 62-110.2(c) of the General Statutes of North Carolina for the assignment of electric service areas in Greene, Lenoir and Wayne Counties, North Carolina.

On May 20, 1970, the Commission in this docket issued a form of notice to be published once a week for four successive weeks in a daily newspaper having general circulation in Greene, Lenoir, and Wayne Counties, as required by Commission Rule R8-29. The notice was published on June 4, June 11, June 18 and June 25, 1970, in the Goldsboro News Argus, and the Commission has been furnished an affidavit of publication to that effect. The notice set the matter for hearing on September 4, 1970, at 10:00 A.M. in the Commission Hearing Room, Raleigh, North Carolina, and further provided that anyone desiring to intervene in the matter or desiring to protest the proposed assignment of territory should file such intervention or protest with the Commission by August 25, 1970. The notice further provided that, in the absence of intervention or protest, the Commission would decide the matter on the application and the public records available to it in its files and no public hearing would be held.

On September 2, 1970, Mr. George R. Kornegay, Jr., on behalf of Ramblewood of Mount Olive, Inc., requested that it be allowed to intervene, setting forth its interest as being owner of approximately 33 acres of land about 2 miles north of the Town of Mount Olive in Wayne County, North Carolina, said area being subject to the joint application in this proceeding. On September 9, 1970, the Commission permitted said intervention and rescheduled the hearing for December 11, 1970.

Motion in the cause was filed with the Commission on November 4, 1970, jointly by CP&L, Pitt-Greene EMC and Tri-County EMC, requesting that the Commission enter a severance order relating to Greene and Lenoir Counties, and further requested that the Commission assign the electric service areas in said counties. On November 19, 1970, the Commission entered a Severance Order dividing Docket No. ES-91 and ES-91(A). In Docket No. ES-91(A), the Commission, after making requisite findings under G.S. 62-110.2 concluded that the assignment of areas in Greene and Lenoir Counties, as designated on Exhibits A and B being the maps filed with the joint application, was in accordance with

public convenience and necessity, and by its Order of November 19, 1970, permitted assignment of electric service areas in Greene and Lenoir Counties, and made no finding in this matter regarding Wayne County, being the area subject to the intervention of Ramblewood of Mount Olive, Inc.

Accordingly, the hearing which was held on December 11, 1970, was for the sole purpose of giving consideration to the joint application insofar as it related to a specific area in Wayne County subject to the intervention of Ramblewood of Mount Olive, Inc.

At the hearing on December 11, 1970, Mr. George R. Kornegay, Jr., attorney representing Ramblewood, testified that he and his wife, Evelyn P. Kornegay, were the owners of Ramblewood of Mount Olive, Inc., developer of Ramblewood Subdivision located in Wayne County. He indicated that it was his understanding that CP&L already had power to 26 lots in Ramblewood Subdivision and that although there was no power presently available to the 14 lots in the northern section of Ramblewood Subdivision, that Tri-County EMC in accordance with the joint application filed with the Commission would serve the 14 remaining lots. Mr. Kornegay stated that the Southern Wayne County Club was served by Tri-County EMC. He further testified that development of Ramblewood Subdivision was begun approximately 1 1/2 years prior to the hearing, but that the only house completed in the subdivision was his personal dwelling located on Lot 14. Mr. Kornegay stated that Ramblewood of Mount Olive, Inc. was selling the lots in said subdivision but as of the date of the hearing, no lots had been sold. Mr. Kornegay testified that his main interest as an intervenor was in having one power Company serve the entire subdivision and stated that this was the reason he filed intervention in this proceeding.

Testimony was presented on behalf of Tri-County EMC through Clinton B. Galphin, Consulting Engineer of the firm of L. E. Wooten and Company. Mr. Galphin testified that the design, development and operation of the electrical system operated by Tri-County EMC was under his overall supervision and that, in his opinion, Tri-County EMC could render adequate and dependable electrical service to the lots in Ramblewood Subdivision pursuant to the joint application and negotiated agreement between said EMC and CP&L. He further testified that Tri-County EMC would employ the use of padmounted transformers and that it was his understanding that this was the same kind of transformer that CP&L would be utilizing in the other part of the subdivision, perhaps even the same color. He testified that there would be no duplication of the facilities of Tri-County EMC or CP&L and that customers in Ramblewood Subdivision would not in any way suffer regarding the quality of service as a result of the joint proposal under consideration in this proceeding.

The evidence tends to indicate that when the agreement giving rise to the joint application in this proceeding was negotiated, neither of the joint applicants was aware of the proposed development of Ramblewood Subdivision.

This order relates to the assignment of electric service areas in Wayne County as requested in the joint application of CP&L, Pitt-Greene EMC and Tri-County EMC. No other protests or interventions were filed regarding any other areas in Wayne County under the joint application.

Based upon the verified application, the records of the Commission, and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) Carolina Power & Light Company 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 at 336 Fayetteville Street, Raleigh, North Carolina. Tri-County EMC 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 Goldsboro, North Carolina. Pitt & Greene EMC 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 Farmville, North Carolina.

(2) Each of the above named applicants is an "electric supplier" as defined in Section 62-110.2(a)(3) of the General Statutes of North Carolina, and as such is authorized to apply to the 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.

(3) CP&L and Tri-County EMC and Pitt & Greene EMC are authorized to operate, and do operate, in Wayne County.

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

(5) CP&L, Tri-County EMC and Pitt & Greene EMC have conducted extended negotiations with respect to Wayne 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 has been reached between the applicants, respectively, covering all areas in Wayne County which lie outside the corporate limits of municipalities, and more than 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) Maps of Wayne County were filed with the application, said maps through appropriate symbols and legends designate the areas which applicants request the Commission to assign to CP&L, Tri-County EMC and Pitt & Greene EMC. The maps also designate the areas that are requested to be ordered to be unassigned as to any electric supplier and also show the areas which are not included within the application. The exhibits signed by representatives of all the applicants show the lines of all suppliers in Wayne County set out on the official Mylar maps of such counties filed with the Commission on August 23, 1966, and August 31, 1966, respectively.

(7) The main interest of intervenor Ramblewood of Mount Olive, Inc., stated by Mr. George R. Kornegay, Jr., is in having one power company serve Ramblewood Subdivision, and it was for this reason that intervention was filed.

(8) The evidence of Tri-County EMC indicates that said EMC can render adequate and dependable electric service to customers in the areas described in the joint application, being a portion of Ramblewood Subdivision, and that there will be no duplication of the facilities of Tri-County EMC and CP&L in said subdivision.

(9) No other protests or interventions have been filed regarding any other areas of Wayne County subject to this joint application.

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

CONCLUSIONS

The Commission finds and concludes that the assignment of the areas in Wayne County as designated by appropriate symbols and legends on the maps filed with the application is in accordance with public convenience and necessity.

Under G.S. 62-110.2(c)(1) in making assignments of electric service areas, this Commission is to consider, among other things, the location of existing lines and facilities of electric suppliers, and the adequacy and dependability of the service of the electric suppliers but not considering rate differentials among electric suppliers.

As expressly indicated by the intervenor Ramblewood of Mount Olive, Inc., its main interest in this proceeding is to have one power company to serve Ramblewood Subdivision. This was said to be the reason for requesting intervention in this case. Beyond this concern, the intervenor has demonstrated no further reason or reasons, or established the same by evidence, which this Commission could consider

as to whether to allow the intervenor's request that the Commission alter the negotiated agreement which is the subject of the joint application in this proceeding as it relates to Ramblewood Subdivision to require only CP&L to serve said subdivision. Mr. Kornegay stated that as of the date of the hearing, no lot had been sold in the Subdivision for building purposes except Lot 14 upon which he has completed the construction of his personal dwelling. The intervenor offered no evidence with respect to the adequacy and dependability of the service of either applicant in this proceeding. Additionally, a Consulting Engineer for Tri-County EMC testified that said EMC can render adequate and dependable electric service to that portion of Ramblewood Subdivision, which is subject to the joint application filed in this proceeding. Not only would similar padmounted transformers be used by both electric suppliers, but said transformers might even be obtained in the same color. The evidence of Tri-County EMC indicates that there would be no duplication of facilities as a result of the joint proposal and that customers in Ramblewood Subdivision would not in any way suffer in connection with the quality of service as a result of the joint proposal.

IT IS, THEREFORE, ORDERED as follows:

(1) That the application of CP&L, Pitt-Greene EMC and Tri-County EMC, for electric area assignments, be, and the same hereby is, approved for the areas in Wayne County situated more than 300 feet from the lines of any electric supplier, and outside the corporate limits of any municipality and are assigned to the respective applicants or designated as unassigned, as referred to in the exhibits attached to the application filed in this proceeding.

(2) That the request of the intervenor to alter the negotiated agreement which is the subject of the joint application in this proceeding as it relates to Ramblewood Subdivision to require only CP&L to serve said subdivision be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. ES-93

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Lake Surf, Incorporated,)
et al., for Reassignment of Electric) ORDER DISMISSING
Service Area) APPLICATION

BY THE COMMISSION: This proceeding is before the Commission on the Application of Lake Surf, Incorporated, Whispering Pines, Moore County, North Carolina, and Randolph S. Sorrell, James W. Davis, Roby H. Futrell, Rebecca F. Greene and Robert T. Skelton, as property owners who have bought lots in the Lake Surf development near Lobelia, Moore County, North Carolina, filed on February 3, 1971, seeking reassignment of a 400 acre tract of land in said Lake Surf development near Lobelia, Moore County, North Carolina, as described in said Application, heretofore assigned to Central Electric Membership Corporation (hereinafter called "Central"), and praying that said 400 acres be reassigned under the Electric Service Area Act, to wit, G.S. 62-110(c)(2) to Carolina Power & Light Company.

The grounds set out in the Application for reassignment of said electric service area are that Lake Surf, Incorporated, is developing a large tract of land near Lobelia in Moore County; that 4600 acres, or over 90% of said Lake Surf, Incorporated, property, have been assigned to Carolina Power & Light Company and that it is desired by the applicants, including Lake Surf, Incorporated, and the lot owners named above, that the subject 400 acres also be served by Carolina Power & Light Company, and stating certain general characteristics of Carolina Power & Light Company as a large regulated utility company as the basis for such desire for service from Carolina Power & Light Company, including the desire to have one electric supplier for the entire area involved.

G.S. 62-110.2, providing for assignment of electric service areas outside of municipalities as between public utility electric companies and electric membership corporations, is a part of the Electric Service Area Act of 1965 and provides a comprehensive plan for assignment of electric service areas, including the establishment of appropriate proceedings and standards to be observed in such assignments. G.S. 62-110.2(c)(2) sets forth the provisions of reassignment of electric service area under said Act as follows:

> "G.S. 62-110.2(c)(2). The Commission, upon agreement of the affected electric suppliers, is authorized to reassign to one electric supplier any area or portion thereof theretofore assigned to another; and the Commission, notwithstanding the lack of such agreement, is authorized to reassign to one electric supplier any area or portion thereof theretofore assigned to another, except premises being served by the other electric supplier or to which any of its facilities for service are attached and except such portions of such area as are within 300 feet of the other electric supplier's lines, upon finding that such reassignment is required by public convenience and necessity. In determining whether public convenience and necessity requires such reassignment, the Commission shall consider, among other things, the adequacy and dependability of the service of the affected electric

suppliers, but shall not consider rate differentials between such electric suppliers."

The statutory plan for reassignment of a service area once established thus provides that the Commission may reassign without consent of both electric suppliers upon first finding that such reassignment is required by public convenience and necessity and, in considering public convenience and necessity, the Commission shall consider the adequacy and dependability of the service of the affected electrical suppliers, but shall not consider rate differentials between such electric suppliers.

The Application filed in this proceeding by Lake Surf, Incorporated, et al, is silent as to the adequacy and dependability of the service of Central, the electric supplier to which the area is assigned. There is no allegation of inadequacy or lack of dependability of such service. The area was assigned to Central after public notice. The provisions for reassignment of such service area do not contemplate reassignment based solely upon the desire of property owners to change from one electric supplier to another electric supplier.

The Application describes the 400 acres involved as being bounded generally on the north by State Road No. 2015; on the east by State Road No. 1825; on the south by Crane Creek; and on the west by State Road No. 2014; and the Application states that Central has no electric service lines in the area other than a single phase line in the far northwestern corner of the property from which no customer is now served. It thus appears from the Application that the subject 400 acres is bounded on all sides by State Roads or a natural boundary and that there is no electric service in the area at the present time. There is no allegation or contention that the applicants have called upon Central to provide service nor that the service of Central, if provided, would not be adequate and dependable.

Based upon the above considerations, the Commission is of the opinion that the Application does not set out sufficient allegations upon which to institute a proceeding for reassignment of the service area, and fails to state grounds for reassignment of the service area involved under the Electric Service Area Act.

IT IS, THEREFORE, ORDERED that the Application of Lake Surf, Incorporated, et al, filed herein on February 3, 1971, is hereby dismissed on the grounds and for the reasons above set forth, for failure to state sufficient grounds for the relief prayed.

ISSUED BY ORDER OF THE COMMISSION.

This 9th day of March, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. ES-48
DOCKET NO. ES-48-A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Duke Power Company and Piedmont Electric Membership Corporation under Chapter 287, Public Laws 1965 [G.S. 62-110.2(c)] for Assignment of Areas in Caswell, Durham, Orange, and Person Counties	SEVERANCE ORDER AND ORDER ASSIGNING ELECTRIC SERVICE AREAS

BY THE COMMISSION: This matter comes before the Commission on joint Application filed on May 29, 1969, by Duke Power Company (Duke) and Piedmont Electric Membership Corporation (Piedmont EMC), under the provisions of Section 62-110.2(c) of the General Statutes of North Carolina for the assignment of electric service areas in Caswell, Durham, Orange, and Person Counties, North Carolina.

On June 16, 1969, the Commission in this Docket issued a form of notice to be published once a week for four successive weeks in a daily newspaper having general circulation in Caswell, Durham, Orange and Person Counties, as required by Commission Rule R8-29. The notice was published on June 20, June 27, July 4, and July 11, 1969, in the Durham-Morning Herald, a daily newspaper having general circulation in Caswell, Durham, Orange, and Person Counties, and the Commission has been furnished an Affidavit of Publication to that effect. The notice set the matter for hearing on September 19, 1969, at 10:00 a.m. in the Commission's Hearing Room, Raleigh, North Carolina, and further provided that anyone desiring to intervene in the matter or desiring to protest the proposed assignment of territory should file such intervention or protest with the Commission by September 9, 1969. The notice further provided that, in the absence of intervention or protest, the Commission would decide the matter on the Application and the public records available to it in its files and no public hearing would be held.

An intervention was filed with respect to Durham and Orange Counties and an Order issued on November 18, 1970, which continued the hearing on this matter and rescheduled it on January 8, 1971, in the Offices of the Commission, 1 West Morgan Street, Raleigh, North Carolina. The hearing has been continued from time to time and is presently to be rescheduled by further Order of the Commission.

The time for intervention or protest with respect to the areas located in Caswell and Person Counties has long since expired and no such intervention or protest was filed with the Commission. The hearing to be scheduled by the Commission is for the sole purpose of giving consideration to the Application insofar as it relates to specific areas in Durham and Orange Counties, North Carolina, and such hearing will have no bearing on or relevancy to the assignments in Caswell and Person Counties.

Therefore and based upon receiving a "Motion in the Cause for Severance Order Relating to Caswell and Person Counties" filed jointly with the Commission by all applicants on September 10, 1971, the Commission sets forth in its ordering clause a granting of the Motion to Sever the Application for area assignments of Caswell and Person Counties from its final Order relating to Durham and Orange Counties.

Upon the verified Application and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. Duke Power Company is a corporation duly organized and existing under the laws of the State of North Carolina as a public utility, with the principal office and place of business of Duke at 422 South Church Street, Charlotte, North Carolina. Piedmont EMC is an electric membership corporation duly organized and existing under the laws of the State of North Carolina with the principal office and place of business in Hillsborough, North Carolina.

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 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.

3. Duke Power Company and Piedmont EMC are authorized to operate, and do operate, in Caswell and Person Counties. The applicants are, and for many years have been rendering electric service to numerous customers in these Counties.

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

5. Duke Power Company and Piedmont EMC conducted extended negotiations with respect to Caswell and Person Counties 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 has been reached between the applicants, respectively, covering all areas in Caswell and Person Counties which are not excluded in the Application and which lie outside the corporate limits of municipalities and more than 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. Maps of Caswell and Person Counties were filed as Exhibits A and D, respectively, to the Application, said maps through appropriate symbols and legends designate the areas which applicants request the Commission to assign to Duke Power Company and to Piedmont EMC. The maps also designate the areas that are requested to be ordered to be unassigned as to any electric supplier and also show the areas which are not included within the Application. Exhibits A and D were signed by representatives of all the applicants and show the lines of all suppliers in Caswell and Person Counties as set out on the official Mylar maps of such Counties filed with the Commission on July 22, 1966.

CONCLUSIONS

The Commission finds and concludes that the assignment of areas in Caswell and Person Counties as designated by appropriate symbols and legends on the maps filed with the Application as Exhibits A and D is in accordance with public convenience and necessity.

IT IS, THEREFORE, ORDERED:

1. That the Application of Duke Power Company and Piedmont Electric Membership Corporation for area assignment in Caswell, Durham, Orange, and Person Counties be divided into two parts so as to sever the Application for area assignment of Caswell and Person Counties from the Application of area assignment for Durham and Orange Counties. For identification and filing purposes the Dockets for these Applications shall be referred to as ES-48-A and ES-48, respectively.

2. That the Application of Duke Power Company and Piedmont Electric Membership Corporation for electrical area assignment be, and the same hereby is, approved for the areas in Caswell and Person Counties situated more than three hundred (300) feet from the lines of any electric supplier and outside the corporate limits of any municipality and are assigned to the respective applicants or designated as unassigned, all as shown on Exhibits A and D incorporated herein by reference and made a part of this Order (identified for reference purposes as being in Docket No. ES-48-A) as fully as if set out herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of October, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. EC-59, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Transfer of Electric Service Areas of) ORDER
Pamlico-Beaufort Electric Membership Cor-) TRANSFERRING
poration to Tideland (Formerly Woodstock)) ELECTRIC
Electric Membership Corporation) SERVICE AREAS

BY THE COMMISSION: Upon consideration of the record herein, including the allegations contained in the verified Application, and it appearing, and the Commission finding, that Woodstock Electric Membership Corporation ("Woodstock" or "Tideland") and Pamlico-Beaufort Electric Membership Corporation ("Pamlico-Beaufort") have entered into an agreement, which has been duly approved by their respective memberships and by the United States Rural Electrification Administration, whereby Woodstock will by charter amendments change its name to "Tideland Electric Membership Corporation" and become corporately empowered to furnish electric service in all counties in which Pamlico-Beaufort presently furnishes service; that Pamlico-Beaufort will transfer, convey and assign all of its assets of whatever kind to Tideland, which in turn will assume totally all of Pamlico-Beaufort's liabilities and obligations, effective as of midnight EST December 31, 1971; that the United States Rural Electrification Administration, as shown on Exhibits "B" and "C" attached to the Application, has given its approval to the proposed plan of combination; and that the plan of combining the two Electric Membership Corporations as specified in the agreement for such combination, dated May 6, 1971, and being Exhibit "A" of the Application, has been or will be effectuated in all respects; that the Commission by Order has heretofore, pursuant to G.S. 62-110.2(c), assigned certain electric service areas to Pamlico-Beaufort, and designated certain areas as being unassigned, in Pamlico, Beaufort and Craven Counties, North Carolina, via Commission Orders in Docket Nos. ES-29, ES-68, and ES-28, the same being herein incorporated by reference; and it appearing that said assignments should be transferred on the records of the Commission as hereinafter ordered;

IT IS, THEREFORE, ORDERED that the Application for transfer of electric service areas filed herein by Woodstock and Pamlico-Beaufort Electric Membership Corporations is hereby approved; and that the maps on file with the Commission in electric service area assignment Docket Nos. ES-29, ES-68, and ES-28 are hereby amended to show that the electric service areas heretofore assigned to Pamlico-

Beaufort Electric Membership Corporation are hereafter assigned to Tideland Electric Membership Corporation, and the books and records of the Utilities Commission shall hereafter be amended to show that all electric service areas heretofore assigned to Pamlico-Beaufort Electric Membership Corporation are now and hereafter assigned to Tideland Electric Membership Corporation; provided, however, this Order is issued subject to, and shall become effective as of midnight EST December 31, 1971, only upon, the effectuation of the plan of combination as above outlined and as set forth in the agreement therefor constituting Exhibit "A" of the Application.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-21, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural) ORDER ALLOWING
Gas Corporation for an Adjustment in) INCREASE IN RATES
its Rates and Charges) AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 27, 1971 at 9:30 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 Applicant:

Donald W. McCoy
Alfred E. Cleveland
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
Box 1688
Fayetteville, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: This proceeding was instituted by an application filed by North Carolina Natural Gas Corporation, hereinafter referred to as "Applicant", on May 27, 1971, seeking authority to adjust and increase its rates and charges amounting to approximately $1,019,169 in annual gross revenues, the same being sought to recover the increased cost of purchased gas to it from its supplier and the related gross receipts tax and increased insurance cost. This increase was sought to be made effective on January 10, 1971.

By Order of December 31, 1970, the Commission ordered that the filing herein be suspended, set the matter for investigation and scheduled same for hearing and further approved the rates sought with an effective date of January 28, 1971, subject to refund under an undertaking as provided in G. S. 62-135; declared the matter to be a general rate case; required public notice to be given by the Applicant and placed upon the Applicant the burden of proving its requested increases to be just, reasonable and otherwise lawful.

This matter came on for hearing at the time and place specified in the Order. No one appeared to protest the application. The Applicant presented its evidence through the testimony of Frank Barragan, Jr., President; John T. Bartlett, Vice President; Howard L. Ford, Vice President & Treasurer; Arthur P. Gnann, Jr., Vice President of Operations, and Glenn E. Anderson, Chief Executive Officer of Carolina Securities Corporation, along with certain exhibits and other evidence by way of judicial notice as set out in the record herein.

The Commission Staff presented evidence through the testimony of Jesse C. Kent, Jr., Staff Accountant, and Raymond J. Nery, Chief-Gas & Water Engineering Division. The testimony of these witnesses and exhibits and other evidence are of record.

Based upon the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) Applicant, North Carolina Natural Gas Corporation, is a Delaware corporation authorized to do business in North Carolina and is a duly franchised and operating public utility under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission for the purpose of fixing its rates and charges.

(2) Applicant has experienced increases in the cost of purchased gas, which said item of expense amounts to approximately 68% of its total operating expenses, in the amount of $1,019,169 with further increases experienced with respect to the related gross receipts tax. These increases result from increases imposed on the Applicant by its suppliers, Transcontinental Gas Pipe Line Corporation and Piedmont Natural Gas Company, which said suppliers in connection with such sales are regulated by the Federal Power Commission and this Commission.

(3) That the fair value of the Applicant's property used and useful in rendering the service it provides to its customers within the State is approximately $42,000,000.

(4) Under Applicant's proposed rates, Applicant will realize operating revenues of $24,198,641, operating expenses of $21,255,798 and net operating income for return of $3,031,334, and a rate of return on fair value of 7.21%.

(5) To require Applicant to absorb the increases in the cost of purchased gas and related gross receipts tax and insurance costs would result in the Applicant being required to operate at a rate of return that would be less than one that is just, reasonable or sufficient under the Applicant's current operating conditions.

(6) The rates proposed by the Applicant will not more than offset the increased cost of purchased gas imposed upon it by its suppliers and the related gross receipts tax and insurance costs, and, therefore, are not unjust and unreasonable.

(7) The rate of return on fair value herein approved of 7.21% is just, reasonable and lawful, and is sufficient to enable Applicant by sound management to produce a fair profit for its stockholders, considering changing economic conditions and other factors, as they now exist, and to maintain its facilities and service in accordance with the reasonable requirements of its customers in the territory covered by its franchise, 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.

(8) That the net result of action by the Federal Power Commission, in the several dockets pending before it, which has resulted in increases and decreases in the wholesale cost of gas to the Applicant, is to afford a .1 cent per MCF decrease in the cost of such gas which was included in the rates heretofore approved by the Commission, subject to refund under an undertaking, and the same to that extent should be refunded and new tariffs filed.

(9) That North Carolina Natural Gas Corporation should file its plan of refunding the excess funds collected to its customers in accordance with this order, which plan shall be submitted to this Commission for approval.

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

CONCLUSIONS

The Commission concludes that the rates requested by the Applicant in this proceeding are not unjust and unreasonable under Applicant's current operating conditions and that the increases authorized herein will result in a rate of return that is not unjust and unreasonable to the Applicant, thereby permitting it to realize sufficient earnings to enable it to provide adequate service to its customers.

The Commission concludes that in the event the Federal Power Commission disallows all or any portion of the rate increases now pending before it, the Applicant should be required to file immediately revised tariffs reflecting such reduction in rates to it; and the Commission further concludes that the Company should immediately refund to its customers that portion of the increases heretofore approved under an undertaking in this docket, which exceeds the cost of gas to it as approved by the Federal Power Commission.

IT IS, THEREFORE, ORDERED as follows:

(1) That North Carolina Natural Gas Corporation shall file revised tariffs consistent with the premises of this Order effective August 1, 1971, and shall make appropriate refunds in accordance with the Findings and Conclusions herein.

ISSUED BY ORDER OF THE COMMISSION.

This 30th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. G-3, SUB 42

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) for an Adjustment of its Rates and Charges) ORDER ALLOWING INCREASE IN RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 20, 1971, at 9:30 A.M.

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

APPEARANCES:

For the Applicant:

James T. Williams, Jr.
McLendon, Brim, Brooks, Pierce & Daniels
Attorneys at Law
440 W. Market Street
Greensboro, North Carolina 27402

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: Pennsylvania & Southern Gas Company (North Carolina Gas Service Division), (hereinafter Applicant) filed with the Commission on December 28, 1970, an application seeking authority to adjust and increase its

rates and charges in an amount equal to approximately $184,086, the same being sought to cover the increased cost of purchased gas to it from its suppliers and the related gross receipts tax and insurance cost. This increase was sought to be made effective on January 27, 1971.

The Commission by Order dated January 12, 1971, ordered that the filing herein be suspended, set the same for investigation and scheduled the matter for hearing as set out in the caption; approved the rates sought with an effective date of January 28, 1971, subject to refund, under an undertaking as provided in G.S. 62-135; declared the matter to be a general rate case; required public notice to be given by the Applicant and placed upon the Applicant the burden of proving its requested increases to be just, reasonable and otherwise lawful.

Upon the call of this matter for hearing, the Applicant presented two witnesses: C.B. Coulter, a Member of the Board of Directors, President, and General Manager of the Applicant, and William W. Devore, Treasurer and Assistant Secretary of the Company; certain exhibits and other evidence by way of judicial notice as set out in the record herein.

The Commission Staff presented its case through the testimony of Raymond J. Nery, Chief Engineer, Gas and Water Division, and William E. Carter, Staff Accountant. The testimony of these witnesses and exhibits and other evidence are of record.

Based upon the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Pennsylvania & Southern Gas Company (North Carolina Gas Service Division), is a duly franchised and operating public utility under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission for the purpose of fixing its rates and charges.

2. Applicant has experienced increases in its cost of purchased gas, which said item of expense amounts to approximately 67% of its total operating expenses, in the amount of $2,396,138, including the related gross receipts taxes. These increases result from increases imposed on the Applicant by its Suppliers, Transcontinental Gas Pipeline Corporation and Public Service Company of North Carolina, which said suppliers in connection with such sales are regulated by the Federal Power Commission and this Commission.

3. That the fair value of the Applicant's property used and useful in rendering the service it provides to its customers within the State is approximately $3,500,000.

4. Under Applicant's proposed rates, Applicant will realize operating revenues of $2,661,956, operating expenses of $2,396,138, and net operating income of $273,022, and a rate of return on fair value of 7.8%.

5. To require Applicant to absorb the increases in the cost of purchased gas and related gross receipts taxes and insurance costs would result in the Applicant being required to operate at a rate of return that would be less than one that is just, reasonable or sufficient under the Applicant's current operating conditions.

6. The rates proposed by the Applicant will not more than offset the increased cost of purchased gas imposed upon it by its suppliers and the related gross receipts tax and insurance costs, and, therefore, are not unjust and unreasonable.

7. The rate of return on fair value herein approved of 7.8% is just, reasonable and lawful, and is sufficient to enable the utility by sound management to produce a fair profit for its stockholders, considering changing economical conditions and other factors, as they now exist, and to maintain its facilities and service in accordance with the reasonable requirements of its customers in the territory covered by its franchise, 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.

8. That the net result of action by the Federal Power Commission, in the several dockets pending before it, which has resulted in increases and decreases in the wholesale cost of gas to the Applicant, is to afford a .1 cent per MCF decrease in the cost of such gas which was included in the rates heretofore approved by the Commission, subject to refund under an undertaking, and the same to that extent should be refunded and new tariffs filed.

9. That Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) should file its plan of refunding the excess funds collected to its customers in accordance with this order, which plan shall be submitted to this Commission for approval.

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

CONCLUSIONS

The Commission concludes that the rates requested by the Applicant in this proceeding are not unjust and unreasonable under Applicant's current operating conditions and that the increases authorized herein will result in a rate of return that is not unjust and unreasonable to the Applicant, thereby permitting it to realize sufficient earnings to enable it to provide adequate service to its customers.

The Commission concludes that in the event the Federal Power Commission disallows all or any portion of the rate increases now pending before it, the Applicant should be required to file immediately revised tariffs reflecting such reduction in rates to it; and the Commission further concludes that the Company should immediately refund to its customers that portion of the increases heretofore approved under an undertaking in this docket, which exceeds the cost of gas to it as approved by the Federal Power Commission.

The Commission finally concludes that the Applicant should file revised rate schedules and make appropriate refunds to its TX rate schedule customers in accordance with the reduction in rates authorized by this Commission for Public Service Company of North Carolina.

IT IS, THEREFORE, ORDERED as follows:

That Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) shall file revised tariffs effective August 1, 1971, and shall make appropriate refunds, all in accordance with the Findings and Conclusions herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 81
DOCKET NO. G-9, SUB 82

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for Adjustment of Its Rates and Charges) ORDER ALLOWING INCREASES IN RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on April 27, 1971, 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:

Jerry W. Amos and
J. T. Williams, Jr.
McLendon, Brim, Brooks, Pierce & Daniels

Attorneys at Law
P. O. Drawer U, Greensboro, North Carolina

For the Intervenor:

Jean A. Benoy
N.C. Department of Justice
Room 124, Ruffin Building
Raleigh, North Carolina
and
I. Beverly Lake, Jr.
N. C. Department of Justice
Revenue Building
Raleigh, North Carolina
For: The Using & Consuming Public

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Ruffin Building
Raleigh, North Carolina
and
Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: Piedmont Natural Gas Company, Inc., hereinafter referred to as "Applicant", filed with the Commission on October 30, 1970, an application seeking authority to adjust and increase its rates and charges in an amount equal to approximately 1 cent per mcf, being the increased cost of purchased gas to it from its suppliers made effective January 1, 1970, and the related gross receipts tax, amounting to approximately $691,912 additional annual revenues. This increase was sought to be made effective on December 1, 1970.

The Applicant filed an amendment on November 6, 1970, to its original application in Docket No. G-9, Sub 81, seeking authority to increase its rates and charges by 1 cent per mcf effective January 1, 1971, representing an increase in the cost of purchased gas to it from its suppliers amounting to approximately $699,396 additional annual revenues, said amount being in addition to the increases sought in the original application filed on October 30, 1970.

By Order of November 17, 1970, the Commission, being of the opinion that the application affected the public interest, suspended Applicant's request to increase its rates and charges hereinabove described, declared the proceeding to be a general rate case under the provisions of G.S. 62-137, set the matter for investigation and hearing, and further required Applicant to publish notice of said hearing in sufficient newspapers having circulation in its service areas.

Applicant filed on December 2, 1970, a Reply to the Commission's Order of Suspension and Investigation requesting that the Commission authorize the Applicant to place its proposed rate increases into effect pursuant to the undertaking attached to said Reply, in which Applicant agreed to refund any amounts collected that were found to be unjust and unreasonable upon final determination by the Commission.

Applicant filed on December 10, 1970, an additional application, which was assigned Docket No. G-9, Sub 82, requesting authority to increase its rates and charges approximately 2.442 cents per mcf effective January 10, 1971, said amount being a further increase in addition to the above mentioned increases imposed upon the Applicant by its suppliers, particularly Transcontinental Gas Pipeline Corporation, hereinafter referred to as "Transco".

By Order of December 14, 1970, the Commission approved Applicant's undertakings thereby allowing Applicant to place into effect subject to refund the increases requested in Sub 81.

Applicant filed on December 22, 1970, amendment to its application. A rider was attached thereto in the form of an undertaking in which the Applicant agreed to refund any amounts collected by it with respect to Docket No. G-9, Sub 82 not found to be just and reasonable by the Commission after hearing.

By Order of December 31, 1970, the Commission consolidated Docket Nos. G-9, Sub 81 and G-9, Sub 82 for hearing, approved the undertaking filed by the Applicant attached to its amendment on December 22, 1970, thereby allowing Applicant to make effective subject to refund the increases in costs of purchased gas in Docket No. G-9, Sub 82, effective January 28, 1971, and required Applicant to file appropriate tariffs. The Order further provided that in the event the Federal Power Commission was to disallow any portion of the increases in purchased gas costs requested in Sub 82, Applicant would be required to immediately file revised tariffs accordingly. The Order further established the test period to be utilized in this proceeding as the 12 months' period ending August 31, 1970. The dockets were consolidated for hearing on April 27, 1971, and Applicant was required to file the Notice of Consolidating Dockets for hearing attached as "Appendix A" of the Commission's order, which summarized all of the increases proposed by the Applicant in the consolidated proceeding.

On March 24, 1971, Notice of Intervention was filed by Robert Morgan, Attorney General of North Carolina, on behalf of the using and consuming public. The Attorney General's intervention was recognized by Order of the Commission dated March 29, 1971.

By Order of April 6, 1971, the Commission extended time for filing reports by the Commission Staff, upon motion by the Commission Staff.

The matter was called for hearing on April 27, 1971. No one appeared at the hearing to protest the applications. After completion of cross-examination of the first witness, the Attorney General's representative moved for leave to withdraw his intervention in this docket. Without objection of the other parties to the proceeding, the Commission allowed such withdrawal.

SUMMARY OF EVIDENCE

The increases requested by the Applicant would amount to approximately $2,212,272 in additional gross annual revenues to the Applicant. The increases requested herein amount to approximately 5.192 cents per mcf for firm customers and 4.945 cents per mcf for interruptible customers. The cumulative effect of both of the applications, which have been consolidated, is to seek authority to allow the Applicant to increase its rates only by amounts equal to the increases in costs of purchased gas to it from its suppliers, Transco and Carolina Pipeline Company, hereinafter referred to as "Carolina", and the related gross receipts tax.

Applicant's evidence indicates that Transco, one of its two suppliers, increased its rates in the following amounts and on the following effective dates: (a) on January 1, 1970, in the amount of 1 cent per mcf; (b) on January 1, 1971, in the amount of 1 cent per mcf and (c) on January 10, 1971, in the amount of 2.3 cents per mcf. As a result of the Federal Power Commission's rolling back a portion of the rate increases regarding the proposed settlements with the American Gas Distributers and Producers, Transco's rates were reduced by 1 cent per mcf retroactive as of January 10, 1971; however, such rates were increased by 1/2 cent effective March 26, 1971, resulting in a net increase of 2.2 cents effective January 10, 1971, rather than a 2.3 cents increase per mcf effective that date. The Applicant contends that for each 1 cent per mcf increase in cost of purchased gas, it experiences $1,000,000 in increased expenses in purchased gas costs and, further, that there is an escalator clause in its contract with its supplier, Carolina, which permits Carolina to increase its rates each time Transco increases its rates.

The last general rate increase for the Applicant was made effective on December 1, 1959, in Docket G-9, Sub 33.

Buell G. Duncan, Chairman of the Board of Directors and Chief Executive Officer of the Applicant, testified that while the Applicant has experienced increases in many items of expense and is considering the possible necessity of filing another general rate application, the proceedings herein relate only to the Applicant seeking increases

amounting to the costs of purchased gas to it from its suppliers and the applicable gross receipts tax. The Applicant presented additional evidence through the testimony of Earl A. Matheney, Senior Vice President - Finance. He testified in connection with the Applicant's exhibits supporting what it contends is its need for revenues in this proceeding, and in connection with the Applicant's need to raise additional capital, and regarding allocations of the Company's operations between North Carolina and South Carolina. Eugene S. Merrill, Senior Vice President - Director of Stone & Webster Management Consultants, Inc., of New York, testified regarding Applicant's cost of capital and the adequacy of Applicant's common earnings. Nelson J. Ambrose, Vice President - Stone & Webster, testified regarding trending of Applicant's utility properties from original cost to current cost based on Handy-Whitman Indices. Richard S. Johnson, Manager of Technical Services Division of Stone & Webster Management Consultants, Inc., testified regarding the Staff's allocations of pipeline demand charges between North Carolina and South Carolina.

The Commission Staff presented evidence through the testimony of Jesse Kent, Staff Accountant, concerning the Staff's investigation and audit, and R. J. Nery, Chief Engineer, Gas & Water Division, regarding the weather adjustment utilized by the Staff, and in connection with allocation of demand costs on the volume of gas sold by the Applicant between its North Carolina and South Carolina customers.

Applicant's evidence indicates that in connection with its North Carolina intrastate operations for the test period ending August 31, 1970, prior to consideration of the increases proposed in this proceeding, it realized operating revenues of $36,853,626, total operating expenses and taxes amounting to $31,787,805, net operating income for return in the amount of $5,184,361, and net plant in service at original cost per books in the amount of $68,696,736. (Applicant's Exhibit "K"). Based upon the foregoing figures, Applicant arrived at a 7.55% rate of return on original cost before the increases in this proceeding. Upon consideration of the increases requested herein of approximately $2,212,272, and corresponding adjustments, Applicant projects a rate of return of 6.92%. (Applicant's Exhibit "K"). In arriving at its cost of utility plant, Applicant deleted amounts relating to construction work in progress in accordance with the decision of the Supreme Court of North Carolina in _Utilities Commission and Lee Telephone Company v. Morgan, Attorney General_, 277 NC 255, decided November 18, 1970. However, several of the Applicant's exhibits include consideration of such amount. Witness Ambrose testified on behalf of the Applicant that the net trended evaluation of Applicant's properties amounted to $96,095,406, representing, in his opinion, an approximate current value of the Applicant's utility properties based upon the witness' studies utilizing the

Handy-Whitman Indices. This amount reflects adjustments made and revised exhibits filed at the hearing which resulted from deletion of construction work and progress and recent revisions in the Handy-Whitman Indices in connection with nine accounts which occurred after the filing by the Applicant of its original exhibits and testimony.

The Commission Staff's evidence indicates that prior to the increases proposed in this proceeding, Applicant's intrastate operating revenues amounted to $36,853,626, and when related to operating expenses of $31,787,805, results in net operating income for return of $5,184,260 and in connection with its North Carolina intrastate operations, Applicant had invested in gas utility plant in service $75,039,291, and a net investment after reduction of reserve for depreciation and contributions amounting to $59,596,773, resulting in a rate of return on net investment of 8.37%. Giving consideration to the increases proposed in this proceeding, the Staff evidence indicates gross intrastate operating revenues of $38,147,039, operating expenses of $32,868,324, and when considering the annualizing factor employed by the Staff relating to Applicant's customer increase during the test period, results in a net operating income for return of $5,402,131. The Staff's evidence further indicates, after consideration of the increases proposed herein, that consideration of a net investment in gas utility plant by the Applicant of $67,530,673, which includes an allowance for working capital, would result in a rate of return of 8.00%. Several adjustments were made by the Staff and are amply reflected in the record of this proceeding. One particular adjustment deserves comment. Based upon the testimony of Mr. Nery of the Engineering Staff, operating expenses of the Applicant were decreased in the amount of $423,228, in order to reallocate a portion of the demand charges to Applicant's South Carolina Operations because, in the opinion of the witness, based upon the test period, actual sales of gas in North Carolina amounted to only 65% of Applicant's total sales while North Carolina customers paid 77% of the demand charges. Witness Nery further testified that an increase in industrial sales in North Carolina was taking place and, in his opinion, would result in the balancing of the sales volumes in North Carolina and South Carolina more nearly in line with the percentage relationship of allocation of the demand utilizing the 3-day sustained peak allocated method.

All of the adjustments by the various witnesses for the Applicant and the Commission Staff are amply set forth in the record herein and have been thoroughly considered by the Commission in arriving at its Findings of Fact and Conclusions as hereinafter set forth.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

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

(2) Applicant has experienced increases in its costs of purchased gas, which said item of expense generally amounts to approximately 75% of its total operating expenses, in the amount of $2,212,272, including the related gross receipts tax. These increases result from increases imposed on the Applicant by its suppliers, Transco and Carolina, which said suppliers are regulated by the Federal Power Commission.

(3) The fair value of the Applicant's property used and useful in rendering the service it provides to its customers within the State is approximately $79,161,098.

(4) Under Applicant's existing rate structure for the 12-month period ending August 31, 1970, it realized operating revenues of $36,853,626, operating expenses of $31,787,805, resulting in a net operating income for return of $5,184,260. Based upon a net investment in gas utility plant of $59,596,773, Applicant was permitted to earn a rate of return on net investment of 8.37%.

(5) The Applicant, Piedmont Natural Gas Company sold in North and South Carolina 70,407,208 Mcf of gas during the test year at essentially 100% load factor. South Carolina was allocated the demand charges by Piedmont Natural Gas Company and was entitled to receive 23% of the annual sales (16,193,658 Mcf) if considered as a separate operation and operating at 100% load factor. However, actual sales in South Carolina amounted to 24,722,261 Mcf, leaving an amount in excess of the 100% load factor volumes which was sold in South Carolina of 8,528,603 Mcf. This amount of gas was created by the peak day demand of Piedmont Natural Gas customers in North Carolina on which the North Carolina customers paid the demand cost. This adjustment in demand charge is deemed to be unreasonable at this time and is not appropriate in the facts of this case for the reason that an increase in industrial sales in North Carolina is currently taking place and is likely to result in the balancing of the sales volumes in North Carolina and South Carolina more nearly in line with the percentage relationship of allocation of the demand utilizing the 3-day sustained peak allocated method.

(6) Under Applicant's proposed rates, Applicant will realize operating revenues of $38,147,039 and excluding the Staff's demand charge adjustment, results in total operating expenses of $33,075,198 and net operating income of $5,071,841, and a rate of return on net investment of 7.68%.

(7) To require the Applicant to absorb the increases amounting to $2,212,272 imposed upon it by its suppliers would result in the Applicant being required to operate at a rate of return that would be less than one which is just and reasonable or sufficient under the Applicant's current operating conditions.

(8) The rates proposed by the Applicant will not more than offset the increased costs of purchased gas imposed upon it by its suppliers and the related gross receipts tax, and, therefore, are not unjust and unreasonable.

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 increases in purchased gas costs, being approximately 75% of its total operating expenses, in the amount of approximately 5.192 cents per Mcf for firm customers and 4.945 cents per Mcf for interruptible customers, and amounting in the aggregate of $2,212,272 additional gross revenues in relation to Applicant's operating conditions during the test period, would result in requiring Applicant to operate at a rate of return that is less than just and reasonable under its current operating conditions as a public utility. Applicant is entitled to a reasonable rate of return based upon the fair value of its properties used and useful in rendering the service it affords the public. The fair value rate base established by this Order of $79,161,098 results in a rate of return on fair value of Applicant's utility properties of 6.56%.

The Commission concludes that the rates requested by the Applicant in this proceeding are not unjust and unreasonable under Applicant's current operating conditions and that the increases authorized herein will result in a rate of return that is not unreasonable to the Applicant, thereby permitting it to realize sufficient earnings to enable it to provide adequate service to its customers.

The Commission is of the opinion that substantial volumes of gas on which North Carolina customers paid demand charges were sold in South Carolina and an allocation of a portion of the demand costs paid by North Carolina to South Carolina is appropriate. However, the testimony of the Staff indicated that an increase in industrial sales in North Carolina was taking place and in their opinion would result in the balancing of the sales volumes in North and South Carolina more nearly in line with the percentage relationship of allocation of the demand utilizing the 3-day sustained peak allocated method, and, therefore, the Commission concludes that, at this time an allocation of the demand cost should not be made. However, in future rate cases, if the sales volume in North and South Carolina is not held by the Applicant more closely to the percentage

relationship of the 3-day sustained peak in both States, the Commission will consider an allocation of the demand cost.

IT IS, THEREFORE, ORDERED as follows:

(1) That the schedule of rates filed by the Applicant in this proceeding be, and the same hereby is, approved.

(2) That approval of Applicant's rates herein as being just and reasonable has the effect of satisfying the two undertakings filed by the Applicant in this proceeding under G.S. 62-135; however, in the event that the Federal Power Commission disallows any portion of the increased costs of purchased gas authorized by this Commission, Applicant shall immediately file revised tariffs to reduce its rates accordingly, and Applicant shall refund any amounts not finally approved by the Federal Power Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 86
DOCKET NO. G-9, SUB 90

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter
Application of Piedmont Natural Gas) ORDER ALLOWING
Company, Inc., for an Adjustment of) PARTIAL INCREASE IN
Its Rates and Charges) RATES AND CHARGES

BY THE COMMISSION: On August 5, 1971, Piedmont Natural Gas Company, Inc., (Piedmont), in Docket No. G-9, Sub 86, filed an application with the North Carolina Utilities Commission for an adjustment of its rates and charges in order that it might recover increases in the cost of gas to it from its suppliers, Transcontinental Gas Pipe Line Corporation (Transco) and Carolina Pipeline Company (Carolina). The Commission, on August 11, 1971, issued its Order Suspending the Rates Filed on August 5, 1971. On August 13, 1971, a Motion was filed by Piedmont with the Commission requesting that it reconsider its Order of Suspension dated August 11, 1971. The Commission, on August 26, 1971, denied Piedmont's Motion for Reconsideration of its Order of August 11, 1971. On September 10, 1971, Piedmont filed an Amendment to its Petition in order that it might recoup additional increases in the cost of gas to it from Transco and Carolina. On September 21, 1971, Piedmont filed an Undertaking pursuant to G. S. 62-134. On October 6, 1971, the Commission approved the Undertaking filed by Piedmont under date of September 21, 1971. On October 21,

1971, the Commission issued its Order suspending the rates filed by Piedmont on September 10, 1971, and further required Piedmont to file additional data as required in its Order, Docket No. G-100, Sub 14. The Order further allowed the Amendment filed by Piedmont under date of September 10, 1971. On November 4, 1971, Piedmont filed an Undertaking pursuant to G. S. 62-134 in order that it might put into effect the increased rates sought in its Amendment to its Petition dated September 10, 1971. On November 12, 1971, the Commission approved the Undertaking filed by Piedmont under the date of November 4, 1971. Each of the above increases filed by Piedmont seeking to recover the increased cost of gas to it from its suppliers in Docket No. G-9, Sub 86, has been approved by the Federal Power Commission and/or other regulatory agencies. Below are listed the increases in the cost of gas to Piedmont as contained in Docket No. G-9, Sub 86:

1) Effective June 1, 1971, Carolina increased its commodity rates to Piedmont .38 cents per Mcf and its demand charges from $4.15 per Mcf per month to $4.16 per Mcf per month.

2) Effective July 1, 1971, Transco increased the demand charges for its GSS service from $1.42 per Mcf per month to $1.54 per Mcf per month.

3) Effective July 26, 1971, Transco increased its CD-2 commodity rates by .1 cent per Mcf and Carolina increased its commodity rates to Piedmont by .02 cents per Mcf.

4) Effective August 2, 1971, Transco increased its CD-2 commodity rates by .6 cents per Mcf and Carolina increased its commodity rates to Piedmont by .22 cents per Mcf.

5) Effective November 14, 1971, Transco increased its CD-2 commodity rates by 1.2 cents per Mcf.

6) Effective November 14, 1971, Transco increased its CD-2 commodity rates by an additional .1 cents per Mcf and Carolina increased its commodity rates to Piedmont by .9 cents per Mcf.

In order for Piedmont to recover the increased cost of gas to it as listed above, plus related gross receipts tax, Piedmont filed rate schedules which would increase the cost of gas to its firm customers by 2.399 and by 2.141 cents per Mcf to its interruptible customers. These increased rates would increase the revenues paid by North Carolina customers to Piedmont by $1,059,467 annually. These increased rates became effective on November 14, 1971, pursuant to the General Statutes and under the Undertaking filed by Piedmont.

On December 1, 1971, in Docket No. G-9, Sub 90, Piedmont filed a second application with the Commission in order to increase its rates and charges to recover further increases

to it in the cost of gas from Transco and Carolina. The increase in the cost of gas which Piedmont is seeking to recover in this docket from its suppliers, Transco and Carolina, is filed to become effective January 2, 1972. The applications for approval of these increases are now pending before the regulatory agencies and are to become effective January 1, 1972. The increases in cost of gas which Piedmont is seeking to recover in Docket No. G-9, Sub 90 are listed below:

Transcontinental - CD-2 rates (1) Demand charges increased by $.16 per month per Mcf. (2) Commodity charges increased by 1.3 cents per Mcf.

GSS Rates - Demand charges increased by 4¢ per month per Mcf.

PS-2 Rates - Demand charges increased by 2¢ per month per Mcf.

Piedmont purchases gas from Carolina under a contract which provides for an automatic adjustment in its tariffs to reflect increases in cost of gas purchased by Carolina from its suppliers, including Transco. Under the terms of this contract, Carolina will track the Transco increases, effective January 1, 1972. Transco's application with the Federal Power Commission in Docket No. RP72-78 will result in Carolina increasing its rates to Piedmont as follows:

LSS-1 - Demand charges by 7¢ per month per Mcf. LSS-1 - Commodity charges by .55 cents per Mcf.

In order to recover these increases in the cost of gas, Piedmont has filed revised tariffs to become effective on January 2, 1972, on all gas sold. These tariffs increase the cost of gas to Piedmont's firm customers by 3.760 cents per Mcf and by 1.373 cents per Mcf to its interruptible customers. These increased rates will allow Piedmont to recover from its customers in North Carolina additional revenues of $1,251,365 annually. The total amount of the increase in revenue in the two dockets referred to above from its North Carolina customers will increase its revenues by $2,310,832 annually.

The North Carolina General Assembly adopted Chapter 1092, Session Laws of 1971, ratified July 21, 1971, North Carolina General Statutes 62-133(f) which provides as follows:

"Unless otherwise ordered by the Commission, Subsections (b), (c), and (d) shall not apply to rate changes of utilities engaged in the distribution of natural gas bought at wholesale by a utility for distribution to consumers to the extent such rate changes are occasioned by changes in the wholesale rate of such natural gas. The Commission may permit such rate changes to become effective simultaneously with the effective date of the change in the wholesale cost of such natural gas, or at such other time as the Commission

may direct. This Subsection shall not prohibit the Commission from investigating and changing unreasonable rates in accordance with the provisions of this Chapter. The public utility shall give such notice, which may include notice by publication, of the changes to interested parties as the Commission in its discretion may direct."

Pursuant to the authority granted above to the Commission by the Legislature, the Commission issued its Order in Docket No. G-100, Sub 14, requiring that certain data as follows, be filed by gas utilities with the Commission for the consideration of increased rate filings solely to recover increases in the cost of gas to a gas utility if approved by the Federal Power Commission.

Pursuant to that Order, Piedmont filed the following data:

1) Schedules of Piedmont's rates and charges which Piedmont is collecting pursuant to the Orders of this Commission dated October 6, 1971, and November 12, 1971.

2) Schedules of Piedmont's proposed rates and charges which Piedmont seeks to place in effect. Rule R1-17(b)(2).

3) Statement showing the original cost of all property of Piedmont used or useful in the public service to which the proposed increased rates relate as of September 30, 1971. Rule R1-17(b)(3).

4) Statement showing the fair value of all property of Piedmont used or useful in the public service to which the proposed increased rates relate as of September 30, 1971, together with a statement showing the method used in calculating same. Rule R1-17(b)(4).

5) Statement of Accrued Depreciation of all property to which the proposed increased rates relate as of September 30, 1971, and of the rates and methods used in computing the amount charged to depreciation. Rule R1-17(b)(5).

6) Statement of materials and supplies as of September 30, 1971. Rule R1-17(b)(6).

7) Statement of cash working capital Piedmont finds necessary to keep on hand for the efficient, economical operation of its business as of September 30, 1971. Rule R1-17(b)(7).

8) Statement of gross revenues received, operating expenses, and net operating income for return on investment for the 12 months ended September 30, 1971, as the same appear on the books with adjustments showing the additional costs of gas from its suppliers and the additional expenses, and the rates of return on the original cost rate base and the fair value rate base and earnings on common equity. Rule R1-17(b)(8 & 9).

9) Balance Sheet as at September 30, 1971, and Income Statement for the 12 months ended September 30, 1971. Rule R1-17(b)(10).

10) Statement of computations of increase per Mcf needed to recover costs associated with increases in Piedmont's wholesale costs of natural gas.

Piedmont requests that the Commission consider the filings in these consolidated dockets under G. S. 62-133(f) and under the procedures established by the Commission in Docket No. G-100, Sub 14.

The data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staff and a report of same submitted to the Commission for its consideration.

Notice of the proposed filings in these consolidated dockets was given to the public by Piedmont inserting a public notice in various newspapers throughout its service areas in North Carolina. These notices were published in these various newspapers on November 22 and December 10, 1971, pursuant to the direction of the Commission. Based on the applications as filed and the records of the Commission in these consolidated dockets, the Commission makes the following

FINDINGS OF FACT

1) That Piedmont Natural Gas Company, Inc., is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2) That Piedmont's rates were increased on all gas sold on and after November 14, 1971, pursuant to the Undertakings filed and approved by this Commission in order to recover the increases in cost of gas to it from its suppliers as listed herein. (Docket No. G-9, Sub 86)

3) All these increases contained in the applications in Docket No. G-9, Sub 86, in the cost of gas have been approved by Federal or State Regulatory Agencies where required.

4) Piedmont is seeking to recover in Docket No. G-9, Sub 86, increases in its firm rates of 2.399 cents per Mcf and 2.141 cents per Mcf in its interruptible rates.

5) The increases in the cost of gas which Piedmont is seeking to recover in docket No. G-9, Sub 90, have been filed for by Transco with the Federal Power Commission in Docket No. RP72-78 and are now pending. The tariffs filed in Docket No. RP72-78 are to become effective January 1, 1972, and have been filed pursuant to a settlement agreement. The increases to Piedmont from Carolina will be the result of Carolina's tracking of Transco's increase now pending before the Federal Power Commission.

6) Piedmont filed tariffs to recover these increases in cost of gas plus related gross receipts tax to become effective on all gas sold on and after January 2, 1972.

7) That the rates of return approved by the Commission in the last general rate case (May 19, 1971) and those determined by the Commission in this proceeding are listed below:

	Approved in Docket No. G-9, Sub 82	Docket No. G-9, Sub 90
Return on end-of-period investment	7.68	7.29
Return on equity	10.96	9.40

The return on end-of-the-period investment and the return on equity in this proceeding have decreased from that found just and reasonable by the Commission in Docket No. G-9, Sub 82, after the adjustment for the proposed increases as applied for herein.

8) That included in the firm rate increase sought herein by Piedmont in Docket No. G-9, Sub 90, of 3.760¢ per Mcf is an amount of 1.044¢ per Mcf which increased total Company revenue by $341,363, of which $269,244 is applicable to Piedmont's North Carolina customers. Of the $341,363; $228,563 is the annual demand charge relating to new GSS service to Piedmont of 12,055 Mcf per day. The volume of gas relating to this service is in storage and will be sold and revenues collected beyond the test period used herein. Since this new GSS service will be utilized beyond the test period, this expense should be eliminated from this filing. Piedmont purchased an additional 10,000 Mcf/day of contract demand gas from Carolina at an added annual cost of $112,773 because gas was not available from Transco. This amount should be eliminated from this filing because it is not an increase in the purchase gas costs as covered by G. S. 62-133(f).

CONCLUSIONS

In accordance with G. S. 62-133(f) the Commission has statutory authority to consider as a separate item increases in the cost of gas to gas utilities in North Carolina occasioned by increases in cost of gas to them from their wholesale suppliers as approved by the Federal Power Commission. The Commission issued a General Order in Docket No. G-100, Sub 14, providing that after review of the data filed by the natural gas utilities as described herein, if the Commission concludes from such review that the filing will not result in an increase in the Company's rate of return over the rate of return most recently approved by the Commission in the last general rate case that the pass-on of the wholesale rate would be allowed. The Commission considers the filings and applications herein as complying with G. S. 62-133(f) as allowed to become effective without hearing (except that, the portion of the rate increase

relating to new GSS service and the portion of the rate increase relating to the purchasing of gas from Carolina instead of Transco, which the Commission concludes does not fall within the meaning of G. S. 62-133(f) as an increase occasioned by an increase in the wholesale gas cost and for that reason and for the reason stated in the Findings of Fact should be denied.) The Commission concludes that in these consolidated proceedings that the rate of return of Piedmont has decreased since the last general rate proceeding in Docket No. G-9, Sub 82, which Order was issued on May 19, 1971.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increases filed by Piedmont that seeks solely to recover increases in the cost of gas to it from its suppliers as approved by the Federal Power Commission should be allowed as a filing pursuant to G. S. 62-133(f) and should be permitted to become effective without hearing and that portion of the rate increase relating to the new GSS service and the additional expense in cost of gas resulting from the purchasing of the additional contract demand volumes from Carolina in lieu of Transco, which results in an increase of 1.044¢ per Mcf, should be denied.

IT IS, THEREFORE, ORDERED:

1) That the tariffs filed by Piedmont Natural Gas Company, Inc., in Docket No. G-9, Sub 86, which went into effect under the Undertaking on all gas sold on and after November 14, 1971, be, and are, hereby authorized to become effective as filed.

2) That the tariffs affecting the firm rate schedules filed by Piedmont Natural Gas Company, Inc., in Docket No. G-9, Sub 90, on all gas sold on and after January 2, 1972, be denied.

3) That Piedmont Natural Gas Company, Inc., shall file revised tariffs in Docket No. G-9, Sub 90, applicable to its firm customers reducing the increase in firm rates from 3.760¢ per Mcf to 2.716¢ per Mcf on all gas sold on and after January 2, 1972.

4) That the interruptible tariffs filed by Piedmont Natural Gas Company, Inc., in Docket No. G-9, Sub 90, be, and are, hereby authorized to become effective on all gas sold on and after January 2, 1972.

5) That the approval of the increased rates as authorized herein by this Commission in Docket No. G-9, Sub 90, is conditioned upon final approval of the settlement agreement as filed with the Federal Power Commission by Transcontinental Gas Pipe Line Corporation in Docket No. RP72-78 or approval of the Federal Price Commission if required.

6) That in the event the increases sought by Transcontinental Gas Pipe Line Corporation in the various Federal Power Commission Dockets upon which these rates are based are reduced or if the effective dates are changed, that Piedmont Natural Gas Company, Inc., shall immediately file tariffs making corresponding decreases in the tariffs as filed herein or tariffs changing the effective dates to coincide with the effective dates as approved by the Federal Power Commission.

7) In the event the Federal Power Commission or the Federal Price Commission make changes in the wholesale rates to Piedmont Natural Gas Company, Inc., retroactively or if refunds are received from Transcontinental Gas Pipe Line Corporation as a result of regulatory actions, or if producers' refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to Piedmont Natural Gas Company, Inc., all such refunds and the retroactive portion of any rate change, if any, shall be placed in the restricted account for further orders of this Commission.

8) That the attached Notice Appendix "A" be mailed to all customers along with the next bill advising them of the actions taken herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
NOTICE

Upon application filed by Piedmont Natural Gas Company, Inc., the North Carolina Utilities Commission approved increased rates which have been collected under bond by Piedmont since November 14, 1971, in the amount of 2.399¢ per Mcf to firm customers and 2.141¢ per Mcf to interruptible customers. Upon further application by Piedmont, the Commission has approved increased rates to become effective upon all gas consumed on and after January 2, 1972, in the amount of 2.716¢ per Mcf on firm rate schedules and 1.373¢ per Mcf on interruptible rate schedules. These increases allow Piedmont Natural Gas Company, Inc., to recover only the increases in cost of gas to it from its suppliers, Transcontinental Gas Pipe Line Corporation and Carolina Pipeline Company, which increases have been approved by the Federal Power Commission.

Piedmont Natural Gas Company, Inc.

DOCKET NO. G-5, SUB 71
DOCKET NO. G-5, SUB 77

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, Beginning on March 9, 1971, 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 Applicant:

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For the Intervenor:

Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Borden Brick Company
Chatham Brick & Tile Company
Cherokee Brick Company
Lee Brick & Tile Company
Sanford Brick & Tile Company
Triangle Brick Company

Claude V. Jones
City Attorney for Durham
Central Carolina Bank Building
111 Corcoran Street
Durham, North Carolina
For: City of Durham

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney

N.C. Utilities Commission
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On July 31, 1970, Public Service Company of North Carolina, Inc., hereinafter referred to as Applicant, filed with the Commission an application for a general rate increase, which was assigned Docket No. G-5, Sub 71. Applicant requested it be authorized by the Commission to increase its rates effective September 1, 1970, amounting to approximately $2,728,412 additional annual revenues.

Application by the City of Durham for Leave to Intervene was filed on August 7, 1970, and said intervention was allowed by Order of the Commission dated August 10, 1970.

Being of the opinion that the application affected the public interest in the areas in which service is provided by the Applicant, the Commission by Order of August 26, 1970, set the matter for investigation and hearing on March 2, 1971, declared the proceeding to be a general rate case under G.S. 62-133, suspended the increases requested by the Applicant for a period of 270 days from September 1, 1970, and required that Applicant publish notice of hearing attached to the Commission's Order in sufficient newspapers having general circulation in its service areas.

The Commission entered an Order on September 30, 1970, establishing as the test period to be utilized in this proceeding the 12-months period ending September 30, 1970.

Applicant filed a second application on December 11, 1970, which was assigned Docket No. G-5, Sub 77, in which Applicant requested that the Commission authorize it to recover approximately $1,704,000 additional annual revenues representing increases in the costs of purchased gas to it from its Supplier, Transcontinental Gas Pipeline Corporation, hereinafter referred to as Transco. The Applicant requested that the Commission authorize these increases effective January 11, 1971.

On December 14, 1970, Applicant filed amendment to its application in Docket No. G-5, Sub 77, to which was attached an Undertaking in the form of a rider. Through its amendment, the Applicant requested that the Commission authorize it to place into effect the increases to be experienced by it in purchased gas costs from its Supplier, Transco, which said increases were to become effective to it on January 1, 1971, and January 10, 1971, amounting to approximately $1,704,000. Applicant agreed to refund any amounts collected with interest at the rate of 6% per annum if the Commission should later determine that the increased costs were not properly collected by the Applicant.

The Commission entered an Order on December 31, 1970, Consolidating Docket Nos. G-5, Sub 71 and G-5, Sub 77 for

hearing to be heard on March 9, 1971. In that Order, the Commission authorized the increases set forth by the Applicant relating to purchased gas costs it alleged would be experienced by it in January 1971. The rider attached to the amended application filed on December 14, 1970, was approved by an Undertaking under G.S. 62-135. The increases in costs of purchased gas were allowed to become effective pursuant to the Undertaking on January 28, 1971, with the requirement that in the event the Federal Power Commission disallowed any portion of the purchased gas increased costs, Applicant should immediately file revised tariffs to reduce its rates accordingly. The Commission Order of December 31, 1970, authorized increases only with respect to purchased gas costs and expressly did not affect Applicant's general rate request, which said request was subject to further order of the Commission after hearing.

Applicant was required to publish in newspapers of general circulation the Notice of Consolidating Dockets for Hearing attached as "Appendix A" to the Commission's Order, which summarized the increases requested by the Applicant.

Motion for Leave to Amend was filed on January 8, 1971, by the Applicant relating to the original application filed on July 31, 1970, wherein the Applicant requested that it be permitted to amend its application to include therein a request for full recovery of all increased costs of purchased gas, some amounts of which were not contemplated at the time of the filing of the original application. Accompanying said Motion was Applicant's amendment.

Application by the City of Durham was filed on January 25, 1971, requesting Leave to Intervene in Docket No. G-5, Sub 77, and such intervention was allowed by Commission Order of January 26, 1971.

On February 8, 1971, the Commission entered an Order Allowing Amendment to the application filed herein as modified by certain conditions in said order.

On February 10, 1971, an Undertaking was filed by Applicant that it be allowed by the Commission to make effective the increases originally requested on July 31, 1970, being the Applicant's general rate request as distinguished from its request to recover increases in costs of purchased gas. Applicant requested that it be authorized under G.S. 62-135 to make these increases effective March 1, 1971, pursuant to the Undertaking.

Upon Motion by the Commission's Staff for an extension of time to file reports, the Staff was allowed an extension until 10 days prior to the hearing by Order of February 15, 1971.

By Order of February 17, 1971, the Commission approved the Undertaking filed by Applicant on February 10, 1971, authorizing the Applicant to make effective the increases

originally requested in Docket No. G-5, Sub 71, on March 1, 1971. The increases were allowed as modified in accordance with the Applicant's Undertaking for Rate Schedule No. 7 Firm, No. 7 Interruptible, Nos. 9, 10 and 15, so that no increase on any of Applicant's schedules would exceed 20% when combined with the increase of 3.62% per Mcf allowed under another Undertaking in Docket No. G-5, Sub 77.

The consolidated dockets were called for hearing on March 9, 1971. On March 10, 1971, being the second day of public hearings, Protest and Petition for Leave to Intervene was filed by Sanford Brick & Tile Company, Triangle Brick Company, Borden Brick Company, Cherokee Brick Company, Lee Brick & Tile Company and Chatham Brick & Tile Company. Said intervention was allowed on the record of the proceedings on March 10, 1971.

By Order of March 31, 1971, late exhibits identified as Staff's Exhibit 1-C and Staff 1-D at the hearings held from March 9, 1971, through March 11, 1971, were received into the official record as late exhibits.

Petition to Reopen the Proceedings in the consolidated dockets was filed on April 9, 1971, after the completion of the public hearings, by The Fletcher Brick Company, Inc.; Statesville Brick Company; Kings Mountain Brick, Inc.; Taylor Clay Products, and Uniglass Industries, Inc., Division of United Merchants & Manufacturers, Inc. Petitioners requested the proceedings be reopened for the reason that neither of the Petitioners received any actual or constructive notice of the filing of the application, and further alleged that the Applicant did not comply with the Commission's Order regarding publication of notice and hearing. By Order of April 13, 1971, Applicant was allowed 10 days to file verified answer to the above mentioned Petition to Reopen Proceedings. Reply was filed on April 27, 1971, in which Applicant set forth dates of publication and newspapers in which notice of publication appeared. The Commission entered an Order on April 27, 1971, setting oral argument on the Petition to Reopen Proceedings on April 29, 1971. Oral arguments were heard on that date and verified affidavits were filed by certain of the parties. Upon consideration of the arguments of counsel, affidavits, and the entire record, the Commission entered an Order on May 6, 1971, denying the Petition to Reopen Proceedings.

SUMMARY OF EVIDENCE

The increases requested by the Applicant in this proceeding amount to approximately $4,613,701 in total additional gross annual revenues. Of this amount $1,709,373, or approximately 37% of Applicant's total request, would be generated from increases in the cost of purchased gas it contends it has experienced as a result of Transco, its sole supplier, having increased its rates to the Applicant. Transco is regulated by the Federal Power Commission which has the regulatory responsibility of

approving or disapproving Transco's rates. The balance of Applicant's total rate request amounts to $2,904,328, being the amount involved in Applicant's general rate request originally filed in Docket No. G-5, Sub 71. That docket was consolidated by the Commission with Docket No. G-5, Sub 77, which relates to Applicant's request for increases relating only to its costs of purchased gas. The general rate request amounting to $2,904,328 is proposed by the Applicant to be apportioned to the following classifications of customers resulting in approximate annual average increases in the following percentages:

Residential	4.44%
Commercial	6.09%
Firm Industrial	13.79%
Industrial Interruptible	10.59%
Other Gas Utilities	16.65%
Electric Utilities	13.74%
Total Approximate Annual Average	8.32%

All of the increases requested by the Applicant as hereinabove described which did not exceed 20% on any schedule have been placed into effect heretofore under two separate undertakings by Applicant.

The last general rate proceeding instituted by the Applicant resulted in approval by the Commission on August 28, 1970, of an increase of 1 cent per mcf to recover the increase in purchased gas costs imposed upon it on January 1, 1970, by Transco as approved by the Federal Power Commission.

At the hearing, Applicant presented evidence in support of its rate request through testimony of the following witnesses which is hereafter briefly summarized. Branson E. Zeigler, President and Chairman of the Board of Directors, testified regarding the impact of inflationary trends upon the Applicant and indicated that Applicant can no longer absorb the increased expenses it has experienced through increased sales volume and efficiency as it has done in the past. He further testified that the gas supply situation makes it very unlikely that there will be much expansion by the Applicant in new areas in the foreseeable future. He described the Applicant's operations as they relate to obtaining necessary natural gas requirements from Transco and stated that the Applicant has no control over the increases in gas costs levied by Transco. Mr. Charles E. Zeigler, Executive Vice President of the Applicant, testified in support of Applicant's requested "purchased gas adjustment clause" which would be applicable to all rate schedules. He further indicated that purchased gas expenses of the Applicant amounted to approximately 59% of its total operating expenses for 1970, including depreciation and taxes. The purchased gas adjustment is contained in Exhibit 2A, page 22 of 22, Applicant's exhibits. Under its proposal, Applicant would apply to this Commission for approval of increases or decreases in Transco charges and

the Commission would either suspend the rate request and set a hearing, set a hearing allowing such increases without suspension, or allow the increases without hearing and notice to the public based upon the applicant's annual reports filed with the Commission. Applicant contends that increases or decreases in its costs of purchased gas do not result in any net change in its overall rate of return. Mr. W. Clyde Rodgers, Vice President, Secretary and Treasurer of the Applicant, testified in connection with Applicant's detailed exhibits relating to its financial data and overall operations. He indicated that Exhibit 2A contains the total amount of increases requested in the application herein. Applicant's Exhibit #9, page 1 of 13 indicates the effect of all of the proposed increases in this proceeding, computation of Applicant's net investment in plant, which does not include construction work in progress and its net operating income for return excluding interest during construction. That Exhibit was modified at the hearing to reflect corrections which were made necessary because of an error in the computer data utilized by the Applicant in computation of its pro forma revenue adjustment giving effect to abnormal weather conditions during the test period. Mr. Rodgers testified that the cost of purchased gas to the Applicant for the test period was $17,186,049, amounting to somewhat over 50% of the Company's gross operating expenses.

The Applicant's evidence indicates that for the test period ended September 30, 1970, its gross operating revenues amounted to $33,878,156, its total operating expenses were $29,169,955, resulting in a net operating income for return of $4,708,201.

Applicant indicates net investment in plant of $67,418,630. Applicant's exhibit reflects a rate of return on net investment per books for the test period of 6.98%. Applicant adjusted its operating revenues to decrease such revenues to adjust for the excess degree days in the test period over what it contends was the average in the territory served. Decreases in form sales under Applicant's computation amounts to $1,974,287 and with $883,844 representing potential resale interruptible rates and adjusted for the computer error described in the hearing, would result in net decrease in operating revenues of $944,674. Operating revenues were then increased by $263,166, resulting from a pro forma treatment of 1 cent per mcf increase authorized by the Commission on August 28, 1970. Consequently, Applicant's net adjustment to net operating revenues based upon what it contends were abnormal weather conditions during the test period amounts to $681,508. (Exhibit 9, p. 2 of 13)

Mr. C. Marshall Dickey, Division Engineer for the Applicant, testified in connection with justification for utilizing a weather adjustment to Applicant's revenues because of Applicant's contention that weather during the test period was abnormally cold. In that the natural gas

service afforded by the Applicant is utilized by its customers principally for heating, use of natural gas is affected by temperature changes. Mr. Dickey's testimony relates to Applicant's method of computation rather than reflecting a thorough justification for utilizing a weather adjustment. (Trans. Vol. III, p. 32)

Mr. John D. Rissell, Vice President of American Appraisal Company, Inc., testified on behalf of the Applicant regarding the appraisal of Applicant's utility properties and his reproduction cost study. Mr. Russell stated that the fair value of Applicant's properties is, in his opinion, $98,397,146. His study was made on the basis of visual inspection of the physical condition of certain of Applicant's properties and a review of Applicant's books and records. His recommendation of fair value was based on what, in his opinion, represents the current cost less observed depreciation of Applicant's properties.

Mr. Richard S. Johnson, Manager of the Rate Department of Technical Service Division of Stone & Webster Management Consultants, Inc., testified regarding the cost of service study made by him, which he indicates is only one factor to be considered in determining the level of revenue requirements necessary to cover Applicant's operating expenses. His testimony further reflects the rate of return by classes of service at original cost for the test period for residential and the various classes of industrial service (Exhibit 13, Sch. 1, p. 1 of 1). His testimony indicates that Applicant's proposed rate increases relating to its industrial customers reflect accurately the cost of service to such classifications.

Mr. E. S. Merrill, Sr. Vice President and Director of Stone & Webster, testified regarding his study of the finances and capital costs of the Applicant. Mr. Merrill indicated that investors attribute a greater risk to gas utilities generally as compared with electric utilities with respect to their respective rates of return. His "comparative earnings approach" takes into account such risks and other variations which affect rate of return. He stated that the common equity ratio of the Applicant as of the calendar year 1969 of 22% was considerably thinner than most gas companies. He testified that, in his opinion, the cost of common equity of the Applicant is in the range of 15 to 17 1/2% and concluded that the cost of capital of the Applicant as of the end of the test period was in the range of 8.00% to 8.59%. He stated that his range reflects, in his opinion, the overall cost of capital including consideration of net investment and common equity. He further indicated the rate increase in this proceeding would produce earnings near the bottom of his range of required rate of return as calculated by him. Schedule 1 of Applicant's Exhibit 14 reflects its capitalization ratio for the test period as follows:

First Mortgage Bonds	52.2%
Sinking Fund Debentures	11.3%
(For total long term debt of 63.5%	
Cumulative Preferred Stock	11.0%
Convertible Preference Stock	2.3%
Common Stock Equity	23.2%

Applicant's evidence indicates that when considering only the increases of $2,904,328, its operating revenues would be $35,955,207, total operating expenses of $30,503,430, and net operating income of $5,590,797 with end of period net investment of $67,193,825. This portion of Applicant's rate request results in a return on end of period net investment of 8.42%. Under its calculations (Exhibit 9, p. 1 of 13), Applicant applied the same amount of increases to its fair value computation of $98,292,168 and computed a return on fair value of 4.76%.

Applicant's evidence indicates that considering both the $2,904,328, being its general rate request and $1,709,373, being the amount of increases requested because of increased costs in purchased gas to the Applicant from its supplier, Transco, would result in operating revenues of $37,664,580, operating expenses of $32,209,705, and net operating income for return of $5,660,512. These figures and the figures represented above include Applicant's net weather adjustment of $681,508. Relating these figures to end of period net investment of $67,201,818, Applicant computed a return on end of period net investment of 8.42%; and on fair value of $98,300,161, a return of 4.76%, considering all of the increases requested in this proceeding. The slight changes in the net investment and fair value figures above result from the effect of tax adjustments relating to cash working capital allowances.

The Commission Staff presented evidence through the testimony of J. W. Smith, Director of Accounting and Economics, regarding the Staff's audit of the Applicant's operations and Raymond J. Nery, Chief/ Gas & Water Engineering Division, in connection with the Engineering Staff's recommendation regarding the weather adjustment to Applicant's revenues because of the Staff's findings that the weather for the test period in this proceeding was abnormally cold and further regarding value of Applicant's service to the various classifications of customers it serves.

The Staff's evidence indicates that for the test period Applicant's operating revenues amounted to $33,878,156, operating expenses $29,169,955, with net operating income for return of $4,828,260. The Staff's audit reflects net investment in gas utility plant of Applicant, plus allowances for working capital amounting to $66,457,566, resulting in a rate of return of 7.27% on Applicant's net investment. The Commission Staff's audit reflects adjustments in insurance expenses, pension costs, wage and salary expenses, rate case expenses, purchased gas costs and

certain other miscellaneous expenses specifically set forth in Staff Exhibit 1, page 4. The principal adjustment made by the Staff was the weather adjustment to Applicant's revenues. Applicant's operating revenues were decreased by $893,126 to adjust for the revenue effect due to the excess degree days in the test period over the normal in the territory served by the Applicant. Operating revenues were further increased $263,166 to adjust for additional revenues which will be produced by the rates in effect under Commission's Order in Docket No. G-5, Sub 69, which are not reflected in Applicant's test period computations. The latter adjustments resulted in a net adjustment in Applicant's operating revenues amounting to $629,960. (Staff Ex. 1, Sched. I-A, Sheet 1 of 5). The method utilized by the Staff in computing the weather adjustment will be summarized below.

Giving effect to all the increases proposed in this proceeding amounting to $4,613,701, the Staff's audit reflects projected operating revenues of $37,861,897, projected operating expenses of $32,036,695 and projected net operating income for return of $5,973,744. Applying the projected effect of these increases to Applicant's net investment in gas utility plant of $66,225,001, the Staff computed a rate of return of 9.02% on end of period net investment. Witness Smith testified at the hearing that if plant held for future use by the Applicant in relation to the test period was deleted from the Staff's computation, such would result in a rate of return on net investment of 7.29% prior to consideration of the increases requested in this proceeding and 9.06% after such consideration. Plant held for future use amounted to $267,762 under the Staff's computations.

The purpose of the weather adjustment utilized by the Company and the Staff is described as being to adjust Applicant's gas sales to normal temperature conditions, thereby making the test period in this proceeding more representative, upon the theory that adjustment must be made for abnormal conditions if a representative showing is to be achieved.

As a natural gas utility, Applicant supplies its firm customers with large volumes of gas sold for heating that is temperature sensitive. Staff Exhibit #2, pages 1-3 indicate direct relationship between firm sales and degree days. The gas supply available to Public Service shifts to various classes of customers depending primarily on temperature conditions that exist each day. For instance, during the summer gas is sold for base use purposes to firm customers and to industrial interruptible customers for their processing purposes.

As the cooler weather develops which requires heating of customer homes, the supply of gas shifts to customers using gas for heating purposes. The magnitude of the gas sales is affected by the average temperature which occurs during each

day. If during a heating season, the degree days are greater than normal, increased sales are reflected in sales to heating customers. Having established that temperature sensitive sales are directly related to temperature and that an adjustment to normal temperature is desired, it then becomes necessary to measure the changes in sales and the revenue effect of same. This is normally accomplished by taking the three summer months under any particular rate classification which is determined to be temperature sensitive and determining the use per customer during this three month period. Multiplying this use by the total number of customers billed during the test period determines the base load gas. The difference between the actual sales and the base load sales is the temperature sensitive gas volumes. Relating the degree days during the test period to the average normal temperature base, a factor is developed which indicates the percent above or below normal temperature conditions which existed during the test year. This factor multiplied by the temperature sensitive sales produces the volume of gas which has been shifted because of the relationship of actual degree days to normal degree days. In the test year, the sales and revenues to firm customers increased due to colder than normal temperature conditions. This above calculation was made for each of the divisions in which Public Service Company operates because of the variances in temperature conditions that exist in each of the areas and also by rate schedules.

Both the Applicant and the Commission Staff utilized a 39-year base period in making the weather adjustment and adjusted degree days during the test period to compensate for cycle billing. The dollar effect of the adjustment was then calculated using the consolidated factor method. (Tran. Vol. III, p. 50).

Commission Staff Witness Nery also prepared a comparative analysis of Applicant's interruptible rate schedules with competitive alternative fuels (Staff Exhibit #3). Mr. Nery testified that, in his opinion, the competitive costs of standby or alternative fuels to the industrial interruptible customers served by the Applicant is one of the most important measures of the value of gas service to those customers. Staff Exhibit #3 indicates that the interruptible industrial rates of the Applicant are below the cost of standby alternate fuels used by Applicant's interruptible customers.

Intervenor City of Durham introduced three exhibits relating to Applicant's service agreements with Transco. No other evidence was offered by either of the intervenors.

Under the rules of the Federal Power Commission, Transco is required to give notice of increased rates to its customer companies to the state commissions. Additionally, this Commission receives official notices from the FPC in connection with approvals or disapprovals of rate increases from suppliers such as Transco. Inasmuch as several of the

dockets before the FPC have resulted in a reduction in rates to the Applicant from Transco between the period January 10, 1971, and March 26, 1971, the following is set forth as an explanation for the increases and decreases in Transco's rates in view of the direct relationship of same to this proceeding.

On January 1, 1971, Transco increased its rates by 1 cent per mcf in Docket No. RP70-31. On January 10, 1971, Transco increased its rates to the Applicant by 2.3 cents in Docket No. RP71-68. As a result of a filing by Transco on February 22, 1971, and Dockets No. R-394 and RP71-68 before the Federal Power Commission, Transco's rates were reduced by 1 cent per mcf retroactive to January 10, 1971. However, in the same filing, Transco's rates were increased by 1/2 cent effective March 26, 1971. Additionally, on May 7, 1971, in Docket No. RP70-31, Transco increased its rates to the Applicant by 4/10ths (.4) of 1 cent. The net effect of these changes was to reduce the cost of purchased gas to the Applicant by 1/10th (.1) of 1 cent. This reduction has been computed and utilized by the Commission in this Order in arriving at the effect of increased cost of purchased gas by Transco to the Applicant. Instead of a total increase per mcf of 3.3 cents, Applicant has experienced increases of 3.2 cents per mcf. This has the ultimate effect of reducing the requested increases of cost of purchased gas from $1,709,373 to $1,652,003 annually.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) Public Service Company of North Carolina, Inc., is a duly franchised public utility providing natural gas service to its customers in its North Carolina service area. Applicant's rates and services are regulated by this Commission under the provisions of Chapter 62 of the North Carolina General Statutes.

(2) The increases requested by the Applicant would amount to a total of approximately $4,613,701 in additional annual gross revenues. Of this amount $1,709,373 or 37% of the requested increases result from increases in cost of purchased gas to the Applicant from its sole supplier, Transco. The balance of the increases requested of $2,904,328 result from Applicant's general rate request originally filed in Docket No. G-5, Sub 71.

(3) The test period utilized by all parties in this proceeding was the 12-months period ending September 30, 1970.

(4) Under its present rates, Applicant realized for the test period operations approximately $33,878,156 in gross operating revenues. Applicant's reasonable operating expenses for that period amounted to $29,169,955.

(5) The Commission finds that the fair value of the Applicant's properties used and useful in rendering the natural gas service it affords to its North Carolina customers, considering original cost less depreciation, and replacement cost by trending original cost to current cost levels, is $79,272,908.

(6) Applicant's net operating income for return at the end of the test period after applying a customer annualizing factor of 2.55% is $4,828,260, resulting in a rate of return on net investment prior to consideration of the increases requested herein of 7.27%, which the Commission deems insufficient considering the Applicant's current operation conditions.

(7) The rate of return deemed necessary on the fair value of its properties, with sound management, to produce a fair profit for its stockholders, considering economic conditions as they exist and permitting Applicant to maintain its facilities and service and to compete in the market for capital funds, thereby fulfilling its obligations to its customers, is 6.66%, which said rate of return on fair value will afford the Applicant an opportunity to realize additional annual gross revenues of approximately $3,097,171. The Commission deems this amount of dollar return to the Applicant to be sufficient for it to compete in the market for capital funds on a reasonable basis. The total increases granted by this Order amount to 67.12% of the increases requested by the Applicant in this proceeding, including the cost of purchased gas increases. Excluding the cost of purchased gas, which said increases amount to $1,652,003, this Order affords to Applicant approximately $1,445,168 in additional annual gross revenues in its general rate request, being approximately 49.76% of the increases requested by the Applicant originally in Docket No. G-5, Sub 71. The increases requested by the Applicant in excess of the above stated amount are deemed to be unjust and unreasonable.

(8) The additional revenues provided by the increases approved in this Order will produce projected annual gross revenues of approximately $36,345,367 and when related to projected operating expenses of approximately $31,180,468 produces approximately $5,279,671 in net operating income for return, including consideration of the customer annualizing factor.

(9) The additional revenues provided by the increases herein will result in a return on common equity to the Applicant of approximately 16.5%.

(10) After consideration of the increases allowed by this Order, Applicant's net investment in utility plant of approximately $66,060,757 when related to its projected net operating income for return of $5,279,671 after consideration of the customer annualizing factor, produces a

return on net investment to the Applicant of approximately 7.99%.

(11) The increases allowed by this Order total approximately $3,097,171 in additional annual revenues and are reflected in Appendix A of this Order, being the schedule of rates as such increases relate to classifications of Applicant's customers. The increases granted herein are deemed to be just and reasonable and result in a fair and equitable rate distribution among the classes of Applicant's customers.

(12) The purchased gas adjustment clause, as proposed by the Applicant, is deemed to be unjust and unreasonable inasmuch as the proposal by the Applicant is that this Commission, in its discretion, permit the Applicant to automatically pass on increases in cost of purchased gas to it from its supplier, Transco, without the public having notice and an opportunity to be heard on any specific application relating to increases which might be imposed by Transco and approved by the Federal Power Commission. Consequently, members of the public would be without any opportunity to examine the rates of the Applicant to determine if they are just and reasonable and non-discriminatory and would not have an opportunity to determine the fair rate of return on the fair value of the Applicant's property.

(13) The record in this case indicates that the weather for the test period ending September 30, 1970, was significantly colder than normal. The Commission finds that an adjustment should be made to reflect normal weather conditions, thereby making the test period more representative. The adjustment to reflect normalized weather has been computed by the Applicant and the Commission Staff, utilizing substantially the same method and the same base period as hereinabove described. The adjustment by the Commission Staff to Applicant's revenues because of abnormal weather conditions is just and reasonable and is adopted by the Commission in this Order.

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

CONCLUSIONS

The Commission concludes that the rate of return on the fair value of Applicant's properties of 6.66% will afford the Applicant an opportunity to earn approximately $3,097,171 in total additional annual revenues. Of this amount, $1,652,003 results from authorizing the Applicant in this Order to increase its rates commensurate with the increases in cost of purchased gas to it from its supplier, Transco. This Order allows Applicant to increase its rates by way of a general rate request by approximately $1,445,168, which said amount is 49.76% of the general rate

increases requested by the Applicant without consideration of the purchased gas costs increases requested.

The total amount applied for by the Applicant in this proceeding is not supported by this record and would produce a return greater than that which is just and reasonable. The Commission concludes that additional annual gross revenues of $3,097,171 are necessary to provide a fair return to the Applicant on the fair value of its property. The rates proposed by the Applicant are concluded to be unjust and unreasonable to the extent that they produce any increases in annualized revenue to the Applicant at the end of the test period in excess of $3,097,171. Accordingly, the Commission concludes that the Applicant has not carried its burden of proving that the entire increases requested in this proceeding are just and reasonable, and this Order allows only a part of the proposed increases as being supported by the evidence in this record. The rates approved by this Order as to classifications of the Applicant's customers are reflected in Appendix A attached hereto. The Commission concludes that the rates established by this Order are not preferential or discriminatory between classes of customers of the Applicant.

The Commission concludes that an adjustment should be made to Applicant's revenues to reflect normalized weather to the test period ending September 30, 1970, in view of abnormally cold weather which existed during that period and which is established by this record. This adjustment is necessary in order to make the test period more representative as a forecast of Applicant's revenue needs for the future. As a natural gas utility, the Applicant supplies its firm customers with large volumes of gas which is sold for heating and is temperature sensitive. As a consequence of abnormally cold weather during the test period, the Applicant received additional firm gas revenues rather than lower interruptible gas revenues which would have been received had the weather been more normal. The overall volume of Applicant's gas sales is affected by the temperature on any given date. The Commission herein adopts the adjustment computed by the Commission Staff. For other jurisdictions which have approved weather adjustments, see Re Michigan Consolidated Gas Company, 79 PUR 3d, at pgs. 375,395 (1969); Alabama Gas Corporation, 25 PUR, at pgs. 257,268 (1958); Niagara Mohawk Power Company of New York, 35 PUR 3d, at pgs. 149,163 (1960); Plateau Natural Gas Company of Colorado, 36 PUR 3d, at pgs. 452,454 (1960); Public Service Company of Colorado, 34 PUR 3d 186, at p. 208 (1960); Pacific Gas & Electric Company, 38 PUR 3d, at pgs. 1,6 (1961); Laclede Gas Company of Missouri, 42 PUR 3d, at pgs. 209,226 (1962); Michigan Gas Utilities Company, 47 PUR 3d, at pgs. 15, 19 (1963); Niagara Mohawk Power Corporation of New York, 76 PUR 3d 349, at p. 358 (1968); Wisconsin Natural Gas Company, 80 PUR 3d, at pgs. 511,518 (1969); Columbia Gas of Kentucky, 87 PUR 3d, at p. 168 (1970); Brooklyn Union Gas Company, 87 PUR 3d, at p. 136 (1970) and Southern Connecticut Gas Company, 81 PUR 3d, at pgs. 289,294

(1970). In Re Mountain Fuel Supply Company (Case No. 4797, February 17, 1960), 32 PUR 3d 321 (1960), the Utah Public Service Commission found considerable merit in an adjustment showing the effect of temperature upon revenues but hesitated and declined to allow such an adjustment while the Louisiana Public Service Commission in Ex Parte United Gas Corporation (Docket No. 7796, Order No. 7827, June 23, 1959) 30 PUR 3d 86 (1959), disallowed a similar weather adjustment for the reason that it found the test period was unusually warm while the Company contended the same to be unusually cold. In the Utah case, the Commission had before it an adjustment using an average for the ten years prior to the test period and the Louisiana Commission considered a seven year average.

The revenue calculation used by both the Company and the Staff in determining increased revenue shown on Exhibit 9, page 7 of $2,904,328 was based on actual sales during the test year. When the adjustment of sales to normal weather is calculated, a new distribution of sales is determined which reflects sales under normal temperature conditions.

The revenues calculated on the temperature adjusted sales at the rates shown on Exhibit A produces $1,744 less than the amount allowed by the Commission herein, no adjustment was made for this amount.

Research of the various cases involving weather adjustments indicates that the differences among the various commissions lie principally in the quantum of proof required to establish utilization of a particular weather adjustment and the method utilized in reaching an ultimate determination, rather than whether or not such adjustment should be utilized in the first instance.

Realizing that normalization of the test period through the utilization of a weather adjustment is not an exact science, the Commission accepts the basic principle in order that the test period is not distorted or made unrepresentative by using actual purchases and sales. Such an adjustment is regarded as appropriate whether the weather in the test period reflects an abnormally warm or cold winter since in either event it would not be equitable to all concerned if an adjustment is not made. To fail to make such adjustments for an abnormally warm test period would be unfair to the consumers and unfair to the company for an abnormally cold test period.

The Commission concludes that the purchased gas adjustment clause requested by the Applicant is unjust and unreasonable and should not be allowed inasmuch as such clause would potentially result in the Commission's approval of increased purchased gas costs by way of increases in rates to Applicant's customers without notice to and opportunity to be heard by the public. While the Commission would have to resort to the Applicant's annual reports and certain financial data, the public would not be afforded an

opportunity, if the Commission acted in its discretion to allow such rate increases without a hearing, to examine the justness and reasonableness of the requested increases or to examine the fair rate of return on the fair value of Applicant's properties which is contemplated by the statutory provisions relating to general rate increases.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the application in this docket be, and the same hereby is, approved insofar as it is consistent with the provisions of this Order, and is disapproved in all other respects.

(2) That Applicant be, and the same hereby is, authorized to file and make effective on all sales made on and after June 1, 1971, its tariffs containing rates and charges in accordance with the rates and charges reflected in Appendix A attached hereto and incorporated herein.

(3) That in the event that the Federal Power Commission disallows any portion of the increased costs of purchased gas authorized by this Commission, Applicant shall immediately file revised tariffs to reduce its rates accordingly, and the Applicant shall promptly refund any amounts not finally approved by the Federal Power Commission. Applicant is required to file a written verified report regarding the manner in which any such reductions will affect the various classifications of Applicant's customers.

(4) That a report of net reduction in dollars in purchased gas costs to Applicant between January 10, 1971, up to and including the effective date of this Order, shall be filed with the Commission by way of a written verified statement not later than June 30, 1971.

(5) That the Company shall refund to its customers in lump sum, by check, all revenues which it received from its customers during the period January 10, 1971, up to and including the effective date of this Order, which exceeded the rates and charges contained in Appendix A attached hereto and incorporated herein, to the extent of such excess, plus interest at the rate of 6% per annum; and that said refund shall be made at the earliest possible date, and within a reasonable period of time, and in any event, not later than September 1, 1971; and shall file a written verified report with the Commission with reference thereto not later than September 15, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This 27th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Appendix A

RATE SCHEDULE NO. 1 - GENERAL RATE

Rates: Per Month

First	1,000 cu. ft. @-----------$.30618		Per C
Next	1,000 cu. ft. @----------- .20618		Per C
Next	8,000 cu. ft. @----------- .15618		Per C
Next	15,000 cu. ft. @----------- .13118		Per C
Next	50,000 cu. ft. @----------- .11118		Per C
Next	125,000 cu. ft. @----------- .10118		Per C
All Over	200,000 cu. ft. @----------- .08618		Per C

Summer Gas Air Conditioning --- May through September

When customer uses gas for cooling in the summer, such gas separately metered from all other uses during the months May through September shall be .08118 per hundred cubic feet.

RATE SCHEDULE NO. 2

COMBINATION RESIDENTIAL

Rates: Per Month

First	1,000 cu. ft. @-----------$.30668	Per C
Next	1,000 cu. ft. @----------- .20668	Per C
Next	2,500 cu. ft. @----------- .14868	Per C
All Over	4,500 cu. ft. @----------- .09868	Per C

Summer Gas Air Conditioning --- May through September

When customer uses gas for cooling in the summer, all gas used over 5,000 cubic feet per month during the months May through September shall be .08118 per hundred cubic feet.

RATE SCHEDULE NO. 3

FIRM INDUSTRIAL

Rates

First	100,000 cu. ft. @-----------$.10918	Per C
Next	100,000 cu. ft. @----------- .09718	Per C
Next	300,000 cu. ft. @----------- .08718	Per C
All Over	500,000 cu. ft. @----------- .07718	Per C

RATE SCHEDULE NO. 4

INTERRUPTIBLE INDUSTRIAL

First	1,000,000 cu. ft. @-----------$.07918	Per C
Next	1,000,000 cu. ft. @----------- .06918	Per C
Next	3,000,000 cu. ft. @----------- .05918	Per C
All over	5,000,000 cu. ft. @----------- .04918	Per C

RATE SCHEDULE NO. 5

OPTIONAL INTERRUPTIBLE INDUSTRIAL

First	1,000,000 cu. ft. @------------$.06918	Per C
Next	1,000,000 cu. ft. @------------ .05918	Per C
Next	3,000,000 cu. ft. @------------ .05418	Per C
All over	5,000,000 cu. ft. @------------ .04918	Per C

RATE SCHEDULE NO. 6
SPECIAL ALL YEAR AIR CONDITIONING SERVICE
Rates: Per Month

Per Month During Period October 1 through April 30 Inclusive

Firm:

First	250,000 cu. ft. @----$.10918	Per C
Next	750,000 cu. ft. @---- .09918	Per C
All Over	1,000,000 cu. ft. @---- .08918	Per C

Interruptible: Natural gas may be purchased as an option during October 1 through April 30 inclusive on an interruptible basis providing customers normal requirements are not less than 20,000 cubic feet during any 24-hour period. The terms and conditions for interruptible service shall be as listed on the back of this rate schedule.

First	500,000 cu. ft. @----$.07918	Per C
Next	500,000 cu. ft. @---- .06918	Per C
Next	1,500,000 cu. ft. @---- .06268	Per C
All Over	2,500,000 cu. ft. @---- .05918	Per C

Per Month During Period May 1 through September 30 Inclusive

All service rendered is firm and shall not be subject to curtailment or interruption except when due to force majeure during May 1, through September 30, inclusive.

Rates: Per Month

First	250,000 cu. ft. @----$.07418	Per C
Next	750,000 cu. ft. @---- .06418	Per C
Next	1,500,000 cu. ft. @---- .05768	Per C
All Over	2,500,000 cu. ft. @---- .05418	Per C

RATE SCHEDULE NO. 7
LARGE VOLUME FIRM AND INTERRUPTIBLE INDUSTRIAL SERVICE
Rate:

Firm: The customer shall pay the company for the Contracted Maximum Monthly Volume @ $.05918 per hundred cubic feet.

Interruptible: All gas @ $.04318 per hundred cubic feet.

Minimum Monthly Bill

The minimum monthly bill shall be the greatest of the following:

1. 40% of the previously rendered maximum monthly bill during the immediately preceding twelve months, but not less than the Contracted for Maximum Monthly Volume @ $.05918 per hundred cubic feet.

2. $6,328.00

RATE SCHEDULE NO. 8
PREFERENTIAL INTERRUPTIBLE

The Customer shall pay the Company for all gas supplied under this rate schedule at the rate of $.05918 per hundred cubic feet.

RATE SCHEDULE NO. 9
LARGE VOLUME INTERRUPTIBLE INDUSTRIAL

The Customer shall pay the Company for all gas supplied under this rate schedule at the rate of $.03918 per hundred cubic feet.

RATE SCHEDULE NO. 10
COMMODITY AND DEMAND
Rate: Per Month

For all gas delivered, the Customer shall pay the Company a commodity charge of $.36 per M.C.F. In addition to commodity charge the Customer will pay a monthly demand charge of $5.50 per M.C.F. of Contract demand.

Overrun volume taken in any one day in excess of the maximum contracted daily demand will be billed at a price per M.C.F. equal to the 50 per cent load factor price of this Rate Schedule No. 10. In addition, any gas taken on any one day in excess of 5 per cent of the maximum contracted daily demand or 50 M.C.F. whichever is greater will constitute overrun taken subject to the additional charges and conditions contained in the contract.

Minimum Annual Bill

Beginning with the first day of the month following the expiration of the first 90 days of service there shall be a minimum bill which shall be on an annual basis. The minimum annual bill shall be the product of $12.62 times the sum of the M.C.F. used for determining the demand charge for each month for the twelve months less $.36 times the number of M.C.F. not delivered on account of variation due to inability to maintain precise control, and shall apply to each full 12-month period beginning with the first day of the month following the expiration of the first 90 days of service hereunder and each anniversary of that date. Should the sum of the monthly bills for each 12-month period be less than the annual minimum bill as determined herein, then the amount that the annual minimum bill exceeds the sum of the monthly bills shall be due and payable with the twelfth month's bill of each such period.

RATE SCHEDULE NO. 11
PUBLIC SCHOOL SERVICE
Rates: Per Month

First	1,000 cu. ft.	@----$.30768
Next	1,000 cu. ft.	@---- .20768
Next	8,000 cu. ft.	@---- .15768
Next	15,000 cu. ft.	@---- .13268
All Over	25,000 cu. ft.	@---- .11268

When customer uses gas for space heating or air conditioning, such gas separately metered from all other uses shall be $.08368 per hundred cubic feet.

RATE SCHEDULE NO. 12
SERVICE TO PUBLIC HOUSING APARTMENT PROJECTS

The Customer shall pay the Company for all gas supplied under this rate schedule at the rate of $.10068 per hundred cubic feet.

RATE SCHEDULE NO. 13
EXCESS GAS SERVICE TO PRIVATE GAS PUBLIC UTILITY COMPANIES

Each month the Customer shall pay the Company for natural gas service rendered to the Customer at the following rates:

For gas purchased from November 1 through April 30: The then applicable Transcontinental Gas Pipe Line Corporation's CD-2 natural gas rate calculated on a basis of 100% load factor plus 30%.

For gas purchased from May 1 through October 31: The then applicable Transcontinental Gas Pipe Line Corporation's CD-2 rate commodity component only plus 30%.

The Customer shall collect the applicable gross receipts taxes from its Customer (s) and remit same to the North Carolina Department of Revenue when due.

RATE SCHEDULE NO. 14
OUTDOOR LIGHTING SERVICE
Rates:

Payable monthly for each fixture

Single Upright Mantle	@--------------$1.81
Double Inverted Mantle	@-------------- 1.81
Each Additional Mantle:	
Inverted type up to 1250 BTU/hr.	@-------------- .80
Upright type up to 2500 BTU/hr.	@-------------- 1.40

RATE SCHEDULE NO. 15
EXCESS GAS SERVICE TO PRIVATE ELECTRIC UTILITY COMPANIES

Rate

The Customer shall pay the Company for all interruptible natural gas supplied and accepted under this contract at the rate of 46.18 cents per 1,000 cubic feet.

RATE SCHEDULE NO. 19
SPECIAL EMPLOYEE RATE

The Employee shall pay the Company for all gas supplied under this rate schedule at the rate of $.11200 per hundred cubic feet.

Summer Gas Air Conditioning --- May through September

When employee uses gas for cooling in the summer, all gas used over 5,000 cubic feet per month during the months May through September shall be $.08200 per hundred cubic feet.

WELLS, COMMISSIONER, DISSENTING:

WEATHER FACTOR ADJUSTMENT

Critical to the decision in this case is the validity of the weather factor adjustment assumed in the Staff audit and accepted by the Commission. The Applicant and Staff presented testimony to the effect that the test period (12 months ended September 30, 1970) was characterized by an extremely cold winter, which allegedly resulted in Applicant's receiving significantly higher income during the test period than would have been the case for a test period characterized by "average" weather conditions. For the sake of brevity, I shall refer to these dollars in terms of the "weather adjustment".

Applicant's actual gross operating revenues for the test period were $33,870,000. (Note: All of the figures used in this dissent will be rounded off to the nearest one thousand dollars.) This figure was reduced by way of the weather adjustment by $893,000. In other words, for the purposes of the Staff audit and the majority order, an assumption has been made that the Applicant received $893,000 less gross revenue during the test period than it actually received, and all the rate of return data and dollars in the majority order are based upon this assumption. No one contends that Applicant did not actually receive these dollars during the test period, but the majority order accepts the contention that the test year was abnormally cold and that therefore, the adjustment is necessary to normalize the test year as a predicate for setting rates for the future.

To arrive at the weather adjustment, the auditing Staff accepted at face value the dollar results of a highly sophisticated method of relating weather conditions to

natural gas sales. The method is highly complex and difficult to understand. I, for one, do not understand it in the detailed manner in which it has been presented in the record of this case. The results, however, are simply stated. One, the assumption has been made that the test-year weather resulted in gross <u>firm</u> sales in the sum of $1,605,000 which would not have occurred in an "average" or "normal" year; two, that had these additional gross firm sales not have been made, the same gas <u>could</u> have been sold to Applicant's interruptible customers for the total sum of $712,000. Hence, the resulting adjustments to gross revenues of $893,000.

As a rate making device of general application, I reject this adjustment out of hand. It is of obvious (to me) doubtful validity. Conceding, arguendo, that natural gas companies will sell more gas to firm customers (principally residences) in colder weather, we are immediately confronted with myriad questions. What is "colder" weather? How many years are required to make a valid comparison of what is "colder" weather? Are we now in a weather trend toward "colder" weather and will winters be getting colder before they again begin getting warmer? Can it be assumed that today's customers will react to "colder" weather similarly to customers of ten, twenty, or thirty years ago? Are today's houses and buildings so constructed that more, or less, gas will be used to cope with "colder" weather? What is the formula to be used to state how much more gas people will use in "colder" weather? How do you test the validity of the formula? How many gas companies in the United States are using such a formula and can say it is valid? How many regulatory commissions have employed a similar adjustment to make rates?

I can answer none of the first eight questions satisfactorily from the record in this case. As to the ninth, the record is not clear. Applicant introduced evidence tending to show that nine state regulatory commissions have employed a similar adjustment rate in natural gas cases. This does not include the North Carolina Utilities Commission. Our research indicates that while it is inconclusive as to how many state regulatory agencies have applied a similar rate making device during the past twelve years, two have considered and rejected it and only six have employed it in a rate proceedings, and those have used vastly different base periods (as low as 5 years compared to Staff's 39 years) from which they have derived their "average" weather conditions.

This device, as a matter of general application, immediately raises the "sauce" question. If we use it for the gas gander, why not for the electric goose, whose sales are increasingly being affected by summertime peaks brought on by air conditioning in response to "hotter" weather. Could the electric utilities not contend that in "hotter" years, their revenues should be similarly adjusted to arrive at a normal or average revenue statement.

The Utah Public Service Commission considered this type of adjustment and came to the following conclusion:

> We believe there is considerable merit in the proposed adjustment, but we hesitate to apply it because of the vagaries and uncertainty of the weather. We find, therefore, that this adjustment should be disallowed. Re: Mountain Fuel Supply Company (Feb. 1960) 32 PUR 3rd 321, at Page 340.

Now to examine for a moment the validity of the adjustment in this particular case. The theory, as above stated, is that the test year was abnormally cold and therefore the firm sales were abnormally high. It is contended that the loads which are most weather sensitive are residential space heating loads. Let us, therefore, compare some figures for the test-year twelve months, ending September 30, 1970, with the twelve-months period ending September 30, 1969 (see Staff audit, Pages 2 and 3):

<u>Operating Revenues</u>
<u>For Twelve Months Ended September 30</u>

	1969	1970
Residential Heating Sales	$10,179,000	$11,414,000

<u>Revenues Per MCF</u>
<u>Sold</u>

	1969	1970
Residential Heating Sales	$1.34	$1.35

The above Tables disclose no substantial difference between the two twelve-months periods in revenues per Mcf sold to residential heating loads, and a gross increase of only $1,235,000 in the test year over the previous twelve months ending September 30, 1969. And yet, the formula accepted by the majority assumes additional such revenues in the test year in the sum of $1,605,000 <u>due to weather alone</u>, giving what amounts to minus effect of additional test-year income from customer growth in this and other categories.

An additional measure of the normality of the test-year sales is disclosed by examining the ratio of Applicant's net income to gross revenues for three closely proximate twelve-months periods.

Year	Ratio of Net Income to Gross Revenues
1969	7.24%
Test Year	6.96%
1970	6.93%

While the foregoing ratios would not be conclusive of this matter, as other variables are involved to some degree, these ratios strongly support the inference that the test-

year revenues are not substantially distorted, much less grossly distorted as assumed by the weather adjustment accepted and applied in the majority order.

In addition to the foregoing, the weather adjustment adopted and applied by the majority is predicated on customer classification rates in effect during the test year, while the requested (and in proportion, allowed) rate increases result in a 4.5% increase for residential firm customers and an 11% increase for interruptible customers, which means that the Staff adjustment, even if valid in theory in this case, is very wrong in its dollars, and is therefore not supported by the evidence in this record in that respect.

In view of all these circumstances, I must conclude that the weather adjustment is not valid, not supported by the evidence and should not be allowed.

RATE BASE

The majority order finds the book value (net investment) of Applicant's properties to be in the sum of $63,437,000. To this they have added materials, supplies and working capital (less Federal income tax accruals) in the sum of $2,718,000, for a total book value (net investment) of $66,155,000. To arrive at the fair value of Applicant's properties, they have "trended" the above total of $66,155,000 by 20%, resulting in a value of $79,386,000. When you deduct materials, supplies and working capital from the properties to be trended (as obviously should be done), the trend factor becomes 25% rather than 20%.

Applicant used the Handy-Whitman Index to trend the value of its properties, resulting in an alleged trended value of $98,292,000. Commission Staff offered no evidence of trended value or fair value, nor did intervenors. The Commission may and should take judicial notice of its official records and files. These records and files disclose that almost 60% of Applicant's total plant investment has been added during the past six years, as shown in the following Table, these figures being taken from Applicant's annual reports on file with the Commission.

Plant Additions - 1965-70

Year	Beginning Plant Investment	Gross Additions	Balance at End of Year
1965	$41,359,000	$6,115,000	$47,100,000
1966	47,100,000	6,926,000	53,582,000
1967	53,582,000	7,347,000	60,546,000
1968	60,546,000	7,010,000	67,016,000
1969	67,016,000	7,500,000	73,886,000
1970	73,886,000	6,315,000	79,680,000

To trend these recent plant additions by 25% is wholly unrealistic and unjustified and results in a distorted and inflated fair value. If these recent plant additions should be trended at all, it should be in a very small percentage, certainly not more than 10%.

COST OF CAPITAL & RATE OF RETURN

The majority order has barely mentioned the cost of capital, which is in all cases a vital element in arriving at a fair rate of return. Applicant's cost of capital is computed below based upon an assumed cost of equity funds of 15% (which I find to be reasonable, as will be elaborated upon later in this dissent).

Capital Structure as of September 30, 1970 (1)

Type of Capital	Amount	Interest Rate	Percent of Total	Overall Cost
Bonds	$30,997,000			
Debentures	6,700,000			
Notes Payable	9,000,000			
	$46,697,000	5.95%	68.28%	4.06%
Preferred and Preference Stock	7,912,000	5.64%	11.56%	.65%
Common Equity	13,792,000*	15.00%	20.16%	3.02%
Totals	$68,401,000		100.00%	7.73%

(*Includes unappropriated earned surplus of $4,571,000.)
(1) Source: Staff Audit, Page 8.

As stated in the majority order, Applicant's financial witness Merrill computed a cost of capital in the range of 8.00% to 8.59%, based upon a <u>recommended</u> range of equity cost of 15.0% to 17.50%. Not mentioned in the majority order is the opinion of Staff witness J. W. Smith (Director of Economics and Accounting) that a return on equity of 15% would be reasonable.

The following Table, taken from Applicant's annual reports on file with the Commission show that its return on equity during the period 1965-70 falls in a range of 13.24% to 17.82%, for an average return on equity during the six-year period of 15.60%.

	Average Common Equity	Earnings For Common	Return on Equity	Per Share Earnings
1965	$ 6,689,000	$1,088,000	16.26%	.76
1966	7,055,000	1,257,000	17.82	.87
1967	7,476,000	1,286,000	17.20	.89
1968	8,088,000	1,227,000	15.17	.84
1969	10,838,000	1,782,000	14.02	1.09
1970	13,596,000	1,851,000	13.24	1.01

The above data discloses that while Applicant's rate of return on equity was declining over the period, its per share earnings were showing a consistent and significant growth. The Table also discloses that during the period, Applicant more than doubled its total equity investment dollars.

For a comparison of Applicant's experience during this six-year period, let us consider the return on equity of other comparable natural gas companies for a comparable period (seven years, 1963-69).

Applicant introduced exhibits, shown below, to reflect return on common equity and common equity ratios of 19 gas distribution companies in the United States which are roughly comparable to Applicant.

CAPITALIZATION RATIOS
19 GAS DISTRIBUTORS WITH CURRENT ANNUAL REVENUES
IN EXCESS OF $50,000,000

Common Equity:	1963	1964	1965	1966	1967	1968	1969
Alabama Gas	41.6%	43.3%	38.8%	40.2%	38.8%	39.2%	39.3%
American Natural Gas	37.5	38.0	37.5	35.3	35.2	33.5	32.7
Atlanta Gas Light	36.1	37.8	34.9	36.7	38.3	36.2	38.1
Brooklyn Union Gas	40.2	41.6	38.9	40.1	37.5	39.0	40.7
Consolidated Natural Gas	55.8	56.3	57.8	58.7	58.5	56.5	55.5
Equitable Gas	40.5	41.8	40.8	43.2	42.4	43.8	45.8
Gas Service	28.9	28.3	34.5	33.4	32.2	30.2	30.2
Laclede Gas	37.6	39.3	40.8	39.7	41.6	40.1	42.0
Minneapolis Gas	50.2	51.8	53.4	55.1	56.8	58.7	52.1
Mountain Fuel Supply	49.1	46.8	48.4	49.2	43.5	46.3	48.1
National Fuel Gas	58.8	57.2	56.8	56.1	53.2	51.1	49.7
Northern Illinois Gas	48.1	47.5	43.6	43.7	43.9	43.3	43.3
Northwest Natural Gas	34.8	32.8	36.4	32.8	32.5	33.7	33.9
Oklahoma Natural Gas	41.6	44.5	44.4	44.8	46.9	49.0	49.2
Pacific Lighting	44.8	45.7	44.9	43.9	45.6	44.8	45.7
Peoples Gas	42.9	43.5	43.2	42.7	40.6	41.8	40.2
Southern Union Gas	37.0	38.7	38.6	35.2	36.5	36.4	38.0
Washington Gas Light	34.8	36.0	34.5	32.4	30.9	35.0	34.3
Washington Natural Gas	35.2	38.3	36.5	32.1	33.3	32.9	36.7
Average - 19 Companies	41.9	42.6	42.3	41.8	41.5	41.6	41.8

RETURN ON AVERAGE COMMON EQUITY
19 GAS DISTRIBUTORS WITH CURRENT ANNUAL REVENUES
IN EXCESS OF $50,000,000

	1963	1964	1965	1966	1967	1968	1969	1970
Alabama Gas	11.8%	12.2%	11.5%	11.7%	11.8%	13.8%	13.6%	11.3%
American Natural Gas	11.6	12.0	13.3	13.3	13.3	12.2	12.4	11.4
Atlanta Gas Light	11.5	13.2	13.1	13.0	11.4	12.4	12.2	9.2
Brooklyn Union Gas	12.3	12.4	12.4	12.6	12.5	12.6	12.2	10.5
Consolidated Natural Gas	7.5	8.1	10.0	9.5	9.4	8.6	9.3	8.6
Equitable Gas	11.5	12.1	13.9	12.9	12.1	11.5	12.2	12.1
Gas Service	10.4	13.3	11.5	10.3	9.4	9.1	11.0	11.9
Laclede Gas	11.8	11.8	12.9	12.4	12.3	12.3	12.2	14.0
Minneapolis Gas	13.6	13.4	13.4	13.4	13.4	13.4	12.7	N/A
Mountain Fuel Supply	11.2	10.8	9.7	8.2	8.0	8.7	9.9	10.0
National Fuel Gas	9.6	8.7	9.2	9.2	8.2	6.4	8.2	7.0
Northern Illinois Gas	15.7	15.6	15.8	15.6	15.6	13.9	14.8	13.7
Northwest Natural Gas	11.5	12.7	10.8	9.7	9.6	10.9	9.7	N/A
Oklahoma Natural Gas	14.5	15.5	14.9	13.7	13.6	13.4	14.2	13.5
Pacific Lighting	8.5	10.2	10.3	9.8	9.9	8.6	9.0	8.5
Peoples Gas	12.5	13.7	13.9	13.9	14.1	14.0	13.2	11.9
Southern Union Gas	11.8	15.2	14.4	15.1	14.1	13.6	12.2	11.8
Washington Gas Light	9.4	9.9	9.9	9.7	10.6	9.6	12.1	9.7
Washington Natural Gas	11.5	11.8	11.0	11.3	11.5	11.8	10.9	N/A
Average - 19 Companies	11.5	12.2	12.2	11.9	11.6	11.4	11.7	

The foregoing data demonstrates that Applicant's recent return on equity has been high compared to comparable companies, even allowing for Applicant's lower ratio of equity capital; and dictates the conclusion that a 15.0% return on equity is amply sufficient to enable Applicant to achieve earnings at a level which will in turn enable it to compete in the market for equity funds. I must therefore conclude that the 16.5% return on equity allowed by the majority is excessive and not supported by the record.

Again, it must be forcefully pointed out that the 16.5% return on equity allowed by the majority is not predicated upon Applicant's actual test-year revenues. If you use Applicant's actual revenues during the test year, then superimpose the general rate increase allowed by the majority in its order, Applicant's rate of return becomes 19.5%.

The Commission and the Applicant are well aware that Applicant is not currently confronted with the need to raise significant amounts of new capital. It has no plans for significant expansion of its system in the near future. We all know that it, as well as other natural gas distributors in North Carolina, can sell all the gas it can get its hands on. We also know that due to the current high demand for natural gas, Applicant is able to shift significant amounts of its sales from lower paying interruptible customers to higher paying firm customers. Under these circumstances, even a 16.5% rate on equity is excessive, and the 19.5% return actually allowed reflects an apparent disregard for the statutory injunction to the Commission to "...fix such rates as shall be fair both to the public utility and to the consumer".

Before the general rate increase applied for, Applicant's actual test-year revenues resulted in a rate of return on common equity of 14.74%; on net investment in plant of 8.63%; and even on the inflated fair value found by the majority of 7.19%. All of these rates of return are clearly sufficient, and I must therefore conclude that Applicant has not carried the burden of proof to show a need for any general rate increase and that the new rates allowed and set by the majority are not supported by the record, are not based upon findings of fact sufficient to conclude that they are needed, and are not just and reasonable.

I would, therefore, allow the Applicant to recover the increases in wholesale cost of gas covered in these dockets, but would not allow any general increase in its retail rates which would have the effect of enhancing its rate of return.

There is one other point that needs dealing with. Assuming, while not conceding, that the weather adjustment can be justified in this case, it nevertheless remains that for the test year, Applicant did receive revenues in amounts that the majority order itself admits to the abnormally high - in other words, excessive. This being the case, the

result of the majority order is to allow Applicant to retain this bonanza forever. This is apple pie for the company, but bitter fruit for the ratepayers out of whose pockets the bonanza was plucked.

Hugh A. Wells, Commissioner

McDEVITT, COMMISSIONER, CONCURRING AND DISSENTING IN PART:

I concur with that portion of the majority Order allowing Public Service to recover through equivalent rate increases the increased cost of purchased gas ($1,652,003) approved by the Federal Power Commission.

I dissent from that part of the Order allowing Public Service $1,445,168 in additional general rate increases and adjusting the company's _actual_ revenues for the test period downward by $893,126 through the unacceptable device of a weather adjustment factor which results in an understatement of revenues and return on common equity. North Carolina gas utilities have operated successfully for years without rate changes based on the application of an artificial weather adjustment factor and the Commission has never before based a general rate increase on such a factor.

I vigorously dissent from the majority's Finding of Fact No. 9 that "The additional revenues provided by the increases herein will result in a return on common equity of 16.5%". Only through arithmetical acrobatics resulting from a reduction of actual revenues by $893,126 could the majority arrive at this figure. _Actual_ _revenues_ for the test period produce return on common equity of 19.48% which is excessive, unjust and unreasonable.

I dissent from the finding that the fair value of the Applicant's properties is $79,272,908. The Staff audit reflects net investment in utility plant of $66,467,566. I believe the fair value of the Applicant's properties is not more than $76,500,000 which exceeds net investment by approximately 15%.

John W. McDevitt, Commissioner

DOCKET NO. G-5, SUB 71
DOCKET NO. G-5, SUB 77

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service Company of North) ORDER OF
Carolina, Inc., for an Adjustment in its Rates) AMENDMENT
and Charges.)

BY THE COMMISSION: It appearing to the Commission that certain typographical errors were made in Appendix A

attached to its Order of May 27, 1971, in this docket and that said typographical errors should be corrected;

IT IS, THEREFORE, ORDERED as follows:

1. That said Appendix A, Page 3 of 5, be and the same is, hereby amended by correcting Rate Schedule No. 10 to read as follows:

RATE SCHEDULE NO. 10
COMMODITY AND DEMAND

Rate: Per Month

For all gas delivered, the Customer shall pay the Company a commodity charge of $.3962 per M.C.F. In addition to commodity charge the Customer will pay a monthly demand charge of $5.50 per M.C.F. of Contract demand.

2. That said Appendix A, Page 4 of 5, be, and the same is, hereby amended by correcting the "Minimum Annual Bill" to read as follows:

Minimum Annual Bill

Beginning with the first day of the month following the expiration of the first 90 days of service there shall be a minimum bill which shall be on an annual basis. The minimum annual bill shall be the product of $13.33 times the sum of the M.C.F. used for determining the demand charge for each month for the twelve months less $.3962 times the number of M.C.F. not delivered on account of variation due to inability to maintain precise control, and shall apply to each full 12-month period beginning with the first day of the month following the expiration of the first 90 days of service hereunder and each anniversary of that date. Should the sum of the monthly bills for each 12-month period be less than the annual minimum bill as determined herein, then the amount that the annual minimum bill exceeds the sum of the monthly bills shall be due and payable with the twelfth month's bill of each such period.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 78
DOCKET NO. G-5, SUB 79
DOCKET NO. G-5, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service Company of North Carolina, Inc., Gastonia, North Carolina, for an Adjustment of its Rates and Charges) ORDER ALLOWING PARTIAL INCREASES IN RATES AND CHARGES

BY THE COMMISSION: On July 23, 1971, Public Service Company of North Carolina, Inc., (Public Service) in Docket No. G-5, Sub 78 filed an application with the North Carolina Utilities Commission for an adjustment of its rates and charges in order that it might recover increases in the cost of gas to it from its sole supplier, Transcontinental Gas Pipe Line Corporation (Transco). In this filing Public Service seeks to recover an increase of .1 cent per mcf effective July 26, 1971, in Federal Power Commission Docket No. RP71-31, and .6 cent per mcf increase effective August 2, 1971, in Federal Power Commission Docket No. RP71-31. Both of these increases were allowed to become effective by the Federal Power Commission on the effective dates listed above.

By Order dated July 27, 1971, the North Carolina Utilities Commission suspended the rates requested by Public Service in this proceeding and denied Public Service the right to put in the increased rates on less than statutory notice. This rate filing was suspended for 270 days from and after August 23, 1971.

Public Service at the same time it filed its requested increase in Docket No. G-5, Sub 78 filed an Undertaking pursuant to G. S. 62-135.

The amount of the increase sought to be recovered as a result of Transco's gas filing in this docket results in an increased cost of gas to Public Service of $374,990 annually.

On September 13, 1971, Public Service Company of North Carolina, Inc., filed a second application in Docket No. G-5, Sub 79, in which it seeks to recover further increases in cost of gas to it from Transco. The amount of cost which Public Service seeks to recover in this docket is 1.2 cents per mcf which was filed to become effective on September 19, 1971, in Docket No. RP 72-27 filed with the Federal Power Commission and the .1 cent per mcf filed to become effective October 5, 1971, in Federal Power Commission Docket No. RP 71-31. These two increases in rates filed by Transco with the Federal Power Commission have also been allowed to become effective by Order of the Federal Power Commission but were subject to the President's Freeze Order No. 11615. These increases in gas cost to Public Service became

effective when the Freeze Order was lifted on November 14, 1971. This filing will increase the cost of gas to Public Service in the amount of $667,652 annually. The combined results of all the above four Transco filings as listed herein with the Federal Power Commission increases the cost of gas to Public Service by $1,042,642.

The amount sought to be recovered by Public Service from its customers in gross operating revenues is $1,109,160 which is the purchased gas cost stated above plus related gross receipt tax. The combined filing in both Docket Nos. G-5, Sub 78 and 79 result in a 2.2 cents per mcf uniform increase applicable to all customers.

The Commission, on October 20, 1971, consolidated the above dockets for action and or hearing and at the same time approved the undertaking filed by Public Service pursuant to G. S. 62-135 in Docket No. G-5, Sub 78. The Commission, on October 20, 1971, suspended the tariffs filed by Public Service in Docket No. G-5, Sub 79. On November 15, 1971, Public Service increased its rates to its customers pursuant to the undertaking in the amount of 2.2 cents per mcf on all gas consumed on and after that date. On December 6, 1971, Public Service Company of North Carolina, Inc., in Docket No. G-5, Sub 81, filed another application for authority to increase its rates in order to recover further increases to it from Transco. These increases listed below were filed by Transco with the Federal Power Commission to become effective on January 1, 1972, in Federal Power Commission Docket No. RP 72-78.

Commodity Increases

CD-2	28.9¢ to 30.2¢	Total increase 1.3¢
PS-2	28.9¢ to 30.2¢	Total increase 1.3¢
GSS	36.8¢ to 41.2¢	Total increase 4.4¢

Demand Increases

CD-2	$3.13 to $3.29	Total increase 16¢
TS-2	$1.90 to $1.92	Total increase 2¢
GSS	$1.42 to $1.58	Total increase 16¢

The foregoing Transco increases also cause an automatic increase in gas purchased from United Cities Gas Company as follows:

1st 50,000 mcf per month from 39.19¢ to 41.02¢
Over 50,000 mcf per month from 33.9¢ to 35.2¢

That the total increased cost to Public Service on an annual basis of these increases is approximately $1,233,000.

In order to recover the above increases in the cost of gas to it, Public Service is proposing in this docket to increase rates to its firm customers by 4.14¢ per mcf and to its interruptible customers by 1.38¢ per mcf. The total

annual revenue required to offset the above cost plus related gross receipts tax is $1,310,313. The amount sought to be recovered by Public Service from its customers in gross operating revenue from all the above proceedings in these consolidated dockets is $2,419,473.

Public Service Company of North Carolina, Inc., was ordered by this Commission to file consolidated data relating to the above proposed increases as required by the Commission's Order in Docket No. G-100, Sub 14.

The North Carolina General Assembly adopted Chapter 1092 Session Laws of 1971, ratified July 21, 1971, North Carolina General Statute 62-133(f) which provides as follows:

"Unless otherwise ordered by the Commission Subsections (b), (c), and (d) shall not apply to rate changes of utilities engaged in the distribution of natural gas bought at wholesale by the utility for distribution to consumers to the extent such rate changes are occasioned by changes in the wholesale rate of such natural gas. The Commission may permit such rate changes to become effective simultaneously with the effective date of the change in the wholesale cost of such natural gas, or at such other time as the Commission may direct. This subsection shall not prohibit the Commission from investigating and changing unreasonable rates in accordance with the provisions of this chapter. The public utility shall give notice, which may include notice by publication, of the changes to interested parties as the Commission in its discretion may direct."

Pursuant to the authority granted above to the Commission by the Legislature, the Commission issued its order in Docket No. G-100, Sub 14, requiring certain data as follows to be filed with the Commission for the consideration of increased rates filed solely to recover increases in the cost of gas to a gas utility company in this state if approved by the Federal Power Commission. Pursuant to that order Public Service filed the following data:

Tracking rate schedules which became effective November 15, 1971 pursuant to authority granted in Docket No. G-5, Sub 79

Schedule of the rates and charges proposed by the Petitioner on December 6, 1971 in Docket No. G-5, Sub 81

Statement of end of period net investment at September 30, 1971

Statement of present fair value rate base

Statement showing accumulated depreciation balances and depreciation rates

Statement of materials and supplies necessary for operation of the Petitioners business

Statement showing amount of cash working capital which Petitioner finds necessary to keep on hand

Statement of net operating income for return for twelve months ended September 30, 1971

Statement showing effect of proposed increase in rates and rates of return

Balance sheet at September 30, 1971 and income statement for the year ended September 30, 1971

Statement showing computation of increased cost of purchased gas and rate increase per mcf

Statement showing computation of return on equity

Copies of Transco tariffs

The data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staff and a report of same submitted to the Commission for its consideration.

Notice of the proposed filing to the public was given by Public Service by an insertion in the bill during the month of November and December which covered the filings made by Public Service in Docket Nos. G-21, Sub 72, 78, and 79 in the amount of 2.2¢ per mcf.

Based on the applications as filed and the records of the Commission in these consolidated dockets, the Commission makes the following findings of fact.

FINDINGS OF FACT

1) That Public Service Company of North Carolina, Inc., is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2) That Public Service's rates were increased on all gas sold on and after November 15, 1971, pursuant to the undertaking filed and approved by this Commission in order to recover the increases in cost of gas to it from Transco as shown in Docket Nos. G-5, Subs 78 and 79 in the amount of 2.2¢ per mcf. All increases contained in these applications have been approved by the Federal Power Commission.

3) In Docket No. G-5, Sub 81, the proposed increase in rates sought to be recovered by Public Service is 4.14¢ per mcf to firm customers and 1.38¢ per mcf to interruptible customers. These increases in rates are filed to recover the increased cost of gas to Public Service as contained in Federal Power Commission Docket No. RP 72-78, which has been

filed to become effective January 1, 1972, pursuant to a settlement agreement.

4) Public Service filed tariffs to recover these increased costs to become effective on all gas sold on and after January 1, 1972.

5) That the rate of return on end of the period investment and the return on equity as approved by the Commission for Public Service in the last general rate case Docket No. G-5, Sub 71 and Sub 77 issued on May 27, 1971, for the test period ending September 30, 1970, and that determined by the Commission in these consolidated dockets are below:

	Approved in Dockets G-5, Subs 71 & 77 September 30, 1970	Docket Nos. G-5, Subs 78, 79 & 81 September 30, 1971
Return on end of period investment	7.99	7.98
Return on equity	16.5	15.25

The return on end of the period investment and the return on equity in these consolidated proceedings have decreased from that found just and reasonable by the Commission in Docket Nos. G-5, Sub 71 and Sub 77 after the adjustment for the proposed increases as applied for herein.

6) That included in the firm rate increase sought herein of 4.14¢ per mcf is an amount of 1.01¢ per mcf (demand charge and capacity charge for new GSS service) which amounts to $212,851 which is the annual expense only relating to new GSS service of 8,595 mcf per day or 461,940 mcf annually which volumes will be sold and revenues collected beyond the test period used herein. Since this new service will be utilized beyond the test period, the expense portion of it 1.01¢ per mcf should be eliminated from this filing.

CONCLUSIONS

In accordance with G. S. 62-133(f) the Commission has statutory authority to consider as a separate item increases in cost of gas to gas utilities in North Carolina occasioned by increases in cost of gas to them from their wholesale suppliers as approved by the Federal Power Commission. The Commission issued a general order in Docket No. G-100, Sub 14 providing that after review of the data filed by the natural gas utilities as described herein if the Commission concludes from such review that the filing will not result in an increase in the companies rate of return over the rate of return most recently approved by the Commission in the last general rate case that the pass-on of the wholesale rate would be allowed. The Commission considers the filings and applications herein as complying with G. S. 62-133(f) as allowed to become effective without hearing (except that that portion of the rate increase relating to the new GSS

service does not fall within the meaning of G. S. 62-133(f) as an increase occasioned by an increase in the wholesale gas cost and for that reason and the reason stated in the findings of fact should be denied.)

The Commission concludes that in these consolidated proceedings that the rate of return and return on equity of Public Service Gas Company of North Carolina, Inc., has decreased since the last general rate proceeding in Docket No. G-21, Sub 71 & 77 which order was issued May 27, 1971.

Based on the foregoing findings of fact and conclusions the Commission is of the opinion that the rate increase filed by Public Service that seeks solely to recover increases in the cost of gas to it from Transco as approved by the Federal Power Commission should be allowed as a filing pursuant to G. S. 62-133(f) and should be permitted to become effective without hearing and that the portion of the increase relating to the new GSS service of 1.01¢ per mcf should be denied.

IT IS, THEREFORE, ORDERED:

1) That the tariffs filed by Public Service Company of North Carolina, Inc., in Docket Nos. G-5, Sub 78 and Sub 79, which went into effect under the undertaking on all gas sold on and after November 15, 1971, be and are hereby authorized to become effective as filed.

2) That the tariffs affecting the firm rate schedules filed by Public Service Company of North Carolina, Inc., in Docket No. G-5, Sub 81, on all gas sold on and after January 1, 1972, be denied.

3) That Public Service Company of North Carolina, Inc., shall file revised tariffs in Docket No. G-5, Sub 81 applicable to its firm customers reducing the increase in firm rates from 4.14¢ per mcf by 1.01¢ per mcf effective on all gas sold on and after January 1, 1972.

4) That the interruptible tariffs filed by Public Service Company of North Carolina, Inc., in Docket No. G-5, Sub 81, be and are hereby authorized to become effective on all gas sold on and after January 1, 1972.

5) That the approval of the increased rates as authorized herein by this Commission in Docket No. G-5, Sub 81 is conditioned upon final approval of the settlement agreement as filed with the Federal Power Commission by Transcontinental Gas Pipe Line Corporation in Docket No. RP 72-78 or approval of Federal Price Commission if required.

6) That in the event the increases sought in the various Federal Power Commission dockets as cited herein are reduced or if the effective dates are changed, the North Carolina Natural Gas Corporation shall immediately file tariffs

making corresponding decreases in the tariffs as filed herein.

7) In the event the Federal Power Commission or the Federal Price Commission makes changes in the wholesale rates to Public Service Company of North Carolina, Inc., retroactively or if refunds are received from Transcontinental Gas Pipe Line Corporation as a result of these actions or if producers' refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to Public Service Company of North Carolina, Inc., all refunds and the retroactive portion of any rate change, if such occurs, shall be placed in a restrictive account for further orders of this Commission.

8) That the attached Notice, Appendix "A", be mailed to all customers along with the next bill advising them of the action taken herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
NOTICE

Upon applications filed by Public Service Company of North Carolina, Inc., the North Carolina Utilities Commission approved on December 21, 1971, increased rates which have been collected under bond by Public Service since November 15, 1971, in the amount of 2.2¢ per mcf. Upon further application by Public Service Company, the Commission has approved increased rates to become effective on all gas consumed on and after January 1, 1972, in the amount of 3.13¢ per mcf on firm rate schedules, and 1.38¢/mcf on interruptible rate schedules. These increases allow Public Service Company of North Carolina, Inc., to recover only the increases in cost of gas to it from its supplier, Transcontinental Gas Pipe Line Corporation, which increases have been approved by the Federal Power Commission.

Public Service Company of North Carolina, Inc.

DOCKET NOS. G-5, SUB 78, 79, & 81

WELLS, COMMISSIONER, DISSENTING. Consistent with my dissent in Docket Nos. G-5, Sub 71 and 77, where I dissented from the Commission's Order of May 27, 1971, which allowed Applicant a considerable rate increase in a case in which Applicant's rate of return was thoroughly investigated and dealt with, I must dissent from the Majority Order in this case allowing Applicant to pass on to its consumers

increases in the cost of gas to it from its pipeline supplier, Transcontinental Gas Pipe Line Corporation.

In the rate of return case, I pointed out in my dissent that, based on its actual experience, Applicant's rate of return was excessive, and that even accepting the Commission's questionable weather factor adjustment arguendo, the rate of return allowed by the Majority was too high.

The Commission's investigation in this case was carried out thoroughly, and the Commission's Staff is to be commended for the development of a means and method in these "pass-on" cases whereby the Commission can test the reasonableness of the effects of the wholesale price increases on the operating company's rate of return. The results, however, indicate that the company's rate of return has continued to improve since the last rate of return case, and unfortunately the questionable weather factor adjustment continues to be used by the Staff and adopted by the Commission Majority.

It is my opinion, based upon the Staff's investigation and the information developed thereby in this docket, that this company could well absorb all of these wholesale price increases and still be enjoying more than an adequate rate of return, and it is therefore my opinion that either none or very little of these wholesale price increases should be allowed to be passed on to the Applicant's consumers.

Hugh A. Wells, Commissioner

DOCKET NO. G-1, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of United Cities Gas) ORDER ALLOWING
Company for an Adjustment in Its) INCREASES IN
Rates and Charges) RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on September 8, 1971, at 10:00 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:

Jerry W. Amos, Esq.
McLendon, Brim, Brooks, Pierce & Daniels
Attorneys and Counsellors at Law
P.O. Drawer U, Greensboro, North Carolina 27402

For the Commission Staff:

William E. Anderson, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On January 19, 1971, United Cities Gas Company, hereinafter referred to as "Applicant", filed with the Commission an Application for a rate increase, in which Applicant requested it be authorized by the Commission to increase its rates by approximately 4.62 cents per Mcf, alleged to be an amount equal to certain increases in the cost of gas purchased by the Applicant from Transcontinental Gas Pipe Line Corporation, hereinafter referred to as "Transco", which were made effective by the Federal Power Commission on January 1, 1970, January 1, 1971, and on January 10, 1971.

Being of the opinion that the Application affected the public interest in the area in which service is provided by the Applicant, the Commission by Order of January 25, 1971, set the matter for investigation and hearing, declared the proceeding to be a general rate case under G.S. 62-133, suspended the increases requested by the Applicant for a period of 270 days from January 28, 1971, approved the Undertaking under G.S. 62-135, required that Applicant publish notice of hearing attached to the Commission's Order in sufficient newspapers having general circulation in its service area, and established as the test period to be utilized in this proceeding the twelve months' period ending March 31, 1971.

Applicant filed an Amended Application on July 7, 1971, in which Applicant requested that the Commission authorize it to recover approximately $61,345 additional annual revenues which the Applicant contended is necessary to permit it to earn a fair rate of return.

The Commission issued an Order in the same docket on July 14, 1971, suspending rates requested in Amended Application, declaring the matter of the Amended Application to be a general rate case, and requiring further public notice.

The matter duly came on for hearing at the time and place designated by prior order.

SUMMARY OF EVIDENCE

The increases requested by the Applicant in this proceeding amount to approximately $95,483 in total additional gross annual revenues. Of this amount, approximately $34,138, or approximately 36% of Applicant's total request, would be generated from 1970 and 1971 increases in the cost of purchased gas it contends it has experienced as a result of Transco, its sole supplier, having increased its rates to the Applicant pursuant to orders of the Federal Power Commission. The balance of Applicant's total rate request amounts to $61,345, this being the amount involved in Applicant's general rate request filed in the Amended Application.

Through its original Application and Amended Application, United Cities Gas Company proposes the following approximate average annual increases in its rates and charges:

Customer Classification	Revenue Increase	Percentage Increase
Residential	$ 22,015	11.5
Commercial	11,237	12.1
Industrial Firm	29,945	21.5
Industrial Interruptible	31,649	15.4
Public Authority	637	3.8
Miscellaneous Revenue	-	-
	$ 95,483	13.6

At the hearing, Applicant presented evidence in support of its rate request through testimony of the following witnesses. John W. Maxheim, President and Chief Executive Officer, testified regarding the impact of inflationary trends upon the Applicant and indicated that Applicant can no longer absorb the increased expenses it has experienced through increased sales volume and efficiency, and reduce rates voluntarily, as it has done in the past. He further testified that the gas supply situation requires restrictions of new sales to large volume industrial firm customers. He described the Applicant's operations as they relate to obtaining necessary natural gas requirements from Transco and stated that the Applicant has no control over the increases in gas costs levied by Transco. Mr. Robert J. Sebastian, Vice President-Treasurer of the Applicant, testified in connection with Applicant's exhibits relating to its financial data and overall operations. He identified Exhibits 1-10 and explained the various adjustments.

The Applicant's evidence indicates that for the test period ended March 31, 1971, its gross operating revenues amounted to $712,552, its total operating expenses were $652,678, resulting in a net operating income for return of $59,874.

Applicant indicates end-of-period net investment in plant of $1,180,176. Applicant's Exhibit 7 reflects a rate of return on net investment for the test period of .95%. Applicant adjusted its operating revenues to adjust for the degree days in the test period under what it contends was the 39-year average in the territory served. Increases in firm sales under Applicant's computation amount to $4,771 and with $2,830 representing decrease in interruptible sales, the net result is an increase in operating revenues of $1,941, for test period purposes.

Mr. Sebastian used a trended value rate base of $1,825,425. His study was made on the basis of trending original cost of property in Accounts 367, 376, 380, 381 and 382 by use of the Handy-Whitman Index, with retirements being applied on a FIFO basis, and estimated other accounts based on the trended ratio of Account 381. He then deducted trended depreciation on the per books reserve ratio of 18.73% approved in Docket No. G-1, Sub 27.

Mr. Harry B. Sheldon, Sr., President of Private Placement Financing, Inc., testified regarding his study of the finances and capital costs of the Applicant. Mr. Sheldon indicated that investors attribute a greater risk to gas utilities generally now as compared with the pre-1963 period. He testified that it is essential for United Cities Gas Company to sell common stock to provide capital funds at a minimum return in the range of 13.55% to 15.7%. He stated that this range reflects, in his opinion, current cost of equity capital.

The Commission Staff presented evidence through the testimony of Mr. Allen J. Schock, Staff Accountant, regarding the Staff's audit of the Applicant's operations, and Mr. Thomas L. Dixon, Gas and Water Engineering Division, in connection with the Engineering Staff's recommendation regarding the weather adjustment to Applicant's revenues because of the Staff's findings that the weather for the test period in this proceeding was abnormally warm.

The Staff's evidence indicates that for the test period Applicant's North Carolina operating revenues amounted to $657,146, operating expenses $619,126, with annualized (2.83%) net operating income for return $39,096. The Staff's audit reflects net investment in gas utility plant of Applicant, plus allowance for working capital amounting to $1,100,820, resulting in a rate of return of 3.55% on Applicant's intrastate net investment. The Commission Staff's audit reflects adjustments in operating revenues, expenses, wage and salary expenses, rate case expenses, purchased gas costs and certain other miscellaneous expenses. The principal adjustments made by the Staff were (1) the weather adjustment to Applicant's revenues, by which Applicant's test period operating revenues were increased by $3,882, (2) a reduction in operating expenses for cost of gas associated with non-recurring sales to Public Service Company of North Carolina, Inc., and (3) a reduction in

plant investment to eliminate part of the value of a new Peak Shaving Plant common to North Carolina and South Carolina operations.

Giving effect to all the increases proposed in this proceeding amounting to $95,483, the Staff's audit reflects projected operating revenues of $752,629, projected operating expenses of $667,536, and projected net operating income for return of $87,501. Applying the projected effect of these increases to Applicant's net investment, plus working capital, of $1,094,460, the Staff computed a rate of return of 7.99%.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) United Cities Gas Company is a duly franchised public utility providing natural gas service to its customers in its North Carolina service area, which is primarily Hendersonville, North Carolina. Applicant's rates and services are regulated by this Commission under the provisions of Chapter 62 of the North Carolina General Statutes.

(2) The increases requested by the Applicant would amount to a total of approximately $95,483 in additional annual gross revenues. Of this amount $34,138 of the requested increases result from increases in cost of purchased gas to the Applicant from its sole supplier, Transco. The balance of the increases requested, $61,345, results from Applicant's general rate request.

(3) The test period utilized in this proceeding was the twelve months' period ending March 31, 1971.

(4) Under its present rates, Applicant realized for the test period operations approximately $657,146 in gross operating revenues. Applicant's reasonable operating expenses for that period amounted to $619,126.

(5) The Commission finds that the fair value of the Applicant's properties used and useful in rendering the natural gas service it affords to its North Carolina customers, considering original cost less depreciation, and replacement cost by trending original cost to current cost levels, is no less than $1,120,000.

(6) Applicant's net operating income for return at the end of the test period after applying a customer annualizing factor of 2.83% is $39,096, resulting in a rate of return on net investment prior to consideration of the increases requested herein of 3.55%, which the Commission finds is insufficient for a fair rate of return.

(7) The rate of return deemed necessary on the fair value of its properties, with sound management, to produce a fair profit for its stockholders, considering economic conditions as they exist, and permitting Applicant to maintain its facilities and service and to compete in the market for capital funds, thereby fulfilling its obligations to its customers, is 7.81%, which said rate of return on fair value will afford the Applicant an opportunity to realize additional annual gross revenues of approximately $95,483. The Commission finds this amount of dollar return to the Applicant to be sufficient for it to compete in the market for capital funds on a reasonable basis.

(8) The additional revenues provided by the increases approved in this Order will produce projected annual gross revenues of approximately $752,629, and when related to projected operating expenses of approximately $667,536, produces approximately $87,501 in net operating income for return, including consideration of the customer annualizing factor.

(9) The additional revenues provided by the increases herein will result in a return on common equity to the Applicant of approximately 12.01%.

(10) After consideration of the increases allowed by this Order, Applicant's net investment in utility plant of approximately $1,094,460, when related to its projected net operating income for return of $87,501 after consideration of the customer annualizing factor, produces a return on net investment to the Applicant of approximately 7.99%.

(11) The increases allowed by this Order total approximately $95,483 in additional annual revenues. The increases granted herein are found to be just and reasonable.

(12) The record in this case indicates that the weather for the test period ending March 31, 1971, was somewhat warmer than normal. The Commission finds that an adjustment should be made to reflect normal weather conditions, thereby making the test period more representative. The adjustment to reflect normalized weather has been computed by the Applicant and the Commission Staff, as hereinabove described. The adjustment by the Commission Staff to Applicant's revenues because of abnormal weather conditions is just and reasonable and is adopted by the Commission in this Order.

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

CONCLUSIONS

The Commission concludes that the rate of return on the fair value of Applicant's properties of $1,120,000 will afford the Applicant an opportunity to earn approximately

$95,483 in total additional annual revenues. Of this amount, $34,138 results from authorizing the Applicant in this Order to increase its rates commensurate with the 1970-1971 increases in cost of purchased gas from its supplier, Transco. This Order allows Applicant to increase its rates by way of a general rate request by approximately $61,345 which said amount is approximately 64.25% of the general rate increases requested by the Applicant without consideration of the purchased gas costs increases requested.

The Commission concludes that additional annual gross revenues of $95,483 are necessary to provide a fair return to the Applicant on the fair value of its property. The rates approved by this Order as to classifications of the Applicant's customers are reflected in Appendix A attached hereto.

Upon consideration of the evidence submitted in this case and the regulations issued by the Price Commission on November 13, 1971, §300.016, Federal Register, Vol. 36, No. 220, p. 21793, the Commission finds and concludes that the tariff schedules herein involved should be allowed to become effective subject to the notice regulations of the Price Commission as hereinabove mentioned.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Application in this docket be, and the same hereby is, approved insofar as it is consistent with the provisions of this Order.

(2) That Applicant be, and the same hereby is, authorized to file and make effective on all sales made on and after December 15, 1971, its tariffs containing rates and charges in accordance with the rates and charges reflected in Appendix A attached hereto and incorporated herein.

(3) That in the event that the Federal Power Commission disallows any portion of the increased costs of purchased gas authorized by this Commission, Applicant shall immediately file revised tariffs to reduce its rates accordingly, and the Applicant shall promptly refund any amounts not finally approved by the Federal Power Commission. Applicant is required to file a written verified report regarding the manner in which any such reductions affect the various classifications of Applicant's customers.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A

UNITED CITIES GAS COMPANY
HENDERSONVILLE, NORTH CAROLINA
N.C.U.C. GAS TARIFF

GAS SERVICE: RESIDENTIAL NON-HEATING
SCHEDULE 705

Applicability

This rate schedule is applicable to the area served with natural gas by the Company in the State of North Carolina.

Availability

Service under this schedule is for all gas served through one meter for any purpose.

Monthly Rate

First	3 therms, or less	$2.00	
Next	97 therms	0.175	per therm
All Over	100 therms	0.15	per therm

Minimum Monthly Bill $2.00 per meter per month.

Delayed Payment Charge

Accounts not paid in full within 10 days from date of bill will be subject to additional charge of 5%.

Special Terms and Conditions

1. Gas sold under this schedule is subject to the General Rules and Regulations of the Company as approved by the North Carolina Utilities Commission.

2. All gas served will be natural gas or its equivalent, of not less than 1,000 British Thermal Units per cubic foot.

3. The word "therm" as used herein shall mean 100 cubic feet of gas.

4. Gas furnished under this schedule may not be resold or submetered without written permission of the Company.

GENERAL GAS SERVICE
SCHEDULE 710

Applicability

This rate schedule is applicable to the area served with natural gas by the Company in the State of North Carolina.

Availability

Service under this schedule is for all gas served through one meter for space heating and any other purpose.

Monthly Rate

First	20 therms	0.25 per therm
Next	180 therms	0.15 per therm
Next	200 therms	0.13 per therm
All Over	400 therms	0.115 per therm

Summer Air Conditioning

When gas is used for the operation of gas air conditioning equipment, all gas used in excess of 50 therms on meter readings taken on or after May 15 and before October 15 will be billed at $0.07 per therm.

Minimum Monthly Bill $3.00 per meter per month.

Delayed Payment Charge

Accounts not paid in full within 10 days from date of bill will be subject to additional charge of 5%.

Special Terms and Conditions

1. Gas sold under this schedule is subject to the General Rules and Regulations of the Company as approved by the North Carolina Utilities Commission.

2. All gas served will be natural gas or its equivalent, of not less than 1,000 British Thermal Units per cubic foot.

3. The word "therm" as used herein shall mean 100 cubic feet of gas.

4. Gas furnished under this schedule may not be resold or submetered without written permission of the Company.

INDUSTRIAL FIRM GAS SERVICE
SCHEDULE 730

Availability

1. For all gas, capable of being served through one meter, to any institutional or commercial or industrial customer for any purpose, at the option of the Company to the extent gas is available. Not available to residences or housing projects.

2. This schedule is available within the Company's service area to any building owned and used by a City or County Government for heating and other general

purposes on the "Base Use" Schedule, excluding all "Excess Use" provisions.

Monthly Rate

"Base Use" Gas and All Gas Used During May Through September

		Net
First	400 Therms, or less per month	$50.00
Next	1,100 Therms per month	.105 per therm
Next	2,000 Therms per month	.090 per therm
All Over	3,500 Therms per month	.080 per therm

"Excess Use" Gas

All "Excess Use" Gas per month .115 per therm

Minimum Monthly Bill $50.00

Delayed Payment Charge

Accounts not paid in full within 10 days from date of bill will be subject to an additional charge of 5%.

"Base Use" Gas

"Base Use" Gas shall be the greater of 500 Therms or 110% of the average monthly consumption in Therms from billings for the months of May through September. For any customer who does not have a record of service of one full billing month prior to the first October billing month he is served at this schedule. Company will estimate Base Use gas according to such customer's equipment and schedule of operations.

"Excess Use" Gas

"Excess Use" Gas shall be the Therms used in any month during October through April which is in excess of "Base Use" Gas.

Special Terms and Conditions

1. Service under this schedule is available only under contract for a term of not less than one year, subject to the conditions outlined in the contract.

2. Gas furnished under this schedule may not be resold by the customer.

3. The word "therm" as used herein shall mean 100 cubic feet of gas.

4. Gas sold under this rate schedule is subject to the General Rules and Regulations of the Company approved by the North Carolina Utilities Commission.

INDUSTRIAL INTERRUPTIBLE GAS SERVICE
SCHEDULE 750

Availability

For any Customer: (1) capable of being served through one meter; and (2) whose premises are located adjacent to Company's distribution mains having adequate capacity to supply Customer's prospective requirements in addition to the requirements of other customers already receiving service from distribution mains; and (3) who is willing to take service on a fully interruptible basis; and (4) who will maintain adequate standby facilities; and (5) whose gas input requirements of equipment is in excess of 30 therms per hour.

Rate

		Net
First	5,000 therms per month	$0.070 per therm
Next	20,000 therms per month	0.055 per therm
All Over	25,000 therms per month	0.050 per therm

Delayed Payment Charge

Accounts not paid in full within 10 days from date of bill will be subject to an additional charge of 5%.

Minimum Bill

The minimum bill under this rate shall be $100 net per month for the months of April to October inclusive; and $10 net per month for the months of November to March inclusive.

Special Terms and Conditions

1. Service under this schedule is available only under written contracts for a term of not less than one year, subject to the terms and conditions outlined in the contract.

2. Gas furnished under this schedule may not be resold by the customer.

3. The word "therm" as used herein shall mean 100 cubic feet of gas.

4. Gas sold under this rate schedule is subject to the General Rules and Regulations of the Company and approved by the North Carolina Utilities Commission.

GENERAL GAS SERVICE - PUBLIC HOUSING AUTHORITY
SCHEDULE 770

Applicability

This rate schedule is applicable to the area served with natural gas by the Company in the State of North Carolina.

Availability

For all gas served through one meter to two or more residential housing units and to Administrative buildings all of which are under the authority of the Hendersonville Housing Authority.

Rate	Net
All therms per month	$0.1245 per therm

Minimum Monthly Bill

$3.00 per month for each residential unit and each Administrative Building attached.

Delayed Payment Charge

Accounts not paid in full within thirty (30) days from date of bill will be subject to an additional charge of 5%.

Special Terms and Conditions

1. Gas sold under this schedule is subject to the General Rules and Regulations of the Company as approved by the North Carolina Utilities Commission.

2. All gas served will be natural gas or its equivalent, of not less than 1,000 British Thermal Units per cubic foot.

3. Gas furnished under this schedule may not be resold by the customer.

4. The word "therm" as used herein shall mean 100 cubic feet of gas.

5. Gas shall be delivered to each housing project location through a master meter. The housing authority shall provide the installations, if any, for the distribution of gas from the outlet of master meter to the various points of usage.

DOCKET NO. G-1, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of United Cities Gas Company for an Adjustment of its Rates and Charges	) ORDER CHANGING THE) EFFECTIVE DATE OF THE) TARIFFS APPROVED) DECEMBER 3, 1971

BY THE COMMISSION: On December 13, 1971, United Cities Gas Company (United Cities) applied for authority to change the effective date of Rate Schedules 705, 710, 730, 750, and

770 from all gas sold on and after December 1, 1971, as authorized by this Commission in its order of December 3, 1971, to all bills rendered on and after December 15, 1971.

In order to comply with the Commission's Order, United Cities would have to prorate all bills for service rendered. United Cities cannot prorate its bills because the new rate schedules and the old rate schedules do not in all instances apply to the same classification of customers. Furthermore, the new rate schedules contain different step rates from those shown on the old rate schedules.

United Cities by the change in the effective date would receive revenues which would approximate those revenues allowed under the Commission's Order.

The Commission is of the opinion that the request by United Cities to change the effective date as herein described should be allowed.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

That the rate schedules attached to the Application to Amend Order dated December 13, 1971, affecting Rate Schedules 705, 710, 730, 750, and 770, which have the effective date of December 15, 1971, be and are hereby authorized.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-3, SUB 43

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) For Authority To Issue and Sell $1,200,000 Principal Amount of First Mortgage Bonds	) ORDER GRANTING AUTHORITY TO ISSUE AND SELL SECURITIES

THIS CAUSE COMING BEFORE THE COMMISSION upon an Application of Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) for authority to issue and sell $1,200,000 principal amount of 8% First Mortgage Bonds, which Application was filed under date of March 12, 1971, through its counsel, McLendon, Brim, Brooks, Pierce & Daniels, Greensboro, North Carolina.

FINDINGS OF FACT

PETITIONER is incorporated under the laws of the State of Delaware and is duly domesticated under the laws of the State of North Carolina.

This Commission has previously granted the Petitioner a Certificate of Public Convenience and Necessity authorizing it to acquire certain gas franchises and properties in the State of North Carolina; Petitioner now holds franchises and is furnishing natural gas in Rockingham County and Beaver Island Township in Stokes County, North Carolina.

In order to meet the increasing demands for gas and to facilitate, improve, and extend its services, the Petitioner spent $3,324,143 ($1,565,540 for North Carolina Service Division in North Carolina) during the period April 1, 1966 (the date of Petitioner's last permanent financing) through December 31, 1970, and proposes to spend, in carrying out its program of construction and extension of services, approximately $438,000 ($147,700 for North Carolina Service Division in North Carolina) during the year 1971.

Subject to the approval of this Commission, Petitioner now proposes to issue $1,200,000 aggregate principal amount of 8% First Mortgage Bonds due April 1, 1996, and to sell said bonds to Modern Woodmen of American and Royal Neighbors of America at a price of 100% of the principal amount thereof plus accrued interest (if any) thereon from the date of said bonds to the date of delivery.

The expenses estimated to be incurred in connection with the issuance and sale of said bonds are approximately $18,000.

The issue and sale of said bonds and the execution of the Bond Purchase Agreement and Eighth Supplemental Indenture has been authorized by resolutions of Petitioner's Board of Directors.

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 finds 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 Petitioner;

(b) compatible with the public interest;

(c) necessary and appropriate for and consistent with the proper performance of 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.

THEREFORE:

IT IS ORDERED that Pennsylvania & Southern Gas Company be and it hereby is authorized, empowered, and permitted under the terms and conditions set forth in the Application and its supporting data:

(1) to execute and deliver to Modern Woodmen of American and Royal Neighbors of America a Bond Purchase Agreement in substantially the form attached to the Petition;

(2) to execute and deliver an Eighth Supplemental Indenture in substantially the form attached to the Petition;

(3) to issue and sell $1,200,000 principal amount of First Mortgage Bonds due April 1, 1996, to Modern Woodmen of American and Royal Neighbors of America at a price of 100% of the principal amount thereof plus accrued interest, if any, thereon from the date of the New Bonds to the date of delivery.

IT IS FURTHER ORDERED, That the proceeds to be derived from the sale of said bonds shall be devoted to the purposes as set forth in the Application.

IT IS FURTHER ORDERED, That the Petitioner supply the Commission with a copy of the Bond Purchase Agreement and a copy of the Eighth Supplemental Indenture as soon as such documents are available in final form.

IT IS FURTHER ORDERED, That the Petitioner shall file with this Commission in the future a notice of negotiations of short-term notes setting forth the principal amount thereof, rate of interest, and maturity date.

IT IS FURTHER ORDERED, That the Petitioner, within a period of thirty (30) days following the completion of the transactions authorized herein, shall file with this Commission in duplicate a revised report of actions taken and transactions consummated pursuant to the authority herein granted.

ISSUED BY ORDER OF THIS COMMISSION.

This the 30th day of March, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-15, SUB 166
DOCKET NO. B-69, SUB 109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Carolina Coach Company - Application for authority to operate from Greensboro over Interstate Highway 40 to junction North Carolina Secondary Road 1850 near Colfax and return over the same route serving no intermediate points	RECOMMENDED ORDER
Queen City Coach Company - Application for authority to operate from Winston-Salem over Interstate Highway 40 to its junction with North Carolina Secondary Road 1850 near Colfax and return over the same route serving no intermediate points	

HEARD IN: The Commission's Hearing Room, Raleigh, North Carolina on September 16, 1971, at 10:00 a.m.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicants:

Thomas W. Steed, Jr.
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
Appearing for Carolina Coach Company

R. C. Howison, Jr.
Joyner and Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
Appearing for Queen City Coach Company

For the Protestants:

J. Ruffin Bailey
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
Appearing for Greyhound Lines, Inc.

HUGHES, EXAMINER: By application filed with the Commission on July 26, 1971, Carolina Coach Company, 1201 South Blount Street, Raleigh, North Carolina (Carolina), seeks motor passenger common carrier authority to engage in the transportation of passengers, their baggage, mail and light express in the same vehicle with passengers, from Greensboro over Interstate Highway 40 to junction N. C.

Secondary Road 1850 near Colfax, and return over the same route serving no intermediate points.

By application filed with the Commission on July 26, 1971, Queen City Coach Company, 417 West Fifth Street, Charlotte, North Carolina (Queen), seeks motor passenger common carrier authority to transport passengers, their baggage, mail and light express in the same vehicle with passengers, from Winston-Salem over Interstate Highway 40 to its junction with N. C. Secondary Road 1850 near Colfax and return over the same route serving no intermediate points.

Both of the above described applications were set for hearing in the Commission's Hearing Room, on September 16, 1971, at 10:00 a.m., and notice thereof given by mail to the Applicants and to other motor carriers holding certificates or permits to operate in the territories proposed to be served by the applications. In addition, notices of the time and place of hearing, together with brief descriptions of the purpose of said hearing were published for two (2) successive weeks in newspapers of general circulation in the territories proposed to be served. Affidavits of newspaper publication have been filed with the Commission.

Within apt time, protest to both applications was filed by Greyhound Lines, Inc., 1400 West 3rd Street, Cleveland, Ohio (Greyhound). The applications are otherwise unopposed.

At the call of the case, all parties were present and represented by counsel. Without objection, the two (2) applications were consolidated for hearing.

The evidence for Carolina and Queen, hereinafter referred to as Applicants, tends to show that Applicants presently provide through service between Winston-Salem and Greensboro by combining Carolina's existing franchise between Greensboro and High Point over N. C. Secondary Road 1541 to the junction of N. C. Highway 68 and thence over N. C. Highway 68 to High Point and Queen's franchise between High Point and Winston-Salem over U. S. Highway 311; that said through bus operations are conducted under an equipment interchange agreement and that said through service is part of an overall service which extends beyond Winston-Salem and Greensboro; that Applicants presently operate twelve (12) daily round trips between Greensboro and Winston-Salem under the interchange agreement; that Applicants' operation between Winston-Salem and Greensboro is a part of their through bus service which extends from Asheville, Murphy and points in Tennessee on the west to Winston-Salem, thence to Greensboro and extending east to Raleigh and Norfolk; that through service is also offered by Applicants between Winston-Salem and Beaufort, Wilmington and Jacksonville, North Carolina; that when Interstate 40 is fully completed, Applicants will be able to operate between Raleigh and western North Carolina on into Tennessee over said Interstate Highway except for that portion of I-40 between Greensboro and Winston-Salem; that the purpose of these

applications is to enable Applicants to jointly use I-40 between Greensboro and Winston-Salem, along with the remainder of said highway; that the present combined service of Carolina and Queen between Greensboro and Winston-Salem is also utilized for the operation of through service between Norfolk and Memphis, Norfolk and Knoxville, Philadelphia and Memphis, Raleigh and Asheville and Raleigh and Memphis; that a traffic survey of passengers transported by Applicants between Greensboro and Winston-Salem for a test period - February 10 through March 9, 1971 - and annualized to show the projected or estimated volume of traffic that travels between Greensboro and Winston-Salem in a year, shows that Applicants transport some 13,000 intrastate passengers whose entire ride is between Greensboro and Winston-Salem, plus some 44,000 other intrastate passengers, for a total of some 57,000 intrastate passengers and a total of some 68,000 including interstate passengers; that all of the passengers shown in the survey were involved in the Applicants established operation over which through service is offered between Winston-Salem and Greensboro; that the highways over which Applicants' buses operate between Winston-Salem and Greensboro via High Point are presently two (2) lane highways with a great number of curves and no control of access, with entrances and exits all along the entire distance; that the distance between Winston-Salem and Greensboro, from bus station to bus station, over the present joint route is 33.9 miles, whereas, the proposed joint route over I-40 is 29.2 miles, which would result in a savings of 4.7 miles if the authority sought is granted; that use of the proposed route would provide a much smoother and more comfortable trip for passengers and would also be time saving in that the operation over the proposed route would require approximately 15 minutes less than the present operation via existing service routes, and that although the junction of I-40 and N. C. Secondary Road 1850 is shown as a terminus in each application, no service by either carrier is contemplated to this point and that for all practical purposes, Applicants are seeking a joint or combined alternate route to provide through service between Winston-Salem and Greensboro over Interstate 40 for operating convenience only with no service to intermediate points.

The evidence further tends to show that if the applications are granted eight (8) of the existing through schedules will be operated by Applicants over I-40 between Winston-Salem and Greensboro and four (4) of said schedules will continue to operate between these termini over the existing regular service routes via High Point.

The evidence for Protestant Greyhound, tends to show that Protestant holds authority from Winston-Salem to Kernersville over N. C. Highway 150 and U. S. Highway 421; thence to Greensboro over U. S. Highway 421 via Colfax, Friendship and Guilford College, serving all intermediate points and that in addition, Protestant operates over a portion of another highway leading from Winston-Salem

towards Kernersville and over Interstate Highway 40 from Winston-Salem to Kernersville, serving all intermediate points and thence over Interstate 40 to Greensboro as an alternate route serving no intermediate points on that portion of I-40; that by virtue of its shorter routes, Greyhound presently has the competitive advantage for traffic moving between Winston-Salem and Greensboro in that Applicants' running time between the two (2) points at present is fifty-five (55) minutes on the fastest trip, whereas, operations by Applicants over the routes applied for would reduce the time to 40 minutes, which would be directly competitive with Greyhound's fastest time; that with the number of trips that Greyhound presently operates between Winston-Salem and Greensboro on which they are required to render service to the intermediate points of Guthrie, Kernersville, Sedge Garden, Colfax and Guilford College, means that Greyhound would not be in a position to render as much non-stop service as Applicants and therefore, would lose passengers who would be attracted to Applicants buses because of the shorter running time; that Protestant presently operates with some vacant seats between the involved points and that the loss of additional passengers might result in Protestants inability to continue to render the same number of schedules and that if the authority sought is granted, Greyhound will be unable to compete with Applicants over I-40 because of the local service that it must render to intermediate points.

Briefs were filed.

Upon consideration of the applications, the evidence adduced in this proceeding, all of the exhibits and the briefs filed, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That Applicant, Carolina Coach Company, is the holder of Passenger Common Carrier Certificate No. B-15, heretofore issued to it by this Commission, under which it holds authority to furnish regular route passenger service between Greensboro and High Point over N. C. Secondary Road 1541 to the junction of N. C. Highway 68 and thence over N. C. Highway 68 to High Point,

(2) That Applicant, Queen City Coach Company, is the holder of Passenger Common Carrier Certificate No. B-69, heretofore issued to it by this Commission, under which it holds authority to furnish regular route passenger service between Winston-Salem and High Point over U. S. Highway 311,

(3) That Protestant, Greyhound Lines, Inc., is the holder of Passenger Common Carrier Certificate No. B-7, heretofore issued to it by this Commission, under which it holds authority to furnish regular route through passenger service between Winston-Salem and Greensboro over old U. S. Highway 421, N. C. Highway 150, U. S. Highway 421, Interstate 40 and/or combinations of said highways, serving all

intermediate points except on that portion of I-40 between Kernersville and Greensboro which is served as an alternate route for operating convenience only with no service to intermediate points,

(4) That by virtue of an equipment interchange agreement, Carolina Coach Company and Queen City Coach Company furnish through service between Winston-Salem and Greensboro via the routes enumerated in Findings of Fact (1) and (2),

(5) That the through service which Applicants jointly provide between Winston-Salem and Greensboro is in connection with a generally east-west service between points east of Greensboro and points west of Winston-Salem, while the Greyhound service between Winston-Salem and Greensboro is in connection with its generally north-south service between points north of Greensboro and points south of Winston-Salem,

(6) That because of the nature of the operations of Applicants and Protestant extending beyond Greensboro and Winston-Salem, one being an east-west operation and the other a north-south operation, the only passengers who might possibly be diverted from Protestant's to Applicants' buses would be generally those whose entire ride is between Greensboro and Winston-Salem,

(7) That Applicants do not propose to "serve a route" within the meaning of the term as used in G. S. 62-262(f), but will merely traverse Interstate Highway 40 for operating convenience only and as an alternate route in connection with their existing authorized "through bus" operation between Winston-Salem and Greensboro,

(8) That Applicants' proposed joint operation over I-40 will not be in addition to existing authorized service between Greensboro and Winston-Salem because the same service between these termini is presently being provided by Applicants over the longer route and that the reduction in time and the increased comfort, security and convenience to through passengers which will follow from the use of the shorter, safer I-40 will be in the public interest,

(9) That Applicants will continue to provide reasonable and adequate service on their existing regular service routes between Winston-Salem and High Point and between High Point and Greensboro and on their combined operation over said routes between Winston-Salem and Greensboro via High Point,

(10) That the joint "through bus" operation over Interstate Highway 40 between Winston-Salem and Greensboro proposed by Applicants will afford a safer, more convenient, more efficient and more economical operation without materially changing the competitive situation between Applicants and Protestant,

(11) That public convenience and necessity require the service proposed by Carolina Coach Company in Docket No. B-15, Sub 166 and by Queen City Coach Company in Docket No. B-69, Sub 109, subject to the condition that the authority granted herein shall be restricted to the sole purpose of providing through bus service between Greensboro and Winston-Salem over I-40 as a joint or combined alternate route, for operating convenience only, with no service to intermediate points and that service authorized at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 be for interchange purposes only,

(12) That Applicants, Carolina Coach Company and Queen City Coach Company, are fit, willing and able to properly perform the proposed service on a continuing basis, and

(13) That Applicants, Carolina Coach Company and Queen City Coach Company, are solvent and financially able to render the proposed service.

CONCLUSIONS

Applicants are major common carriers of passengers. They are both members of the National Trailways system and by means of coordinated time schedules and equipment interchange agreements between themselves and with other Trailway carriers, they provide through service without change of bus between a large number of points throughout the State and Nation. As here pertinent, they conduct such operations between Greensboro and Winston-Salem as intermediate points on their regular routes, leading towards and extending beyond Greensboro and Winston-Salem.

Protestant is a major nationwide common carrier of passengers and provides through service without change of bus between numerous points throughout the State and Nation over its own authorized routes. Greensboro and Winston-Salem are intermediate points on Protestant's regular routes leading towards and extending beyond Greensboro and Winston-Salem. Because of its unrestricted local franchise between Greensboro and Winston-Salem, Protestant is authorized and required to furnish local service to intermediate points on most of its authorized routes between these termini.

Had the Applicants' authorized service routes between Winston-Salem and Greensboro via High Point, under which the joint operation is conducted, been held exclusively by either Applicant, this application would not have been necessary. The holder of the franchise could have simply filed a notice of deviation under this Commission's Rule R2-71, under which rule the matter would have been considered. Authority to deviate from a regular service route under Rule R2-71 does not require a showing of public convenience and necessity. Under the circumstances however, since the Deviation Rule R2-71 does not contain a provision for two carriers with connecting franchises to qualify under said

rule, these applications for certificated authority were filed.

Applicants have shown that they presently operate through service between the termini involved over a practicable and feasible route under appropriate authority from this Commission; that Applicants jointly are an effective competitor of Protestant by reason of handling a substantial amount of traffic between these termini, and that the competitive situation will not be materially changed to the detriment of Protestant or in a manner which amounts to a new service. Under the circumstances, the Hearing Examiner concludes that the granting of the applications herein will have little or no adverse affect on the overall operations of Protestant, and that the advantages and benefits to the using public will far outweigh any minor disadvantages which might be envisioned by Protestant.

With regard to contention of Protestant that G. S. 62-262(f) prohibits the Commission from granting a certificate for the transportation of passengers to an applicant proposing to serve a route already served, the Supreme Court of North Carolina in the State of North Carolina ex rel Utilities Commission v. Queen City Coach Company, 233 N. C. 119 among other things, had this to say:

> "The mere fact that the two carriers will use the same highway for a short distance does not require the denial of the application in toto. A traversing of the same highways for certain distances by competing carriers may readily become necessary in the public interest and in such an instance, more than one certificate may be granted, subject to such restrictions as will protect the authorized carrier in respect of that part of the highway to be traversed by both."

It is the conclusion of the Hearing Examiner that the applications of Carolina Coach Company and Queen City Coach Company herein should be granted with a restriction that the routes authorized shall be used as alternate routes for operating convenience only, with no service to intermediate points and that service authorized at the junction of Interstate 40 and North Carolina Secondary Road 1850 shall be for interchange purposes only.

IT IS, THEREFORE, ORDERED:

(1) That Passenger Common Carrier Certificate No. B-15, heretofore issued to Carolina Coach Company, be, and the same is, hereby amended to include the authority more particularly described in Carolina Coach Company Exhibit A attached hereto and made a part hereof.

(2) That Passenger Common Carrier Certificate No. B-69, heretofore issued to Queen City Coach Company, be, and the same is, hereby amended to include the authority more

particularly described in Queen City Coach Company Exhibit A attached hereto and made a part hereof.

(3) That Carolina Coach Company and Queen City Coach Company shall comply with the rules and regulations of the Commission and institute operations under the authority herein granted within thirty (30) days from the date this order becomes final.

BY ORDER OF THE COMMISSION.

This the 2nd day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Carolina Coach Company
Raleigh, North Carolina — Certificate No. B-15

EXHIBIT A (1) To transport passengers, their baggage, mail and light express over the following routes and between the following points, except as to such restrictions as may be indicated in the route description.

EXHIBIT A (2) From Greensboro over Interstate Highway 40 to junction North Carolina Secondary Road 1850 near Colfax and return over the same route serving no intermediate points.

RESTRICTION: Authority shall be used for the sole purpose of providing through bus service between Greensboro and Winston-Salem over Interstate Highway 40 through interchange with Queen City Coach Company as a joint or combined alternate route for operating convenience only. Service is authorized at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 for interchange purposes only.

Queen City Coach Company
Charlotte, North Carolina — Certificate No. B-69

EXHIBIT A (1) To transport passengers, their baggage, mail and light express over the following routes and between the following points, except as to such restrictions as may be indicated in the route description.

EXHIBIT A (2) From Winston-Salem over Interstate Highway 40 to its junction with North Carolina Secondary Road 1850 near Colfax and return over the same route serving no intermediate points.

RESTRICTION: Authority shall be used for the sole purpose of providing through bus service between Greensboro and Winston-Salem over Interstate Highway 40 through interchange with Carolina Coach Company as a joint or combined alternate route for operating convenience only. Service is authorized at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 for interchange purposes only.

DOCKET NO. B-15, SUB 167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Carolina Coach Company, 1201 South Blount) RECOMMENDED
Street, Raleigh, North Carolina) ORDER

HEARD IN: The Commission's Hearing Room, Raleigh, North Carolina, on October 8, 1971, at 10:00 A. M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

Arch T. Allen
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

Tom Sneed, Jr.
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Protestant:

Clarence H. Noah
Attorney at Law
1425 Park Drive
Raleigh, North Carolina
Appearing for: Southern Coach Company

HUGHES, EXAMINER: By application filed with the Commission on August 24, 1971, Carolina Coach Company, 1201 South Blount Street, Raleigh, North Carolina, makes application under the provisions of the Public Utilities Act, for a certificate to transport passengers, their baggage, mail and light express in the same vehicle with passengers, as a common carrier by motor vehicle, from Raleigh over relocated North Carolina Highway 54 to junction Interstate Highway 40, and thence over Interstate Highway 40 to junction North Carolina Secondary Road 1959 near Nelson,

and return over the same route serving all intermediate points.

Notice of the application, together with the time and place of hearing and a description of the rights sought, was given by mail to the Applicant and to other motor carriers holding certificates or permits to operate in the territory proposed to be served. Protest thereto was timely filed by Southern Coach Company. The application is otherwise unopposed.

All parties were present at the hearing and represented by counsel.

Evidence for the Applicant consists of the testimony of Mr. Aaron Cruise, Applicant's Traffic Manager and certain exhibits some of which were offered and received in evidence by reference. The exhibits include Applicant's franchise, annual report, tariffs and lists of equipment on file with the Commission, along with Affidavit of Publication of notice of hearing and other exhibits. Testimony of Applicant's witness tends to show that Applicant presently has four (4) different franchise routes between Raleigh and Durham, which are now being served; that Applicant presently has thirty-five (35) schedules per day operating between Durham and Raleigh; that presently three (3) daily trips are operated by Applicant between Raleigh and Durham via the Research Triangle; that in the event the rights sought are granted, three (3) additional trips between Raleigh and Durham will be instituted via the Research Triangle and the new route; that Applicant has provided bus service between Durham and Raleigh over various highways, which have changed from time to time due to relocations and the construction of new highways, etc., since the year 1925 and prior thereto; that Applicant has the equipment and financial ability to provide adequate and continuous service over the route sought and that the rerouting of three (3) trips over the new route will have no material affect on existing service or result in any substantial diminution of service over existing routes.

Protestant, Southern Coach Company, offered no oral testimony but did offer certain exhibits by reference, including its franchise, annual report, tariffs and lists of equipment, which were received in evidence.

A motion by Applicant at the beginning of the hearing to dismiss the protest and renewed at the conclusion thereof, was taken under advisement. The motion is now denied.

Upon consideration of the application, the evidence presented and the testimony of record, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That public convenience and necessity requires the proposed service in addition to any existing authorized transportation service,

(2) That the Applicant is fit, willing and able to properly perform the proposed service, and

(3) That Applicant is solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

Applicant first began operating motor passenger service between Durham and Raleigh some forty-five (45) years ago, when the bus industry was in its infancy and has provided such service adequately and continuously up until the present time. When highways between the two points, from time to time, were relocated or new and improved highways came into being, as herein, Applicant has petitioned the Commission for appropriate authority to serve such relocated and new and improved highways in the interest of the public.

Protestant, in its written protest alleges, as follows:

> "Each of Applicant's routes between Durham and Raleigh is much shorter than the only one route the Protestant has and each of them gives Applicant a substantial advantage, so much so that Protestant is unable to compete with it. Added routes adversely affect Protestant's service to the public."

As a matter of fact, the only route that Protestant can operate between Durham and Raleigh is via Apex and Holly Springs, which route, because of its circuitousness is in no sense nor by any stretch of the imagination, competitive with Applicant's direct service between Raleigh and Durham. Furthermore, Protestant only operates one schedule a week in each direction over its roundabout route.

The fact that Applicant presently has some thirty-five (35) bus schedules operating between Durham and Raleigh, along with the additional well known fact that the Research Triangle is growing by leaps and bounds, coupled with the further fact that the proposed route, as it now exists and with future improvements, will provide a much safer, quicker and improved service, is sufficient to show that a grant of authority is in the public interest and is required by public convenience and necessity.

Based upon the record, the evidence presented in this case and the foregoing findings of fact, the Hearing Examiner concludes 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 the application of Carolina Coach Company in this docket be, and the same is, hereby granted and that Common Carrier Certificate No. B-15, heretofore issued to Applicant, be amended to include the authority more particularly described in Exhibit A hereto attached and made a part hereof.

(2) That Carolina Coach Company comply with the rules and regulations of the Commission and begin operations, under the authority herein granted, within thirty (30) days from the date this order becomes final.

BY ORDER OF THE COMMISSION.

This the 19th day of October, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Carolina Coach Company
Raleigh, North Carolina — Certificate No. B-15

EXHIBIT A (1) To transport passengers, their baggage, mail and light express in the same vehicle with passengers over the following routes and between the following points:

EXHIBIT A (2) From Raleigh over relocated North Carolina Highway 54 to junction Interstate Highway 40, and thence over Interstate Highway 40 to junction North Carolina Secondary Road 1959 near Nelson, and return over the same route serving all intermediate points.

DOCKET NO. B-254, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of S. D. Small, d/b/a Central Buslines of North Carolina, 1228 Marshall Street, Raleigh, North Carolina) ORDER GRANTING OPERATING AUTHORITY

HEARD IN: Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, at 10:00 A.M., on Thursday, December 17, 1970

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

APPEARANCES:

For the Applicant:

S. D. Small
1228 Marshall Street
Raleigh, North Carolina
(Appearing for Himself)

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

RHYNE, COMMISSIONER: On November 13, 1970, the Commission received the application for passenger common carrier certificate filed by S. D. Small, d/b/a Central Buslines of North Carolina, for a certificate to transport passengers, their baggage, mail flight express in the same vehicle with the passengers over such regular routes as follows: "From Chapel Hill over N. C. Highway 86 to Junction Orange County Road 1718, and thence over Orange County Road 1718 to Junction Orange County Road 1719; turn left .8 mile and return over the same route serving no intermediate points."

On November 13, 1970, the Commission received a request from Mr. Harold Jernigan, Principal of Carolina Friends School, Route 1, Box 183, Durham, North Carolina, filed "on behalf of the Parents' Council of Carolina Friends School", that Small be granted a Temporary Permit pending a hearing. On November 17, 1970, the Commission issued an order granting temporary authority in which the Commission stated the following: "It appears that applicant is an experienced motor passenger carrier and fully qualified financially and otherwise to provide service under the temporary authority sought. It further appears that there are no existing connecting or competing carriers who would have an interest in the matter."

The matter came on for hearing on December 17, 1970, at 10:00 A.M. as set in the Notice of Application and Hearing issued on November 19, 1970. The requisite certificate of publication was filed indicating that the Notice of Application and Hearing was printed in the _Chapel Hill Weekly_ in the issues of December 6 and December 13, 1970. The requisite maps were filed. Mr. Small represented himself and presented three witnesses as follows: Harold Jernigan, Elizabeth Endicott and Mrs. Ruel Tyson; and tendered Mrs. Alice Rupen.

Mr. S. D. Small testified that a certificate of insurance is filed with the Commission and that he currently operates three buses in a shuttle run which consists of nine round

trips a day between Durham and Chapel Hill. He testified that his personnel consists of himself and two more drivers, that his proposed operation, which has been in effect for approximately one month under the temporary authority, consists of one round trip each day from Chapel Hill to the Carolina Friends School. The trip covers a distance of approximately 8 miles each way and is being served by one bus which currently carries 35 passengers and has a capacity for a total of 38 passengers. Additional buses will be provided as needed. The fare is 45 cents for an adult or 35 cents for a student one way. Tickets may be bought in a book of 10 student tickets for $2.25.

Mr. Harold Jernigan, Principal of Carolina Friends School, testified that parents have for some time suggested that there be bus service to Carolina Friends School, that no other carriers would provide this service, that before this service was provided all students were brought to the school by their parents individually or in car pools, that there is a public need for this service and that he considered the proposed bus service would provide additional safety for the students.

Mrs. Elizabeth Endicott testified that as the mother of two students at Carolina Friends School, she felt the bus service could provide greater safety for the students and greater convenience for herself. She approved the proposed rate structure. Mrs. Alice Rupen was tendered with the instructions that her testimony would be similar to that of Mrs. Endicott. Mrs. Ruel Tyson testified that her views included those of Mrs. Endicott but added that her position as a working mother made the proposed bus service even more important to her.

Mr. Jernigan's testimony included the factual information that the Carolina Friends School consists of grades 1-9 at the Orange County site and had enrolled 149 students from Chapel Hill. He testified that he expected the demand for Mr. Small's bus service to increase with its continued successful operation. No protest has been filed and no complaints have been received by the Commission.

Mr. Small filed the requisite highway maps showing the routes of the proposed operation and submitted the requisite statement of assets and liabilities, which indicates net assets of approximately $10,000.00.

Whereupon the Commission makes the following

FINDINGS OF FACTS

1. That there are 149 students in grades 1-9 who must be transported each school day a distance of approximately 8 miles from their residence in Chapel Hill, North Carolina to the Carolina Friends School.

2. That the parents and students of Carolina Friends School require a better means of transportation than has heretofore been provided by individual automobiles and car pools.

3. That no protests have been filed and the proposed service will not be provided by other existing authorized transportation service.

4. That the applicant has provided the proposed service for approximately one month without complaint, that the applicant has thus demonstrated that he is fit, willing and able to properly perform the proposed service.

5. That the applicant is prepared to increase the number of buses used in providing the proposed service as the demand grows.

6. That the applicant has net assets of approximately $10,000.00.

Whereupon the Commission reaches the following

CONCLUSIONS

The applicant has satisfied the burden of proof required by G. S. 62-262 to show:

1. That public convenience requires 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, THEREFORE, ORDERED:

That S. D. Small, d/b/a Central Buslines of North Carolina, 1228 Marshall Street, Raleigh, North Carolina, be and hereby is, granted authority as a regular route common carrier of passengers, their baggage, mail and flight express in the same vehicle with passengers in accordance with Exhibit A attached hereto and made a part hereof.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-254 Sub 5 — S. D. Small, d/b/a
Central Buslines of North Carolina
1228 Marshall Street
Raleigh, North Carolina

EXHIBIT A

(1) To transport passengers, baggage, mail and express over the following routes serving all intermediate points except as to such restrictions as may be indicated in the route description.

(2) From Chapel Hill over North Carolina Highway 86 to Junction Orange County Road 1718, and thence over Orange County Road 1718 to Junction Orange County Road 1719, turn left .8 mile and return over the same route serving no intermediate points.

DOCKET NO. B-7, SUB 83

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Greyhound Lines, Inc.,	) ORDER
1400 West Third Street, Cleveland, Ohio	) GRANTING
44113, to Amend its Certificate	) APPLICATION

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on Thursday, August 5, 1971, at 9:00 A.M.

BEFORE: Chairman H. T. Westcott, Commissioners Miles H. Rhyne and Hugh A. Wells (Presiding)

APPEARANCES:

For the Applicant:

J. Ruffin Bailey, Esq., and
Kenneth Wooten, Jr., Esq.
Bailey, Dixon, Wooten & McDonald
P. O. Box 2246, Raleigh, North Carolina 27602

No Protestants

WELLS, COMMISSIONER: Application was filed by Greyhound Lines, Inc., 1400 West Third Street, Cleveland, Ohio 44113, on June 9, 1971, for a common carrier franchise to transport passengers, their baggage, mail and light express over the following routes:

"From Winston-Salem, North Carolina, over Interstate Highway 40 to its intersection with Interstate Highway 77 near Statesville, North Carolina, thence over Interstate Highway 77 to junction U. S. Highway 21 near Cornelius, North Carolina, and return over

> the same route serving all intermediate points including access roads to cities and town located on Greyhound's present certificated route between Winston-Salem and Cornelius over U. S. Highway 158, U. S. Highway 64 and U. S. Highway 21 and North Carolina State Highway 115."

By Order of the Utilities Commission issued June 15, 1971, public notice was given and the application was set for hearing. The Applicant was required to publish notice of the application and of the hearing 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.

Greyhound offered witnesses and nine (9) exhibits in support of its application, some of which showed affidavit of publication; present certificated route between Winston-Salem and Cornelius, and Greyhound's proposed authority; service presently being operated between Winston-Salem and Charlotte; ticket sales (total of 1900) for the month of May, 1971, in the proposed area to be served; its Safety Program; Balance Sheet and Income Statement as of December 31, 1970.

Witness John E. Adkins, Vice President - Traffic for Greyhound Lines East, who is in charge of traffic matters for Greyhound in North Carolina, testified that the requested authority would provide a faster, safer and more comfortable type of service for the public.

Mr. Otis L. Snow who is employed by Ingersoll-Rand Co., testified that he favors the application. He testified that it would especially improve package express service for the Mocksville plant which manufactures portable air compressors.

Mrs. Gertha Foster of Mocksville who is a practical nurse and works in Winston-Salem, testified that she uses the bus frequently and favors the application.

Mr. Claude Tucker of Route 1, Ramseur, North Carolina, who works in Mooresville for Burlington Mills, testified that he also uses the bus and favors the application.

Mrs. C. C. Singletary of Statesville, who works for the City of Charlotte (Model Cities Program), offered testimony in support of the application saying that she has no other way of making the trip to and from Charlotte other than by bus and that the proposed route is more convenient for her.

Mr. Joe Harris and 26 more public witnesses whose testimony would similarly support the application were tendered and their names entered in the record as Exhibit No. 9.

Based upon the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) That public convenience and necessity requires the proposed service in addition to existing authorized service; and

(2) That the applicant, Greyhound Lines, Inc., 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

The testimony presented by five (5) witnesses and 27 tendered witnesses clearly indicates that there is a need for the proposed bus service; that the Applicant has met the burden of proof as provided in G. S. 62-262(e); and, that its Certificate No. B-7 previously issued by the North Carolina Utilities Commission should be amended to include the proposed service.

IT IS, THEREFORE, ORDERED:

1. That the applicant, Greyhound Lines, Inc., be, and hereby is, authorized to engage in the transportation of passengers, their baggage, mail and light express as particularly described in Exhibit A attached hereto and made a part of this Order.

2. That Greyhound Lines, Inc., will begin operations only after having fully complied 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. Said service shall begin as herein authorized within thirty (30) days from the date this Order issues.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-7 SUB 83 — Greyhound Lines, Inc.
1400 West Third Street
Cleveland, Ohio 44113

EXHIBIT A — To transport passengers, their baggage, mail and light express over the following routes:

From Winston-Salem, North Carolina, over Interstate Highway 40 to its intersection with Interstate Highway 77 near Statesville, North Carolina, thence over Interstate Highway 77 to junction U. S. Highway 21 near Cornelius, North Carolina, and return over the same route serving all intermediate points including access roads to cities and town (sic) located on Greyhound's present certificated route between Winston-Salem and Cornelius over U.S. Highway 158, U.S. Highway 64 and U.S. Highway 21 and North Carolina State Highway 115.

DOCKET NO. B-245, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Lawrence C. Stoker, d/b/a Suburban Coach) ORDER AMENDING
Company, Morganton, North Carolina -) CERTIFICATE
Petition to Amend Certificate)

BY THE COMMISSION: By petition filed with the Commission on January 21, 1971, Lawrence C. Stoker, d/b/a Suburban Coach Company, seeks to amend Certificate No. B-245 heretofore issued to him by eliminating therefrom the following described franchised routes:

"Route 1. From Morganton, N.C., to Salem, N.C., over U.S. Highway 64-A and unnumbered highway, and return."

"Route 4. From Bridgeport, N.C., north over unnumbered county highway known as the 'Enon Road,' via the 'Falls Road' to its point of intersection with U.S. Highway 70, and return over the same route, a distance of approximately 9.6 miles."

Petitioner represents and the Commission's investigation reveals that said franchised routes are dormant in that bus service has not been provided over said routes for several years and that a public need for such service no longer exists.

Upon consideration thereof, the Commission is of the opinion and finds that public convenience and necessity no longer require service over said routes and that the petition should be granted.

IT IS, THEREFORE, ORDERED:

That Common Carrier Certificate No. B-245, heretofore issued to Lawrence C. Stoker, d/b/a Suburban Coach Company, be, and the same is hereby amended by eliminating therefrom the following described routes:

"Route 1. From Morganton, N.C., to Salem, N.C., over U.S. Highway 64-A and unnumbered highway, and return.

"Route 4. From Bridgeport, N.C., north over unnumbered county highway known as the 'Enon Road,' via the 'Falls Road' to its point of intersection with U.S. Highway 70, and return over same route, a distance of approximately 9.6 miles."

BY ORDER OF THE COMMISSION.

This the 28th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. B-271, SUB 1
DOCKET NO. B-13, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Docket No. B-271, Sub 1 Thomas Ralph Young, d/b/a Asheville-Elk Mountain Bus Line, Complainant vs. Lawrence C. Stoker, d/b/a Suburban Coach Lines Defendant and Docket No. B-13, Sub 21 Proposed transfer from Mars Hill-Weaverville Bus Line, Inc., to Lawrence C. Stoker, d/b/a Suburban Coach Lines, of Motor Passenger Operating Rights	ORDER CONSTRUING OPERATING RIGHTS

HEARD IN: Room 207, Buncombe County Courthouse, Asheville, North Carolina, on September 29, 1971, at 2:00 P.M.

BEFORE: Commissioner John W. McDevitt, Presiding; and Commissioners Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For the Complainant:

S. J. Crow, Esq.
Gudger, Erwin and Crow
Post Office Box 7036

Asheville, North Carolina 28807
Appearing for: Thomas Ralph Young, d/b/a
Asheville-Elk Mountain Bus Line

For the Defendant-Respondent:

E. L. Loftin, Esq.
Loftin and Loftin
Gennett Building
Asheville, North Carolina

and

Lawrence C. Stoker, Esq.
Attorney at Law
Jackson Building
Asheville, North Carolina
Appearing for: Lawrence C. Stoker,
d/b/a Suburban Coach Lines

For the Commission Staff:

William E. Anderson, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building, One West Morgan Street,
Raleigh, North Carolina 27602

BY THE COMMISSION: Investigation and hearing in these two matters were initiated by the filing of a Complaint on June 29, 1971, by Thomas Ralph Young, d/b/a Asheville-Elk Mountain Bus Line (hereinafter also styled "Young") alleging that Lawrence C. Stoker, d/b/a Suburban Coach Lines (hereinafter also styled "Stoker"), was operating over a route not contained in his (Stoker's) franchise certificate and was in direct competition with the authorized operations of Young, to wit: that Stoker was engaged in the operation of buses on Broadway, Riverside Drive and Burnsville Hill Road. The complaint was initially docketed as Docket No. B-271, Sub 1.

On May 7, 1971, in Docket No. B-13, Sub 21, the Commission issued an Order approving transfer of operating rights, in part, in which the Commission approved a transfer of the franchise theretofore held by Mars Hill-Weaverville Bus Lines, Inc., to Stoker to the extent indicated in Appendix A of that Order, as follows:

APPENDIX "A"

Operating Rights for Which Transfer from Mars Hill-Weaverville Bus Lines, Inc., to Lawrence C. Stoker, d/b/a Suburban Coach Lines is Authorized in Docket No. B-13, Sub 21

Lawrence C. Stoker, d/b/a Certificate No. B-13
Suburban Coach Lines
Asheville, North Carolina

EXHIBIT A To transport passengers, baggage, mail and express over the following route serving all intermediate points except as to such restrictions as may be indicated in the route description.

1. From Asheville Union Bus Station over such streets in the corporate limits of Asheville as the city authorities may direct, to U. S. Highways Nos. 19 and 23; thence over said highways via Weaverville and Stocksville to the intersection of the highway leading to Mars Hill; thence over said Mars Hill Highway to Mars Hill.

2. From Beech over the Reams Creek Road to Weaverville, thence to Asheville over U. S. Highway 19, limited to passengers originating in or destined to the community along the Reams Creek Road between Beech and Weaverville with the right to transport such passengers to and from Asheville and intermediate points along U. S. Highway 19 between Asheville and Weaverville.

By Order issued the 20th day of July, 1971, in Docket No. B-13, Sub 21, the Commission ordered that Stoker immediately cease and desist from further operations over Broadway, Riverside Drive and Burnsville Hill Road and directed Stoker to "operate his buses over U. S. Highways 19 and 23, both within (Merrimon Avenue) and without the City of Asheville, in his operation between Asheville and Mars Hill under authority granted in this docket."

By Answer to Complaint filed on July 30, 1971, Stoker answered the Complaint, admitting and denying particular allegations.

When the two matters were called for consolidated public hearing at the time and place designated, Mr. Thomas Ralph Young testified that under Certificate No. B-5 he conducts passenger bus common carrier operations from Asheville by way of temporary Highway No. 63, to Woodfin, via Burnsville Hill Road, to the top of Burnsville Hill, and via Elk Mountain Road to Elk Mountain Village and Mill, to Craggy Bridge, to the top of Craggy Hill and return by the same route; that under the old Mars Hill-Weaverville franchise, the Mars Hill-Weaverville bus line had a franchise that "was an exact duplication of my franchise to the point of Craggy Bridge"; that he had observed another operator operating within his franchise territory on or after June 10, 1971; that the buses so operated belonged to Stoker; that he observed such operations from the period of June 10, 1971, until the date of the cease and desist order; that he observed both the picking up and letting off of passengers

in the area; that the operations of Suburban Coach Lines in that manner resulted in a direct loss of revenue to his bus operations to the amount of between $2.00 and $5.00 a day during this period; that under the franchise which Young operates on Burnsville Hill Road, his buses turn off to the west at the intersection of Burnsville Hill and Elk Mountain Road, and in so doing stops short of U. S. Highways 19-23; that there are members of the public residing on or near Elkwood Avenue between Elk Mountain Road and Merrimon Avenue who are rendered bus service, but not on a "front door" basis, by his operation and by Stoker's operation along U.S. Highway 19-23.

Mr. Lawrence C. Stoker testified that around the first of the year he entered into a contract with Mars Hill-Weaverville Bus Line, Inc., to buy that corporation's certificate; that pursuant to the May 7, 1971 Commission Order in the matter of the transfer, he began operating from the Union Station in Asheville to Mars Hill by way of Weaverville; that the nature of his operation was as follows: "Union Station on Lexington Avenue down Broadway to Riverside Drive to Burnsville Hill, over Burnsville Hill to New Bridge then on 19-23 into Weaverville and Mars Hill and return the same route"; that Mars Hill-Weaverville Bus Line, Inc. had operated over the same streets for many years; that the transfer was not a verbatim transfer of Mars Hill-Weaverville's entire franchise; that the Certificate issued by the Commission "did not say which way to go to 19-23"; that in his operations down Broadway-Riverside Drive-Burnsville Hill Road, Stoker's buses went outside the city limits "somewhere on Broadway"; that there is a "U. S. 19-23" highway sign at the intersection of Broadway and Riverside Drive; that Riverside Drive (NC Highway 191) is the truck route for U. S. 19-23; that "the first highway sign on 19-23 that I am familiar with is at New Bridge"; that at New Bridge U. S. Highway 19-23 "goes into Merrimon Avenue"; that the City of Asheville has not instructed him by ordinance or resolution as to any particular routes for his operations to follow within the city.

A number of members of the using public appeared to testify as to a need for bus service on Elkwood Avenue between Elk Mountain Road and Merrimon Avenue. Their testimony was not received into evidence inasmuch as all parties stipulated that "front door" service was not available to them under the circumstances of Young's operating out Elk Mountain Road and Stoker's operating on Merrimon Avenue (U. S. 19-23).

The parties stipulated that the Commission could by letter exchange between the Commission and the N. C. State Highway Commission establish the official route of U. S. 19-23 through Asheville and put that in the record.

The North Carolina State Highway Commission subsequently provided an official map indicating the "true and accurate representation of the location of U. S. 19 and 23". This

map represents U. S. Highways 19 and 23 as coinciding with Merrimon Avenue from New Bridge to downtown Asheville. The accompanying statement explains that there is under construction State Highway Project 8.3023215 "parallel to the French Broad River in a northerly direction east of the river to a point on existing U. S. 19-23 at New Bridge", and that this highway will be designated "U. S. 19-23" upon its completion.

Based upon the evidence adduced at the hearing and the records of the Commission in this docket, the Commission makes the following

FINDINGS OF FACT

(1) That Lawrence C. Stoker, d/b/a Suburban Coach Lines, and Ralph Thomas Young, d/b/a Asheville-Elk Mountain Bus Line, are both motor carriers of passengers duly certificated and under the jurisdiction of this Commission for the purposes of the North Carolina Public Utilities Act.

(2) That by order issued on May 7, 1971, the Commission authorized a transfer of the following operating rights from Mars Hill-Weaverville Bus Line, Inc., to Lawrence C. Stoker, d/b/a Suburban Coach Lines:

> To transport passengers, baggage, mail and express over the following routes serving all intermediate points except as to such restrictions as may be indicated in the route description.

1- From Asheville Union Bus Station over such streets in the corporate limits of Asheville as the city authorities may direct, to U. S. Highways Nos. 19 and 23; thence over said highways via Weaverville and Stocksville to the intersection of the highway leading to Mars Hill; thence over said Mars Hill Highway to Mars Hill.

2- From Beech over the Reams Creek Road to Weaverville, thence to Asheville over U. S. Highway 19, limited to passengers originating in or destined to the community along the Reams Creek Road between Beech and Weaverville with the right to transport such passengers to and from Asheville and intermediate points along U. S. Highway 19 between Asheville and Weaverville.

(3) That Stoker's operation of passenger buses on Riverside Road (State Highway 191) and on the Burnsville Hill Road (State Road 1674) included operations which were outside of the corporate limits of the City of Asheville, but between the Union Station and U. S. Highways 19 and 23.

(4) That the State Highway 191 and State Road 1674 were not, as of the time of public hearing in Docket No. B-13, Sub 21, and are not as of yet, designated as "U. S. 19-23".

(5) That Stoker's operation of motor passenger buses on State Highway 191 and State Road 1674 is beyond the Operating Rights authorized in Docket No. B-13, Sub 21.

Whereupon the Commission reaches the following

CONCLUSIONS

The Commission concludes that Certificate No. B-13 does not authorize Lawrence C. Stoker, d/b/a Suburban Coach Lines, to conduct passenger bus operations on State Highway 191 (Riverside Drive) and State Road 1674 (Burnsville Hill Road).

The Commission Order issued May 7, 1971, authorizes Stoker to operate "from Asheville Union Bus Station over such streets in the corporate limits of Asheville as the City authorities may direct, to U. S. Highways No. 19 and 23; thence over said highways...". There is no evidence that the Asheville city authorities have directed Stoker to operate over any particular route to U. S. Highways 19-23. The Commission concludes that the interim order to cease and desist from further operations over Broadway, Riverside Drive and the Burnsville Hill Road should be made permanent and that Stoker should operate his buses over U. S. Highways 19-23 both within (presently Merrimon Avenue) and without the City of Asheville in his operation between Asheville and Mars Hill under authority granted May 7, 1971, in this docket.

Regarding the stipulated public need for additional service on the part of those members of the public who reside on or near Elkwood Avenue and do not currently have "front door" service from either Young or Stoker, the Commission concludes that either Young or Stoker, or both, may apply for new authority, under G. S. 62-262, to operate over all or part of Elkwood Avenue between Merrimon Avenue and Elk Mountain Road in order to provide "front door" service to those persons.

IT IS, THEREFORE, ORDERED:

That Lawrence C. Stoker, d/b/a Suburban Coach Lines, be, and he is hereby, directed to operate his buses over U. S. Highways 19 and 23 both within (Merrimon Avenue) and without the City of Asheville, in his operation between Asheville and Mars Hill under authority heretofore granted by the Commission in Docket No. B-13, Sub 21.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-13, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Lawrence C. Stoker, d/b/a Suburban Coach Lines, Suspension and Investigation of Proposed Increase in Bus Passenger Fares) ORDER APPROVING INCREASED FARES

HEARD IN: Room 207, Buncombe County Courthouse, Asheville, North Carolina, on September 29, 1971

BEFORE: Commissioner John W. McDevitt, Presiding; and Commissioners Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For the Applicant:

Lawrence C. Stoker, Esq.
Attorney at Law
409 Jackson Building
Asheville, North Carolina

For the Commission Staff:

William E. Anderson, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: This matter arose upon the filing with this Commission by Lawrence C. Stoker, d/b/a Suburban Coach Lines, P. O. Box 7291, Asheville, North Carolina, of a tariff schedule proposing an increase in his bus passenger fares between Asheville and Mars Hill, North Carolina, and points and places in between, said tariff publication being scheduled to become effective July 26, 1971, and designated as follows:

Lawrence C. Stoker, d/b/a Suburban Coach Lines:
Supplement No. 8 to Local Passenger Tariff,
N.C.U.C. No. 1,

and of a petition filed simultaneously with the named tariff schedule by Petitioner (Lawrence C. Stoker, d/b/a Suburban Coach Lines), for authority to make said fares effective July 26, 1971, and offering justification in support of the aforementioned tariff schedule.

The following fares were proposed:

ONE-WAY ADULT FARES

AND	BETWEEN Asheville	Woodfin	New Bridge	Stony Knob	Weaverville	Stocksville	Forks of Ivy
Woodfin	30						
New Bridge	40	30					
Stony Knob	45	40	35				
Weaverville	45	45	40	35			
Stocksville	55	50	50	45	40		
Forks of Ivy	75	65	60	50	45	40	
Mars Hill	85	75	65	55	50	45	45

The Commission, being of the opinion that the proposed increase in bus passenger fares, and practices in connection therewith, are matters affecting the public interest, concluded that good and sufficient cause has not been shown and that the tariff schedule hereinabove mentioned should be suspended, an investigation into and concerning same instituted and the matter assigned for hearing with view of determining whether said publication is just, reasonable and otherwise lawful. Accordingly, the tariff was suspended to and including December 31, 1971.

The Applicant was required to post notice in his buses, and to give notice on two (2) separate occasions of the time, place and purpose of the hearing in this matter by the publication in a newspaper or newspapers of a notice in regard thereto, as set forth in Appendix I attached hereto and made a part hereof, having general circulation in involved areas of North Carolina, with said publication to be made not more than fifteen (15) nor less than ten (10) days prior to the date of hearing.

At the public hearing the Applicant offered into evidence an Affidavit of Publication indicating that the requisite public notice was given in The Asheville Citizen-Times and by public display of the proposed tariff in the Asheville Union Bus Station, the Mars Hill Bus Station, the Weaverville Town Hall, and in the several buses. No one protested the proposed increases, either by letter or by appearance.

The Applicant, Mr. Lawrence C. Stoker, testified that the tariff as it now exists had been in effect since 1965; that unlike other carriers in the area and statewide, Mars Hill-Weaverville had no rate increases during that time to offset

rising costs of labor, fuel and taxes; that during his operation the cost of operation has been $43.37 per day and average revenue per day, for the month of July 25 through July 24 was $34.68, and for the period July 25 through August 25 (after ceasing operations through Woodfin), revenue dropped to $28.91 per day, and from August 25 to September 24, to $27.98 per day; that the run consists of approximately 200 miles per day, at approximately 22 cents per mile; that the operating ratio is "well in excess of 100"; that the proposed increase would amount to an average revenue of $37.55; that the proposed increase would amount to a revenue change from 3 cents per mile to 4.1 cents per mile; that his proposed tariff is identical to the tariff of Trailways from Asheville to Mars Hill-Weaverville; and that since acquiring the Mars Hill-Weaverville operation he had printed no tickets but had operated on a cash fare basis.

Based upon the evidence adduced at the public hearing in this matter, the Commission makes the following

FINDINGS OF FACT

1. That Lawrence C. Stoker, d/b/a Suburban Coach Lines is a public utility within the jurisdiction of this Commission in accordance with the North Carolina Public Utilities Act, including the setting of rates and charges for services rendered.

2. That this Commission, by Order issued May 7, 1971, approved the acquisition by Stoker of certain operating rights indicated in a Certificate theretofore held by Mars Hill-Weaverville Bus Line, Inc., said acquisition of operating rights being particularly described in Docket No. B-13, Sub 22.

3. That since the last rate increases in these proceedings were granted, the operators have experienced and continue to experience constant increases in their costs of operation due to the increased costs of labor and fuel.

4. That the operating ratios presented in this matter are based on intrastate revenues and expenses.

5. That the operation under prevailing rates has resulted in an operating ratio of 152%.

6. That upon taking judicial notice of the evidence presented in Docket No. B-13, Sub 20, which was an Application for new rights under G. S. 62-262, the Commission finds that there is at present a public need for the maintenance of adequate bus service in the area served by the Applicant's bus operation between Asheville and Mars Hill, North Carolina, and that the rates prevailing heretofore provide insufficient revenues to insure the maintenance of adequate bus service.

7. That the proposed rates will allow the Applicant's motor passenger operation from Asheville to Mars Hill to produce revenues sufficient to result in an operating ratio closer to 100%.

8. That the Applicant has not printed new tickets since beginning the operations involved in this Application, and that the public interest requires that such tickets be printed.

Whereupon the Commission reaches the following

CONCLUSIONS

This Commission is authorized and directed to prescribe just and reasonable rates and charges for the transportation of passengers and property in intrastate commerce by common carrier by motor vehicle. In setting such rates under Section 62-146(g) of the General Statutes of North Carolina, this Commission is not to consider any elements of value of the property of a carrier, good will, earning power or the certificate under which the carrier is operating, but is to fix and approve rates "on the basis of the operating ratios of such carriers, being the ratio of the operating expenses to the operating revenues,..."

In order to preserve adequate and efficient motor bus service within the State, it is essential that the Applicant have revenues sufficient to support the costs of operation, maintenance, improvement and replacement of vehicles and facilities and to provide the Applicant an opportunity, with adequate and efficient operation, to derive a fair and reasonable profit.

The present condition of the Applicant's operations and operating ratios clearly indicates the need for additional revenues, if the Applicant is to continue to provide service to the public without reduction in the quality of that service; it appears the economic pressures upon the Applicant's operation compels the Commission to allow the increase in fares proposed in this proceeding. The amount of the fare and rate increases proposed is reasonable, and will not result in any excessive return to the Applicant.

The Commission further concludes, in view of the complaint and investigation proceedings in Docket No. B-271, Sub 1 and Docket No. B-13, Sub 21, that the tariff should be amended to delete a fare for bus service to Woodfin, inasmuch as it has been established in those proceedings that the Applicant herein is not authorized to conduct operations to and through Woodfin, North Carolina.

The Utilities Commission takes judicial notice of the President's Executive Order No. 11627, entered on October 15, 1971, establishing Phase 2 of wage and price controls under the Economic Stabilization Act of 1970 beyond the original 90-day period ending November 13, 1971, and the establishment of the Price Commission pursuant to said Order, and the rules and regulations of the Price Commission published in Volume 36, No. 220, Federal Register, November 13, 1971, §300.016, Regulated Utilities, at p. 21,793, as amended in Volume 36, No. 222, Federal Register, November 17, 1971, at p. 21,953. The Utilities Commission is further advertent to public statements of guidelines and policies of the Price Commission urging adherence to stated guidelines for price increases, and concludes that the North Carolina rate procedure, the facts found in this proceeding, and the consideration thereof by the Commission, fixes the fares in this proceeding on the basis that they will provide no more than the minimum revenues necessary to assure continued and adequate service. The deficit return actually earned from the rates in effect immediately prior to the price freeze on August 15, 1971 (which have been in effect since 1965), if continued without the fare increase approved here, would not be adequate to assure continued and adequate service, and this Commission finds and so certifies that the increases are consistent with the criteria established by the Price Commission and the documentation for such findings are set out fully in the Findings of Fact and Conclusions herein, based on evidence in record of the public hearing herein, and the rate increase approved here is authorized solely on the basis that it is necessary in order to assure continued and adequate service to the public by the Applicant, considering the Applicant's increased expenses, present operating ratio, and the purpose of the Economic Stabilization Act of 1970, as amended.

This Order is entered subject to the Applicant's compliance with all requirements of the Price Commission for notice of such increase and subject to such other rules and regulations of the Price Commission as may be applicable to such increase.

IT IS, THEREFORE, ORDERED:

1. That the Order of Suspension and Investigation in this docket, dated June 20, 1971, be, and the same is hereby, vacated and set aside for the purpose of allowing the suspended tariff schedules to become effective as modified regarding service to Woodfin, North Carolina, and as attached hereto as "Appendix A."

2. That the 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 transportation tariff schedules.

3. That the Applicant be, and is hereby, ordered to provide printed tickets to be available at all stations and from the driver, said tickets to indicate the fares between various points and places in accordance with the tariff as approved herein, and as attached hereto as "Appendix A."

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-13, SUB 22
APPENDIX A

ONE-WAY ADULT FARES

AND \ BETWEEN	Asheville	New Bridge	Stony Knob	Weaverville	Stocksville	Forks of Ivy
New Bridge	40					
Stony Knob	45	35				
Weaverville	45	40	35			
Stocksville	55	50	45	40		
Forks of Ivy	75	60	50	45	40	
Mars Hill	85	65	55	50	45	45

DOCKET NO. B-105, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Suspension and Investigation of Proposed Increase in Bus Passenger Fares, Charter Coach Rates and Charges and Package Express Rates and Charges) ORDER

HEARD IN: The Commission Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on March 24, 1971

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

APPEARANCES:

For the Respondents:

R. C. Howison, Jr.
Joyner & Howison
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Wachovia Bank Building
Raleigh, North Carolina 27602
Appearing For: Carolina Scenic Stages
Fort Bragg Coach Company
Queen City Coach Company
Smoky Mountain Stages
Virginia Stage Lines, Inc.

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Appearing For: Carolina Coach Company

Ralph McDonald & J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
Appearing For: Greyhound Lines, Inc.

David Ward, Jr.
Ward, Tucker, Ward & Smith
Attorneys at Law
310 Broad Street
New Bern, North Carolina 28560
Appearing For: Seashore Transportation Company

Clarence H. Noah
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Raleigh, North Carolina 27605
Appearing For: Southern Coach Company

For the Commission Staff:

Maurice Horne
Assistant Commission Attorney
North Carolina Utilities Commission
P.O. Box 991, Raleigh, North Carolina 27602

No Protestants

BY THE COMMISSION: Garland L. Gordon, d/b/a Appalachian Coach Company (now Appalachian Coach Company, Incorporated); Carolina Coach Company; Carolina Scenic Stages; S. D. Small, d/b/a Central Busline of N. C.; Fort Bragg Coach Company; Gaston-Lincoln Transit, Inc.; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Queen City Coach Company; R. H. Gauldin, d/b/a Safety Transit Lines; Seashore Transportation Company; Smoky Mountain Stages, Inc.; Southern Coach

Company; Lawrence C. Stoker, d/b/a Suburban Coach Lines; Virginia Dare Transportation Company, Inc.; Virginia Stage Lines, Inc.; Wilkes Transportation Company, Inc., and National Bus Traffic Association, Inc., Agent, for and on behalf of certain of its member carriers, filed with the Commission tariff schedules proposing for certain of the above named carriers an increase in bus passenger fares which now reflect 3.5 and/or 3.85 cents per mile to 4.1 cents per mile and an increase in the minimum fare from 35 and/or 40 cents to 45 cents, charter coach rates and charges by approximately 14.0%, and bus express rates and charges by approximately 82%, both said tariff filings scheduled to become effective January 1, 8, and 15, February 1, and March 10, 1971. The tariff schedules mentioned above were first filed by Carolina Coach Company; Carolina Scenic Stages; S.D. Small, d/b/a Central Bus Line of N. C.; Greyhound Lines, Inc.; R. H. Gauldin, d/b/a Safety Transit Lines; Smoky Mountain Stages, Inc.; Virginia Dare Transportation Company, Inc.; Virginia Stage Lines, Inc., and National Bus Traffic Association, Inc., Agent, and on December 16, 1970, the Commission being of the opinion that the said tariff changes affected the rights and interest of the public, issued an Order suspending the schedules, instituted an investigation into the justness and reasonableness thereof; declared the matter to be a general rate case, named carriers parties to said tariff filings respondents and assigned to those carriers the burden of proving said rates and charges to be just, reasonable and otherwise lawful. The Order dated December 16, 1970, assigned the matter for hearing on March 24, 1971, in the Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina. Subsequent to this Order tariff schedules were filed with the Commission by Queen City Coach Company, Seashore Transportation Company, Southern Coach Lines, proposing certain changes in passenger bus fares as hereinabove described and a Supplemental Order dated January 13, 1971, issued.

On January 14, 1971, the Commission issued an Order in this docket allowing Motion of Respondents filed January 7, 1971, which waived the provisions of Commission Rules R1-17 and R1-24 to the extent necessary to permit the written testimony and exhibits of witnesses for bus carrier respondents to be filed not later than February 21, 1971.

On January 27, 1971, the Commission issued further Order in this docket allowing letter-petition by P. J. Campbell, Chairman, National Bus Traffic Association, Inc., Agent, for authority to correct clerical errors by publishing only the current basing fares for account of involved carriers parties to its National Basing Fare Tariff No. A-100, N.C.U.C. No. 4, and making the revised pages to Section 38 of said tariff not subject to suspension and investigation in this docket.

Notice to the public was duly given as required by law and the rules of the Commission. Affidavits of publication were introduced into the record.

This matter came on for hearing as scheduled and respondents presented seven (7) witnesses, to wit: C. Walters, H. Lester Creech, Aaron Cruise, R. C. O'Bryan, C.H. Hall, John E. Adkins and G. V. McQuinn. The Commission's Staff presented one witness, I. H. Hinton. No protestants appeared at the hearing.

A number of the representatives of respondents testified relative to their operations and the increased cost for transporting passengers and express in North Carolina intrastate commerce since the last general increase authorized by the Commission. The witness, C. Walters, System Revenue Auditor, Continental Trailways Company, presented testimony and exhibits for and on behalf of five (5) carriers: Carolina Scenic Stages, Fort Bragg Coach Company, Queen City Coach Company, Smoky Mountain Stages and Virginia Stage Lines, Inc., which tended to show that operating costs have greatly increased since the last increase in passenger fares, charter coach rates and charges and bus express rates and charges. The witness stated that for the year 1969, the operating ratio in North Carolina for Continental Trailways companies before taxes was 99.3% and after taxes 99.7%, and for the year 1970, it was 100.3% before taxes. He stated and his Exhibit No. 4 reflected that the operating revenues for said companies for the year 1970 was .5994 cents per coach mile whereas operating expenses for this same period was .6013 cents per coach mile, or a loss of .0019 cents per mile. Witness Walters testified that the proposed increase accruing to the Continental Trailways companies would amount to $80,628.55 from passenger fare increases, $36,511.83 from charter party service, and $236,153.25 from package express rate increases, or a total of $353,293.63. The witness further testified that Continental Trailways companies expenses in the year 1970 represented an increase of 36.44% over 1966, but that during this same period a fare adjustment equaling 21% was effected, 11% in 1968, and 10% in 1970.

The testimony of Mr. Walters further tends to show that for the year 1970, Continental Trailways companies operating ratio in North Carolina intrastate commerce was 120.7%, and that if the increases sought are approved, and giving consideration to the anticipated increases in expenses, he feels an operating ratio of 111.0% would result. Witness Walters stated he considered an operating ratio of 82.0% to be satisfactory.

Mr. Walters testified that three companies were selected for study during a test period, December 4, through December 15, 1970. The companies selected ship express packages regularly from Charlotte, North Carolina, Ford Motor Company, City Chevrolet Company and Duke Power Company, and that for this period 53.6% of the shipments

were intrastate shipments and produced 30.9% of the revenue; that 46.4% of the shipments were interstate and produced 69.1% of the revenue; that these shippers as well as others pay a considerably different rate for their interstate shipments than their North Carolina intrastate shipments; that rates applying on North Carolina intrastate traffic are too low to pay for the services performed in handling said shipments, and that in his opinion both classes of shipments should be based on the same scale of rates.

Mr. H. Lester Creech, Vice President and Treasurer, Carolina Coach Company, offered testimony and exhibits tending to show that for the year 1970, his company's North Carolina intrastate operating ratio is 107.78% after taxes, compared to 91.66% after taxes for system operations; that operating costs have increased and continue to increase, and that if the rate increase sought is not approved, consideration must be given to reducing or discontinuing service on certain of its routes.

Mr. Aaron Cruise, Traffic Manager, Carolina Coach Company, offered testimony and exhibits tending to show that since May, 1968, through December, 1970, his company's costs of operation has increased 21.4%; that the cost of purchasing a new bus (Silver Eagle) increased 15.5% during that same period; drivers' rate per mile increased 16.5%, per hourly rate for drivers increased 17.6%, and the semi-monthly guarantee increased 20.5%. The increase in cost of gasoline was 10.6%, tires 6.7%, vacation wages 24.7% and employees' welfare expenses 36.9%. His testimony further reflects that the proposed increase in fares, charter coach rates and charges, and express rates sought are the same as those now applicable on interstate traffic. Testimony by Mr. Cruise reflected that there are no conditions in the territory in which his company operates, both interstate and intrastate, to warrant different rates and charges being assessed for the transportation of persons or property in North Carolina intrastate commerce than assessed on like traffic moving in interstate commerce. The witness further testified that since 1958, his company had received one general increase in fares, rates and charges applicable to North Carolina intrastate traffic, said increase of 10% having become effective in 1968.

Mr. R. C. O'Bryan, Traffic Manager, Seashore Transportation Company, offered testimony and exhibits tending to show that his company's charter revenues for the year 1970, were $68,059.94, but that had the proposed charter rates been in effect during this period his company revenues for that service would have been $77,817.98, or 14.3% greater; that 56.7% of his charter party service involves North Carolina intrastate, and 53.3% involves interstate transportation.

Mr. C. H. Hall, Vice President and General Manager, Seashore Transportation Company, offered testimony and exhibits tending to show that his company operates in

seventeen Eastern North Carolina counties, beginning in Norlina near the Virginia line, thence to Rocky Mount, Wilson, Goldsboro, Raleigh, Wilmington, Jacksonville and Morehead City, with New Bern serving as the central hub of the operation where his company maintains its central office and shops; that his company is the only public carrier serving a large portion of these eastern counties; that his company operates as an independent carrier; that his company holds interstate authority from the Interstate Commerce Commission to serve these same seventeen counties; that his interstate operating rights do not authorize his company to cross the North Carolina State Line, but only authorizes his company to originate and/or terminate interstate traffic in said territory. His testimony reflects that his company is currently operating 36 buses; that cost per mile for performing charter party service now exceeds his company's charter coach rate per mile; that terminal operating costs of his company have increased 136% for the period 1959, through 1970, excluding capital outlay and investment; that during the past six (6) years drivers' hourly pay has increased 38.7%, excluding fringe benefits such as accident and health insurance, disability insurance and retirement; that driver labor cost per mile has increased from 10.8 cents per mile to 14.4 cents per mile during the past five (5) years, that for the year 1970, his company's operating ratio was 96.84%, after taxes, and that his company will be unable to continue to render the service it is now performing without the increase in rates herein sought.

Mr. John E. Adkins, Vice President-Traffic, Greyhound Lines, East, offered testimony and exhibits tending to show that his company's costs of operation has increased within the past year and that additional revenues are needed to meet these increased costs in order for his company to continue to offer adequate transportation services and facilities to the traveling public. Mr. Adkins testified that his company seeks to limit the size of packages it handles, the number of pieces in lot shipments it transports and the weight per piece transported in package express service. The witness testified further that his company is not equipped to handle large, bulky, odd-shaped, oversized and heavier weight items; that the space for baggage and express on his company's vehicles is limited; that packages of excessive dimensions present real loading problems, are difficult for one man to handle, and in many instances impossible to load if the bus bins are partially filled; that lot shipments be limited to not more than five (5) pieces as it is not unusual to be tendered 20 to 25 pieces in a single lot shipment, and that it is impossible many times to move that many pieces together in the same bus, thus causing delay, tracing and contributes to loss and added costs. Mr. Adkins testified that the proposed increase in rates and charges will raise same to the present interstate level and that his company can find no justification for charging a shipper less for handling intrastate shipments than for handling interstate shipments of the same poundages for comparable distances. Further,

that his company's costs for handling express has increased with the volume by having to hire more employees, expand facilities, larger bus bins in the buses, but that the North Carolina rates have not kept pace with these increases in cost. This includes the passenger fares and charter coach rates also. The witness testified that his company's system costs per bus mile for twelve (12) months ended September 30, 1970, was 78.07 cents, and that he anticipates these costs will increase to 81.11 cents per bus mile in 1972, that his present live mileage charter coach rates range from 65 cents to 80 cents per mile depending on the number of passengers transported; that his proposed rates will be from 75 to 90 cents per mile depending upon the number of passengers transported, that the time charges would be increased proportionately, and that the deadhead mileage rate would be increased from 45 to 50 cents per mile per coach. His testimony further reflected that it is needful for the carriers to have the same intrastate fare or rate level as they interline traffic with each other.

Mr. G. V. McQuinn, Internal Auditor, Greyhound Lines, East, offered testimony and exhibits tending to show that the revenues of Greyhound Lines, East, decreased $2,383,669 for the year 1970, over 1969; that for the year 1969, his company's operating ratio is shown as 91.32% after taxes and 92.47% after taxes for the year 1970; and that for the year 1970, his company's North Carolina intrastate operating ratio was 108.10%. His testimony shows that for the twelve (12) months ending September 30, 1970, his company's North Carolina passenger revenues amounted to $582,530, and with a proposed 6.5% increase in passenger fares he expects additional revenues in the amount of $37,864 therefrom; that for this same period charter revenues amounted to $115,410, and with the proposed 14.6% increase he expects additional revenues in the amount of $16,850; that during this same period it received $198,766 from express shipments, and that from the proposed 80% increase in express rates his company expects to receive $159,013 in additional revenue. He further testified that his company anticipates increases in expenses in the amount of $213,727; that he expects net income from the increases to be $105,920 and that his company's North Carolina intrastate operating ratio is anticipated to be 94.81% before taxes if the proposed increases are permitted to become effective, and that the increases as sought are essential in order for his company to maintain a reasonable and efficient service.

The Commission Staff presented one witness in the person of I. H. Hinton. Certain exhibits, which are of record, were presented by this witness as well as testimony pertaining thereto.

The filing of briefs was waived by all parties of record. Upon consideration of the testimony and evidence adduced in this proceeding and the official record herein, the Commission makes the following

FINDINGS OF FACT

1. The respondents operate intrastate bus passenger service and are subject to the jurisdiction of the North Carolina Utilities Commission.

2. That present bus passenger fares of Carolina Scenic Stages, Greyhound Lines, Inc. (East), Queen City Coach Company, Smoky Mountain Stages and Virginia Stage Lines, Inc., were fixed at 3.85 cents per mile by Order of the Commission in Docket No. B-105, Sub 23, dated January 29, 1970. The present bus passenger fares of the other bus passenger carriers respondents herein were fixed at 3.5 cents per mile by Order of the Commission in Docket No. B-105, Sub 21, dated August 16, 1968. All of the respondents herein with the exception of Garland L. Gordon, d/b/a Appalachian Coach Company, Fort Bragg Coach Company (in part), Gaston-Lincoln Transit, Inc., Piedmont Coach Lines, Inc. and Wilkes Transportation Company, Inc., are seeking approval of bus passenger fares reflecting 4.1 cents per mile, increased where necessary to end in "0" or "5" with a minimum fare of 45 cents.

3. The present minimum bus passenger fare of Carolina Scenic Stages, Greyhound Lines, Inc. (East), Queen City Coach Company, Smoky Mountain Stages and Virginia Stage Lines, Inc., is 40 cents and for the other respondents, 35 cents.

4. Ten of the Respondents herein are proposing certain increases in their charter coach rates and charges depending on the seating capacities of the coach. Certain of these carriers are seeking charter rates ranging from 65 cents per live mile for coaches with seating capacities of 38 or less to 70 cents per live mile per coach for those with seating capacities of 39-41. Certain other carriers, respondents herein, are seeking increases in rates which will result in rates ranging from 75 cents per live mile per coach with seating capacities of 38 or less to 90 cents per live mile per coach with seating capacities of 44-46. Rate per deadhead mile is increased from 45 to 50 cents per mile per coach. Hourly rates and maximum 24 hour period rates and charges are also increased.

5. Respondents further propose to increase their bus package express rates approximately 82%.

6. Greyhound Lines, Inc. (East), further seeks to amend certain of its rules and practices regarding the weight, size, storage and handling of certain of its bus express shipments.

7. The last general increase in bus passenger fares for account of Carolina Scenic Stages, Greyhound Lines, Inc. (East), Queen City Coach Company, Smoky Mountain Stages and Virginia Stage Lines, Inc., was granted by the Commission in 1970, in Docket No. B-105, Sub 23, and for the other

Respondents as well as those hereinabove named a general increase in bus passenger fares, charter coach rates and charges, and bus express rates and charges was authorized by the Commission in 1968, in Docket No. B-105, Sub 21. That since the last rate increases in these proceedings were granted, respondents have experienced and continue to experience constant increases in their costs of operation due to the increased costs of labor, equipment, fuel, repairs and parts, station rental and upkeep and taxes.

8. That Respondents have experienced and continue to experience from year to year increased operating ratios and diminishing returns on their investments as a result of the factors set forth in Findings of Fact No. 7.

9. That the operating ratios presented in this matter are based on a separation of intrastate and interstate revenues and expenses, and show generally, lower system-wide operating ratios when compared to the intrastate ratios; that the operating ratios for intrastate operations are higher than will allow a sufficient profit for continued service; that the separations evidence in this case did not establish such separations with mathematical exactitude, but the same did approximate the ratable proportion of their movements in intrastate traffic, which, when taken with other facts and circumstances with respect thereto, is of a sufficient probative force to make the findings herein as required by statute.

10. In order to preserve adequate and efficient motor bus service within the State, it is essential that Respondents have revenues sufficient to support their costs of operation, maintenance, improvement and replacement of vehicles and facilities and to provide Respondents with a fair and reasonable profit on their operations.

11. That the proposed increases in passenger fares, charter coach rates and charges, package express rates and charges and the proposed changes in the rules and practices for handling package express appear to the Commission, after due consideration of all of the evidence, to be just, reasonable and otherwise lawful.

Based upon the record in this proceeding and the above enumerated Findings of Fact, the Commission concludes as follows

CONCLUSIONS

1. G. S. 62-142(h) requires this Commission to give due consideration among other factors to the effect of rates upon movement of traffic by the carrier or carriers for which rates are prescribed to the need in the public interest of adequate and sufficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service and to the need of revenues

sufficient to enable such carriers under honest and efficient management to provide said service.

2. That the formula and method used in making the separations and allocations in this case do not reflect to a certainty, accurate results, and we advise and enjoin the respondents to continue their efforts for improvement in this area. However, we do conclude that the evidence relates passenger mile and bus miles and revenues to operating expenses to an extent sufficient to demonstrate that respondent's intrastate operations do not produce sufficient revenues to provide a fair return and reasonable operating ratios.

3. That Respondents have justified the proposed increases in their fares, rates, charges and changes in their tariffs.

4. That the present condition of the Respondents operations and their operating ratios clearly indicate the need for additional revenues, if Respondents are to continue to provide service to the public without reduction in the quality of that service; that it appears the economic pressures upon the Respondents compel the Commission to allow the increased fares, rates, charges and changes proposed in this proceeding. The amount of the fare and rate increases proposed is reasonable, and will not result in any excessive return to the Respondent carriers.

IT IS, THEREFORE, ORDERED:

1. That the Order of Suspension and Investigation in this docket, dated December 16, 1970, as Supplemented and Modified on January 13, and 14, 1971, be, and the same is hereby vacated and set aside for the purpose of allowing the suspended tariff schedules to become effective.

2. That the 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 transportation tariff schedules.

3. That upon the 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 22nd day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Docket No. B-105, Sub 29

WELLS, COMMISSIONER, DISSENTING. This record presents evidence which inclines me to believe that some rate relief is needed by the Respondent carriers, but the evidence does not convince me that the specific increases sought will result in just and reasonable rates.

The Respondents were able to make out a *prima facie* case that their operating ratios were inadequate, but the record is inadequate to enable the Commission to determine the reasons therefor.

There was no investigation by the Commission into operating practices or operating efficiencies; no effort to determine whether poor operating ratios may be related to low load factors or unprofitable routes, poor service, or carrier failure to promote or encourage full use of facilities. Neither did the carriers offer evidence in this respect. By and large they simply stated that their operations were costing them more money and that income was not keeping up with expenses.

The Respondents constantly emphasized their conviction that North Carolina intrastate rates should equate interstate rates set by the Interstate Commerce Commission, and the majority order gives credence to this position. The fact that the Interstate Commerce Commission has set or allowed any rate at any level does not convince me of the validity, justness or reasonableness of such rates. Neither the carriers nor this Commission has developed any precise method of determining intrastate - interstate revenue and expense separations. The methods used, as reflected in this record, result in little more than an educated guess and do not provide an adequate basis for sound fact-finding in this aspect of motor carrier rate proceedings.

The 82% increase in package express rates is exorbitant on its face. No well managed public utility, be it a motor carrier or otherwise, should ever find itself in the position of having to raise any general class of rates by 82% at any one time.

The problem in these cases is that the Commission simply reacts to whatever the carriers present, with little or no effort by the Commission to search out viable alternatives to higher and higher rates. We simply accept inflationary pressures on the carriers, give them higher rates, which in turn engender higher prices; and the inflationary spiral continues upward. Perhaps there are no reasonable alternatives. But we don't *know* whether there are or not. All we have is the carriers' word, and it appears that the time has come when we ought to require more than this.

The Commission needs to institute an on-going program of surveillance of rates, routes and services of the motor carrier industry in this State, so that the Commission, will

have its own built-in capacity to exercise a really effective degree of expertise in these areas of regulation. The Commission has an opportunity to contribute to the transportation needs of North Carolina by expanding its activities and efforts in this direction, and could be of great assistance to the carriers themselves as well as to the shipping, receiving and traveling public in this respect. What we are now doing is not enough for us to be certain that our duty to the public or the industry is being energetically and adequately discharged.

Hugh A. Wells, Commissioner

DOCKET NO. B-272, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Appalachian Coach Company, Incorporated, 201 N. Jefferson Street, Galax, Virginia - Application for approval of transfer of Common Carrier Certificate No. B-272 from Garland L. Gordon, d/b/a Appalachian Coach Company to Appalachian Coach Company, Incorporated) ORDER APPROVING TRANSFER

By application filed with the Commission on March 19, 1971, authority is sought to transfer Certificate No. B-272, together with the operating rights contained therein, from Garland L. Gordon, d/b/a Appalachian Coach Company, Transferor, to Appalachian Coach Company, Incorporated, Transferee.

It appears from the application and the records of the Commission that the corporation, Appalachian Coach Company, Incorporated, was organized under the laws of the State of Virginia; that the principal managing officers of said corporation are Garland L. Gordon, Catherine C. Gordon and Horace Sutherland, all of Galax, Virginia; that the transfer will not result in any change in operation or management of the business; that there are no debts or claims of the nature specified in G.S. 62-111 against Transferor; that continuous service under Certificate No. B-272 has been offered to the public up to the date of the application herein and that Transferee corporation is qualified financially and otherwise to meet such reasonable demands as the business may require.

Upon consideration thereof, the Commission is of the opinion and finds that said application should be approved.

IT IS, THEREFORE, ORDERED:

(1) That the transfer of Certificate No. B-272, together with the operating rights described in Exhibit A hereto attached and made a part hereof, from Garland L. Gordon,

d/b/a Appalachian Coach Company to Appalachian Coach Company, Incorporated, be, and the same is, hereby approved.

(2) That Appalachian Coach Company, Incorporated, 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.

BY ORDER OF THE COMMISSION.

This the 24th day of March, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Appalachian Coach Company,
Incorporated, Galax, Virginia   Certificate No. B-272

EXHIBIT A (1) To transport passengers, baggage, mail and express over the following routes serving all intermediate points except as to such restrictions as are indicated in the route description.

EXHIBIT A (2)

1. From Jefferson over N.C. Highway 88 to Laurel Springs; from Laurel Springs over N.C. Highway 18 via Sparta to the N.C. Va. State Line.

2. From Jefferson to West Jefferson over U.S. 221.

3. From West Jefferson, N.C., to Boone, N.C., over U.S. Highway 221 to Deep Gap, N.C. (intersection of U.S. Highway 221 and U.S. Highway 421) thence over U.S. Highway 421 to Boone, North Carolina, and return over the same route.

   Ref: Order dated June 6, 1968, in Docket No. B-272, Sub 1.

DOCKET NO. B-13, SUB 20
DOCKET NO. B-13, SUB 21
DOCKET NO. B-5, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Docket No. B-13, Sub 20 Application of Lawrence C. Stoker, d/b/a Suburban Coach Lines, P. O. Box 7291, Asheville, North Carolina Docket No. B-13, Sub 21 Proposed Transfer from Mars Hill-Weaverville Bus Line, Inc., to Lawrence C. Stoker, d/b/a Suburban Coach Lines, of Motor Passenger Operating Rights Contained in Passenger Common Carrier Certificate No. B-54 Docket No. B-5, Sub 4 Application of Thomas Ralph Young, d/b/a Asheville-Elk Mountain Bus Line, 943 Riverside Drive, Asheville, North Carolina	ORDER APPROVING TRANSFER OF OPERATING RIGHTS, IN PART

HEARD IN: The Buncombe County Courthouse, Asheville, North Carolina, on January 28, 1971, at 9:00 A.M.

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

APPEARANCES:

E. L. Loftin
Loftin & Loftin
Attorneys at Law
Gennett Building
Asheville, North Carolina
For: Lawrence C. Stoker, d/b/a Suburban Coach Lines
Mars Hill-Weaverville Bus Line

S. J. Crow
Gudger, Erwin & Crow
Attorneys at Law
P. O. Box 7036, Asheville, North Carolina 28807
For: Thomas Ralph Young, d/b/a Asheville-Elk Mountain Bus Line

William C. Moore
Patla, Straus, Robinson & Moore
Attorneys at Law
Asheville, North Carolina
For: Asheville Transit Authority

William Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina
For: North Carolina Utilities Commission Staff

BY THE COMMISSION: Between the date 9 October 1970, at which time the operating rights of Mars Hill-Weaverville Bus Line, Inc., hereinafter also styled "MARS HILL-WEAVERVILLE", were suspended by Commission Order, in Docket No. B-54, Sub 4, and the time for public hearing of this matter, a number of applications and interventions were filed by Lawrence C. Stoker, d/b/a Suburban Coach Lines, hereinafter also styled "STOKER", and Thomas Ralph Young, d/b/a Asheville Elk-Mountain Bus Line, hereinafter also styled "YOUNG", regarding the acquisition by one of those parties of all or part of the operating rights of Mars Hill-Weaverville Bus Line, Inc. At the time the matter came on for hearing, the parties were in the following posture: STOKER sought new rights which consisted of the operating rights of MARS HILL-WEAVERVILLE, with the exception that the Craggy run was deleted from his application for new rights; alternatively, STOKER sought Commission approval of a transfer of the operating rights from MARS HILL-WEAVERVILLE, pursuant to a contract by which STOKER would pay MARS HILL-WEAVERVILLE $5,000 for those rights; YOUNG sought as new operating authority the routes which were previously granted to MARS HILL-WEAVERVILLE but suspended by Commission Order of 9 October 1970.

The evidence tends to show that STOKER is at the present time engaged in the transportation of passengers in Buncombe County and other counties under a franchise certificate issued by the North Carolina Utilities Commission; that he is an experienced operator; that he is financially able and can furnish equipment adequate to haul passengers for hire on the routes which are the subject of this proceeding; that on 30 November 1970, STOKER entered into a contract to purchase the operating rights of MARS HILL-WEAVERVILLE for $5,000, and that he purchased three additional buses that heretofore were the property of MARS HILL-WEAVERVILLE, and that he is experienced and financially able to provide service on a continuing basis.

The evidence further tends to show that YOUNG is at the present time engaged in the transportation of passengers in Buncombe County and other counties under a franchise certificate issued by the North Carolina Utilities Commission; that he is financially able to furnish equipment adequate to haul passengers for hire on the routes which are the subject of the proceeding and that YOUNG has been performing service heretofore performed by MARS HILL-WEAVERVILLE pursuant to emergency operating authority granted to YOUNG on 9 October 1970, by the North Carolina Utilities Commission.

The evidence further tends to show that the operating rights heretofore granted to MARS HILL-WEAVERVILLE and to

YOUNG are such that service on the Craggy run amounts to dual operation and direct competition over the total run of approximately 9 miles one way, and that such dual service will not support 2 competing carriers.

In YOUNG's Motion to Intervene in the proposed transfer from MARS HILL-WEAVERVILLE to STOKER, Docket B-13, Sub 21, it was prayed that:

> "the Mars Hill-Weaverville Bus Line, Inc., in compliance with G.S. of N.C. 62-111(c) be required to file with the Commission prior to said hearing a statement under oath of all debts and claims against said corporation of which said corporation has any knowledge or notice."

In its Order Allowing Intervention, the Commission established that G.S. 62-111(b), rather than subsection (c), governs the transfer of operating rights as regards motor carriers of passengers and that STOKER, as the proposed successor carrier must, in order to comply with G.S. 62-111(b):

> "...satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured."

Accordingly, STOKER offered evidence tending to establish the nature and magnitude of such debts and the security therefor, at the hearing and by a Late Exhibit filed on 5 February 1971, including a verified appraisal valuing the garage building and building site owned by MARS HILL-WEAVERVILLE and located in Weaverville, North Carolina, as substantially in excess of the ad valorem taxes due.

Based upon the verified applications and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That both STOKER, d/b/a Suburban Coach Line, and YOUNG, d/b/a Asheville-Elk Mountain Bus Line, are motor carriers of passengers, duly certificated under the jurisdiction of this Commission.

2. The operating rights heretofore granted to Mars Hill-Weaverville Bus Line, Inc., in Certificate No. B-54 were suspended by Order of the Commission dated 9 October 1970; service under said franchise was continuously offered to the public up to the time of said suspension; the franchise has not been abandoned, dormant or revoked.

3. The proposed transferee, STOKER, has experience as a certificated carrier of passengers which establishes that he

is fit, willing and able to perform such service to the public under the franchise.

4. The proposed transferor, Mars Hill-Weaverville Bus Line, Inc., proposes that the known debts and obligations of the seller are to be "deducted and paid from the purchase price by the purchaser or as directed by the North Carolina Utilities Commission". Those debts and obligations are as follows:

Parkland Chevrolet, Asheville, N. C.	$296.10
Genuine Parts Co., Asheville, N. C.	101.35
Tate's Battery, Asheville, N. C.	9.36
R. T. Clapp, Asheville, N. C.	67.66
Battery & Ignition, Asheville, N. C.	24.82
Carolina Bus Sales, Asheville, N. C.	63.00
Liberty Tire Co., Asheville, N. C.	335.94
North Carolina gasoline gross receipts tax due	136.27

5. The _ad valorem_ taxes on the realty of Mars Hill-Weaverville Bus Line, Inc., Inc., due Buncombe County, is in the amount of $6,000.25, and the _ad valorem_ taxes due the Town of Weaverville is in the amount of $2,965.91. The fair market value of said realty is approximately $17,000, constituting adequate security for the payment of such taxes.

6. The dual service heretofore authorized by this Commission in the certificates granted to Mars Hill-Weaverville Bus Line, Inc., and YOUNG, have resulted in a situation such that the Craggy run will not support the transportation operations of 2 competing carriers.

WHEREUPON the Commission reaches the following

CONCLUSIONS

When these _three_ dockets were consolidated for hearing, there were several factors upon which there was little controversy. It was generally understood by all parties that MARS HILL-WEAVERVILLE has offered service to the public on the routes of its franchise up until approximately the time of suspension of such operating authority by Commission Order. Since that time YOUNG, under emergency operating authority granted by the Commission, offered to the public all service set out in the MARS HILL-WEAVERVILLE franchise, except for the Craggy run and continued to offer service to the public on the Craggy run in accordance with his own franchise. Neither STOKER nor YOUNG seriously contested the fitness of the other to provide passenger motor carrier transportation service. Through the use of public witnesses, there was the showing of public need which would be required if a new franchise were to be granted under the provisions of G.S. 62-262.

There is no evidence which establishes that the franchise held by Mars Hill-Weaverville Bus Line, Inc., has been abandoned or has become dormant; the franchise has not been revoked. The question then is narrowed to determining whether the proposed transfer of the operating rights to STOKER is in compliance with the mandates of G.S. 62-111, particularly subsections (b) and (e). We conclude that the evidence establishes that the operating debts and obligations of the seller which are heretofore unpaid, as set out in Finding of Fact No. 5 above, will be paid before the effective date of the transfer and that the remaining obligations of the transferor are adequately secured by the transferor's real property.

We conclude that the competition which has resulted from certificates heretofore issued has proven to be destructive competition and for such reason the continuation of dual authority on the Craggy run is not in the public interest. As to the other operating rights contained in MARS HILL-WEAVERVILLE's Certificate No. B-54, we conclude that the transfer 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 evidence establishes that STOKER is fit, willing and able to perform such service to the public under the franchise and that service under the franchise has been continuously offered to the public up to the time of the suspension of said franchise. Accordingly, the transfer should be approved.

IT IS, THEREFORE, ORDERED:

1. That Mars Hill-Weaverville Bus Line, Inc., is hereby authorized to sell, and Lawrence C. Stoker, d/b/a Suburban Coach Lines is hereby authorized to buy, the operating authority set out in Exhibit "A" attached hereto.

2. Mars Hill-Weaverville Bus Line, Inc., and Lawrence C. Stoker, d/b/a Suburban Coach Lines are hereby authorized to effectuate the transfer in accordance with the contract between those two parties and in a manner not inconsistent with this Order.

3. That the operating authority heretofore granted to Mars Hill-Weaverville Bus Line, Inc., in Certificate No. B-54 which, in accordance with this Order, will not be transferred to Lawrence C. Stoker, d/b/a Suburban Coach Lines, is hereby canceled.

4. That the transfer herein authorized will become effective only upon the date of the transferor's filing with this Commission a verified statement that the known obligations and debts as set out herein have been paid.

5. That the application of Lawrence C. Stoker, d/b/a Suburban Coach Lines for new operating authority in Docket No. B-13, Sub 20, is hereby denied.

6. That the application of Ralph T. Young, d/b/a Asheville-Elk Mountain Bus Line in Docket No. B-5, Sub 4, for new operating authority, is hereby denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

APPENDIX "A"

Operating Rights for Which Transfer from
Mars Hill-Weaverville Bus Lines, Inc., to
Lawrence C. Stoker, d/b/a Suburban Coach Lines
is Authorized in Docket No. B-13, Sub 21

Lawrence C. Stoker, d/b/a
Suburban Coach Lines
Asheville, North Carolina

Certificate No. B-13

EXHIBIT A

To transport passengers, baggage, mail and express over the following routes serving all intermediate points except as to such restrictions as may be indicated in the route description.

1. From Asheville Union Bus Station over such streets in the corporate limits of Asheville as the city authorities may direct, to U.S. Highways Nos. 19 and 23; thence over said highways via Weaverville and Stocksville to the intersection of the highway leading to Mars Hill; thence over said Mars Hill Highway to Mars Hill.

2. From Beech over the Reams Creek Road to Weaverville, thence to Asheville over U.S. Highway 19, limited to passengers originating in or destined to the community along the Reams Creek Road between Beech and Weaverville with the right to transport such passengers to and from Asheville and intermediate points along U.S. Highway 19 between Asheville and Weaverville.

DOCKET NO. T-1347, SUB 4

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, for Additional Authority to Transport Mobile Homes	) ORDER) GRANTING) ADDITIONAL) AUTHORITY

HEARD IN: The Commission's Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on Wednesday, January 6, 1971, at 2:00 P.M.

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

APPEARANCES:

For the Applicant:

Eric Davis
Attorney at Law
P. O. Box 426
North Wilkesboro, North Carolina 28659

No Protestants

WOOTEN, COMMISSIONER: Application was filed in this matter by Sam Eller, d/b/a Sam D. Eller Motor Carrier, Box 8, Sparta Road, North Wilkesboro, North Carolina, on November 18, 1970, seeking irregular route common carrier authority to transport Group 21, Other Specific Commodities, to wit: mobile homes, in the territory described as between all points and places within Caldwell County, from all points and places in Caldwell County to all points and places in North Carolina, and from all points and places in North Carolina to all points and places in Caldwell County, in addition to the counties for which applicant currently holds a certificate.

Notice of the application, with a description of the authority applied for, setting the matter for hearing at the captioned time and place was given in the Commission's Calendar of Hearings issued on December 1, 1970. No protests were filed prior to the hearing and no one appeared at the hearing in opposition to the application herein.

The applicant testified in his own behalf and offered evidence by way of affidavit, late filed, of Robert Dowell. Both the Affiant, Robert Dowell, and the Applicant, Sam Eller, testified that there is a great need for an additional mobile home mover in the territory applied for within North Carolina; that the applicant owns and operates mobile home moving equipment in connection with other common carrier authority granted to him by this Commission; that the applicant will acquire additional equipment if necessary

to meet the demands and needs of the public if this authority is granted; that there has been a tremendous growth in the number of mobile homes sold, used and moved within the counties here involved, and to and from said counties; that there is a definite public need for short-haul mobile home mover authority within Caldwell County; that there are no terminals in Caldwell County for the movement of mobile homes; and that the applicant has the finances, equipment and experience to move mobile homes in the territory requested as an irregular route common carrier on a continuing basis.

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 the movement of mobile homes within and between several counties adjoining Caldwell County.

4. That the applicant is fit, willing and financially and otherwise qualified and able to properly perform adequate service as proposed in the application and to continue such service as long as the need therefor exists.

5. That public convenience and necessity requires the service of applicant for the hauling of mobile homes or house trailers, as applied for, 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 conclusions 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 his application should be approved and granted.

5. It is further concluded, in the light of the fact that no protests were filed in this case and 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.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Sam Eller, d/b/a Sam D. Eller Motor Carrier, Box 8, Sparta Road, North Wilkesboro, 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 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 14th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1347 SUB 4

Sam D. Eller Motor Carrier
Sam Eller, d/b/a
Box 8, Sparta Road
North Wilkesboro, 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:

Between all points and places within Caldwell County, North Carolina, and from all points and places in Caldwell County to all other points and places in North Carolina, and from all points and places in North Carolina to all points and places in Caldwell County, in addition to the counties for which applicant currently holds a certificate.

DOCKET NO. T-1532

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Contract Carrier Permit by Joseph Alvin Faulkner, d/b/a Faulkner Mobile Home Moving, Route 3, Louisburg, North Carolina) ORDER GRANTING PERMIT

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Tuesday, December 29, 1970, at 10:00 A.M.

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

APPEARANCES:

For the Applicant:

Bobby W. Rogers
Attorney at Law
P. O. Box 696, Henderson, North Carolina

No Protestants

WOOTEN, COMMISSIONER: By application filed with the Commission on October 2, 1970, Joseph Alvin Faulkner, d/b/a Faulkner Mobile Home Moving, Route 3, Louisburg, North Carolina, seeks a contract carrier permit to transport Group 21, Other Specific Commodities, to wit: mobile homes, in a territory described as: from points originating in Vance,

Franklin, Warren and Granville Counties to any location in the State of North Carolina, and from any location within the State of North Carolina that terminates in Vance, Franklin, Warren and Granville Counties. The involved territory will be under specific written bilateral contracts with individual mobile home dealers.

Notice of the application was given in the Commission's Calendar of Hearings dated October 9, 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 four (4) sworn affidavits, duly verified, from mobile home dealers as follows: Cleveland Moore, Jr., Vance County; Calvin H. Averette, Franklin County; James T. Goodson, Vance, Franklin and Granville Counties; and Vallen F. Wright, Franklin County. These affidavits were in support of the application in this case and provided indications that the granting of the application for a permit will not unreasonably impair service to the public by common carriers; that Faulkner Mobile Home Moving has the equipment required for the specialized service and is otherwise fit, willing and able to perform the service for which a permit is sought; and that each of the four mobile home dealers are willing to enter into bilateral contracts with the applicant for the movement of mobile homes as applied for.

The applicant also filed with the Commission three (3) bilateral contracts, one dated September 23, 1970, by and between E & R Mobile Homes Sales, of Franklin County, North Carolina, and the applicant; one dated September 25, 1970, by and between William M. Spain, of Vance County, and the applicant; and one dated September 18, 1970, by and between E. C. Seaman Mobile Homes, of Vance County, and the applicant; these contracts are for the movement of mobile homes at prices as therein indicated and agreed to by and between the parties in the territory for which permit is here sought.

The applicant also testified in his own behalf and testified that he was the owner of two vehicles specifically designed for the movement of mobile homes, to wit: one 1964 Chevrolet Truck, and a 1969 Ford Truck; that he has had experience in the movement of mobile homes previously through illegal operations, which he immediately ceased upon learning of their illegality and filed the application herein; that a survey of the mobile home dealers in the counties for which a permit is here sought as originating and terminating points under contract revealed that there is a definite need by the mobile home carriers located in said counties for the movement of mobile homes; that he is financially able and is otherwise fit and qualified to conduct service for which he seeks authority and that he understands that he is permitted only to make mobile home movements to, from and within the counties specified for

those mobile home dealers with whom he has individual contracts and that the total number of such contracts cannot exceed seven (7).

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 Seaman Mobile Homes, of Vance County, William M. Spain, of Vance County, and E & R Mobile Homes Sales, of Franklin County, 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

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 Joseph Alvin Faulkner, d/b/a Faulkner Mobile Home Moving, Route 3, Louisburg, 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 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 31st day of December, 1970.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-1532

Joseph Alvin Faulkner
d/b/a Faulkner Mobile Home Moving
Route 3
Louisburg, North Carolina

Contract Carrier Authority

EXHIBIT A

Transportation of Group 21, Other Specific Commodities, to wit: mobile homes, under bilateral contract with not more than seven (7) mobile home dealers located in Vance, Franklin, Warren and/or Granville Counties, in the territory described as from points originating in Vance, Franklin, Warren and Granville Counties to any location within the State of North Carolina, and from any location within the State of North Carolina that terminates in Vance, Franklin, Warren and Granville Counties, when such movements are in the normal course of business being made by a contracting mobile home dealer in connection with sales, exchanges, or repossessions of mobile homes.

DOCKET NO. T-1506, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by James Woodrow Frady, 56 West Main Street, Sylva, North Carolina, for Transportation of Trailers and/or Mobile Homes	RECOMMENDED ORDER GRANTING AND DENYING PORTIONS OF APPLICATION

HEARD IN: Swain County Courthouse, Superior Courtroom, Bryson City, North Carolina, on August 20, 1971, at 10:00 A.M.

BEFORE: Commissioner Marvin R. Wooten

APPEARANCES:

For the Applicant:

R. Phillip Haire
Hall, Holt & Haire
Attorneys at Law
50 West Main Street
Sylva, North Carolina 28779

For the Protestant:

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
P. O. Box 535
Eden, North Carolina
For: Morgan Drive Away, Inc.

WOOTEN, HEARING COMMISSIONER: By application filed on March 17, 1971, James Woodrow Frady (hereinafter Applicant), Sylva, North Carolina, seeks authority as an irregular route common carrier to engage in the transportation of Group 21, trailers and mobile homes in Graham, Cherokee and Clay Counties; pick up in Jackson, Macon, Swain, Cherokee, Graham, and Clay Counties for transportation and delivery to all points and places in North Carolina; and pick up in all points and places in North Carolina for transportation and delivery to Jackson, Macon, Swain, Cherokee, Graham and Clay Counties.

This matter was calendared for hearing on May 19, 1971, and was called for hearing at that time, with all parties present and/or represented by counsel. During the course of the initial hearing, counsel for Applicant requested that the matter be continued and set for hearing in Sylva, North Carolina. Motion was filed with the Commission on May 27, 1971, moving that the Commission reschedule the hearing in this matter at Bryson City, North Carolina. The Commission issued its order dated July 1, 1971, setting recessed hearing at the time and place set out in the caption.

Initial notice of the initial hearing in this case was given in the Commission's Calendar of Hearings issued on March 31, 1971.

Protest to the granting of the application was timely filed by Morgan Drive Away, Inc., 2800 West Lexington Avenue, Elkhart, Indiana.

All parties were present and represented by counsel.

The Applicant presented, in addition to the testimony adduced at the initial hearing in this matter, 8 witnesses, including himself, for additional testimony. The Applicant presented the following witnesses who testified in part as indicated:

1. Clifford Cook testified that he lives in Franklin, Macon County, North Carolina, and has lived there for 26 years; that he owns and operates a mobile home trailer park and has done so for 13 years; that trailers regularly move in and out of his trailer park; that some of his tenants have experienced some delay in the movement of their trailers; that he has movements in and out of his part to various parts of North Carolina; that the mobile home business is increasing weekly; that he is aware that there are statewide and nationwide mobile home movers authorized for the transportation of mobile homes; that 2 people have moved out of his lot in the last previous six months, one move was within the county of Macon and the other to South Carolina; and that he believes there is a need for additional statewide authority for the movement of mobile homes.

2. Paul Ledford testified that he is from Murphy, North Carolina, Cherokee County; that he has lived there for 44 years and owns a trailer park which he has operated for 4 years; that he has 17 spaces in his trailer park located six miles east of Murphy; that there are regular movements into and out of his trailer park; that there are 8 or 10 trailer parks in Cherokee County; that his tenants have had difficulty in obtaining local moves because it is impossible to locate a local mover; that the greatest problems which his people incur is in local moves; that he knows of no trouble in the past two years which his tenants have had in moving into or out of the counties applied for from or to other counties of the State.

3. Claude Henry Young, Sr., testified that he is from Sylva, North Carolina, Jackson County; that he operates Davis Trailer Park which has 32 spaces, which he has operated for 27 months; that he has been associated with Riverside Trailer Park, which has 29 spaces for 8 years; that most of his business is students attending Western Carolina University; that there is right much delivery in his trailer park; that the number of students at the University, the number of mobile homes and the number of trailer parks in Jackson County is increasing; that he has had 12 to 15 moves into or out of his trailer park during the past 12 months; that he knows of no trouble which his tenants have had in obtaining moves into or out of his park to or from other parts of the State; that the Applicant herein does a good job in setting up mobile homes and preparing them for convenient living, and that other drivers do not perform that service.

4. Albert Patton testified that he is from Jackson County, is Mayor of Indian Hill, North Carolina; that he operates a motel and is in the retail mobile home business; that he has been in the mobile home sales business for about 8 years; that, that business is really growing in that section of the State; that someone is always asking him who they can get to move mobile homes for them; that people seeking information from him were requesting movements into,

out of and around that section of the State and other sections of the State; that the need for service for the movement of mobile homes has increased in the western North Carolina area in recent years; that he believes that there is a statewide need for additional mobile home movers and that he does not know of any trouble that anyone has had in a movement into or out of the counties herein applied for to or from other sections of the State during the past 2 years.

5. Albert M. Taylor testified that he is from Sylva, North Carolina, Jackson County, and that he has had about one and one-half years experience in the sales of mobile homes; that he has been out of the mobile home business for approximately one and one-half years; that when he was in the mobile home business, he had many inquiries regarding the movement of mobile homes; that he had had inquiries in the past from people desiring to move from Jackson County to other parts of the State; that in his opinion there is a need locally for a mover to move mobile homes from the six counties here applied for to other parts of the State, and from other parts of the State into the six counties here applied for; that mobile home movers from other sections of the State do a poor job of moving mobile homes in mountainous terrain; and that he has worked on occasions for the Applicant herein, but is now temporarily retired.

6. Mary P. Brauer testified that she is from Andrews, North Carolina, Cherokee County; that her husband owns Herman's Trailer Park; that she runs the business for her husband; that she and her husband have been in the business of selling new mobile homes for approximately 12 years; that she receives 2 or 3 calls a week from people desiring to get them to move a mobile home for them; that these calls are for moves from the six-county area to other parts of the State and from other parts of the State into the six-county area; that she is unable to give any specific example of such requests and does not know whether these requests have been satisfied by other movers; that she and her husband refused to make any illegal moves without proper authority; that her husband was hit by a bootleg mover and was at the time in the hospital recovering from injuries sustained, and that she believes a local mover would be of benefit to them.

7. Frank Hensley testified that he is from Jackson County, Sylva, North Carolina; that he operates Hensley's Mobile Home Park and has operated this 18-space park for approximately 12 years; that there is a tremendous increase in the mobile home business in the western North Carolina area; that he has some Western Carolina University students in his lot; that his lot is located on N. C. 107 and that it is his opinion that it would be good to have somebody locally to move mobile homes; that he does not know whether or not people are getting their homes moved expeditiously, but that he does receive many inquiries reference to the same.

8. James Woodrow Frady testified in addition to his previous testimony that since the initial hearing on May 19, in this case, he has received 17 calls for moves into and out of counties, some of which he serves and some of which he does not serve under authority previously granted by this Commission; that some of the 17 requests he has received were within the territory for which he is certificated; that some of the 17 requests which he has had since the May 19 hearing were from counties which he is presently certificated to or from the counties for which he is requesting authority; that some of the 17 requests which he has received were from or to some of the counties for which he has requested authority and for which he has authority to or from other counties for which he does not have authority in other parts of the State; that in connection with every mobile home movement which he has had from or to the six-county area, moved to or from other parts of the state, he has made those movements by leasing his equipment to a certificated statewide mobile home mover, for which he received the greater portion of the line-haul charge, the smaller portion going to the lessee, and for which he received the full amount of accessorial charges.

The Protestant, Morgan Drive Away, Inc., offered as a witness, Mr. Robert D. McGinnis, its area Supervisor, who testified that his company had terminals and drivers located throughout the State and that his company was affording statewide mobile home movement service. He further testified that they had 47 drivers in the State; that their nearest terminal was in Statesville, North Carolina; that they had 2 drivers living in Asheville, North Carolina; that Transit Homes, Inc., a statewide mover, has a terminal located in Asheville; that his company has other drivers located around the State as follows: Marion 3; Lincoln 1; Charlotte 6; Huntersville 1; Statesville 4; Salisbury 1, Mocksville 1; and Cherryville 1; that terminals located in western North Carolina are as follows: in Charlotte, Transit Homes and National Mobile Home Movers have a terminal; that in Statesville Transit and Morgan have terminals; that in Gastonia, National Mobile Home Movers has a terminal and that Transit Homes, Inc., has a terminal located in North Wilkesboro, North Carolina, all of which have drivers located around the State; that his company does not afford the needed transportation for mobile homes within and between the six counties herein applied for and that his company has no objection to the granting of a authority as applied for in connection therewith, but does object to that portion of the application which seeks authority to transport to or from the entire State into or out of the six counties here applied for since, in his opinion, his company and other mobile home movers are serving these needs.

Upon the call of this matter for hearing, the parties stipulated and agreed that there was a public need for the movement of mobile homes into, out of and between the Counties of Jackson, Macon, Swain, Cherokee, Graham and Clay, but the Protestant denied that there is a public need

for additional mobile home movement authority to all points and places in North Carolina from those counties and from other points and places in North Carolina into those counties.

All parties waived the privilege of filing briefs.

Upon consideration of the evidence of record adduced in this proceeding and the records of this Commission, the Commission makes the following

FINDINGS OF FACT

1. That public convenience and necessity does require the services proposed in the territory set out in Section (a) of Exhibit B in the application, to wit: Cherokee, Graham and Clay Counties, in addition to existing authorized transportation service for the movement of trailers or mobile homes.

2. That public convenience and necessity does not require the services proposed in the territory set out in Section (b) of Exhibit B in the application, to wit: Pick up in Jackson, Macon, Swain, Cherokee, Graham, and Clay Counties for transportation and delivery to all points and places in North Carolina, in addition to existing authorized transportation service for the movement of trailers or mobile homes.

3. That public convenience and necessity does not require the services proposed in the territory set out in Section (c) of Exhibit B in the application, to wit: Pick up in all points and places within North Carolina for transportation and delivery to Jackson, Macon, Swain, Cherokee, Graham and Clay Counties, in addition to existing authorized transportation service for the movement of trailers or mobile homes.

4. That the Applicant is certificated for the movement of mobile homes or trailers within and between the counties of Jackson, Macon and Swain; that public convenience and necessity requires additional transportation authority for said movements within and between Cherokee, Graham and Clay Counties; and that public convenience and necessity requires additional transportation authority for said movements within and between the counties of Jackson, Macon, Swain, Cherokee, Graham and Clay in addition to existing authorized services.

5. That the need for transporting or hauling trailers or mobile homes, as specified in Findings of Fact 1 and 4 above 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 such

service and to contribute materially to public need and to the safety of the traffic upon the highways.

6. That the Applicant owns the necessary equipment for the movement of trailers or mobile homes as specified.

7. That the Applicant is now engaged in the movement of trailers or mobile homes under a Common Carrier Certificate issued by this Commission within and between the counties of Jackson, Macon and Swain.

8. That the Applicant is fit, willing and financially and otherwise qualified and able to properly perform adequate service as set out in Findings of Fact 1 and 4 above and to continue such service as long as the need therefor exists.

CONCLUSIONS

In view of the evidence, records of the Commission, stipulations and agreements herein, and the law applicable, the Commission concludes that the Applicant has satisfied the burden of proof required by statute and that the application should be granted and approved ONLY to the extent specified in Exhibit B attached hereto and made a part hereof; and further concludes that the Applicant has failed to satisfy that burden of proof required by statute for additional authority to and from all points and places within the State into and out of the six counties herein approved.

A mere desire to engage in the common carrier operation by motor vehicle and the mere desire to have a friend or local resident engage in such operation is not evidence, in and of itself, to justify a finding that the service is required by the public convenience and necessity. Where the evidence with reference to portions of an application merely establishes a desire to perform a common carrier service and a desire of several citizens to have such service performed by a particular local individual, and there is no showing that the existing transportation facilities are inadequate or that the proposed service is required to meet the transportation needs of the public, as to those portions of the application, we must conclude, with reference to such portions of the application, that a certificate should be denied; and where the evidence is to the contrary with reference to still other parts of the application, we conclude that the application, to that extent, should be approved and certificate granted.

IT IS, THEREFORE, ORDERED:

1. That Common Carrier Certificate No. C-983 issued by this Commission to James Woodrow Frady, 56 West Main Street, Sylva, North Carolina 28779, be, and the same is, hereby amended to conform with Exhibit B attached hereto and made a part hereof.

2. That the Applicant shall comply with the laws of this State and the rules and regulations of this Commission and shall begin operations under the authority herein granted 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 31st day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1506 SUB 1

James Woodrow Frady
56 West Main Street
Sylva, North Carolina 28779

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, Trailers and/or Mobile Homes, as a common carrier over irregular routes as follows: between points and places in Jackson, Macon, Swain, Cherokee, Graham and Clay Counties, North Carolina.

DOCKET NO. T-521, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, 1030 Hammell Street, Raleigh, North Carolina - Application for Contract Carrier Permit) RECOMMENDED ORDER

HEARD IN: The Commission's Hearing Room, Ruffin Building, Raleigh, North Carolina, on August 26, 1971, at 9:30 A. M.

BEFORE: E. A. Hughes, Jr.

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law

1108 Capital Club Building
Raleigh, North Carolina

No Protestants

HUGHES, EXAMINER: By application filed with the Commission on July 15, 1971, Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, 1030 Hammell Street, Raleigh, North Carolina, seeks to amend authority heretofore issued to him in Contract Carrier Permit No. P-31, to authorize the transportation of Group 21, automotive supplies and equipment from Jacksonville, N.C., to points and places within 150 miles of Raleigh, North Carolina, under bilateral contract between Applicant and Target Tire and Automotive, Inc., of Jacksonville, North Carolina.

Due notice of the application, along with the time and place of the hearing, was given in the Commission's Calendar of Hearings issued on August 2, 1971. No written protests were filed and no one appeared at the hearing in opposition to the granting of the authority sought.

The evidence tends to show that Applicant presently holds Contract Carrier Permit No. P-31, heretofore issued by this Commission, which authorizes the transportation of drugs and automotive parts, supplies and accessories under contract with seven (7) shippers, from Raleigh, Durham, Greensboro, Charlotte and Rocky Mount to points and places within a radius of 150 miles of Raleigh; that Applicant owns eleven (11) trucks; that Applicant has net assets in the amount of some $48,000.00 and that Applicant has entered into a contract with Target Tire and Automotive, Inc., of Jacksonville, North Carolina, the shipper which Applicant seeks authority to serve. A copy of the contract was filed with the application.

The application is supported by Target Tire and Automotive, Inc., whose Vice President, Mr. E. R. Barclay, offered testimony from which it appears that shipper's main point of distribution for this area is located in Jacksonville, North Carolina, from which point it distributes its goods to distributors in the three (3) states of North Carolina, South Carolina and Virginia; that the automotive supplies and equipment which it ships are the type not generally stocked by its customers and that orders are not placed for said goods until they are needed; that the business of shipper is very competitive and that time is of the essence in the specialized type of transportation which he requires; that the service of common carriers is not satisfactory; that he has appealed to common carriers, advising them of his problem, without any affect upon the situation; that he has lost one-third of his business because of poor service by motor freight carriers; that he has documented cases where it has taken seven (7) or more days for his goods to reach a customer within a 100 mile radius of Jacksonville when shipped by common carrier; that he has considered the possibility of using his own trucks

but realized that this would be unprofitable; that Applicant has agreed and contracted to give him one (1) day service from Jacksonville to consignees within a 150 mile radius of Raleigh and that he is convinced that Applicant will serve his needs in the very best possible way.

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,

(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 the public interest requires the proposed service, which will increase the number of shippers which Applicant is authorized to serve as a contract carrier to a total of eight (8).

CONCLUSIONS

The Commission's Rule R2-10(c) limits the number of shippers which a contract carrier such as Applicant will be authorized to serve, to seven (7) shippers, unless the Commission, in its discretion finds that the public interest so requires.

A grant of the authority requested will not change or enlarge the territory which Applicant is already authorized to serve. In fact, the commodities are similar in nature and almost identical to commodities which Applicant is already authorized to transport for the shipper in Rocky Mount. The authority requested would enable Applicant to render little service that it is not already authorized to perform. Applicant's trucks from Wilmington will come through Jacksonville in the late afternoon, picking up shipments at shipper's warehouse and delivering them to points in Applicant's territory the next day. It is a special service which Applicant is equipped to render and the effect of a grant of such authority on certificated common carriers would be minimal.

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 Contract Carrier Permit No. P-31, heretofore issued to Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, Raleigh, North Carolina, be, and the same is, hereby amended to include the authority more particularly described in Exhibit A attached hereto and made a part hereof.

(2) That Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company 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.

BY ORDER OF THE COMMISSION.

This the 3rd day of September, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-521 SUB 6 — Harper Trucking Company
Thomas Oliver Harper, d/b/a
Contract Carrier of Property
Raleigh, North Carolina

EXHIBIT A — Transportation of Group 21, automotive supplies and equipment from Jacksonville, North Carolina, to points and places within 150 miles of Raleigh, North Carolina, under bilateral contract with Target Tire and Automotive, Inc., Jacksonville, North Carolina.

DOCKET NO. T-1057, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tom B. York, d/b/a Hill-Top Transport, P. O. Box 78, White Plains, North Carolina - Application for additional contract carrier authority) RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Friday, October 29, 1971, at 10:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

R. Mayne Albright
Attorney at Law
1014 Branch Banking and Trust Building
Raleigh, North Carolina

No Protestants

HUGHES, EXAMINER: By application filed with the Commission on August 27, 1971, Tom B. York, d/b/a Hill-Top Transport, P. O. Box 78, White Plains, North Carolina, seeks to amend his existing Contract Carrier Permit No. P-127, to include authority to transport petroleum and petroleum products in bulk in tank trucks under individual contracts with York Oil Company, Inc., and Yoco, Inc., over irregular routes from originating terminals at Friendship, Wilmington and Thrift, North Carolina, to points and places in Rockingham, Guilford, Randolph, Davidson, Davie, Iredell, Alleghany, Ashe, Watauga and Forsyth Counties. Notice of the application and hearing was given in the Commission's Calendar of Hearings issued September 1, 1971. No protest was 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 Mr. Tom B. York and Mr. Gary York, Secretary-Treasurer of Yoco, Inc. All of the parties, including Applicant and contracting shippers are domiciled at White Plains, North Carolina.

Applicant testified that he presently operates under Contract Carrier Permit No. P-127, heretofore issued to him by the Utilities Commission for the purpose of engaging in the transportation of petroleum and petroleum products in bulk in tank trucks under contract with York Oil Company, Inc., and Yoco, Inc., over irregular routes from originating terminals at Friendship, Wilmington and Thrift, North Carolina, to points and places in Surry, Stokes, Yadkin and Wilkes Counties; that said contracting shippers are expanding their territory to include the ten (10) additional counties as applied for herein and that the purpose of the application herein is to obtain authority to furnish transportation under contract with said shippers to said additional territory; that Applicant owns three (3) tractors and two (2) tank trailers which are adequate to provide the additional service and that he has assets in the amount of approximately $200,000.00.

Mr. Gary York of Yoco, Inc., testified that his company is in the process of expanding its distribution of petroleum products to the ten (10) additional counties which Applicant seeks to serve and that his company needs the service of

Applicant for the transportation of its commodities to its own outlets as well as to its customers in the area for which authority is sought.

Upon consideration of the application and the evidence presented in this case, the Hearing Examiner is of the opinion and makes 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 contracts with York Oil Company, Inc., and Yoco, 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 Hearing Examiner 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 Tom B. York, d/b/a Hill-Top Transport, P. O. Box 78, White Plains, 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, and

otherwise, all of which shall be done within thirty (30) days from the date this order becomes final.

BY ORDER OF THE COMMISSION.

This the 8th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1057 SUB 2	Hill-Top Transport Tom B. York, d/b/a Contract Carrier of Property White Plains, North Carolina
EXHIBIT A	Transportation of petroleum and petroleum products in bulk in tank trucks, under individual bilateral contracts with York Oil Company, Inc., and Yoco, Inc., over irregular routes, from originating terminals at Friendship, Wilmington and Thrift, North Carolina, to points and places in Surry, Stokes, Yadkin, Wilkes, Rockingham, Guilford, Randolph, Davidson, Davie, Iredell, Alleghany, Ashe, Watauga and Forsyth Counties.

DOCKET NO. T-1572

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Mini-Haul, Inc., Route 4, Forest Hills,) RECOMMENDED
Sanford, North Carolina - Application) ORDER
for Common Carrier Authority to operate) GRANTING
Merchandise Pick-Up and Delivery Service) AUTHORITY

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina on September 17, 1971, at 10:00 A.M.

BEFORE: Commissioner John W. McDevitt

APPEARANCES:

For the Applicant:

Clawson L. Williams, Jr.
Attorney at Law
Branch Bank and Trust Building
Raleigh, North Carolina

For the Protestants:

Thomas W. Steed, Jr.
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

McDEVITT, COMMISSIONER: Application was filed on August 10, 1971, by Mini-Haul, Inc., Route 4, Forest Hills, Sanford, North Carolina (hereinafter called Applicant) for a certificate to operate as a common carrier over irregular routes as follows:

Pick-up and delivery, upon request, of parcels, packages, boxes, cartons, merchandise and commodities weighing not in excess of 100 pounds, within the bounds of the territory described as follows: From points and places in Lee County, North Carolina to points and places within a 50-mile radius of the City of Sanford, and from points and places within a 50-mile radius of the City of Sanford to points and places within Lee County.

Public Hearing was scheduled and held as captioned in accordance with notice published in the Calendar of Hearings issued August 6, 1971.

Protest and Motion for Intervention filed by American Courier Corporation was withdrawn during the course of the hearing upon motion of counsel.

Mr. L. L. Beckham, President of Mini-Haul, Inc., testified that about 60 days ago he initiated an exempt pick-up and delivery service in the City of Sanford serving business and industry with a 1971 Ford Super Van; that the assets of the Company amount to $3,800 and liabilities consist of a lien on equipment of $2,500; that in the course of his experience as an exempt carrier he has had requests for service which would be permitted under the proposed authority; that he is ready, willing and able, financially and otherwise, to provide the proposed service.

Mr. Joe Derrickson, an officer of Brown's Auto Supply Company of Sanford, North Carolina, testified that he needs the proposed service in supplying garages, service stations, and automobile dealers; that another business in which he is part owner, Baker's Garage, requires transportation of critical items of equipment within the scope of the proposed authority.

Mr. T. Burke Buchanan, operator of Buchanan's Radio, TV and Record Shop and Buchanan's Music and Record Bar in Sanford, testified that he needs the proposed service.

Mr. Elwin J. Buchanan, Executive Vice President of the Sanford Merchant's Association, and operator of a Retail Furniture Business testified that he needs and will use the proposed service in his own business and is of the opinion

that the service is needed generally by business and industrial establishments within the area.

From the evidence offered the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Public Convenience and Necessity requires the proposed service in addition to existing authorized transportation service.

2. The applicant is fit, willing and able to properly perform the proposed service.

3. The applicant is solvent, and financially able to furnish adequate service on a continuing basis.

CONCLUSION

The applicant has borne the burden of proof that public convenience and necessity requires the proposed service and that he is ready, willing and able to provide it on a continuing basis. The Hearing Commissioner concludes that the proposed authority should be authorized.

IT IS, THEREFORE, ORDERED That the applicant, Mini-Haul, Inc., be, and it hereby is granted authority as an irregular route common carrier to transport specific commodities 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 Commission a tariff of schedules and charges, evidence of adequate insurance coverage, and has otherwise complied with the rules and regulations of the Commission, all of which should be accomplished within 30 days from the date this Order becomes final.

IT IS FURTHER ORDERED That the authorization herein set forth shall constitute a certificate until formal certificate shall have been issued and transmitted to the applicant authorizing the transportation herein described.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of October, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1572

Mini-Haul, Inc.
Route 4, Forest Hills
Sanford, North Carolina

<u>Irregular Route Common Carrier Authority</u>

EXHIBIT B

Pick up and delivery, upon request, of parcels, packages, boxes, cartons, merchandise and commodities weighing not in excess of 100 pounds, within the bounds of the territory described as follows: From points and places in Lee County, North Carolina, to points and places within a 50 mile radius of the City of Sanford, and from points and places within a 50 mile radius of the City of Sanford to points and places within Lee County.

DOCKET NO. T-153, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Morven Freight Lines, Incorporated,) ORDER
P. O. Box 718, Wadesboro, North Carolina)

HEARD IN: The Commission's Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 7, 1971, at 2:00 P. M.

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

APPEARANCES:

For the Applicant:

H. Pat Taylor, Jr.
Taylor & McLendon
Attorneys at Law
P. O. Box 593, Wadesboro, North Carolina 28170

WOOTEN, COMMISSIONER: This matter arises upon the application filed by Morven Freight Lines, Incorporated, P.O. Box 718, Wadesboro, North Carolina, for common carrier authority to transport Group 21, sand, gravel, dirt and debris in bags, packages or boxes over irregular routes, in the territory described as from points and places throughout the State of North Carolina to points and places throughout the State of North Carolina. Said application was filed with the Commission on March 23, 1971.

Notice of the application, containing a description of the authority applied for, and setting the matter for hearing at the above time and place was given in the Commission's March 31, 1971, issue of the Calendar of Hearings.

No protests were received by the Commission and no one appeared at the hearing to protest the granting of the authority herein sought.

Upon the call of this matter for hearing, the owner of the corporate applicant, Charles B. Ratliff, testified regarding the need for the transportation service which he was requesting, and his fitness, willingness and ability to perform such service. Also testifying for and on behalf of the applicant was Mr. John Duncan Currie, who is manager of Southern Products and Silica Company and is in charge of the shipping for said company. Mr. Currie testified regarding the need of his company for the service herein applied for and the need of the general public and contractors for the movement of the materials which his company produces which are used in water filter plants and for sandblasting and in construction.

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 the necessary equipment for the movement of the commodities in the territory described as applied for.

2. That the applicant and its employees are experienced in the movement of the commodities herein applied for 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 the products here sought under a limited certificate heretofore issued by this Commission.

4. That the applicant is fit, willing and financially able 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 require the service of the applicant for the hauling of Group 21, sand, gravel, dirt and debris in bags, packages and/or boxes, as specified, in addition to other existing transportation service.

It appears from the evidence that the need for transporting the commodities herein involved is substantial and will probably increase; that to move such commodities and comply with the public convenience and necessity, it is required that equipment be available for instantaneous use to meet the need.

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, THEREFORE, ORDERED as follows:

1. That Morven Freight Lines, Incorporated, P. O. Box 718, Wadesboro, North Carolina 28170, be, and it is, hereby granted authority as an irregular route common carrier to transport Group 21 commodities in accordance with Exhibit B attached hereto.

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 otherwise complied with the rules and regulations of this Commission, all of which shall be done within thirty (30) days from the date of this order.

3. That the authorization herein shall constitute a certificate until a formal certificate shall have been transmitted to the applicant authorizing transportation herein set out.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-153

Morven Freight Lines, Incorporated
P. O. Box 718
Wadesboro, North Carolina 28170

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 21, sand, gravel, dirt and debris in bags, packages or boxes over irregular routes in the territory described as from points and places throughout the State of North Carolina to points and places throughout the State of North Carolina.

DOCKET NO. T-277, SUB 12
DOCKET NO. T-480, SUB 28
DOCKET NO. T-208, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Consolidated Applications of Old Dominion) ORDER
Freight Line, High Point, North Carolina;) GRANTING
Thurston Motor Lines, Inc., Charlotte, North) CERTIFICATE
Carolina; and Overnite Transportation Company,)
Richmond, Virginia, for a Common Carrier)
Certificate to Serve "An Off-Route Point")

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Friday, January 22, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Applicants:

Honorable T. D. Bunn
Hatch, Little, Bunn, Jones & Liggett
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina
For: Old Dominion Freight Line
Thurston Motor Lines, Inc.
Overnite Transportation Company

No Protestants

WOOTEN, COMMISSIONER: By applications filed simultaneously with the Commission on October 1, 1970, the applicants, Old Dominion Freight Line, High Point, North Carolina (hereinafter Old Dominion); Thurston Motor Lines, Inc., Charlotte, North Carolina (hereinafter Thurston); and Overnite Transportation Company, Richmond, Virginia (hereinafter Overnite), seek authority to engage in transportation of Group 1, General Commodities, in a territory described as serving the plant site of Allied Chemical Corporation located at or near Moncure, North Carolina, on or near U.S. Highway 1, as an off-route point.

Notice of the applications, giving a description of the authority applied for, setting the same for hearing on December 29, 1970, was given in the Commission's Calendar of Hearings issued October 9, 1970. Subsequent thereto, Motion to Postpone Hearing was filed with the Commission, and by order dated December 11, 1970, hearing was continued to the captioned time and place. No one appeared at the hearing in protest or in opposition to the applications herein and no protests were received by the Commission.

The applicants presented John Burton, Assistant Director of Traffic for Overnite, Bruce Hooks, Assistant Traffic Manager for Thurston, and Robert B. Stanley, Sr., Traffic Manager for Old Dominion, as company witnesses in support of their applications. In each instance the witness introduced by reference the certificate of the respective carrier, the equipment list of the respective carrier, a copy of the proposed authority as filed with the application for each carrier, and a copy of each carrier's financial statement as filed with the application. The testimony of the witnesses and the various exhibits which they introduced tended to show that each of the applicants hold intrastate authority which would enable them to give needed service to the Allied Chemical Corporation Plant at Moncure, North Carolina, on a needed statewide basis, in addition to that presently offered by Helms Motor Express, in the event they are granted the requested additional off-route point authority; that the applicants are all fit, willing and able, financially and otherwise, to perform the proposed service on a continuing basis; that the applicants, and each of them, filed their application as a result of a request from Allied Chemical Corporation which desired such service; and that the applicants are in a position to supplement existing service to this customer for both inbound and outbound shipments.

The applicants also offered the testimony of Mr. Edward T. Ramsey, who resides in Prince George County, Virginia, and who is the Manager for Procurement - Fiber Division - of Allied Chemical Corporation. This witness' testimony was in support of the applications heretofore filed; the witness' evidence tended to show that the present service afforded by Helms Motor Express intrastate was not sufficient to serve the company's needs; that the company was making purchases outside the State of North Carolina because it could obtain more prompt delivery than that afforded by Helms Motor Express, intrastate; that the company needs to ship into and out of Moncure to and from all points in North Carolina; that the company's outbound shipments will include synthetic yarns (polyester) both interstate and intrastate; that inbound shipments will include raw materials and operation and maintenance supplies; that inbound and outbound shipments will be both less-than-truckload and truckload shipments; that Allied Chemical Company uses both its own trucks and common carrier vehicles; that Helms Motor Express' service is not adequate; that in his opinion this additional authority is needed in addition to present authorized and existing service; that his company's operation is a constant operation which cannot be interrupted and favorable sources of available transportation are necessary; and that intrastate shipments inbound take from six to eight days, while the company is presently receiving overnight service out of Richmond, Virginia.

Upon consideration of the applications and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That public convenience and necessity requires the proposed service by the applicants, and each of them, in addition to existing authorized transportation service.

2. That the applicants, and each of them, are fit, willing, and able to properly perform the proposed service.

3. That the applicants, and each of them, are solvent and financially able to furnish adequate service on a continuing basis.

CONCLUSIONS

The applicants, and each of them, are presently authorized by this Commission to serve points and places covering almost all of the State of North Carolina, though none of the applicants serve all of the same points and their authorities differ substantially, and none of the applicants are presently authorized to serve Moncure, North Carolina; and it, therefore, appears that the applicants having authority to serve points in close proximity to Moncure, North Carolina, can conveniently serve the plant site of Allied Chemical Corporation at or near Moncure, North Carolina, as an off-route point from their respective existing franchises over Highways U.S. 70, U.S. 64 and U.S. 1. It further appears that the applicants, and each of them, have the equipment and are financially able and otherwise qualified to render the proposed service.

Based upon the record, the evidence presented in these cases, and the foregoing Findings of Fact, it is the conclusion of the Commission that the applicants, and each of them, have carried the burden of proof required for the granting of the authority sought and that the applications, and each of them, should be approved and granted.

IT IS, THEREFORE, ORDERED, as follows:

1. That the application of Old Dominion Freight Line, High Point, North Carolina, be, and the same is, hereby granted, and that Common Carrier Certificate No. C-97 in the name of Old Dominion Freight Line be, and the same is, hereby amended to include the authority more particularly described in Exhibit A hereto attached and made a part hereof.

2. That the application of Thurston Motor Lines, Inc., Charlotte, North Carolina, be, and the same is, hereby granted, and that Common Carrier Certificate No. C-26 in the name of Thurston Motor Lines, Inc., be, and the same is, hereby amended to include the authority more particularly described in Exhibit A hereto attached and made a part hereof.

3. That the application of Overnite Transportation Company, Richmond, Virginia, be, and the same is, hereby granted, and that Common Carrier Certificate No. C-6, in the name of Overnite Transportation Company be, and the same is, hereby amended to include the authority more particularly described in Exhibit A hereto attached and made a part hereof.

4. That the applicants, Old Dominion Freight Line, Thurston Motor Lines, Inc., and Overnite Transportation Company, and each of them, file with the Commission appropriate tariffs and otherwise comply with the rules and regulations of the Commission and begin operating under the authority herein granted within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. T-277 SUB 12

Old Dominion Freight Line
P. O. Box 1189
High Point, North Carolina

Regular Route Common Carrier Authority

EXHIBIT A

Transportation of General Commodities, except those requiring special equipment as follows:

Serving the Plant Site of Allied Chemical Corporation located at or near Moncure, North Carolina, on or near U.S. Highway No. 1, as an off-route point from applicant's presently authorized routes.

DOCKET NO. T-480 SUB 28

Thurston Motor Lines, Inc.
600 Johnson Road
Charlotte, North Carolina

Regular Route Common Carrier Authority

EXHIBIT A

Transportation of General Commodities, except those requiring special equipment as follows:

Serving the Plant Site of Allied Chemical Corporation located at or near Moncure, North Carolina, on or

near U. S. Highway No. 1, as an _off-route point_ from applicant's presently authorized routes.

DOCKET NO. T-208 SUB 30 — Overnite Transportation Company
1100 Commerce Road
Richmond, Virginia

Regular Route Common Carrier Authority

EXHIBIT A — Transportation of General Commodities, except those requiring special equipment as follows:

Serving the Plant Site of Allied Chemical Corporation located at or near Moncure, North Carolina, on or near U.S. Highway No. 1, as an _off-route point_ from applicant's presently authorized routes.

DOCKET NO. T-1367, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Schwerman Trucking Co., 611) RECOMMENDED
South 28th Street, Milwaukee, Wisconsin) ORDER

HEARD IN: The Commission's Hearing Room, Ruffin Building, Raleigh, North Carolina, on August 18, 1971, at 9:30 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

Kenneth Wooten, Jr.
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

Clawson L. Williams, Jr.
Attorney at Law

Branch Banking and Trust Building
Raleigh, North Carolina
Appearing for: Maybelle Transport Company and
Central Transport, Inc.

HUGHES, EXAMINER: By application filed with the Commission on June 30, 1971, Schwerman Trucking Co., 611 South 28th Street, Milwaukee, Wisconsin, seeks irregular route common carrier authority to engage in the transportation of cement, in bulk, from points in North Carolina, restricted to shipments having immediate prior or subsequent movement by rail, to all points and places in North Carolina. Notice of said application, along with the time and place of the hearing was published in the Commission's Calendar of Hearings issued on June 30, 1971.

Protests thereto were timely filed by Maybelle Transport Company, Lexington, North Carolina, and Central Transport, Inc., High Point, North Carolina.

All parties were present and represented by counsel at the hearing.

At the call of the case, Applicant moved to amend the application to change the commodity and territorial description to read as follows:

"Cement, in bulk, from all points in North Carolina to all points in North Carolina, restricted to shipments for the account of Ideal Cement Company, Division of Ideal Basic Industries, Inc., and to shipments having immediate prior movements by rail and to construction projects only."

Since the proposed amendment would restrict and limit the authority sought and would in no sense result in an enlargement thereof, the motion to amend was allowed, whereupon Protestants asked that their protests be withdrawn and excused themselves from the hearing.

Evidence tends to show that Applicant, Schwerman Trucking Co., is one of the largest bulk commodity haulers in the country; that Applicant has forty-one (41) tractors and thirty-one (31) dry tanks, specially designed and used for the transportation of dry commodities, based in North Carolina; that the transportation of cement in bulk is highly specialized and requires not only special equipment but drivers and employees who have had extensive training in the loading, unloading and handling of said commodities and that Applicant has the equipment, experience and financial ability to provide adequate and continuous service under the authority sought.

The evidence further shows that Applicant presently holds certain intrastate common carrier authority for the transportation of dry cement, in bulk, in North Carolina, including authority to transport said commodity from Wilmington, North Carolina, and points and places within a

radius of fifteen (15) miles thereof, to points and places throughout the State.

The application is supported by Ideal Cement Company (Ideal) whose manager of said firm's ICT Division at Castle Hayne, North Carolina, testified that Ideal's $40,000,000.00 plant at Castle Hayne is the only manufacturer of cement within the State of North Carolina; that said plant produces three and one-half million (3,500,000) barrels of cement a year and in the course of a year, adds $16,000,000.00 to the economy of the State; that Ideal is the largest cement producer in the country and has fifteen (15) manufacturing plants located throughout the United States; that forty percent (40%) of the cement produced at Castle Hayne is shipped to points in North Carolina, fifty percent (50%) of which moves by truck; that Ideal has used Applicant for all of its motor transportation needs since 1967, prior to which said firm did its own hauling in private carriage; that a substantial amount of dry cement is shipped from Castle Hayne to highway construction points throughout the State by rail; that said rail cars are placed on rail sidings usually some five (5) to fifteen (15) miles from the construction site; that said commodity will be transferred from the rail cars to Applicant's trucks for transportation to the construction sites; that such ex rail shipments are not only more economical but allow for a more rapid and expeditious service to fit the contractors needs which vary from day to day; that the transportation of dry cement in bulk is a specialized field and requires an experienced carrier such as Applicant who has the facilities, including the specially built high cost equipment.

Upon consideration of the application, the testimony of the Applicant and the supporting witness, the exhibits and all of 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

Applicant presently holds intrastate authority for the transportation of dry cement in bulk from Castle Hayne to all points and places within the State of North Carolina and can transport said commodity from origin to destination entirely by truck. For economical reasons, however, a substantial volume of such traffic moves by rail to the

nearest rail siding to the job site, from which point it will be moved by Applicant's trucks to the site of the construction. Applicant frankly admits that it would not be profitable to perform the short moves from rail sidings to job sites, if that was the total business offered by the shipper. For this reason, the shipper uses the services of Applicant for all of its hauling, including movements from the plant at Castle Hayne of both dry cement in bulk and in bags to all points where ex rail shipments would not be feasible. In this way, the carrier gets all of Ideal's traffic, including that which is attractive and that which is not so attractive, such as the ex rail shipments, which would be offered if the authority sought is granted.

The Hearing Examiner is of the opinion and concludes that Applicant has carried the burden of establishing that a public demand and need exists for the proposed service; that shipper has a substantial volume of traffic to be moved in ex rail service to points throughout the State and that shipper requires the availability of specialized equipment for the transportation of dry cement in bulk in expedited statewide deliveries to the various points, including job site locations. Shipper has demonstrated a need for Applicant's proposed service which existing carriers either cannot or do not want to meet. The Hearing Examiner concludes that the authority sought should be granted.

IT IS, THEREFORE, ORDERED:

(1) That Common Carrier Certificate No. CP-31, heretofore issued to Schwerman Trucking Co., 611 South 28th Street, Milwaukee, Wisconsin, be, and the same is, hereby amended to include the authority more particularly described in Exhibit B hereto attached and made a part hereof.

(2) That Schwerman Trucking Co. comply with the rules and regulations of the Commission and institute service under the authority herein granted within thirty (30) days from the effective date of this order.

BY ORDER OF THE COMMISSION.

This the 26th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1367 SUB 5 — Schwerman Trucking Co.
Irregular Route Common Carrier
Milwaukee, Wisconsin

EXHIBIT B — Transportation of cement, in bulk, from all points in North Carolina, to all points in North Carolina, restricted to shipments for the account of Ideal Cement Company,

Division of Ideal Basic Industries, Inc., and to shipments having immediate prior movements by rail and to construction projects only.

DOCKET NO. T-1545

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Worsley Transport, Inc., N. Norwood Street, Wallace, North Carolina) ORDER

HEARD IN: The Commission's Hearing Room, Ruffin Building, Raleigh, North Carolina, on April 14, 1971, at 2:00 P. M.

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

APPEARANCES:

For the Applicant:

Ralph McDonald
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
P. O. Box 2246
Raleigh, North Carolina

William C. Blossom
Wells, Blossom & Burrows
Attorneys at Law
P. O. Box 552, Wallace, North Carolina

No Protestants

WELLS, COMMISSIONER: By application filed with the Commission on January 28, 1971, Worsley Transport, Inc., N. Norwood Street, Wallace, North Carolina, seeks a contract carrier permit to engage in the transportation of Group 21. Gasoline, Kerosene, Fuel Oils and Liquefied Petroleum Gas in bulk in tank trucks and Motor Oils, Greases and Antifreeze in packages and containers, between all points and places in Anson, Beaufort, Bladen, Brunswick, Carteret, Chatham, Columbus, Craven, Cumberland, Dare, Duplin, Durham, Edgecombe, Franklin, Greene, Harnett, Hoke, Hyde, Johnston, Jones, Lenoir, Moore, Martin, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Wake, Washington, Wayne and Wilson 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 February 1,

1971. No protests were filed and the application is unopposed.

The evidence tends to show that Applicant presently holds an exemption certificate under which it leases equipment to shippers; that the president of the Applicant corporation has had fifteen (15) years experience in motor transportation; that Applicant has service stations throughout the area to be served under contract; that the commodities to be transported will be picked up at originating terminals in Selma and Wilmington and distributed to shippers within the territory applied for under contracts which were submitted at the hearing and received in evidence; that shippers to be served, during the peak season, need to move petroleum products quickly, upon short notice; that said shippers do not presently use common carriers for the reason that they cannot effectively perform the needed service and that the rates to be applied will be equivalent to those established by common carriers.

The evidence further shows that Applicant will use five (5) tractors and fourteen (14) tank trailers in its operation and that Applicant has a net worth in the amount of $10,000; that the 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 Worsley Transport, Inc., was incorporated under the laws of the State of North Carolina on April 2, 1971, and that the Board of Directors consist of Donald A. Worsley, of Elizabethtown, North Carolina, and George K. Worsley and W. C. Worsley, Jr., both of Wallace, North Carolina.

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 should be granted.

IT IS, THEREFORE, ORDERED:

(1) That a contract carrier permit be granted Worsley Transport, Inc., N. Norwood Street, Wallace, North Carolina, to engage in the transportation of Group 21. Gasoline, Kerosene, Fuel Oils and Liquefied Petroleum Gas in bulk in tank trucks and Motor Oils, Greases and Antifreeze in packages and containers, as particularly described in Exhibit A hereto attached and made a part hereof.

(2) That Worsley Transport, Inc., file with this Commission 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.

(3) That Exemption Certificate No. E-16931, heretofore issued to Worsley Transport, Inc., be, and the same is, hereby cancelled.

BY ORDER OF THE COMMISSION.

This the 26th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1545 — Worsley Transport, Inc.
Contract Carrier of Property
Wallace, North Carolina

EXHIBIT A — Transportation of Group 21. Gasoline, Kerosene, Fuel Oils and Liquefied Petroleum Gas in bulk in tank trucks and Motor Oils, Greases and Antifreeze in packages and containers, between all points and places in Anson, Beaufort, Bladen, Brunswick, Carteret, Chatham, Columbus, Craven, Cumberland, Dare, Duplin, Durham, Edgecombe, Franklin, Greene, Harnett, Hoke, Hyde, Johnston, Jones, Lenoir, Moore, Martin, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Pitt, Richmond, Robeson, Sampson, Scotland,

Tyrrell, Wake, Washington, Wayne and Wilson Counties, under bilateral written contracts with Twin Petroleum, Inc., of Wallace, North Carolina, Worsley Oil Company of Burgaw, Inc., Burgaw, North Carolina, Worsley Oil Company of Elizabethtown, Inc., Elizabethtown, North Carolina and Worsley Oil Company of Wallace, Inc., Wallace, North Carolina.

DOCKET NO. T-825, SUB 148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of North Carolina Household Goods Carriers For Authority to Make Uniform Increase and Changes in Line Haul Rates and Charges	) ORDER ALLOWING) INCREASES IN) LINE HAUL RATES) AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on July 15, 1971, at 9:30 o'clock, a.m.

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

APPEARANCES:

For the Applicant:

Mr. Thomas R. Eller, Jr.
Cansler, Lockhart & Eller
Attorneys at Law
1111 North Carolina National Bank Building
Charlotte, North Carolina 28202

For the Commission Staff:

Mr. Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

No Protestants

BY THE COMMISSION: This proceeding began with the filing with the Commission of a Joint Application by Counsel, Thomas R. Eller, Jr., of the law firm of Cansler, Lockhart and Eller, Charlotte, North Carolina, for and on behalf of the motor common carriers of household goods in North Carolina intrastate commerce and their tariff publishing agents, Motor Carriers Traffic Association, Inc., Agent; North Carolina Motor Carriers Association, Inc., Agent, and

North Carolina Household Goods Movers and Warehousemen's Association, wherein Counsel for applicants sought to have the Commission approve a six (6%) percent interim increase on line haul rates and charges effective May 1, 1971, on statutory notice. Further, the application sought an additional increase of six (6%) percent, thereby increasing the North Carolina intrastate line haul rates and charges to the proposed interstate level.

By Order in this docket dated March 29, 1971, oral argument on the application filed by Counsel, as hereinabove enumerated and described was assigned for April 6, 1971, and held as scheduled. Order issued April 21, 1971, in this docket denied the request of applicants' counsel to allow the six (6%) percent interim increase for application to North Carolina intrastate traffic effective May 1, 1971; suspended the use and application of the proposed tariff schedules to and including August 31, 1971; instituted an investigation into and concerning the lawfulness of said tariff schedules; declared the matter to be of a general rate case under G. S. 62-137; served a copy of the Order upon the carriers' tariff publishing agents, and made the motor carriers participating or proposing to participate in the suspended tariff schedules respondents. The Commission's Order further directed that the schedules suspended not be changed or altered until the proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

The aforementioned Order of the Commission set the matter for hearing on July 15, 1971. No protest to the involved tariff schedules was received by the Commission, nor did any protestant appear at the hearing to offer evidence and testimony in opposition thereto.

The matter came on for hearing as scheduled and the respondents presented eight (8) witnesses, to wit: Francis L. Wyche, L. E. Forrest, Ben T. Fralick, Wendell Thornton, Jimmy Lawrence Paul, Frank E. Watson, Howard Frazier and William Walton. The Commission's Staff presented one witness, I. H. Hinton.

The representatives of respondents presented exhibits and testimony purporting to show the justness and reasonableness of the proposed rates and charges and tariff changes herein involved.

Mr. Francis L. Wyche, Executive Secretary, Household Goods Carriers' Bureau and Agent of North Carolina Household Goods Movers and Warehousemen's Association, for and on behalf of respondents, presented evidence in the form of testimony and exhibits tending to show the justness and reasonableness of the proposed increase in line haul rates and charges. His testimony tended to show that the intrastate rate levels should be higher than interstate because of the benefits of full utilization of equipment, manpower, and the amount of back-hauls or return loads in interstate traffic; that

interstate shipments move on the average from 750 to 800 miles and that intrastate shipments move on the average from 100 to 150 miles. His testimony further tended to show that the North Carolina intrastate and interstate rates were substantially at the same level in 1969; that effective May 15, 1970, the interstate rates were increased by six (6%) percent, and on May 1, 1971, said interstate rates were increased by an average of 6.25%. This witness also outlined and described the proposed increase in hourly charges from $15.00 per hour for a van and two men to $19.50, and the increase per hour for each additional man from $5.00 to $5.50 for regular hours, and from $20.00 to $25.00 per hour for a van and two men and from $7.50 to $8.25 per hour for each additional man for after regular hours; the change in mileage from 20 to 30 miles in the Storage in Transit rule; the proposed rule covering handling of shipments involving Elevator, Stair and excessive distance carry charges, and the proposed cancellation of the surcharge of 75 cents per each 1,000 pounds or fraction thereof, based on actual weight of entire shipment when released to a value not exceeding 60 cents per pound per article.

The testimony of Mr. L. E. Forrest, Traffic Manager, North Carolina Motor Carriers Association, Inc., for and on behalf of respondent member carriers, tended to show that said respondent member carriers, support state-wide uniformity of household goods movers rates applying to all household goods transportation service rendered in North Carolina; that intrastate rates applicable to shipments of household goods should be substantially the same level as interstate rates for substantially the same service; that the interstate carrier can make better utilization of its equipment, manpower, and other facilities than the intrastate carrier; that the intrastate moves are usually for shorter distances than interstate moves, and that North Carolina intrastate operating costs have continued to increase since 1969 and spiral upward along with increased costs of equipment, licenses and taxes.

Mr. Ben T. Fralick, Operations Manager, Raleigh Bonded Warehouse, Inc., offered testimony and exhibits tending to show that more movements of household goods are handled by his company during the summer months than during the winter months; that his company has a great deal of idle equipment during the winter months; that moving is directly related to the degree of employment and is seasonal; that the mover cannot sell his trucks and discharge his drivers in the off-season and neither can he use a van, dollies, and pads for something else in the off-season; that his company has a serious need for additional revenue but does not want North Carolina intrastate rates higher than interstate rates if it can be avoided; that his company's North Carolina revenues for the years 1969 and 1970 amounted to $80,602 and $54,593, and expenses for this same period were $104,173 and $69,134, producing operating ratios of 129.2% and 126.6%, respectively; that his company used a mileage pro-rate

formula in arriving at a separation of expenses attributable to North Carolina intrastate commerce; that the cost gasoline has increased by two (2) cents per gallon, license plates have increased by 25%, labor costs have increased greatly since 1969, and that drivers' wages per hour have increased from $2.20 per hour to $3.08 per hour, or a 40% increase.

Respondents next presented Mr. Wendell Thornton, Manager, Security Storage Company, Inc., whose testimony and exhibits tended to show that his company had experienced increased costs in 1970 over 1969; that for the years 1969 and 1970 his company's North Carolina intrastate revenues amounted to $80,301 and $51,499, and expenses were $98,843 and $54,660, producing operating ratios of 123.1% and 106.1%, respectively. Mr. Thornton's testimony reflected that approximately 60% of the household goods moves are made during the four (4) months period, June through September of each year; that of the more than 200 household goods movers engaged in North Carolina intrastate commerce, his committee selected 20 of these carriers as representatives thereof, using such criteria in arriving at a "cross-section" type sample as geographical location, size of operation, type of operation, and size of sample, and that these twenty carriers represent approximately ten (10%) percent of the household goods carriers engaged in North Carolina intrastate traffic but represents approximately fifty (50%) percent of the total amount of revenues for these 200 carriers. His Exhibit No. 5, offered into evidence in this proceeding, shows for the year 1970, the North Carolina intrastate revenues, intrastate mileage, total company regulated mileage, percent of intrastate mileage to total mileage, total company operating expenses, expenses attributable to North Carolina intrastate commerce by use of the mileage pro-rate formula, and the North Carolina intrastate operating ratios of the twenty study carriers hereinbefore mentioned, with the names of said carriers and their operating ratios being as follows:

NAME AND LOCATION OF CARRIER	OPERATING RATIO
ABC Moving and Storage, Greenville, N. C.	95.8%
Airway Moving and Storage Company, New Bern, N. C.	96.9%
Charlotte Van and Storage Co., Inc., Charlotte, N. C.	104.0%
Fleming-Shaw Transfer Company, Greensboro, N. C.	96.0%
Gilbert Trucking Company, Eden, N. C.	96.9%
Hobby's Transfer and Storage Company, Raleigh, N. C.	151.7%
Holland Transfer and Storage Company, Statesville, N. C.	95.0%
Lentz Transfer, Winston-Salem, N. C.	108.0%
McCauley Bros. Moving and Storage, Inc., Jacksonville, N. C.	109.7%

Modern Moving and Storage, Fayetteville, N. C.	98.0%
Murray Transfer and Storage Co., Wilmington, N. C.	96.6%
North American Movers of N. C., Inc., Asheville, N. C.	100.6%
Patterson Storage Warehouse Company, Inc., Fayetteville, N. C.	96.6%
Raleigh Bonded Warehouse, Raleigh, N. C.	126.6%
Rucker Moving and Storage Company, Greensboro, N. C.	103.0%
Security Storage Company, Inc., Goldsboro, N. C.	106.1%
Spruill Moving and Storage, Washington, N. C.	100.4%
Streeter Moving and Storage Company, Goldsboro, N. C.	101.3%
Tatum-Dalton Transfer Company, Greensboro, N. C.	109.3%
Trexler's Transfer, Salisbury, N. C.	107.1%

Mr. Thornton's testimony further tended to show that the household goods carriers do not currently have on file with the Commission a published tariff scale of rates applicable to North Carolina intrastate shipments of household goods weighing 16,000 pounds and over as is the case for interstate shipments, but have no objection to publishing such a scale of rates for application to North Carolina intrastate traffic.

The testimony of Respondent, Jimmy Lawrence Paul, Vice President and General Manager, Patterson Storage Warehouse Company, Inc., reflected that his company handled 126 North Carolina intrastate moves in 1969 compared to 87 moves in 1970; that his company's operating expenses have increased since 1969; that during this same period wages for drivers have increased 17.2%, labor 18%, wages for warehousemen 19% and tires 17.4%, and that North Carolina intrastate regulated business comprises approximately 24.56% of his company's total business.

Mr. Frank E. Watson, President, Charlotte Van and Storage Company, Inc., Respondent, offered testimony tending to show that his company's rate of return on investment is 2-1/2 percent; that cost of repairing articles of furniture has increased 50% during the past three years, and that his company's North Carolina intrastate operating ratio is 104% for the year 1970.

The testimony of respondents' last two witnesses, Mr. Howard Frazier, President, North American Movers of N. C., Inc., and Mr. William Walton, President, Murray Transfer and Storage Co., tended to show that their companies have experienced a similar decline in volume of business since 1969, and that they have experienced increases in costs of operations since 1969, similar to respondent witnesses hereinabove mentioned.

The Commission Staff presented one witness in the person of I. H. Hinton. Certain exhibits which are of record were presented by this witness as well as testimony pertaining thereto.

The filing of briefs was waived by all parties of record.

Upon consideration of the evidence adduced at the hearing and the record in this proceeding as a whole, the Commission makes the following

FINDINGS OF FACT

(1) That respondent carriers participating in tariff schedules under suspension in this proceeding, are common carriers of property by motor vehicle in North Carolina intrastate commerce, are subject to the jurisdiction of, and regulation by this Commission, and said carriers are properly before the Commission in this proceeding.

(2) That respondents have proposed cancellation of the surcharge of 75 cents per each 1,000 pounds or fraction thereof, based on actual weight of entire shipment when released to a value not exceeding 60 cents per pound per article.

(3) That the spiraling inflation in almost all phases of intrastate operations of respondent motor carriers, including but not limited to, the cost of labor, repair parts, equipment of all kinds, taxes, gasoline, oil, license fees, tires, office supplies, etc., has adversely and substantially affected the operating ratios of the respondents.

(4) That the increase in line haul rates averaging approximately 12.25%, the increase in hourly charges, the additional carry charges for handling shipments involving elevators, stairs or excessive distances in loading or unloading, and the cancellation of the surcharge, are just and reasonable.

(5) That the operating ratios presented in this matter are based on a separation of intrastate and interstate revenues and expenses, and show, generally, lower system-wide operating ratios when compared to the intrastate ratios; that the operating ratios for intrastate operations are higher than will allow a sufficient profit for continued service; and that the separations evidence in this proceeding did not establish such separations with mathematical exactitude, but same did approximate the ratable proportion of their movements in intrastate traffic, which, when taken with other facts and circumstances with respect thereto, is of a sufficient probative force to make the findings herein as required by statute.

(6) That respondents should publish a scale of rates in their tariffs for shipments weighing 16,000 pounds and over.

Based upon the record in this proceeding and the foregoing FINDINGS OF FACT, the Commission concludes as follows

CONCLUSIONS

(1) That respondents should be permitted to cancel the surcharge of 75 cents and remove same from their tariffs.

(2) That the formulae developed and used by the respondents in apportioning their expenses has not been approved by this Commission for determining intrastate expenses, 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 respondents have shown a need for the additional revenue the proposed increases will produce, that the proposed increases are not excessive, and that the proposed changes in tariff schedules, including the scale of rates for shipments weighing 16,000 pounds and over, except as otherwise provided, should be allowed to become effective.

IT IS THEREFORE ORDERED:

(1) That the Order of Suspension and Investigation in this Docket dated April 21, 1971, be, and the same is hereby, vacated and set aside, for the purpose of allowing the publication hereinafter authorized to be made effective.

(2) That the proposed cancellation of the surcharge of 75 cents per 1,000 pounds be, and same is hereby, allowed, and same shall be removed from the tariff schedules.

(3) That except as otherwise hereinbefore provided, Respondents may by appropriate supplements to their tariffs make effective the rates and charges in issue in this proceeding, including the scale of line haul rates applicable to shipments weighing 16,000 pounds and over.

(4) That the publication authorized hereby may be made effective on one (1) day's notice to the Commission and to the public, and shall in other respects comply with the Rules and Regulations of the Commission governing the construction, posting and filing of transportation tariff schedules.

(5) That in all other respects the relief sought in the Joint Application in this matter, except as hereinabove authorized be, and the same is hereby, denied.

(6) That upon the publication hereby authorized having been made, the investigation in this matter be discontinued and the same is considered as discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-107, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Observer Transportation Company,) ORDER ALLOWING
Proposed Revision in Rates and Charges) INCREASES IN
) RATES AND CHARGES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on April 14, 1971, at 10:00 A. M.

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

APPEARANCES:

For the Applicant:

Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: On December 29, 1970, The Observer Transportation Company, Charlotte, North Carolina, a common carrier of property by motor vehicle in North Carolina intrastate commerce holding Certificate No. C-289, issued by this Commission, filed North Carolina Intrastate Tariff NCUC No. 7, which would cancel NCUC No. 5. Applicant's Tariff filing indicates a scheduled effective date of February 8, 1971.

The Commission, being of the opinion that the proposed rate revisions and changes in Applicant's rules and regulations affected the public interest, by Order of January 27, 1971, set the matter for investigation and hearing to be held on April 14, 1971, in Raleigh, North Carolina, in the Commission's Hearing Room. The Order further declared the proceeding to be a general rate case under G. S. 62-137, suspended the effective date of the Tariff to and including June 8, 1971, and required Applicant to publish Notice of Hearing attached to the Order as

Appendix "A" by mailing such notice to its patrons with its next mailing of bills Notice of the Hearing set by the Commission.

This matter was called for hearing at the time and place specified in the Commission's Order of January 27, 1971. No one appeared at the hearing in protest to the rate revisions requested by the Applicant.

Applicant presented evidence to support its requested increases in rates and charges through the testimony of Joseph Radovanic, General Manager and Vice President of the Applicant since September 1, 1970. Mr. Radovanic indicated that he was responsible for the filing and preparation of the Applicant's Tariff and that he had engaged Cecil Davis, a retired Traffic Manager of Akers Motor Lines, to assist him in preparation of the Tariff filed in this proceeding. He testified that the Applicant is an irregular route specialized common carrier of property by motor vehicles, having authority from this Commission to transport newspapers, periodicals, films and incidental thereto, general commodities. He indicated that the purposes in submitting the Tariff revisions proposed herein were to increase its rates and change the type of structure of Applicant's Tariff from a commodity-type Tariff to principally a class-rate type Tariff where each commodity would take a rate based upon certain classifications. He testified that a class-rate tariff would bring Applicant's Tariff structure more in line with generally accepted standards of Tariff construction practiced by the motor carrier industry and reflected in the National Motor Freight Classification.

Witness Radovanic testified in connection with Applicant's need for additional revenues and the increases sought in its Tariff filing. Applicant's Tariff herein seeks increases, and in certain instances decreases, in connection with Items 80, 150, 160, 240, 250, 270, 280, 610 and 620, and with respect to Pages 17 through 19 and Pages 21 through 23 of the Tariff's class-rate tables. Witness Radovanic testified that the most significant increases requested in the application herein related to Item No. 160, minimum charges. Applicant's previous minimum charges were $2.75 on distances less than 100 miles and $3.00 on distances over 100 miles. The minimum charges requested in the application herein are based on weight of shipments. Applicant requests a $4.00 minimum on shipments of under 50 pounds and a $4.50 minimum on shipments of over 50 pounds. Under the proposed Tariff, Applicant requests authority to increase its minimum relating to storage, Item No. 240, from 78¢ to $3.00 per shipment.

Exhibits supporting Applicant's need for increases in its rates and charges and changes in its rules and regulations were offered through the testimony of Witness Radovanic. Exhibits 4 and 5 reflect Applicant's operations on a system basis and include its North Carolina and South Carolina

operations, and the financial data reflected therein also includes Applicant's interstate and intrastate operations. Exhibit 6 reflects Applicant's determination of its North Carolina intrastate operating ratios for the calendar year 1969 and for the first 10 months of the year 1970. Applicant's Exhibit 7 reflects the method used by it to determine the percentage of costs allocated to its intrastate freight. That Exhibit indicates that Applicant's percentage of allocation to its intrastate North Carolina operation is 37.53%. Relating that percentage to its operating cost and its terminal cost, Applicant derived an operating ratio of 109.3% for the calendar year 1969 as reflected in Exhibit 6. When considering intrastate revenues of $476,388 and intrastate expenses of $521,053 for the calendar year 1969, Applicant's Exhibits indicate that in connection with its intrastate North Carolina operations, it lost approximately $44,665. For the first ten months of 1970, Applicant derived an operating ratio of 106.0% when considering intrastate North Carolina revenues of $432,570 and intrastate expenses of $458,571, thereby reflecting a loss of $26,001 for that period.

Applicant's Exhibit 8 indicates that an analysis of all of its intrastate billings for the week ending November 14, 1970, tends to indicate that the increases requested herein would amount to approximately $2,059 additional revenue dollars on a weekly basis. Consequently, the application herein involves request by the Applicant for approximately $107,068 in additional annual gross revenues.

Applicant's Exhibit 10 makes a projection for 1971, based on the increases requested in its application, assumed as having been effective on February 8, 1971. Such projection reflects an operating ratio of 93.6%. This operating ratio results from projected revenues of $619,841 and operating expenses amounting to approximately $580,073, which Applicant projects as its reasonable operating costs for the year 1971.

Applicant's Exhibit 3 is a statement of known increased costs effective January 1, 1971, relating to payroll expenses. The increases and expenses reflected therein, relating to payroll only, amounted to $58,071. Witness Radovanic testified that Applicant has experienced increases in license taxes, maintenance expenses, depreciation expenses, and other related payroll expenses. These items are not specifically detailed in Applicant's Exhibits.

The Commission Staff presented a series of Exhibits showing the Applicant's proposed rate adjustments, as compared with its present rates, and the rates of other motor common carriers for the transportation of similar traffic.

Upon consideration of the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Applicant, The Observer Transportation Company, is a common carrier of property by motor vehicle in North Carolina intrastate commerce holding Certificate No. C-289, issued by this Commission, and is subject to the jurisdiction of this Commission regarding regulation of its rates and services.

2. Applicant's operating ratio for its North Carolina intrastate operations for the calendar year 1969 was 109.3%, reflecting a loss of approximately $44,665. For the first 10 months of 1970, Applicant's operating ratio was 106.0%, reflecting a loss of approximately $26,001. Inasmuch as Applicant's operating ratios for the periods above stated reflect that Applicant, with respect to its North Carolina intrastate operations, has operated at a deficit, the Commission finds that its operating ratio has been sufficiently high to justify approval of additional revenues.

3. The increases in rates and charges requested herein will result in additional annual revenues to the Applicant of approximately $107,068.

4. The increases in rates and charges and changes in rules proposed herein by the Applicant are just and reasonable and should be allowed to become effective.

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

CONCLUSIONS

The increases in rates and charges requested by the Applicant amounting to approximately $107,068 in additional annual revenues and the changes in its Tariff rules are concluded to be just and reasonable and necessary to permit the Applicant to provide adequate and efficient transportation service at the lowest cost consistent with the furnishing of such service. The operating ratio of Applicant's operating revenues and expenses which will be reflected in the additional annual increases allowed by this Order should result in a ratio of approximately 92%, which the Commission concludes will enable the Applicant to provide adequate and efficient transportation service to the public in connection with its intrastate operations. Accordingly,

IT IS, THEREFORE, ORDERED as follows:

1. That The Observer Transportation Company be, and the same hereby is, authorized to increase its rates and charges and to change its rules and regulations in accordance with its North Carolina intrastate Tariff NCUC No. 7.

2. That publication of the increases approved by this Order may be made effective upon five days' 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.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1549

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sale and Transfer of Certificate No. C-14 of Waco Trucking, Inc., P. O. Box 1552, Hickory, North Carolina, by Colonial Acceptance Corporation, Mt. Holly, North Carolina, to A C Express, Inc., 333 Fayetteville Street, Raleigh, North Carolina) RECOMMENDED ORDER

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on April 1, 1971, at 11:00 A.M.

BEFORE: E. A. Hughes, Jr., Examiner

APPEARANCES:

For the Applicants:

A. Ward McKeithen
Fleming, Robinson and Bradshaw, P.A.
1212 American Building
Charlotte, North Carolina 28202
For: Colonial Acceptance Corporation

Arch T. Allen, III
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina 27602
For: A. C. Express, Inc.

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

HUGHES, EXAMINER: By application filed with the Commission on March 4, 1971, Waco Trucking, Inc., a North

Carolina corporation, with a business address of P. O. Box 1552, Hickory, North Carolina, hereinafter called "Waco", Colonial Acceptance Corporation, a North Carolina corporation with a business address of P. O. Box 405, Mt. Holly, North Carolina, hereinafter called "Colonial" and A C Express, Inc., a North Carolina corporation with the registered address of Suite 701, 333 Fayetteville Street, Raleigh, North Carolina, hereinafter called "Express", seek the approval by the Commission under G.S. 62-111 of the transfer of all motor carrier intrastate operating authority as shown in Certificate No. C-14 issued by the Commission in the name of Waco by Colonial to Express.

Notice of said application, along with the time and place of hearing, together with a description of the involved authority, was published in the Commission's Calendar of Hearings issued March 15, 1971.

The transfer of the certificate for which approval is sought resulted from the foreclosure by Colonial upon the Waco franchise and a contract of sale with Express pursuant to G.S. Section 25-9-504 of the North Carolina Uniform Commercial Code.

The evidence tends to show that Waco became indebted to Colonial upon a short term promissory note dated February 19, 1968, for $25,000; that in addition, Waco, in February, 1966, unconditionally guaranteed to Colonial the full payment and performance of the obligations and indebtness of Gaines Motor Lines, Inc. (Gaines) to Colonial; that to secure the $25,000 promissory note and all other obligations of Waco to Colonial, including the guaranty of Gaines' indebtedness, Waco granted to Colonial a security interest in its operating authority (Certificate No. C-14) by a security agreement dated February 19, 1968 and that Colonial gave notice pursuant to G.S. 62-167 to the Commission of the promissory note and security agreement and perfected its security interest in the said operating authority by filing financing statements with the Secretary of State and in Burke County on February 22, 1968.

The evidence further tends to show that Waco has defaulted after demand by Colonial on both its promissory note and its guaranty with the amount due on the note as of April 1, 1971, exclusive of collection expenses, being $26,606.98, and the amount due under the guaranty being approximately $108,000; that Colonial has exercised its right as a secured party of foreclosure upon the Waco franchise and has entered into a binding contract of sale with Express pursuant to G.S. 25-9-504 of the North Carolina Uniform Commercial Code. The total consideration involved in the proposed transaction is $60,000, which will be paid by Express to Colonial upon approval of the application herein.

Colonial claims that it has a prior and superior security interest in and claim to the full proceeds of said foreclosure sale, and furthermore, that no one holds or

claims of record a lien or security interest in the franchise except a general lien asserted by the Internal Revenue Service against Waco's general assets for taxes due in the total amount of $5,426.28.

The evidence further tends to show that Express, although a new corporation formed for the purpose of purchasing and operating said authority, is fit, willing and able; that its president and sole shareholder has many years of valuable experience in motor carrier transportation and that Express has or is taking the necessary steps required for it to operate actively this authority if the transfer is approved: that the Transferee corporation has a net worth in the amount of some $15,000; that it has entered into an agreement for leasing equipment and for use of office and terminal space in Charlotte, North Carolina, which equipment and space will be available upon approval of the proposed transfer and that Transferee is currently negotiating possible supplementary agreements for leasing additional equipment.

The evidence further tends to show that debts outstanding against Waco of the nature specified in G.S. 62-111(c) are as follows:

For gross receipts, use or privilege taxes due or to become due the State: $291.21; for loss or damage of goods: $200.41; for overcharges: $302.94; and for interline accounts due other carriers: $10,623.41.

In addition, a Notice of Levy dated March 9, 1971, by the Internal Revenue Service to Colonial Acceptance Corporation naming Waco Trucking, Inc., as taxpayer, shows a total tax due in the amount of $5,426.28.

As heretofore indicated, Colonial claims that it has a prior and superior security interest in and is entitled to the full proceeds of the foreclosure sale and that such a transfer pursuant to a foreclosure sale should be excluded from the bond referred to in G.S. 62-111(c).

Brief was filed by Applicants.

Upon consideration of the application, all of the evidence, exhibits and brief of the Applicants, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That Waco Trucking, Inc., is the holder of Common Carrier Certificate No. C-14, heretofore issued by this Commission authorizing the transportation of general commodities within and between a large number of counties within the State of North Carolina.

(2) That A C Express, Inc., is a new corporation, organized and existing under the laws of the State of North

Carolina, and formed for the purpose of purchasing the authority involved in this application; that its president and sole shareholder is experienced in the transportation of general commodities, having had many years of executive experience with major motor carriers within and without the State of North Carolina and that Transferee is fit, willing and able, financially and otherwise, to acquire the involved authority and provide adequate and continuous service thereunder.

(3) That Waco Trucking, Inc., is indebted to Colonial Acceptance Corporation upon a short term promissory note dated February 19, 1968, for $25,000; that in addition, Waco, in February, 1966, unconditionally guaranteed to Colonial Acceptance Corporation the full payment and performance of the obligations and indebtness of Gaines Motor Lines, Inc., to Colonial Acceptance Corporation; that to secure the $25,000 promissory note and all other obligations of Waco to Colonial, including the guaranty of Gaines' indebtedness, Waco granted to Colonial a security interest in its operating authority by a security agreement dated February 19, 1968; that Colonial gave notice pursuant to G.S. 62-167 to the Commission of the promissory note and security agreement and perfected its security interest in said operating authority by filing financing statements with the Secretary of State and in Burke County on February 22, 1968.

(4) That Waco defaulted after demand on both its promissory note and its guaranty with the amount due on the note as of April 1, 1971, exclusive of collection expenses, being $26,606.98 and the amount due under the guaranty being approximately $108,000; that Colonial has exercised its right as a secured party of foreclosure upon the Waco franchise and has entered into a contract of sale with A C Express, Inc., pursuant to the North Carolina Uniform Commercial Code.

(5) That there are other substantial debts and claims against Waco of the nature specified in G.S. 62-111(c), including $291.21 in taxes due the State of North Carolina and $5,426.28 in taxes due the federal government and that a Notice of Levy dated March 9, 1971, was received by Colonial Acceptance Corporation from the Internal Revenue Service with regard to federal taxes and the amount due by Waco Trucking, Inc.

(6) That notwithstanding the contention of Colonial Acceptance Corporation that it has a prior and first security interest or lien in the franchise and therefore is entitled to foreclose it and apply the proceeds of the sale to the obligations of Waco to Colonial, it is felt that some provision should be made for creditors, if any, with rights in the franchise superior to Colonial and that Colonial has expressed its willingness to give its assurance that the net proceeds of the foreclosure, after expenses of the foreclosure, would be applied to these creditors, if any, with liens upon the franchise superior to Colonial.

(7) That the proposed transfer of authority and the acquisition thereof by A C Express, Inc., is in the public interest and should be approved, with the provision that if some other creditor can prove that it has a position or claim in this franchise superior to that of Colonial, the said Colonial will assume the legal responsibility of applying the proceeds of this sale, up to $60,000, to such superior creditor or creditors.

CONCLUSIONS

It appears that upon the facts as found at the hearing and as stated in Applicants' brief, that Colonial Acceptance Corporation has the right under the North Carolina Uniform Commercial Code, to dispose of the Waco franchise by private sale to Express; that the Uniform Commercial Code as adopted in North Carolina covers the rights and priorities of secured parties as to personal property collateral; that an operating authority is a general intangible covered by the UCC in which a security interest may be granted by a security agreement and perfected by the filing of a requisite financing statement; that in this case, a security interest in the franchise was clearly granted to Colonial and perfected as of February 22, 1968, and proper notice thereof given to the Commission; that the official record of the Secretary of State indicates that as of April 1, 1971, no one, other than Colonial, has ever been granted a security interest in the franchise; that upon default in the obligation secured, the Uniform Commercial Code grants the secured party the right of foreclosure by public or private sale; that all requirements of such private sale have been observed and that as between conflicting security interests or liens in the same collateral, the Uniform Commercial Code basically provides that the first to perfect its security interest by filing has priority.

It further appears that the procedure for the approval by the Commission of the transfer of a franchise in a foreclosure sale under the Uniform Commercial Code is not clearly coordinated with the UCC; that the Uniform Commercial Code became effective in North Carolina in 1967, after the Public Utilities Act of 1963; that G.S. 62-111 of the Public Utilities Act does not specifically deal with foreclosure transfers, although G.S. 62-111(c) does exclude certain transfers under court order.

It further appears that G.S. 62-111(c) gives the Commission discretion as to requiring a bond of the seller and that such a bond, in this case, may not be appropriate in that the type debts enumerated in G.S. 62-111(c) may be inferior to Colonial's right.

In view of the nature of the transaction involved in this proceeding, which, in fact, appears to be the first of its kind before the Commission, the Hearing Examiner concludes that a bond should not be required, but that Colonial Acceptance Corporation should be required to assume the

legal responsibility of applying the proceeds of this sale to any other creditor or creditors for debts enumerated in G.S. 62-111(c), who can prove that they have a position or claim in the involved franchise superior to that of Colonial Acceptance Corporation.

The Examiner further concludes that the transfer of Common Carrier Certificate No. C-14 from Waco Trucking, Inc., to AC Express, Inc., is consistent with the public interest and should be approved.

IT IS, THEREFORE, ORDERED:

(1) That the transfer of Common Carrier Certificate No. C-14, containing the authority more particularly described in Exhibit B hereto attached and made a part hereof, by Colonial Acceptance Corporation to A C Express, Inc., be, and the same is, hereby approved.

(2) That Colonial Acceptance Corporation be liable for an amount up to the net proceeds of the foreclosure, after expenses of the foreclosure, for all debts and claims of the nature specified in G.S. 62-111(c) against Waco Trucking, Inc., which are proven to be superior to that of said Colonial Acceptance Corporation.

(3) That Transferee file with the Commission evidence of the required insurance, tariff of rates and charges, lists of equipment, process agent and otherwise comply with the rules and regulations of this Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this order becomes final.

BY ORDER OF THE COMMISSION.

This the 6th day of May, 1971.

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

DOCKET NO. T-1549

A C Express, Inc.
Irregular Route Common Carrier
Raleigh, North Carolina

EXHIBIT B

(1) Transportation of general commodities, except those requiring special equipment and except unmanufactured tobacco and accessories, over irregular routes, between points and places within a radius of 100 miles of Winston-Salem.

(2) Transportation of general commodities, except those requiring special equipment over irregular routes between points and places within the counties of Edgecombe,

Wayne, Sampson, Duplin, Onslow, Pender, New Hanover and that portion of Wake not included in Item (1).

DOCKET NO. T-1523, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
C & O Warehousing Corporation, Research Triangle Moving and Storage, Inc., P. O. Box 12115, Research Triangle Park, North Carolina	) ORDER) APPROVING) STOCK) TRANSFER

BY THE COMMISSION: By application filed with the Commission on August 26, 1971, approval is sought of the transfer of control of Research Triangle Moving and Storage, Inc., from B.E. Tisdale and C.G. Whitehurst, as Transferors, to C & O Warehousing Corporation, as Transferee, through the sale and transfer of all of the outstanding stock in said corporation from said Transferors to said Transferee.

Notice of the application, together with a description of the authority held by Research Triangle Moving and Storage, Inc., along with the time and place of the hearing, was published in the Commission's Calendar of Hearings issued September 1, 1971. The notice contained a provision that if no protests were filed by 5:00 P.M., Thursday, October 21, 1971, the case would be decided on the basis of the application, the documentary evidence attached thereto and the records of the Commission pertaining thereto, and no hearing would be held.

The application is unopposed.

It appears from the application and the records of the Commission that Research Triangle Moving and Storage, Inc., is a corporation duly organized under the laws of the State of North Carolina, with its principal office and place of business in Durham, North Carolina; that said corporation is the holder of Common Carrier Certificate No. C-666, heretofore issued by the North Carolina Utilities Commission authorizing the transportation of household goods between all points and places throughout the State of North Carolina; that pursuant to an agreement attached to the application, the Transferors agree to sell all of the outstanding shares of stock in Research Triangle Moving and Storage, Inc., to Transferee and that after said purchase, Transferee will hold one hundred percent (100%) of the said outstanding stock. It appears further from the application and from the records of the Commission that the authority is active; that there will be no reduction in service resulting from the change of control; that there are no debts or claims against Research Triangle Moving and Storage, Inc., of the nature specified in G.S. 62-111(c) and that Transferee is qualified financially and otherwise to acquire

control of Research Triangle Moving and Storage, Inc., and provide adequate and continuous service under the authority held by said corporation from this Commission.

Upon consideration thereof, the Commission is of the opinion and finds that the change of control of Research Triangle Moving and Storage, Inc., from said Transferors to said Transferee through stock transfer 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 sale and transfer of all of the capital stock of Research Triangle Moving and Storage, Inc., from B.E. Tisdale and C.G. Whitehurst, as Transferors, to C & O Warehousing Corporation, as Transferee, be, and the same is, hereby approved.

BY ORDER OF THE COMMISSION.

This the 27th day of October, 1971.

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

DOCKET NO. T-1481, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application for the Sale and Transfer of Certificate No. C-847 from Redmond Wells, Highway 301 North, Wilson, North Carolina, to Planning Associates, Inc., d/b/a Carolina Mobilemovers, Highway 29, Concord, North Carolina) ORDER APPROVING SALE AND TRANSFER

HEARD IN: The Commission's Hearing Room, Ruffin Building, Raleigh, North Carolina, on April 7, 1971, at 11:00 A. M.

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

APPEARANCES:

For the Applicants:

John R. Boger, Jr.
Williams, Willeford & Boger
Attorneys at Law
P. O. Box 810, Concord, North Carolina
For: Planning Associates, Inc.

David M. Connor
Connor, Lee, Connor & Reese
Attorneys at Law
P. O. Box 2047, Wilson, North Carolina
For: Redmond Wells

For the Protestant:

Thomas S. Harrington
Harrington & Stultz
Attorneys at Law
P. O. Box 535, Eden, North Carolina
For: Transit Homes, Inc.

WOOTEN, COMMISSIONER: The joint application for the sale and transfer of Common Carrier Certificate No. C-847 was filed on February 2, 1971, by Planning Associates, Inc., d/b/a Carolina Mobilemovers (Transferee) and Redmond Wells, d/b/a Wells Mobile Home Movers (Transferor). Said common carrier certificate contains the following operating authority:

"Commodity and Territory Description: Transportation of: Group 13, MOTOR VEHICLES - With the following limitation. To tow or haul mobile homes or trailer homes only, in that area of North Carolina lying on and east of U.S. Highway 21 from the South Carolina line on the south to the Virginia line on the north."

Notice of the application setting forth a description of the authority applied for and setting the matter for hearing on March 10, 1971, was given in the Calendar of Hearings issued February 15, 1971. Said notice provided that if no protests were filed by 5:00 P.M., Wednesday, March 3, 1971, the case would be decided on the basis of the application, the documentary evidence attached thereto and the records of the Commission pertaining thereto, and no hearing would be held. Protest was filed by Transit Homes, Inc., Greenville, South Carolina, on March 2, 1971. Upon agreement by the parties the matter was continued to the date, time and place set out in the caption.

Mr. Redmond Wells, the Transferor Applicant in this case, was sworn and testified that he lives in Wilson, North Carolina; that his principal occupation and business is the movement of mobile homes; that he is the owner of Certificate No. C-847 which was granted to him by this Commission in 1962 or 1963 and covers the movement of mobile homes intrastate to and between all points and places on and east of U.S. Highway 21; that he has been continuously in the business of moving mobile homes since his certificate was issued to him; that he owns two vehicles used in the movement of mobile homes, a 1969 Chevrolet and a 1968 Ford; that he operates under the name of Wells Mobile Home Movers; that he has continuously maintained his insurance as required by the rules of this Commission since his certificate was granted; that he has entered into a contract

giving Planning Associates an option to purchase his certificate; that he has continued to provide mobile home moving service pending approval of this transfer; that he has filed regular common carrier of property monthly reports with the North Carolina Department of Motor Vehicles indicating the extent of his business; that he would obtain and file with the Commission as late exhibits to be marked Exhibit "X", Exhibit "Y", and Exhibit "Z" (which reports have been duly filed and received by the Commission); that the reports filed by him in connection with his business indicate that during the month of November 1970, his gross revenues were $759.25, for the month of December 1970, $803, and for the month of January 1971, $1,039.22; that said reports indicate the majority of his business is located in the eastern portion of his territory, but that he has been constantly and continuously available for service in all areas assigned to him; that in fact he has made movements in all sections of his territory during the three months, November, December, 1970, and January, 1971; that he advertises in the yellow pages of numerous telephone books in his territory, though he does not advertise in all telephone directories in each and every county which he serves; that he has not refused a haul when requested except on occasions when he was busy making other moves and the individual demanded instant service; that he had a gross income for the year 1970 from the movement of mobile homes of approximately $12,000.00; and that he is being required to curtail his operation due to health considerations and this is the reason that he is endeavoring to sell his certificate.

W. Earl Critz testified that he lives in Kannapolis, North Carolina, and that he and Mr. Eugene F. Brown are the stockholders in Planning Associates, Inc., which operates a mobile home moving business in the counties of Cabarrus, Rowan and Stanly under a certificate granted by this Commission; that his company operates their mobile home moving business under the name of Carolina Mobilemovers; that his company entered into an option contract for the purchase of the certificate here sought to be transferred; that his company is also in the business of retail selling of mobile homes; that his company has the financial means with which to actively operate the authority here sought to be transferred; that his company owns sufficient vehicles and has sufficient full-time personnel to operate the authority sought to be transferred on a full-time basis and is in a financial position to add additional equipment and personnel as required to meet the demands of the mobile home moving public; that his company now owns two trucks for the movement of mobile homes and has been in the mobile home business for one and one-half years; that his company is willing and able, financially and otherwise, to serve the public needs in the territory applied for; that his company has tentative plans for establishing a number of terminals at various points as is necessary to properly serve the public; that Planning Associates, Inc., introduced its balance sheet as of May 31, 1970, showing total assets of

$440,580.56 and total stockholders' equity of $75,371.69; and that his company is ready, willing and able to begin operating under the authority here sought to be transferred immediately upon the approval of the same.

The protestant did not offer any evidence except to request the Commission to make a part of the record for its consideration the question of all that authority presently existing in the subject area especially, of course, that granted since 1962 that is presently serving this area. The Commission has taken judicial notice of all of its records as requested by the protestant in its deliberations herein.

FINDINGS OF FACT

1. The Transferor, Redmond Wells, d/b/a Wells Mobile Home Movers, Highway 301 North, Wilson, North Carolina, is the holder and owner of North Carolina Common Carrier Certificate No. C-847 and is actively engaged in the transportation of mobile homes authorized thereunder, and it continuously offered and has had available its service under its said franchise to the public since the time of issuance.

2. There are no debts or claims against Redmond Wells, d/b/a Wells Mobile Home Movers, the Transferor, of which the Transferee or Transferor has knowledge as defined in G.S. 62-111(c).

3. The Transferee, Planning Associates, Inc., d/b/a Carolina Mobilemovers, Highway 29, Concord, North Carolina, is a corporation organized and existing under and in accord with the laws of the State of North Carolina doing business as mobile home movers and in the business of the transportation of mobile homes in the State of North Carolina in three counties, to wit: Cabarrus, Rowan and Stanly; that the Transferee has had one and one-half years experience in the movement of mobile homes; that it is familiar with the safety rules and regulations of this Commission and is fit, willing and able, financially and otherwise, to engage in the transportation of mobile homes between points and places in North Carolina as enumerated in Exhibit B attached hereto.

4. That the transfer in this case is in the public interest and will not adversely affect the service to the public under said franchise and will not unlawfully affect the service to the public by other public utilities.

CONCLUSIONS

The Commission concludes that the proposed sale and transfer is in the public interest and 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 the Transferee is fit, willing and able to perform the required service. The transfer of the authority contained in Certificate No. C-847 for the

transportation of mobile homes from the Transferor to the Transferee herein should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the application in this docket be, and the same is, hereby approved, and Planning Associates, Inc., d/b/a Carolina Mobilemovers, Highway 29, Concord, North Carolina, is authorized to purchase and operate under the authority contained in North Carolina Utilities Commission Motor Common Carrier Certificate No. C-847, pursuant to the terms set forth in the application, and as more specifically set forth in Exhibit B attached hereto and made a part hereof.

2. That upon the sale and transfer herein authorized Redmond Wells, Highway 301 North, Wilson, North Carolina, shall return to the North Carolina Utilities Commission Certificate No. C-847 for cancellation and the Chief Clerk is hereby directed to issue a certificate to the Applicant, Planning Associates, Inc., d/b/a Carolina Mobilemovers, Highway 29, Concord, North Carolina, containing the authority set forth in Exhibit B hereto attached.

3. That the parties be allowed thirty days from the date of this order in which to consummate the transaction herein authorized, comply with the requirements of this order, file the required tariffs, evidence of insurance, list of equipment and otherwise comply with the rules and regulations affecting the operation of a motor common carrier under the jurisdiction of the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1481 SUB 2

Planning Associates, Inc.
d/b/a Carolina Mobilemovers
Highway 29
Concord, North Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of:

GROUP 13, MOTOR VEHICLES - With the following limitation. To tow or haul mobile homes or trailer homes only, in that area of North Carolina lying on and east of U.S. Highway 21 from the South Carolina line on the south to the Virginia line on the north.

DOCKET NO. T-1548

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Joint application for the sale and transfer of Certificate No. C-784 from N. C. Food Express, Inc., to Polar Transport, Inc., Wilson, North Carolina	) ORDER) APPROVING) TRANSFER)

HEARD IN: Commission Hearing Room, Raleigh, North Carolina on April 21, 1971, at 2:00 P. M.

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

APPEARANCES:

For the Applicants:

Bobby G. Deaver
Brown, Fox & Deaver
109 Green Street
Fayetteville, North Carolina
Appearing for N.C. Food Express, Inc.

William R. Rand
Lucas, Rand, Rose, Meyer, Jones & Orcutt
P. O. Box 2008, Wilson, North Carolina
Appearing for Polar Transport, Inc.

For the Commission Staff:

William Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: By joint application filed with the Commission on February 25, 1971, N. C. Food Express, Inc., Charlotte, North Carolina, as Transferor, and Polar Transport, Inc., Wilson, North Carolina, as Transferee, seek approval of the sale and transfer of Certificate No. C-784 from said Transferor to said Transferee.

Notice of the application herein, describing the involved authority and setting forth the time and place of hearing, was given in the Commission's Calendar of Hearings issued March 3, 1971.

No written protests were filed and no one appeared at the hearing in opposition thereto.

It appears from the application and the evidence presented at the hearing that Transferor is at present conducting operations under Certificate No. C-784 and has performed said service continually and uninterruptedly since 1968; that there are no debts or claims against Transferor of the

nature specified in G.S. 62-111(c); that Transferee is a corporation duly organized and existing under the laws of the State of North Carolina, with its principal office and place of business in Wilson, North Carolina, and that the sole stockholder, president and general manager of Polar Transport, Inc., is William J. Bland, Jr., who has had experience in the transportation of commodities for hire, both as a contract carrier and an exempt carrier.

Testifying for the Applicants was Mr. Thomas E. Tucker, Mr. Carl Jorgensen, and Mr. C. J. Whitley, owners of seventy-five percent (75%) of the stock of Transferor and William J. Blair, Jr., sole stockholder, president and general manager of Transferee.

Based upon the evidence adduced at the hearing, the records of the Commission and the file in this matter, the Commission makes the following

FINDINGS OF FACT

(1) That N.C. Food Express, Inc., is a North Carolina corporation with its principal office in Charlotte, North Carolina; that it is the holder of Common Carrier Certificate No. C-784, issued by this Commission authorizing the transportation of certain commodities as described therein, between points and places throughout the State of North Carolina, and that C. J. Whitley, Carl Jorgensen, Thomas Tucker and Ray Templin are the owners of all of the outstanding stock in said corporation.

(2) That Polar Transport, Inc., is a corporation duly organized and existing under the laws of the State of North Carolina, with its principal office and place of business in Wilson, North Carolina; that said corporation was organized to engage in business as a common carrier of solid refrigerated products throughout the State of North Carolina, and that its sole stockholder, president and general manager is William J. Blair, Jr., of Wilson, North Carolina.

(3) That the Transferor and Transferee have entered into a contract providing for the payment by the Transferee to the Transferor of the purchase price of the certificate and certain equipment described in the agreement, all of which shall be due and payable in cash or certified check upon approval of the transaction by this Commission.

(4) That Certificate No. C-784 was initially issued on February 4, 1959, to Carolina Food Express, Inc., all of whose stock was owned by C. J. Whitley; that the history of said certificate since it was originally issued to this date reveals numerous transactions, including several stock transfers between Whitley and others and that the transfer proposed herein will completely relieve the said C. J. Whitley of any and all rights and interest in said certificate.

(5) That the involved franchise is not dormant in that Transferor has continued to perform transportation for compensation under the authority of its certificate continuously up to and including the date of this hearing and that the proposed transfer will not create an additional carrier in competition with existing carriers and that the proposed transfer and sale is justified by the public convenience and necessity as contemplated by G.S. 62-111.

(6) That the proposed transfer will not adversely affect the service to the public and will not unlawfully affect the service to the public by other public utilities.

(7) That Transferee is fit, willing and able to perform such service to the public under said franchise.

CONCLUSIONS

The Commission, in its order of August 6, 1970, approving the most recent stock transfer involving Certificate No. C-784, concluded, among other things, as follows:

> "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."

Prior to the hearing in this case, a thorough and complete investigation was made by the staff of the Commission and during the course of the hearing, in reply to a question from the staff attorney as to whether or not the present transfer would relieve him of any rights in said certificate, Mr. C. J. Whitley replied as follows:

> "I will be completely relieved from all of it in every respect."

The Commission construes this statement to mean that C. J. Whitley completely and irrevocably removes himself from any interest whatever, financial or otherwise, in Certificate No. C-784.

Upon consideration of the application, the exhibits offered, the testimony of witnesses and in light of the findings of fact, the Commission concludes that Applicants have borne the burden of proof required for the transfer of a motor carrier certificate and that the transfer of Certificate No. C-784 from Transferor to Transferee should be approved.

IT IS, THEREFORE, ORDERED:

(1) That the transfer of Common Carrier Certificate No. C-784, containing authority more particularly described in Exhibit B hereto attached and made a part hereof, from N.C. Food Express, Inc., to Polar Transport, Inc., be, and the same is, hereby approved.

(2) That Transferee file with the Commission evidence of the required insurance, tariff or rates and charges, lists of equipment, process agent and otherwise comply with the rules and regulations of this Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this order.

BY ORDER OF THE COMMISSION.

This the 5th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1548

Polar Transport, Inc.
Irregular Route Common Carrier
Wilson, North Carolina

EXHIBIT B

Transportation of the following commodities over irregular routes between all points and places throughout the State of North Carolina:

(1) Group 5. Solid Refrigerated Products. This group includes property of a perishable nature such as fresh fish, meats, meat products, fruits, vegetables, dairy products, and other commodities which require refrigeration while in transit and the use of vehicles with temperature controls.

(2) Group 23. All products requiring refrigerated temperature control during transportation, not to include liquid products in bulk in tank trucks or in containers exceeding 100 gallon capacity.

DOCKET NO. T-681, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Transfer of Stock in Helms Motor Express, Inc., from McRae Industries, Inc., a North Carolina Corporation, to Vallon L. Burris	) ORDER APPROVING CHANGE) OF CONTROL THROUGH) STOCK TRANSFER

HEARD: Commission Hearing Room, Raleigh, North Carolina, on April 8 and 9, 1971, and resumed hearing on May 21, 1971

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

APPEARANCES:

For the Applicants:

Ralph McDonald and J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Vallon L. Burris; McRae Industries, Inc.

Stuart R. Childs
Childs & Patrick
Attorneys at Law
1614 Johnston Building
Charlotte, North Carolina 28202
For: Vallon L. Burris; McRae Industries, Inc.

For the Protestants:

J. M. Broughton, Jr., and J. Mac Boxley
Broughton, Broughton, McConnell & Boxley
Attorneys at Law
P. O. Box 2387, Raleigh, North Carolina 27602
For: Colon Blake, James Ussery
and Robert Chappel

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina 27602

William Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina 27602

BY THE COMMISSION: The joint Application of McRae Industries, Inc., Mount Gilead, North Carolina, transferor, and Vallon L. Burris, an individual, Charlotte, North Carolina, transferee, for approval of the transfer of 60% of the Class B Common Stock of Helms Motor Express, Inc., from McRae Industries, Inc., to Vallon L. Burris, was filed in this proceeding on January 19, 1971, through the applicants attorneys of record, Bailey, Dixon, Wooten & McDonald, Attorneys, Raleigh, N.C.

Attached to the joint Application as Exhibit A thereof is the contract between McRae Industries, Inc., seller, and Vallon L. Burris, purchaser, dated December 21, 1970, and signed by McRae Industries, Inc., B. J. McRae, President, attested by T. R. Tedder, Secretary, with the corporate seal affixed, and duly verified by B. J. McRae as being signed and sealed by him in behalf of the corporation by its authority duly given, and by Vallon L. Burris duly acknowledged before a notary public.

The contract attached as Exhibit A provides for the sale of 60% of the issued and outstanding shares of Class B Common Stock of Helms Motor Express, Inc. (HELMS) for the sum of $150,000, to be paid in accordance with provisions of said contract, the said 60% of the Class B Common Stock of Helms to be placed in escrow pending said payment, and stating that it is understood that approval must be obtained from the North Carolina Utilities Commission for the transfer of the Helms stock to the purchaser.

The contract recites that there are a total of 9,860 shares of Class B Common Stock of Helms now issued, all of which are owned by McRae Industries, Inc., and that there are 30 shares of Class A Common Stock outstanding, none of which is owned by McRae Industries, Inc. The contract contains numerous terms and conditions for the protection of the purchaser and the seller, all as set out in said contract.

It appearing from the Application and the contract attached thereto that the sale of 60% of the Class B Common Stock of Helms would amount to change of control of Helms within the provisions of G.S. 62-111 providing that such change of control is subject to approval of the Utilities Commission, and the Commission being of the opinion that said transfer of stock is affected by the public interest and should be set for public hearing and that the applicants should be required to show proof that said proposed transfer is in the public interest and that the transferee Vallon L. Burris is qualified by experience and training to offer improvements in the management of Helms, the Commission issued its Order on February 23, 1971, setting the Application for public hearing on April 8, 1971. The Application was heard beginning on April 8, 1971.

Notice of the hearing was given in the Calendar of Hearings issued by the Commission, and protests were filed

by Colon Blake, James Ussery and Robert Chappel, stockholders of McRae Industries, Inc., alleging that said contract was contrary to the public interest, and said Petitioners were duly allowed to intervene by Order of the Commission.

Mr. Vallon L. Burris, the transferee-applicant, in this case was sworn and testified that he lives in Charlotte, North Carolina; that he has had 22 years experience with Class 1 common carriers in the southwest, southeast and central states, New England and mid-Atlantic areas, including experience in the operation of motor carrier terminals, line transportation, labor relations, safety and personnel, and that his last assignment was Director of Operations of Central Motor Lines, Inc., of Charlotte, North Carolina; that the contract attached to the Application as Exhibit A was entered into between McRae Industries, Inc., and himself after nogotiations beginning in November, 1970, and culminating with the execution of the contract for purchase of 60% of the Class B Common Stock of Helms from McRae Industries, Inc., for $150,000, together with other considerations set out in the contract; that prior to the contract, Helms had three years of losing operations, including nearly two years as a wholly owned subsidiary of McRae Industries, Inc.; that the sale was made to him with the stock to be held in escrow pending payment of the purchase price, but with Mr. Burris to become President and chief operating officer of Helms immediately upon execution of the contract; that Mr. Burris had been elected President of Helms at a called meeting of Helms on December 21, 1970, and that he had at all times since said date been President and chief operating officer and was in active full-time management of the operation of Helms. Mr. Burris identified and offered into evidence Exhibits showing the operations of Helms since he was elected chief executive officer, and comparisons with prior operations, contending that the operations of Helms were being improved under his management, including the following Exhibits: Exhibit No. 1 consisting of a summary of his business experience in motor transportation; Exhibit No. 2, the agreement as Exhibit 1 attached to the Application for purchase and sale of 60% of the stock of Helms; Exhibit No. 3, the Minutes of the special meeting of the Board of Directors of Helms Motor Express, Inc., on December 21, 1970, electing Vallon L. Burris as President of Helms; Exhibit No. 4, Balance Sheet as at December 31, 1970; Exhibit No. 5, revenues and expenses of Helms; Exhibit No. 6, detail revenues and expenses of Helms 1967 through 1970; Exhibit No. 7, weekly shipping data of Helms, January through March, 1971; Exhibit No. 8, terminals of Helms; Exhibit No. 9, detail expenses of Helms, January 1970 v. January 1971; Exhibit No. 10, expenses of Helms, February 1970 v. February 1971; Exhibit No. 11, expenses of Helms, March 1970 v. March 1971; Exhibit No. 12, expenses of Helms, first quarter 1970 v. first quarter 1971; Exhibit No. 13, operating results of Helms, actual 1970 v. forecast 1971; and Exhibit No. 14, Balance Sheet of Helms March 31, 1971.

Mr. Anthony T. Brisson, Charlotte, North Carolina, testified that he is the Director of Claims and Insurance for Helms, and described in detail the program instituted since his appointment to said position by Mr. Burris on January 18, 1971, to improve the handling of claims for damaged and loss freight, including instituting of improved security measures for protection of freight from theft and damage, improved procedures for processing loss and damage claims, and efforts made to improve the amount of money available for payment of claims approved as valid claims against Helms. Mr. Burris identified and offered into evidence four Exhibits setting forth facts and circumstances regarding claim handling and insurance available for claims work. The Commission Staff identified six Exhibits relating to insurance coverage of said claims which were offered as Staff Counsel Exhibits.

Due to illness of one of the protestant's witnesses, the hearing was thereupon recessed and resumed on May 21, 1971.

Colon Blake, Candor, N.C., being duly sworn, testified that he was a stockholder in McRae Industries, Inc., a company which made shoes, and which took over Helms in 1969, and that no notice of the contract of McRae Industries, Inc., to sell 60% of its Helms Stock was given to the stockholders of McRae Industries, Inc., and that he thought McRae Industries, Inc., should have kept the Helms stock longer and try to turn it into a profitable company, although it might not be worth anything at the time of the sale.

Clay Bruton, Mount Gilead, N.C., being duly sworn, testified that he was a stockholder and Director of McRae Industries, Inc.; that he was present at several informal meetings of Directors in November, 1970, during the discussions of the sale of 60% of the stock to Burris and that he participated in the directions given to attorneys for McRae Industries, Inc., to prepare a contract for such sale and transfer and that he was called on December 21, 1970, and advised that the contract was ready to be signed, but that he did not attend the meeting. Mr. Bruton contended that all of said meetings were informal meetings and were not called as regular meetings of the Board of Directors of McRae Industries, Inc., and no waivers of notice were signed by Directors.

B. J. McRae, being duly sworn and called as a witness by the intervenors Colon Blake, James Ussery and Robert Chappel, testified that he was President and Chairman of the Board of McRae Industries, Inc., and President and Chairman of the Board of Helms prior to December 21, 1970; that he signed the contract attached to the Application as President of McRae Industries, Inc., being attested by the Secretary of the corporation and sealed with the corporate seal, and did not deny that it was sworn to by him before a notary public as being signed under authority duly authorized by McRae Industries, Inc., although he did not remember the

notary's oath; that he was advised of the Application herein to seek approval of such contract before the Utilities Commission and that said transfer of the Helms stock required approval of the Utilities Commission before becoming final; that as of the time of said hearing on May 21, 1971, McRae Industries, Inc., has held legal meetings of the Board of Directors since the contract was signed and that the Board of Directors of McRae Industries, Inc., has since that time not withdrawn the action taken by him in signing said contract and has not instructed him to file any protest in opposition to the petition for approval of the contract by the Utilities Commission and that said Board has not requested him as President to file for withdrawal of the Application which is before the Commission in which he was testifying at the close of the hearing on May 21, 1971.

At the conclusion of all of the testimony, all of the Exhibits offered by the applicant, the intervenors and the Commission Staff Counsel were received into evidence.

Based upon the testimony and the evidence and Exhibits duly received in the public hearing, as above described, the Commission makes the following

FINDINGS OF FACT

1. That Helms Motor Express, Inc., is a duly organized corporation under the laws of North Carolina, with principal office in Albemarle, North Carolina, holding a certificate of operating authority from the North Carolina Utilities Commission to transport general commodities in intrastate commerce in North Carolina as a motor common carrier of freight over 71 regular routes throughout a major portion of the State of North Carolina, and operating 14 terminals in the major cities of North Carolina, extending from North Wilkesboro on the west to Greenville, North Carolina, on the east, including Charlotte, Greensboro, Salisbury, Raleigh, and other major points in North Carolina.

2. Helms is a substantial motor common carrier of freight in North Carolina, having freight revenues of $2,812,110 in 1970, including intrastate freight and interstate freight moved between points in North Carolina, approximately 50% of said total revenue being North Carolina intrastate freight, and handling approximately 5,000 shipments per week during the first quarter of 1971, with 350 employees and annual wages in excess of $1,782,035 per year.

3. That Helms is a wholly owned subsidiary of McRae Industries, Inc., said McRae Industries, Inc., owning 100% of the 9,860 shares of Class B Common Stock of Helms; that the only other remaining outstanding Helms stock consists of 30 shares of Class A stock heretofore issued under an employee stock option plan and subject to redemption or surrender by the employees.

4. That for the last four years Helms has had an operating deficit and now has a total capital stock deficit of $480,384, with losses increasing annually from 1967 through 1970; that Helms has $233,848 of outstanding and unpaid loss and damage claims extending for a period of three years and is under investigation by the Utilities Commission in other proceedings to require payment of said claims.

5. That the equipment of Helms is all owned by manufacturers or finance corporations and is operated by Helms on lease arrangements; that its terminals are operated by lease from the terminal owners, and that the current and fixed assets of Helms of $843,000 are exceeded by the current liabilities of Helms in the amount of $1,510,000, with additional notes and equipment obligations of $343,283.

6. That since acquisition of stock and control of Helms by McRae Industries, Inc., in 1969, the financial strength of Helms has progressively declined through annual increases in the operating losses and unpaid loss and damage claims due to shippers and through unpaid taxes and trade accounts, and as of November and December 1970, Helms was under investigation by the Commission to determine why its loss and damage claims should not be paid and why additional money should not be advanced to the subsidiary by the parent McRae Industries, Inc.

7. That Vallon L. Burris is experienced in the management and operation of motor common carrier operations, including overall operations, insurance, personnel and labor relations, and has demonstrated through 22 years of motor carrier experience his ability as manager of motor common carrier operations; and since his election as President of Helms on December 21, 1970, has demonstrated his fitness and ability to operate Helms.

8. That the sale of controlling interest of Helms by McRae Industries, Inc., is in the public interest and offers the best opportunity of transferring control of Helms from McRae Industries, Inc.; that the continuation of management and control of Helms by McRae Industries, Inc., is not required by the public interest and has not produced service and financial stability for said motor carrier during the two years of control by McRae Industries, Inc.

9. That the contract between McRae Industries, Inc., as seller, and Vallon L. Burris, as purchaser, of control of Helms is duly filed with the Commission as the contract of McRae Industries, Inc., signed by its President, attested by its Secretary, sealed with the corporate seal, sworn to by the President as having been executed with authority of the corporation; that the Minutes of the meeting of the Board of Directors of Helms of December 21, 1970, electing Vallon L. Burris as President of Helms are on file with the Commission; that at no time since the execution of said contract by McRae Industries, Inc., and the meeting of the

said Board of Directors as reflected by the Minutes of December 21, 1970, placing said Vallon L. Burris in control of Helms, has McRae Industries, Inc., taken any corporate action to rescind or nullify said contract of sale and purchase or to withdraw the Application in this proceeding and at no time have the intervenors, in testimony, in briefs or in evidence, stated that the corporate entity of McRae Industries, Inc., has cancelled said contract or taken any steps to return any of the benefits it received under said contract, including its benefit as owner of the remaining 40% of the Class B Common Stock under the new management of Vallon L. Burris as President of Helms.

Based on the above Findings of Fact, the Commission makes the following

CONCLUSIONS

1. That the contract of sale and purchase filed in this proceeding as Exhibit A and offered as Exhibit 2 of the applicants' evidence is a valid contract on its face and on the record in this proceeding, and has not been cancelled or rescinded by the applicant McRae Industries, Inc., and the Commission concludes that insofar as its jurisdiction over the corporate actions of applicants for approval of sale of stock that said contract is a valid and binding contract on McRae Industries, Inc., and based on the evidence presented, has not been voided in this proceeding by individual stockholders of McRae Industries, Inc., or by an individual minority Director of McRae Industries, Inc.

2. The Commission concludes that the operation of Helms by McRae Industries, Inc., has shown continued operating deficits of the company, resulting in precarious financial condition of Helms with current liabilities in excess of its current and fixed assets and with outstanding delinquent taxes, trade accounts for gasoline and oil, unpaid loss and damage claims by shippers, and that it is in the public interest for McRae Industries, Inc., to sell control of Helms.

3. Vallon L. Burris has demonstrated substantial management ability in the four months of operation as President, and he has brought improvements to the operation of the company and further improvements can be expected in the future.

4. The Commission does not consider that certain aspects of the contract for the purchase of stock by Vallon L. Burris are desirable in all respects, particularly in that Vallon L. Burris is to pay for said stock out of operating profits of Helms, and is not investing new capital in Helms, but the Commission concludes that the precarious financial condition of Helms will not attract and has not attracted other buyers with more favorable financial assistance to offer Helms, and that the offer of purchase in this proceeding is the best offer that is presented to the

Commission, and considering the financial condition of Helms, the change of control offered here is the best possibility of continued operation of Helms as a viable motor common carrier in North Carolina operating substantial routes relied upon by substantial numbers of shippers in intrastate commerce in North Carolina.

5. The Commission, in this proceeding, does not abate its strong determination to require improvement in the handling of loss and damage claims of Helms, and the change of control in this proceeding will not abate or terminate the existing proceedings in other dockets to require improvement in the handling and payment of said payments by Helms, and the Commission will continue said requirements in the other dockets now pending for investigation for loss and damage claims of Helms.

6. The financial condition and the operating results of Helms are of such nature that the Commission will continue to require monthly operating reports from the new management of Helms under the new owner of control, Vallon L. Burris, and will direct its auditors and investigators to inspect the books and records of Helms monthly to determine the progress made in the management of operations of Helms by Vallon L. Burris, transferee.

7. The Commission is not oblivious to the complaints voiced in this proceeding by the intervenors as minority stockholders of McRae Industries, Inc., and their disappointment with the management of McRae Industries, Inc., in selling 60% of the stock of Helms, but the Commission finds and concludes that the Utilities Commission is not the proper forum for such complaints, and their remedy would be under the general corporation law as applied and enforced in the General Courts of North Carolina and not in the Utilities Commission. G.S. 55-29 provides that action taken at informal meetings of a Board of Directors may become valid action of the corporation unless complaining Directors make prompt objection to said meeting upon their learning of said meeting.

8. The Application in this proceeding was filed on January 19, 1971, filing a contract of McRae Industries, Inc., to sell 60% of the Class B Common Stock of Helms executed on December 21, 1970. Three minority stockholders have intervened and one has testified. The intervenors called a Director who appeared as a witness, and the Chairman of the Board of Directors of McRae Industries, Inc., testified that there have been legal meetings of McRae Industries, Inc., since the filing of said Application and execution of said contract; yet as of the date of this Order McRae Industries, Inc., as a corporate entity, has not filed any objection with the Utilities Commission to said Application or any notice of cancellation and invalidity of said contract, and the Utilities Commission will presume that the acts of the corporation duly executed and filed with this Commission, subject to approval of this

Commission, are valid acts of the corporation, there being no formal notice or act of the corporation to the contrary at any time during the pendency of this proceeding, and the Commission concludes that the contract is a valid contract, and that the applicant Vallon L. Burris has a right under said contract to file this Application and to secure approval of said transfer of stock of this Commission under the terms of said contract. The evidence shows that Mr. Burris has proceeded in reliance on the contract and that the President of McRae Industries, Inc., has participated in such proceeding, and the corporation has acquiesced fully therein, and there is no sufficient or adequate evidence in this proceeding to the contrary to hold that said contract should not be accepted as the contract of the corporate entity, McRae Industries, Inc., and that the transfer of shares provided therein should not be approved by the Utilities Commission.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the transfer of control of Helms Motor Express, Inc., from McRae Industries, Inc., to Vallon L. Burris, as provided in the contract between said parties and filed herein as Exhibit A of the Application and Exhibit 2 of the evidence, by the sale of 60% of the Class B Common Stock of Helms from McRae Industries, Inc., to Vallon L. Burris is hereby approved.

2. That Vallon L. Burris, as the transferee of the control of Helms, and as the President of Helms, is hereby ordered to file with this Commission within 15 days after each calendar month a full report of the operations of Helms for said preceding month, including revenues, expenses, claims filed, claims paid, shipments transported, pieces of equipment operated, miles of operation, number of terminals operated, routes served, and outstanding liabilities; and shall report any action of any person, corporation or governmental unit tending to place operation of Helms into jeopardy, including tax claims, trade account claims, enforcement of liens, redemption of equipment, cancellation of terminal leases, or inability to acquire all of the supplies, materials and personnel necessary for the proper operation of said Helms.

3. That Vallon L. Burris, as transferee and President of Helms, shall not pay to the transferor, McRae Industries, Inc., any sums of money due for the common stock transferred herein, out of the operating revenues of Helms until and after all current and necessary operating expenses are paid, interest on all debt paid, including current claims filed and accepted as valid claims and including $5,000 per month of said operating revenues for application to existing and outstanding loss and damage claims incurred during the operation of Helms by McRae Industries, Inc., as parent corporation.

4. That the Commission Staff shall inspect the books and records of Helms each month to verify the reports of operations of said motor carrier, and Helms shall make available to auditors and investigators of the Commission all working papers, data, accounting materials and information necessary to complete said audit and investigation, including access to all properties of Helms, its terminals and equipment, its bank accounts, and internal audits.

5. That Helms shall employ outside Certified Public Accountants to prepare annual audits of its operations and report fully the results of said audits to the Utilities Commission, including the opinion and verification as to the validity of said auditors of all accounts for expenses, liabilities, revenues and outstanding debts and liabilities.

ISSUED BY ORDER OF THE COMMISSION.

This 12th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-681, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Transfer of Stock in Helms Motor Express, Inc., Albemarle, North Carolina, from McRae Industries, Inc., Mount Gilead, North Carolina, to Vallon L. Burris, Charlotte, North Carolina	) ORDER) APPROVING) MODIFIED) AGREEMENT

BY THE COMMISSION: On August 4, 1971, motion was filed jointly by McRae Industries, Inc. and Vallon L. Burris, applicants in the above-entitled proceeding through their counsel requesting that the Commission approve the modified agreement attached to said motion for the transfer of stock in Helms Motor Express, Inc. By order of July 12, 1971, the Commission approved change of control of Helms Motor Express, Inc. to Vallon L. Burris through stock transfer finding that such transfer is in the public interest and approving the proposed method of transfer set forth in the record of this proceeding. Accompanying the joint motion filed herein on August 4, 1971, protestants Colon Blake, Robert Chappell and James Ussery indicated by letter dated July 30, 1971, that they agree to the modified agreement attached to joint motion designated Appendix B as being in the best interest of Helms and the public and requested that the Commission allow them to withdraw their protest. It appearing to the Commission that the modified agreement filed with the joint motion of McRae Industries, Inc. and Vallon L. Burris is not inconsistent with the Commission's

Order authorizing transfer of Helms Motor Express, Inc., dated July 12, 1971,

IT IS, THEREFORE, ORDERED, as follows:

(1) That the modified agreement dated July 30, 1971, filed as Appendix B to the motion of McRae Industries, Inc. and Vallon L. Burris be, and the same hereby is, approved as being not inconsistent with the Order authorizing transfer of Helms Motor Express, Inc. entered on July 12, 1971.

(2) That in all other respects the Order of July 12, 1971, shall remain unchanged.

ISSUED BY ORDER OF THE COMMISSION.

This 12th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-127, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Kenan Transport Company - Application for Authority to Issue and Sell 75,000 Shares of its Common Stock) ORDER GRANTING AUTHORITY TO NEGOTIATE SALE OF SECURITIES

This cause comes before the Commission upon an application of Kenan Transport Company (Company), filed under date of June 3, 1971, through its Counsel, Bailey, Dixon, Wooten & McDonald, wherein authority of the Commission is sought as follows:

To issue and sell not to exceed 75,000 shares of common stock, without par value, to Underwriters, pursuant to an Underwriting Agreement.

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 Durham, North Carolina, and is a common motor carrier of property in North Carolina, where, under authority of the North Carolina Utilities Commission and the Interstate Commerce Commission, it is engaged in transportation of property for the public for compensation.

2. The Company's capital stock outstanding as of March 31, 1970, consists of common stock with a stated value of $1,500.00 and earned surplus of $432,786.00.

3. The Company's existing long-term debt at March 31, 1970, amounted to $305,764.97 in equipment obligations due beyond one year and $35,677.96 in Promissory Notes.

4. The Company proposes to issue and sell not to exceed 75,000 shares of common stock to Underwriters represented by First Securities Corporation of North Carolina, in accordance with an Underwriting Agreement under the terms of which the Underwriters propose promptly to make a public offering of such shares of common stock. The price per share to be received by the Company for such additional shares of common stock and the price at which the same will be offered to the public by the Underwriters will be negotiated and agreed upon between the Company and representatives of the Underwriters.

5. The net proceeds from the proposed sale of common stock will be applied to the payment in part of obligation incurred in the purchase by Kenan Transport Company of all the capital stock of Laney Tank Lines, Incorporated, which is the subject of the proceeding in this Commission's Docket No. T-271, Sub 4.

6. The Company estimates that it will incur expenses in the amount of $75,000.00 in the sale of the common stock.

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 Kenan Transport Company, be, and it is hereby authorized, empowered and permitted, subject to the limitations contained in paragraph 2 following:

1. To enter into negotiations with First Securities Corporation of North Carolina for the sale of 75,000 shares of additional common stock, without par value.

2. The sale of the additional shares of common stock shall not be consummated until the results of negotiations

with the Underwriters and a showing that such results and the Underwriters' commissions connected with said proposed sale are reasonable, have been made a matter of record in this proceeding and Supplemental Order entered by this Commission approving the terms of sale.

3. That this proceeding be, and the same is, continued on the docket of the Commission, without day, 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 terms of the proposed sale of the additional shares of common stock, 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 16th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-127, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Kenan Transport Company - Application for Authority to Issue and Sell 75,000 Shares of its Common Stock) SUPPLEMENTAL ORDER

By its Order issued June 16, 1971, the Commission authorized Kenan Transport Company to issue and sell not to exceed 75,000 shares of its Common Stock to underwriters represented by First Securities Corporation of North Carolina. It further provided that the results of negotiations with the underwriter be made a matter of record in this proceeding prior to consummation of the sale.

Kenan Transport Company through its Counsel Bailey, Dixon, Wooten & McDonald and specifically represented by Ralph McDonald filed with the Commission a proposal by First Securities Corporation of North Carolina for the sale of the securities. This proposal is in conformity with the terms set forth in the original application filed June 3, 1971, with this Commission. The securities will be offered to the public at a total price of $750,000 subject to an underwriting discount of 10%.

IT IS THEREFORE, ORDERED:

1. That Kenan Transport Company be and it is hereby authorized, empowered and permitted to enter into negotiations with First Securities Corporation of North Carolina for the sale of Common Stock not to exceed 75,000

shares, without par value, for a total price to the public of $750,000 subject to an underwriting agreement of 10%.

2. That within thirty (30) days after the sale of said additional shares of Common Stock, the company shall file two (2) copies of the underwriting agreement in final form and a report, in duplicate, of the sale of said additional shares of Common Stock, as Supplemental Exhibits in this proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1586

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Fayetteville Inland Port & Storage Facility, Inc., for a Certificate of Exemption) ORDER OF EXEMPTION

BY THE COMMISSION: On October 29, 1971, Fayetteville Inland Port & Storage Facility, Inc., 1001 S. King Street, Fayetteville, North Carolina, filed an application with the Utilities Commission for a Certificate of Exemption to operate an Intra-City-Cartage and delivery service in the City of Fayetteville and between Fayetteville and the Fort Bragg Military Reservation.

The Applicant presently holds a Certificate of Exemption for Intra-City-Cartage service in the City of Fayetteville issued by the Commission.

The application represents that Fayetteville and Fort Bragg Military Reservation are less than two miles apart and that Fort Bragg is treated for rate-making purposes by the Interstate Commerce Commission as the same basing point as Fayetteville.

The application further represents that Fort Bragg Military Reservation does not provide the complete shopping services to the residents of the Fort Bragg Military Reservation as are found in the City of Fayetteville, and that the extension of the intra-City-Cartage and delivery service from Fayetteville to the Fort Bragg Military Reservation will afford a needed service to the residents of the Fort Bragg Military Reservation.

The application requests the exemption pursuant to G.S. 62-261(8), NCUC Rule R2-28, and the decision of the

Commission in Docket No. T-748, Exemption Certificate for Alton G. Murchison, d/b/a City Delivery Service, 1950-1951 NCUC 607 (1951).

G.S. 62-261(8) authorizes the Commission, upon motion of a carrier or other party of interest, to issue a Certificate of Exemption to a motor carrier to perform transportation if it does not substantially affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in intrastate commerce, subject to the other provisions of said G.S. 62-261(8). Rule R2-28 of the Commission's Rules establishes the commercial zones of municipalities for motor carriers of freight, providing that a municipality having a population between 25,000 and 100,000 shall have a commercial zone adjacent to the base municipality of four miles, pursuant to the intra-city exemption in G.S. 62-260(a)(15) and G.S. 62-260(e).

Upon consideration of the application and the records of the Commission, the Commission is of the opinion that it has authority under G.S. 62-261(8) to exempt the Intra-City-Cartage service proposed from Fayetteville to the Fort Bragg Military Reservation, and finds that the service proposed is of such character that it will not substantially affect or impair uniform regulation by the Commission of transportation by motor carriers. Application of Alton G. Murchison, d/b/a City Delivery Service, between Fayetteville and Fort Bragg, 1950-1951 NCUC 607. G.S. 62-261(8) provides for the continuing review of such findings as it might affect the service of other carriers, and the exemption provided here will be subject to such provisions of said statute,

IT IS, THEREFORE, ORDERED that the Exemption Certificate be, and the same hereby is, issued to the Applicant Fayetteville Inland Port & Storage Facility, Inc., 1001 S. King Street, Fayetteville, North Carolina, to provide cartage and delivery service in the City of Fayetteville and between Fayetteville and the Fort Bragg Military Reservation, subject to the right of the Commission to modify or revoke said Certificate for reasons set out in G.S. 62-261(8).

ISSUED BY ORDER OF THE COMMISSION.

This 19th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-390, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application for Approval of Change of Control of Granville House, Inc., d/b/a Granville Bonded Warehouse, High Point, North Carolina, through a Merger with High Point Bonded Warehouse Company, High Point, North Carolina, and a Redemption of Stock by the Surviving Corporation, Granville House, Inc.	ORDER APPROVING CHANGE OF CONTROL THROUGH MERGER

BY THE COMMISSION: On May 14, 1971, joint application was filed by Virginia F. Crihfield, Glenn S. Crihfield, and Virginia F. Crihfield, Executrix of the Estate of J. Glenn Crihfield, of Guilford County, North Carolina; Fred P. Newby of Guilford County, North Carolina; High Point Bonded Warehouse Company, a North Carolina Corporation, with its principal office and place of business in High Point, North Carolina, and Granville House, Inc., d/b/a Granville Bonded Warehouse, a North Carolina Corporation with its principal office and place of business in High Point, North Carolina, requesting that the Commission approve change of control of Granville House, Inc., pursuant to merger with High Point Bonded Warehouse Company, and subsequent stock redemption by the surviving corporation, Granville House, Inc.

Notice of the filing of said application was published in the Calendar of Truck Hearings issued by the Commission on June 1, 1971. A hearing was scheduled pursuant to that notice on July 2, 1971 on the application but in the event no protests were filed by June 25, 1971, the publication indicated that the matter would be considered by the Commission and determined on the basis of the application filed, the documentary evidence attached thereto and the records of the Commission. No protests were filed within the time specified in the Calendar of Hearings. Accordingly, the Commission herewith makes its determination based upon the verified joint application filed in this docket.

Based upon the application and the exhibits attached thereto, the Commission makes the following

FINDINGS OF FACT

(1) That Virginia F. Crihfield, Glenn S. Crihfield, and Virginia F. Crihfield, Executrix of the estate of J. Glenn Crihfield, are the sole owners of all of the issued and outstanding shares (7,200) of the common stock of Granville House, Inc.; that Granville House, Inc. is a North Carolina corporation with its principal office and place of business in High Point, Guilford County, North Carolina; that Granville is engaged in business as a regulated motor carrier and operates under Certificate of Public Convenience and Necessity Number C-858 issued by the North Carolina

Utilities Commission issued to Granville in Docket No. T-390, Sub 7, which certificate authorizes the transportation of household goods; that Granville has been engaged in the intrastate carrier business since 1967; that said company is the owner of and has in operation four (4) motor vehicles; that the gross revenue of Granville derived from its operations within the State of North Carolina under Certificate C-858 for the calendar year ending December 31, 1970, was $24,310.00; and that Granville has in its employ approximately eleven (11) persons.

(2) That the present directors of Granville House, Inc., are Virginia F. Crihfield, Glenn S. Crihfield, and Elizabeth H. Crihfield, each of said directors residing in Guilford County, North Carolina; that the present principal officers of Granville are Glenn S. Crihfield, President, and Virginia F. Crihfield, Secretary-Treasurer.

(3) That on December 31, 1970, J. Glenn Crihfield, one of the three (3) stockholders in Granville House, Inc., became deceased; that J. Glenn Crihfield was the President, Treasurer and principal operating officer of Granville House, Inc.; and that on the 29th day of January, 1971, Virginia F. Crihfield, the widow of J. Glenn Crihfield, qualified as the Executrix of the estate of J. Glenn Crihfield.

(4) That Fred P. Newby is the sole owner of all the issued and outstanding capital stock of High Point Bonded Warehouse Co. (66 shares); that on the 30th day of March, 1971, High Point Bonded Warehouse Co. and Granville House, Inc. entered into a Plan and Agreement of Merger whereby High Point Bonded Warehouse Company would be merged into Granville House, Inc. the surviving corporation; and that Fred P. Newby would receive ninety (90) shares of the capital stock of Granville House, Inc.

(5) That, subject to the approval of this application, Granville House, Inc., and Fred P. Newby and wife, Irene N. Newby, have agreed with Virginia F. Crihfield, Glenn S. Crihfield and Virginia F. Crihfield, Executrix of the estate of J. Glenn Crihfield, to purchase from said persons all of their stock owned in the corporation and place said shares in the Treasure of the corporation leaving Fred P. Newby as the sole stockholder of Granville House, Inc. That Granville House, Inc. as Obligor, and Fred P. Newby and wife, Irene N. Newby, as Endorsers, agreed to pay therefore an aggregate purchase price in the sum of One Hundred Thirty-one Thousand Five Hundred Dollars ($131,500.00). The purchase price is to be paid $6,500.00 as a down payment and the balance over a period of twenty (20) years with interest to be paid on the unpaid balance at the rate of seven per cent (7%) per annum. The Promissory Note shall contain an acceleration clause of principal in the event of the default in the payment of any installment.

Under the terms of the Purchase Agreement, no segregation was made in the purchase price for that portion of the business represented by the carrier activities and the public warehousing activities of the corporation.

(6) That the given effect balance sheet of Granville House, Inc., the surviving corporation, which is marked as Exhibit C, shows the financial condition of the respective companies as of the 31st day of March, 1971; that there has been no substantial change in the financial conditions of the respective companies since said date which would affect this balance sheet; that prior to the consummation of this transaction, High Point Bonded Warehouse Company and Fred P. Newby were not engaged in, nor did they control, any other corporation engaged in the trucking business and neither of them held or presently hold, or control, any corporation holding any certificates or permits issued by the Interstate Commerce Commission or the North Carolina State Utilities Commission.

(7) That Fred P. Newby, who resides in High Point, North Carolina, will be the holder of all of the issued and outstanding capital stock of Granville House, Inc. following the redemption of shares from Virginia F. Crihfield, Glenn S. Crihfield and Virginia F. Crihfield, Executrix of the estate of J. Glenn Crihfield. Mr. Newby has been engaged in the public warehousing business in High Point on several different occasions since 1947 and is presently the owner and manager of High Point Bonded Warehouse Company. During a previous period of operating High Point Bonded Warehouse Company in High Point, North Carolina, he acted as agent for North American Van Lines and engaged in the booking of interstate shipments by motor carrier for North American Van Lines. He also has served for a period of 3 1/2 years as national sales manager for Monogram Industries, Inc., formerly Quincy Stove Company, Quincy, Illinois. Mr. Newby will be the President of Granville House, Inc., Irene N. Newby will be Vice President and Secretary, and Renay N. Foster will be Treasurer. It is now contemplated that substantially all of the employees of Granville House, Inc. will continue to be employed by the corporation and there will be no interruption in the motor carrier business for household goods presently being conducted by Granville House, Inc., d/b/a Granville Bonded Warehouse.

(8) That the merger will result in economies to Granville House, Inc., and will result in providing efficient and proper management. The surviving corporation will have sufficient earned surplus to permit a redemption of the shares insofar as the initial payment is concerned and it is anticipated that the corporation will have sufficient profits to permit the corporation to make the payments on an installment basis as required by the documents representing the debt incurred to accomplish the redemption. Further, that there is no reasonable ground for believing that the corporation would not be able to meet its obligations as they become due in the ordinary course of business; that the

assets of the corporation exceed the liabilities at the present fair value thereof; that there are no shares outstanding in the corporation which have a prior or equal claim to the assets of the corporation and that there do not exist any unpaid accrued dividends or dividend credits with respect to any shares entitled to preferential dividends.

(9) That there are no claims against Granville House, Inc. on its intrastate operations (a) for gross receipt taxes, use of privilege taxes, due or to become due the State; (b) for wages to employees; (c) for unremitted COD collections to shippers; (d) for loss or damage of goods transported, or received for transportation; (e) for overcharges on property transported, or (f) for interline accounts due other carriers, except current claims as existed on the 31st day of March, 1971. The parties hereto contemplate all such claims to be satisfied.

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

CONCLUSIONS

The Commission concludes that the application herein should be approved and that the change of control pursuant to merger of High Point Bonded Warehouse Company into Granville House, Incorporated pursuant to redemption of stock should be authorized.

IT IS, THEREFORE, ORDERED:

(1) That the application for approval of change of control pursuant to merger of High Point Bonded Warehouse Company into Granville House, Incorporated through redemption of stock by the surviving corporation be, and the same hereby is, approved.

(2) That Granville House, Incorporated, d/b/a Granville Bonded Warehouse, file a written statement with the Commission setting forth the date when the merger transaction and redemption of stock are actually consummated.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1287, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
William Edward Kirk, t/a Kirk's Mobile Home Service,) ORDER
Route 3, Box 708, Huntersville, North Carolina)

HEARD IN: The Courtroom of the Commission, Raleigh, North Carolina, on January 29, 1971, at 2:00 P. M.

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

APPEARANCES:

For the Respondent:

Did Not Appear

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
N. C. Utilities Commission
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: The Commission, having received information alleging that William Edward Kirk, t/a Kirk's Mobile Home Service, Route 3, Box 708, Huntersville, North Carolina, herein called "Respondent", had engaged in the transportation of mobile homes (a regulated commodity) for compensation in intrastate commerce without authority from the Commission as required by the North Carolina Public Utilities Act of 1963, as amended, requested its Investigation Division to conduct an investigation and make a report thereof to the Commission. The investigation indicated that prior to August 31, 1970, the Respondent transported without authority a number of mobile homes to and from points in the State of North Carolina for compensation.

The Commission Inspector, Mr. W. H. McSwain, contacted and discussed the matter with the Respondent and his wife on September 10, 1970, and explained to them the law regarding the obtaining of a certificate of public convenience and necessity and with regard to the fact that such movements for compensation could not be properly made without a certificate from this Commission. The Respondent advised the Commission Inspector that he intended to file an application, yet Commission records to date show no such filing. The respondent advised that he would not make any further moves without appropriate authority, and the matter was dropped.

Subsequently and on December 23, 1970, the Commission received a call through its Inspector from Mr. Don Sellers, of Carolina Mobile Home Movers. Mr. Sellers advised that the Respondent had moved in December a house trailer for Miss V. J. Helms and had damaged the same during such movement, and that said movement was made for compensation. Mr. Sellers further advised that the Respondent did not have insurance and had refused to pay for the damages to said trailer.

The above information was relayed to this Commission by Inspector McSwain who advised that the Respondent had moved the mobile home for Mrs. V. J. Helms from Riverside Park on Highway 16 near the Catawba River to Pecan Grove on Highway 29 in Mecklenburg County, which move involved an area including Catawba, Lincoln and Mecklenburg Counties, outside of municipal boundaries.

The Commission, being of the opinion that William Edward Kirk should be named a Respondent in a show cause proceeding, inasmuch as it appeared that the Respondent had conducted operations outside of municipal limits and beyond the scope of Certificate of Exemption provisions issued to him by this Commission for authority to operate within municipal boundaries without having obtained authority as required by law for such operations, concluded that the Respondent should be directed to appear before this Commission to show cause why his license plates issued to him by the Department of Motor Vehicles should not be revoked and removed from any vehicles operated by him for a period not exceeding thirty (30) days, pursuant to the provisions of G.S. 62-278, and issued its order in this cause on January 6, 1971, ordering the Respondent to appear and show cause at the captioned time and place.

Upon the call of this matter for hearing, the Respondent failed to show, and the only evidence presented was that through the testimony of Commission Inspector W. H. McSwain which substantiated and supported the summaries hereinabove set out.

Upon consideration of the evidence in this proceeding and pursuant to the statutory authority empowering the Commission to act in the matter, the Commission makes the following

FINDINGS OF FACT

1. That William Edward Kirk, t/a Kirk's Mobile Home Service, Route 3, Box 708, Huntersville, North Carolina, is an individual holding an exemption certificate issued by the Commission, certifying that he is engaging as an exempted carrier in the transportation of mobile homes exempt from regulation by North Carolina General Statute Chapter 62, in that such movements are within municipal zones as therein defined.

2. That the Respondent, having heretofore been advised in August of 1970, regarding the laws of the State of North Carolina and the requirements for common carrier certificates, is familiar with the laws governing the transportation of mobile homes outside of municipal zones.

3. The Respondent's failure to appear and show cause in this case is a willful and deliberate violation of the show cause order heretofore issued by this Commission.

4. The movement by the Respondent of mobile homes outside municipal zones in December 1970, subsequent to being advised regarding the law, constitutes a willful and deliberate violation of the North Carolina Public Utilities Act.

CONCLUSIONS

Upon consideration of the record and the foregoing Findings of Fact, the Commission concludes that the license plates of the Respondent should be revoked and removed from his vehicles for a period of thirty (30) days as provided by G.S. 62-278; and that this Commission should immediately file with the Superior Court of North Carolina an application for the imposition of a $1000.00 per day penalty upon the Respondent in the event any further movements of mobile homes are made by him in the future without first having secured appropriate and proper authority and complied with the law and the rules and regulations of this Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the license plates of any and all trucks or vehicles used in the transportation of property for compensation issued to William Edward Kirk, t/a Kirk's Mobile Home Service, Route 3, Box 708, Huntersville, North Carolina, be revoked and removed from the vehicles of said Respondent for a period of thirty (30) days.

2. That a copy of this order be forthwith transmitted to the North Carolina Department of Motor Vehicles for proper execution in accordance with the provisions of G.S. 62-278.

3. That the Commission Staff shall immediately report any future violations of the North Carolina Utilities Act by the Respondent herein to the Commission in order that the Commission may immediately take appropriate steps to file with the Superior Court of North Carolina requesting the imposition of a $1000.00 per day penalty for any such future violations.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of February, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1096, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition for Proportionate Sharing and Exchange of Shipments Between Wilson Merchant Delivery Service, Inc., Post Office Box 488, Wilson, North Carolina, and Commercial & Package Delivery Service, Inc., Route 6, Box 53-A, Wilmington, North Carolina	) ORDER ALLOWING PROPORTIONATE SHARING AND EXCHANGE OF SHIPMENTS BETWEEN CONTRACT CARRIERS

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on January 6, 1971, at 10:00 A. M.

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

APPEARANCES:

For the Applicant:

W. C. Harris, Jr.
Harris, Poe, Cheshire & Leager
Attorneys at Law
P. O. Box 2417, Raleigh, North Carolina 27602

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: On November 18, 1970, Petitioners, Wilson Merchant Delivery Service, Inc., and Commercial & Package Delivery Service, Inc., contract carriers delivering drugs, pharmaceuticals and other related items in virtually the same territory for different shippers, filed with the Commission a joint Petition requesting that the Commission approve an agreement involving proportionate sharing and exchange of shipments between said contract carriers as set forth in the agreement attached to the Petition.

Wilson Merchant Delivery Service, Inc., holds contract carrier Permit No. P-133, and Commercial & Package Delivery Service, Inc., holds contract carrier Permit No. CP-30. The

latter carrier is also authorized as an irregular route common carrier.

This matter was set for hearing on January 6, 1971, and Notice of said hearing was published in the regular Calendar of Hearings issued December 1, 1970. The hearing was held at the time and place specified in the above-mentioned Calendar of Hearings. No one appeared at the hearing to protest the joint Petition.

The proposed agreement filed in this proceeding, which said agreement has been further modified at the hearing and is to be further modified consistent with the provisions of this Order as hereinbelow described, provides as follows:

"The following is an agreement between Wilson Merchant Delivery Service, Inc., Wilson, N.C. and Commercial and Package Delivery Service, Inc., Wilmington, N.C. for the purpose of exchanging drugs, pharmaceutical, and other related items. Each party will only handle and exchange merchandise in which he holds operating authority.

These shipments in question usually will be 100 pounds or less.

The carrier which delivers the greater amount of shipments at the end of each week will pay to the other carrier one (1) dollar per shipment.

This agreement is pending the approval of the North Carolina Utilities Commission.

WITNESS: WILSON MERCHANT DELIVERY SERVICE, INC.

/s/ Samuel Wainwright /s/ Edward A. Fulford
PRESIDENT

/s/ Gall Hill

COMMERCIAL & PACKAGE DELIVERY SERVICE, INC.

/s/ Jerry Williams
PRESIDENT"

Prior to the presentation of the Petitioners' case, counsel for Petitioners stated that the Petition in this proceeding only involved proportionate sharing of those parcels which either of the Petitioners starts the delivery of as a contract carrier.

Jerry Williams of Wilmington, North Carolina, President of Commercial & Package Delivery Service, Inc., testified that his firm had entered into the above-mentioned proposed agreement, and that such proportionate sharing of shipments would permit both carriers to commence deliveries of drugs sooner than they are usually able to and would eliminate a

need for one truck as to Commercial & Package Delivery Service, Inc.

On cross-examination by the Commission Counsel, Mr. Williams stated that each carrier would have responsibility for the entire move originated by him, including the portion of movement by the other carrier, in all respects and in connection with loss and damage claims. Mr. Williams testified that the proposed agreement would not affect the contractual relationship each carrier has with his respective shipper and that the proposed agreement relates only to the existing contract authority on file with the Commission as of January 6, 1971, being the date of the hearing. He stated that the originating carrier would continue to bill his shipper and that said originating carrier would charge the sharing delivery carrier a $1 flat fee per shipment.

For the purpose of clarifying the proposed agreement, the joint Petitioners' Counsel and the Commission Counsel, at the instance of the Commission, stipulated that the agreement for proportionate sharing of shipments of drugs, pharmaceuticals and other related items relates only to the following businesses:

> With respect to Commercial & Package Delivery Service, Inc., of Wilmington, it will only relate to Bellamy Drug Company. With respect to Wilson Merchant Delivery Service, Inc., and this is on page 4 of the Calendar of Hearings, starting at (1), Wilson's interchange agreement only relates to Owens, Minor and Bodecker, Inc., which is a drug company; Bissette's Drug Stores, Item (3) and all of these are in Wilson; Koster Beauty Supply, Inc., in Wilson.

Counsel further stipulated that any change or modification in the proposed agreement, if approved by the Commission, would only be made after application to and approval by the Commission. The evidence of the Petitioners further indicates that the terms "and related items" may well include items such as percolators and golf balls, if such items are sold by the particular shipper drug company mentioned above. The Petitioners indicated that their primary interest is to see that they deliver drug stores, hospitals and doctors orders as soon as possible without having to leave them outside of a building during the night or late in the evening in accordance with recent statement by the Attorney General. Mr. Williams testified that the proposed agreement would permit, in his opinion, both of the joint Petitioners to provide better overall service to their respective shippers and receivers and at a more reasonable cost. Although none of the hereinabove described shippers and receivers which would be affected by the proposed agreement appeared at the hearing, the Petitioners indicated that each had discussed with their respective shippers and receivers the proposed agreement and that each was in favor of said agreement.

Edward A. Fulford of Wilson, North Carolina, President of Wilson Merchant Delivery Service, Inc., testified that earlier deliveries would be possible under the proposed agreement and that economics of time and economics of operation would be experienced, in his opinion, by both Petitioners. He further indicated that the rates which each of the Petitioners charge varies and are dissimilar, but that the rate which would apply under this agreement would be the rate involved with the originating carrier and his respective shipper, and that the agreement would involve no additional charges whatsoever to any of the Petitioners' shippers or receivers. Counsel for the joint Petitioners indicated that each of the Petitioners' insurance coverage would be reviewed for modification which might be necessary if the Commission approved the proposed agreement.

Based upon the proposed agreement entered into the record as Petitioners' Exhibit No. 1, and the further evidence adduced at the hearing in this matter, the Commission makes the following

FINDINGS OF FACT

(1) Wilson Merchant Delivery Service, Inc., Post Office Box 488, Wilson, North Carolina, is an authorized contract carrier under the laws of North Carolina holding Permit No. C-133 issued by this Commission.

(2) Commercial & Package Delivery Service, Inc., Route 6, Box 53-A, Wilmington, North Carolina, is an authorized contract carrier under the laws of North Carolina holding Permit No. CP-30 issued by this Commission and, in addition thereto, but not involved in this proceeding, said carrier is also authorized as an irregular route common carrier.

(3) The authorized territory for contract carrier operations with respect to each of the joint Petitioners is virtually identical.

(4) The proposed agreement entered into by the joint Petitioners for proportionate sharing and exchange of shipments as modified at the hearing and as further modified in this order should be approved in that the public interest will be served because of more efficient service, expeditious deliveries, and lower costs which will ultimately inure to the shipping and receiving public in the authorized territory of the joint Petitioners.

(5) The authorized service area of the joint Petitioners is in no way extended or enlarged by the proposed agreement.

(6) Under the proposed exchange of shipments both carriers will be able to begin deliveries of drugs, pharmaceuticals and related items at an earlier time than is possible under existing conditions.

(7) Each carrier will have responsibility for the entire move originated by him, including the portion of move by the other carrier in all respects and in connection with loss and damage claims.

(8) The proposed agreement will not affect the contractual relationship each carrier has with his respective shipper.

(9) The proposed agreement relates only to those businesses hereinabove described pursuant to stipulation by counsel.

(10) The rates heretofore authorized by this Commission to be charged by the joint Petitioners will in no manner be affected by the proposed agreement.

(11) Any changes, modifications or cancellations in any respect of any portion of or all of the proposed agreement would be made only after application to and approval by this Commission.

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

CONCLUSIONS

This is a case of first impression. There is no express statutory authority directly related to contract carriers which would permit "interchange" of shipments as in the case of common carriers. However, G.S. 62-261(11) provides as follows:

> "G.S. 62-261(11). The Commission may from time to time establish such just and reasonable classifications of groups of carriers included in the term 'common carrier by motor vehicle' or contract carrier by motor vehicle as the special nature of the service performed by such carriers shall require, and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this article, to be observed by such carriers so classified or grouped, as the Commission deems necessary or desirable in the public interest. (1947, c.1008, s.5; 1949, c.1132, s.6; 1953, c.1140, s.5; 1957, c.65, s.11; c.1152, s.7; 1961, c.472, s.9; 1963, c.1165, s.1; 1969, c.723, s.2; c.763.)"

The Commission is of the opinion and concludes that the proposed proportionate sharing and exchange of shipments agreement between the joint Petitioners is in the public interest in that the shippers and receivers of the Petitioners in their respective service areas will benefit from said agreement because of more efficient service, expeditious deliveries and more reasonable costs as an ultimate result of the economics of time and economics of operations which will apparently be experienced by the Petitioners under the proposed agreement. It is in the

public interest particularly with respect to drugs and pharmaceuticals that such items be delivered as expeditiously as possible, and it is imperative that such drugs should not be left unattended at closed doors of a particular business at a late hour because of possible theft and misuse of said drugs. The affected shippers are benefited in that their goods will be delivered at an earlier time each day. The affected receivers are benefited in that their purchases will be delivered during daylight hours. The Petitioners, and ultimately their shippers and receivers, will be benefited in that they will realize economics of time and economics of operation resulting in more efficient service and more reasonable costs to all of their shippers and receivers.

The Commission is not herein adopting a rule of general application to all contract carriers. This opinion is based on the particular and unique facts and circumstances of this case and the special nature of the service performed by the joint Petitioners as it relates to drugs, pharmaceuticals and related items only.

The Commission concludes that the proposed agreement for exchange of shipments as outlined in Petitioners' Exhibit 1, and as further modified at the hearing and by the provisions of this Order, should be approved in the public interest.

The joint Petitioners are directed to perform under the terms of this agreement and to seek approval by this Commission for any changes, modifications, or cancellations whatsoever of any or all of the terms of said agreement.

IT IS, THEREFORE, ORDERED as follows:

(1) That the agreement entered by the joint Petitioners as hereinabove described be, and the same hereby is, approved.

(2) That each of the joint Petitioners is directed to perform under the terms of this agreement.

(3) That any changes, modifications or cancellations of any portion of or all of the terms of this agreement approved in this Order shall only be made effective upon application to and upon approval by this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of March, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-10, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Atlantic and East Carolina Railway Company - Letter (Petition) For Authority to Close Its Station at Newport, North Carolina, _Nunc Pro Tunc_	) ORDER) GRANTING) PETITION)

BY THE COMMISSION: By letter treated as a petition dated November 17, 1971, and received by the Commission on November 18, 1971, Counsel for the Atlantic and East Carolina Railway Company, (Petitioner) seeks authorization _nunc pro tunc_ for the closing of its station at Newport, North Carolina, and the removal of the station building there in 1966, and authority to handle future business through its Havelock, North Carolina, agency.

Based upon the petition, the Commission makes the following

FINDINGS OF FACT

1. That the station agency at Newport has been closed and the station building there removed since 1966.

2. That the above action was accomplished under a Superintendent who had previously worked with Atlantic and East Carolina Railway Company prior to its being taken over by Southern Railway Company, and the Southern Railway had no knowledge that the closing had not been submitted to the Commission for action.

3. That the business at Newport is being handled by the agent at Havelock, North Carolina.

4. That no complaints have been received concerning this matter.

Upon the foregoing findings of fact and in consideration of the matter as a whole, the Commission makes the following

CONCLUSIONS

That by oversight or otherwise the station at Newport has been closed and the building removed since 1966, that there have been no complaints about said closing and the Commission is of the opinion that the petition should now be approved, _nunc pro tunc_.

IT IS, THEREFORE, ORDERED:

That Atlantic and East Carolina Railway Company is hereby authorized _nunc pro tunc_ to close its agency station at Newport, North Carolina, to remove the station building and

to handle future business there through its agency station at Havelock, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-5, SUB 257
DOCKET NO. R-5, SUB 258
DOCKET NO. R-5, SUB 259

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
REA Express, Inc., Petition to Close Agency at Davidson, North Carolina, Docket No. R-5, Sub 257	ORDER GRANTING PETITIONS
and	
REA Express, Inc., Petition to Close Agency at Morehead City, North Carolina, Docket No. R-5, Sub 258	
and	
REA Express, Inc., Petition to Consolidate its Agencies at Southern Pines, North Carolina, and Aberdeen, North Carolina, Docket No. R-5, Sub 259	NOTICE OF CONTINUED HEARING

BY THE COMMISSION: By Petitions filed on January 19, 1971, REA Express, Inc. (Petitioner or REA) sought authority from this Commission to

(1) Close its agency at Davidson, Mecklenburg County, North Carolina, and serve its customers within the pick-up and delivery limits at Davidson, by providing Pick-Up and Delivery Service from its Charlotte, North Carolina, facility.

(2) Close its agency at Morehead City, Carteret County, North Carolina, and relocate its facility from 107 South 6th Street to 1300 Arendell Street and provide continued Pick-Up and Delivery Service from its New Bern, North Carolina, facility and establish Branch Package Agency representation for over-the-counter service at 1300 Arendell Street.

(3) Consolidate its Aberdeen, North Carolina, agency with its Southern Pines, North Carolina, agency station with service to its patrons in the Aberdeen - Southern Pines area being performed out of the Southern Pines, North Carolina, agency.

By order dated January 26, 1971, in the above-dockets, notice was given to the public of these filings, the matters assigned for hearing on Thursday, April 15, 1971, and REA required to give full and complete notice of its proposed action in regard thereto and of the time, place and purpose of the hearings in newspapers having general circulation in the involved areas. The order provided further that in the event no protests were received to a particular petition on or before 5:00 P.M., April 9, 1971, that particular petition or petitions would be decided on the basis of the petition, the documentary evidence attached thereto and the pertinent records of the Commission and no hearing would be held on that petition or petitions.

Petitioner complied with the order by publishing appropriate notices in regard to its proposed actions concerning its agencies at Davidson (Docket No. R-5, Sub 257) and Morehead City (Docket No. R-5, Sub 258); however, Petitioner failed to give the public sufficient notice with regards to its proposed action concerning its agencies at Southern Pines and Aberdeen (Docket No. R-5, Sub 259).

The Commission has received no protests to Petitioner's proposed closing of its agencies at either Davidson or Morehead City, North Carolina, and in accordance with the previous order in these dockets, these petitions will be decided without hearing.

Docket No. R-5, Sub 257

In justification of its petitions for authority to close its agency at Davidson, North Carolina and to continue to serve the area by pick-up and delivery service provided through its Charlotte, North Carolina office, REA stated that Southern Railway Company (Southern) has filed a petition with this Commission for authority to discontinue its agency station at Davidson, North Carolina; that REA has heretofore maintained an agency facility in conjunction with Southern Railway Company, at Davidson and that the agent for Southern is also the agent for REA. Petitioner advised further that for the 12-month period December, 1969 through November, 1970, its traffic produced an average monthly revenue of $906.70, while incurring expenses of $131.54 per month which indicates the need for continued customer express service at Davidson, North Carolina, which it would like to provide by establishing pick-up and delivery service within the authorized pick-up and delivery limits at Davidson through its Charlotte, North Carolina, office thereby eliminating one handling and transfer delay. Davidson is located approximately 15 miles north of Charlotte off of U.S. Highway 21 and is on the same local toll-free telephone exchange as Charlotte.

Docket No. R-5, Sub 258

In support of its petition for authority to close its agency station at Morehead City, relocate its facility from

107 South 6th Street to 1300 Arendell Street, there establishing a Branch Package Agency representative to serve REA patrons outside Morehead City's pick-up and delivery limits and to provide REA customers in Morehead City with pick-up and delivery service from its New Bern, North Carolina agency, REA stated that it presently has an agency in Morehead City at 107 South 6th Street upon which the lease expired December 31, 1970; that the agent at Morehead City performs pick-up and delivery service and is only in the office approximately 3 hours per day where he maintains an on hand office for customers outside of the pick-up and delivery area. REA states further that telephone service will be equal to or improved over present because it will install a WX Line between Morehead City and its New Bern, North Carolina salary agency where an agent is on duty during business hours daily Monday through Friday. In addition to improved telephone service a Branch Package Agency representative will be located at 1300 Arendell Street to provide over the counter service to customers outside the pick-up and delivery limits of Morehead City. Petitioner further states that for the latest 12-month period it handled a total of 2,937 revenue shipments or an average of 245 such shipments per month indicating that the volume of express business at Morehead City justifies the continuation of express service.

Docket No. R-5, Sub 259

Petitioner, in this docket, failed to publish the required notice of its proposed actions as required by the Commission's order of January 26, 1971, thereby depriving the people in the Aberdeen-Southern Pines area of their right of protest. Therefore, the Commission is of the opinion that the hearing scheduled in this docket for April 15, 1971, should be canceled and reassigned to a later date with proper notice published in due time so that anyone desiring to be heard in the matter will have the opportunity.

Upon consideration of the petitions in Dockets Nos. R-5, Sub 257 and R-5, Sub 258, the documentary evidence attached to each, the pertinent records of the Commission and the lack of protests the Commission is of the opinion that the proposed service is in the public interest and will be equal to or better than that now being provided, and that these petitions should be approved.

IT IS THEREFORE ORDERED:

(1) That petition of REA Express, Inc., in Docket No. R-5, Sub 257, for authority to close its agency station at Davidson, North Carolina and to provide pick-up and delivery service from its agency at Charlotte, North Carolina be, and the same is hereby, approved.

(2) That the petition of REA Express, Inc., in Docket No. R-5, Sub 258, for authority to close its agency at Morehead

City, North Carolina, relocate its facility from 107 South 6th Street to 1300 Arendell Street there establishing a Branch Package Agency representation for over-the-counter traffic and provide continued pick-up and delivery service from New Bern, North Carolina, be, and the same is hereby, approved.

(3) That the hearings now assigned in Docket No. R-5, Subs 257 and 258, for April 15, 1971, be and the same are hereby canceled, and that upon publication of the proper tariff provisions, the proceedings will be considered canceled and the dockets closed.

(4) That the hearing now assigned in Docket No. R-5, Sub 259, for April 15, 1971, be, and the same is hereby, cancelled and the proceeding reassigned for hearing before the North Carolina Utilities Commission, in its Courtroom, Ruffin Building, on Thursday, June 24, 1971, at 2:00 o'clock p.m.

(5) That petitioner give full and complete notice of its proposed action in Docket No. R-5, Sub 259, by the publication of appropriate notice not more than 15 days nor less than 10 days prior to June 24, 1971, in newspapers having general circulation in the Aberdeen-Southern Pines, North Carolina area, said notice to read substantially as set forth in Exhibit "A" attached hereto and made a part hereof.

BY ORDER OF THE COMMISSION.

This the 13th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Appendix "A"
Docket No. R-5, Sub 259

Notice to the public is hereby given that the petition of REA Express, Inc., for authority to consolidate its Aberdeen agency with its Southern Pines, North Carolina, agency with service to its patrons in the area to be performed out of its Southern Pines facility is reassigned for hearing before the North Carolina Utilities Commission in its Courtroom, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on Thursday, June 24, 1971, at 2:00 o'clock p.m. Protests to the granting of the petition may be filed by any interested party on or before 5:00 o'clock, p.m. on the 18th day of June, 1971. In the event no protests are received on or before the date and time above fixed no hearing on the matter will be held.

DOCKET NO. R-29, SUB 186

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Southern Railway Company - Petition for Authority to Discontinue its Agency Station at Davidson, North Carolina	) ORDER APPROVING) DISCONTINUANCE OF) AGENCY STATION) AT DAVIDSON

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on January 5, 1971

BEFORE: Commissioners John W. McDevitt (Presiding), Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For the Applicant:

James M. Kimzey
Joyner & Howison
Attorneys at Law
P.O. Box 109, Raleigh, North Carolina

For the Protestants:

T. S. Sadler
Mayor of Town of Davidson
Davidson, North Carolina
For: Town of Davidson

E. T. McEver
Town Administrator, Town of Davidson
Davidson, North Carolina
For: Town of Davidson

C. C. Hovis, General Chairman
Transportation-Communication Div.-BRAC
Room 809, Independence Building
Charlotte, North Carolina
For: Transportation-Communication Div.-BRAC

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On November 6, 1970, Southern Railway Company, hereinafter referred to as "Applicant", a common carrier by rail of property in North Carolina intrastate commerce, filed an application with the Commission seeking authority to discontinue the operation of its agency station at Davidson, North Carolina, and to dismantle and remove said agency station building and to handle such business as

has been handled by the agent at Davidson, North Carolina, through the Applicant's agency station at Huntersville, North Carolina.

By Order of December 1, 1970, the Commission set this matter for hearing on January 5, 1971, and required Applicant to publish notice of hearing in a newspaper having general circulation in the Davidson-Huntersville area.

On December 9, 1970, M. F. Beasley, General Supervisor of Terminals of REA Express, filed in this Docket an unverified Petition requesting that REA Express be permitted to discontinue its agency arrangements in connections with the Southern Railway Company agency station at Davidson.

Applicant filed Affidavit of Publication of Notice of Hearing in this proceeding as a late filed exhibit on January 8, 1971, having been previously identified as Applicant's Exhibit 16 and entered into the record of this proceeding. The hearing in this matter was held at the time and place specified in the Commission's Order of December 18, 1970. In addition to the appearances as above indicated for the Applicant and the Commission Staff, the following persons appeared in protest to the Application: Mayor T. S. Sadler of the Town of Davidson; E. T. McEver, Town Administrator of the Town of Davidson; and C. C. Hovis, General Chairman, Transportation-Communications Division - BRAC.

At the commencement of this proceeding, the Commission advised Mr. Beasley that as a corporation, REA Express should file its application through an attorney authorized to practice before the Commission and directed that the application of REA Express be severed from this Docket and instructed REA to refile its application.

An investigation into and concerning this matter was made by Commission Transportation Inspector, W. H. McSwain, who filed a written report with the Commission on November 20, 1970. The report indicates that patrons of the Applicant in the Davidson area contacted by Inspector McSwain were generally not opposed to the granting of the Application.

Applicant offered evidence through Gilbert M. Swing, Trainmaster, who testified that the agency station at Davidson by highway is 7 miles from Huntersville and by rail, 6.6 miles from Huntersville, and that N.C. Hwy 115 parallels the Southern Railway track between the points of Davidson and Huntersville. He stated that this road is a black-top road and described it as being in excellent condition. He indicated that in his opinion 15 minutes would be a reasonable time to travel from Davidson to Huntersville. He stated that the present practice in handling traffic at the Davidson agency station involves the shipper notifying the agent that a car is released and that cars are ordered by telephone and bills of lading are presented to the agent at Davidson who signs such bills. He

testified that if the application is granted by the Commission, receivers would continue to be notified concerning incoming carload shipments by telephone and that cars would continue to be ordered by telephone, the primary difference being that that telephone calls would be made to and from Huntersville. He stated that there is no charge for telephone calls between Davidson and Huntersville. Under the proposed application, Mr. Swing related that shippers would notify the agent by telephone at Huntersville and that shippers would either present a bill of lading in person to the agent at Huntersville, present the bill to the local freight conductor who picks up the car or they could authorize the agent by telephone to issue the bill of lading, sign it and mail them a copy. Mr. Swing stated that granting of the application would not result in an employee of Southern Railway losing a job in that the present agent at Davidson would be entitled to another job because of seniority. He further indicated that he talked with representatives of each shipper utilizing the Davidson agency personally and that none expressed any objection to the application.

Charles M. Loughery, Statistician, Assistant Controller's Office of Southern Railway Company, testified in connection with certain exhibits offered by the Applicant.

The testimony and exhibits of the Applicant's witnesses do not tend to show that the operation of the Davidson agency station is a deficit operation, but tend to show that the Applicant can provide as good or better service to those patrons at Davidson by providing service incident to the receipt and forwarding carload shipments through its facilities and agency at Huntersville.

By utilizing a formula reflected in Applicant's exhibits No. 11 and 17 based upon company-pro-rated expenses on the same amount of revenue, the Applicant concludes that the amount of net contribution to company expenses generated by the agency station at Davidson for the calendar year 1969 was $1,017 and for the year ending October 30, 1970, was $385. Applicant indicates that this amount represents actual profit generated by the agency at Davidson. The total agency's expenses in exhibit No. 8 were $9,685 for year ended October 31, 1970.

At the conclusion of the hearing, T. S. Sadler, Mayor of the Town of Davidson, testified as a protestant to the application that while the Town itself does not utilize the services of the Applicant through the Davidson agency station, it was his opinion that the closing of the station would not be in the best interest of the citizens of Davidson. He further indicated that he had information that certain shippers and receivers might protest the application if the hearing were to be recessed and a public hearing held in the Town of Davidson. The Commission considered Mayor Cates' request for a rescheduled hearing at Davidson, and over objection of the Applicant, recessed the hearing in

order that a public hearing might be set in Davidson on the application.

On January 12, 1971, the Commission entered an interim Order in this proceeding after the recessed hearing setting taking of depositions herein before a Hearing Examiner on January 20, 1971, in the Assembly Room of the Davidson Town Hall in Davidson, North Carolina. Mayor Sadler furnished the names and addresses of such businesses as, in his opinion, might wish to testify and protest the application and indicated that he would assume responsibility for publication of notice of hearing at Davidson on January 29, 1971.

Depositions were taken in this Docket on January 20, 1971, by William E. Anderson, Hearing Examiner, of the following witnesses: Kenneth Caldwell, H. Burling Naramore, Robert A. Currie, Donald F. Howie, Berry Wood, Alton Hoke, James B. Alexander, and Taylor Blackwell. While many of the witnesses indicated general objections to the Application, such as community interest in preservation of the local agency as an inducement for future industrial growth of Davidson, the record indicates that many of those whose depositions were taken did not utilize any of the Davidson agency's service as a shipper or receiver. Several of the witnesses indicated expressly that they had no particular objection to the closing of the Davidson station agency.

Based upon the evidence adduced at the hearing and the taking of depositions in this matter, testimony and exhibits of the Applicant and other evidence of record, the Commission makes the following

FINDINGS OF FACT

(1) Applicant 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) Applicant's Davidson, North Carolina agency station is located approximately 7 highway miles and approximately 6.6 rail miles from Huntersville, North Carolina, and Applicant's track parallels Highway No. 115 between Davidson and Huntersville, said highway being a black-top road in good condition.

(3) The office hours at both the Davidson and Huntersville agency stations are 8:00 A. M. to 5:00 P. M.

(4) The population of Davidson, North Carolina, based upon the 1960 census, is approximately 2,573 persons.

(5) Applicant proposes to dismantle and remove the agency station building but does not propose to make any change in its existing rail track at Davidson, such track would continue to be available for public use.

(6) There is no passenger train service offered in connection with the Davidson station and said station does not handle any less-than-carload freight.

(7) Under Applicant's proposal, receivers would continue to be notified concerning incoming carload shipments by telephone and cars would continue to be ordered by telephone, the primary difference being that telephone calls would be made to and from Huntersville, from which there is no toll charge.

(8) Under Applicant's proposal, shippers would notify the agent in Huntersville by telephone and present a bill of lading in person to the local freight conductor who picks up the car or the shipper could authorize the agent by telephone to issue the bill of lading, sign it and mail him a copy.

(9) Applicant posted notice of its proposed application in connection with dismantling the Davidson station agency pursuant to Rule R1-14 of the Rules and Regulations of the Commission.

(10) Applicant's exhibits tend to show that the amount of net contribution to its expenses generated by the Davidson agency station for the calendar year 1969 was $1,017 and for the year ending October 30, 1970, amounted to $385.

(11) For the period from April, 1968 until March, 1969, 130 shipments were received by and 6 shipments were forwarded from the Davidson agency. For the period April, 1969 until March, 1970, 126 shipments were received by and 6 shipments were forwarded from the Davidson station. These shipments consisted primarily of lumber, chemicals, coal, glass products, electrical machinery and food products.

(12) The gross revenues generated by the above-mentioned shipments for the period stated from 1968 to 1969 was $59,520 for received traffic and $1,732 for forwarded traffic. Gross revenues for the period stated for 1969 to 1970 was $59,494 for received traffic and $1,881 for forwarded traffic.

(13) The transportation of revenues accredited to the Davidson station by the Applicant for the calendar year 1969 was $27,328 and for the year ended March 31, 1970, $27,112. The Applicant's average pro rated operating expenses in taxes on the amount of revenue from the traffic handled at the Davidson agency for the calendar year 1969 was $16,916 and the year ended March 31, 1970, $16,782.

(14) The following businesses have utilized the Davidson agency's services in the past: Kerr McGee Chemical Company; Davidson Ice & Fuel Company; Hoke Lumber Company; Reeves Brothers; Transcontinental Gas Pipeline Corporation; H. K. Porter Company; and Bridgeport Fabrics. These services have also on occasions been utilized by Davidson College.

(15) Two individuals testified at the taking of depositions on January 20, 1971, that there is available to the public other means of freight transportation through the services of the trucking industry.

(16) Public convenience and necessity does not require continued operation of the Davidson agency station and the public will be adequately served if the agency's operations are handled through the Applicant's station at Huntersville.

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

CONCLUSIONS

The Commission is of the opinion that the evidence in this proceeding indicates that the Applicant can provide as good or better service to its patrons at Davidson, North Carolina, by providing service incident to the receipt and forwarding of carload shipments through its facilities and agency at Huntersville, North Carolina.

Under the provisions of G.S. 62-118, which provides as follows

> "G.S. 62-118. Abandonment and reduction of service. Upon finding that public convenience and necessity are 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 has authority to authorize abandonment and reduction of service.

The Commission finds and concludes that public convenience and necessity does not require continued operation of the Davidson agency and the public will be adequately served if the agency's operations are handled through the Applicant's station at Huntersville, North Carolina.

Applicant's evidence indicates that virtually no change in handling and pickup of rail cars would be affected by the instant application. Applicant proposes here to dismantle its agency station. The existing rail track at Davidson will still be available for public use. The method of ordering cars and releasing cars will remain practically the same for the reason that telephone authorizations will continue to be used by calls placed to and from Huntersville rather than Davidson. No toll charges will be incidental thereto. It is apparent that the public can and will be adequately served if its business at Davidson is conducted through utilization of Applicant's agency at Huntersville, North Carolina. Accordingly, the Commission is of the opinion and concludes that the application herein should be approved.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Application of Southern Railway Company in this Docket be, and the same hereby is, approved.

(2) That Applicant be, and hereby is, authorized to discontinue its agency station at Davidson, North Carolina, and handle future business from its agency at Huntersville, North Carolina.

(3) That Applicant notify the Commission the date the Davidson agency station is closed.

ISSUED BY ORDER OF THE COMMISSION.
This 23rd day of April, 1971.

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 Seaboard Coast Line Railroad Company to Make Permanent the Mobile Agency Concept Presently Being Operated in the Tarboro, North Carolina Area, for a Six-Month Trial Period) ORDER APPROVING MOBILE AGENCY OPERATION

HEARD IN: Edgecombe County Courthouse, Tarboro, North Carolina, on May 6, 1971, at 10:00 A. M.

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

APPEARANCES:

For the Applicant:

Z. C. Brinson
Taylor, Brinson & Aycock
Attorneys at Law
201 E. St. James Street
Tarboro, North Carolina 27886

Richard D. Sanborn, Jr.
General Counsel
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202

For the Protestants: No Appearance

For the Intervenor: No Appearance

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WOOTEN, COMMISSIONER: On September 12, 1969, Seaboard Coast Line Railroad Company (Applicant) filed with this Commission an application seeking authority to implement a mobile agency concept in the Tarboro, North Carolina area for a six-month trial period. Subsequently, and on December 9 and 10, 1969, the matter of said application was heard before Hearing Commissioner Wooten, who issued a Recommended Order dated the 20th day of February 1970, approving said application. Exceptions to and Appeal from the Recommended Order were filed in apt time by the protestants and intervenors, and said Exceptions and Appeal were heard by Commissioners Westcott, Wells, Rhyne and McDevitt on oral argument on April 16, 1970, [said Commissioners constituting the Full Commission, excluding Commissioner Wooten as provided by G.S. 62-76(c)]. Subsequent to the hearing on Appeal by the Commission and on July 8, 1970, the Commission issued its Order Overruling the Exceptions filed by the protestants and the intervenors, which said order modified and affirmed the Recommended Order in this case. The Recommended Order was affirmed by the Full Commission, except that the Full Commission found that public convenience and necessity required that the agency station at Scotland Neck (one of the stations included in Applicant's application) be continued at its then level of service and operation, in that such operation was economically feasible and afforded the only less-than-carload lot freight service in the area.

Subsequently, and on September 9, 1970, the Commission entered its order further modifying the Recommended Order theretofore filed by Commissioner Wooten and permitted the deletion from the mobile agency concept of the agency station at Tillery, North Carolina, upon Motion of the Applicant.

The above proceedings and orders had the effect of approving the initial application by the Applicant seeking authority to implement a mobile agency concept in the Tarboro, North Carolina area for a six-month trial period as specified and set forth in its application filed on September 12, 1969, except that the agency stations at Tillery and Scotland Neck were deleted by orders as has been indicated, and otherwise the application for a six-month test of the mobile agency concept as applied for was approved in full.

Upon the expiration of the six-month trial period of operation of the mobile agency concept in the Tarboro, North Carolina area and in accord with the orders of this Commission, the Applicant submitted to the Commission a report, including all data accumulated by it on its mobile

agency operation, which report was filed on February 25, 1971.

On February 17, 1971, the Applicant filed its application in this docket seeking approval of this Commission to make permanent its mobile agency operation in the Tarboro, North Carolina area. The Commission, being of the opinion that this was a matter affecting the public interest, issued its Order of March 8, 1971, setting the application for approval of the permanent mobile agency concept in the Tarboro, North Carolina area for hearing on Thursday, May 6, 1971, at 10:00 a.m., and required the Applicant to give notice of the time, place and purpose of the hearing in newspapers of general circulation in the area affected, and further ordered that a copy of its order setting this matter for hearing be furnished by First Class Mail to all parties known to have professed an interest in this matter as revealed by the records of the Commission.

Upon the call of this matter for hearing the intervenors and protestants were not present, did not offer any testimony and were not represented by counsel, the Attorney General of North Carolina, or otherwise.

The Company offered the testimony of Mr. M. S. Jones, Jr., Rocky Mount, North Carolina, Superintendent of Seaboard Coast Line Railroad Company, in a division which includes the territory here involved, who testified regarding the test period operation of the mobile agency concept and presented certain exhibits which are of record. The Applicant further offered the testimony of several of its customers in the affected area, all of whom supported the application in this case. Some of the witnesses presented by the company in this hearing and who now support the mobile agency concept had appeared at the previous hearing held in December 1969 in protest to the implementation of such concept, which witnesses now testified that experience indicated that the mobile agency concept is an inprovement and not a reduction in service rendered by the railroad in connection with their needs.

The Commission Staff offered the testimony and exhibits of D. D. Coordes, Commission Special Investigator and Rate Specialist, who supervised and investigated the test period of the mobile agency concept. Mr. Coordes' testimony indicated that all of the customers of the Applicant in this case were satisfied with, pleased with, and/or wholly supported the new mobile agency concept of operation in their area.

Having further considered all of the evidence presented in all of the hearings involved in this docket, and upon review of the entire record as a whole, including prior 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 authority to make permanent its mobile agency service in the Tarboro, North Carolina area, which has heretofore been operated on a six-month trial period under the supervision of this Commission, 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
Oak City - Hassell	Palmyra
Bethel - Parmele	Hobgood
Robersonville	Whitehurst
	Conetoe
	Mildred
	Speed

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 was previously the case.

(5) The mobile agent will work six days a week whereas the previous stations were opened 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 of 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 does not result in any substantial reduction in any service previously offered, but on the contrary has resulted 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 calls on customers at the customers' place of business; (3) nine (9) non-agency stations heretofore closed due to insufficient business receives agency service; (4) agency service is available thirteen hours per day, six days a week instead of eight hours, five days a week; (5) toll-free telephone service is available to customers; (6) the Applicant's communication system allows 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 does not result in a reduction, but on the contrary improves 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 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.

10. That the approval of the mobile agency method of operation in the territory and for the stations here involved is in the public interest and such method of operation will best serve the needs of the shipping and receiving public and the public convenience and necessity in said area, as has been clearly demonstrated by the test period operation of the same and the record in this case.

11. That the six-month trial period of operation under the "mobile agency method" of operation has demonstrated that such request is practical and favorable and offers increased efficiencies and improvements in agency service and that it is in the public interest that the implementation of the same in the Tarboro area be approved on a permanent basis as herein outlined.

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 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 application 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 results of the operation for a period of six months under the mobile agency method has shown that in the area here involved such method of operation constitutes an improvement in service afforded by the Applicant.

The Commission further concludes that approval of the "Mobile Agency Concept" as finally applied for should be granted, and that such method of operation should be continued in this area on a permanent basis under the general supervision of this Commission and its staff; that the present physical stations may be closed, dismantled, moved, leased, occupied or otherwise altered as good business management dictates; that the Commission should continue its supervision and control of the level of service afforded by the Applicant in connection with all of its operations, including, but not limited to, the "mobile agency method" in order to assure the adequacy and sufficiency of service; and that the number of mobile agencies, telephone lines, and other equipment and facilities should keep pace with the needs and demands for service in the involved area.

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 the fixed agency station, operation and services at Scotland Neck and Tillery, North Carolina, shall not be included in the mobile agency operation herein approved for the reason that the same has been previously eliminated by order of this Commission, upon the grounds of public convenience and necessity in the case of the Scotland Neck fixed agency station, and at the request of the Applicant in the case of Tillery fixed station agency.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That, subject to further order of this Commission, the Applicant be, and it is hereby, granted approval and authority to continue its Mobile Agency Concept, plan and method of operation in the area and in the manner hereinabove described.

2. That said "Mobile Agency" operation shall be in accord with the Applicant's proposal as above described and shall be subject to supervision, inspection and investigation by the Commission and its staff as by law provided.

3. That said "Mobile Agency" operation shall be in accordance with Applicant's proposal as above described and shall not include the fixed agency station at Scotland Neck and the fixed agency station at Tillery, North Carolina, both of which have heretofore been eliminated by order of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 20

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 Wilson, North Carolina, Area, for a Six-Month Trial Period	) ORDER) APPROVING) APPLICATION) AS MODIFIED

HEARD IN: The Wilson County Courthouse, Wilson, North Carolina, on Friday, August 6, 1971, at 10:00 A. M.

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

APPEARANCES:

For the Applicant:

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For the Protestants:

J. Russell Kirby, Esq.
Kirby, Webb & Hunt
Attorneys at Law
P. O. Box 249, Wilson, North Carolina 27893
For: Town of Kenly, Evans Lumber Company, and Edwards Lumber Company

J. W. Matthews
General Chairman
Transportation Communication Division BRAC
P. O. Box 385, Florence, South Carolina 29501

For the Using and Consuming Public:

I. Beverly Lake, Jr., Esq.
Attorney General's Office
Revenue Building
Raleigh, North Carolina 27602

For the Commission's Staff:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina 27602

WELLS, COMMISSIONER: On May 27, 1971, Seaboard Coast Line Railroad Company filed an application with this Commission seeking authority to implement the Mobile Agency Concept in the Wilson, North Carolina, area, for a six-month trial period. The Commission being of the opinion that the matter affected the public interest, set the matter for hearing on the above captioned date, time and place, and required that notice be given.

Letters of protest were received by the Commission from the Towns of Kenly and Lucama; the Spring Hope Chamber of Commerce; L. W. Clark, Inc., manufacturers of tight cooperage stock; and Mr. J. W. Matthews, General Chairman of the Transportation Communication Division BRAC.

Notice of Intervention was filed by the North Carolina Attorney General's Office on August 5, 1971, on behalf of the using and consuming public.

The matter came on for hearing at the designated time and place with the Applicant and various Protestants being present and represented by counsel.

Witnesses for the Applicant were as follows:

Mr. M. S. Jones, Superintendent of the Rocky Mount Division of the Seaboard Coast Line Railroad Company, testified that all the stations involved in the proposed Mobile Agency Concept comes under his supervision; that improvement in highways, communications, computer operations for agency accounting (local railroad agent no longer renders a freight bill to the customer) have led Seaboard to embark on this new program; that Wilson will be the base station for the route and the mobile agent would operate from Wilson on Monday through Saturday to Elm City, Nashville, Spring Hope, Kenly and Lucama, and that Contentnea, Black Creek, Bunn, Momeyer, Sharpsburg and Vick which are non-agency stations would also be served under the Concept. The mobile agent will call on customers and will prepare bills of lading, furnish advice on car supply, routing of traffic and all other agency services.

Mr. Jones also testified that the van to be used will be equipped with a two-way radio and will be in constant contact with the base station at Wilson and will be equipped with facilities as a normal office would be. All customers can call the base station toll free and get in touch with the mobile agent. Mr. Jones stated that he feels one man can handle the job; that the Concept requires that an agent drive approximately 103 miles per day involving approximately three hours of driving and that the other five hours of working time would be left for handling documents which the station agents now handle; that the present stations are now open eight hours a day, five days a week but the base station under the Concept would stay open 24 hours a day, 7 days a week for passenger service and 13 hours a day for agency service and that the mobile agent would work 6 days a week, 8 hours a day and will work longer hours if necessary.

Mr. Jones further testified that his experience in dealing with such matters has shown that the proposed Concept is an improvement in service to customers and has been accepted as improved service in areas that the Mobile Agency Concept has been implemented.

He further testified that there is more business in this area proposed to be served than in the Tarboro area where the Concept has been implemented. More cars per day are shipped but the inbound cars are about the same. Waybills would be almost four times as many as in the Tarboro area.

Mr. Jones further testified that the company will realize a savings of approximately $25,000 a year; that the mobile agent would or could be in touch with the trains and the base station, and that this is something that the present service does not offer in Nashville, Spring Hope, Lucama, Kenly and Elm City.

Mr. R. L. Finan, Secretary-Treasurer of the Overton Company in Kenly which processes wood products, testified that his company does business with Seaboard at Kenly. They use 175 to 180 cars per year with the largest percentage being inbound. He stated that the Concept had been explained to him and he does not believe his company would have any difficulty operating with it.

Mr. William Little, Coordinator for Sales and Shipping with the Overton Company in Kenly, testified that his job is mostly arranging rail service for his company; that he does this by phone; that the Concept had not been explained to him by railroad representatives but from what he had heard at the hearing could not see any problem with the Concept since most of the company's business has been done by phone in the past. He stated that the present agent comes by when his company is receiving several cars a week to make sure all is satisfactory; that he sends his men to the agency station to get any bills of lading signed and that it is done at irregular times but that is because they know the agent is there and that they are satisfied with the present agent.

Mr. Murray Gordon Chesson, Area Traffic Manager for Weyerhaeuser Company, Plymouth, North Carolina, testified that the Concept had been explained to him and that it would affect the Bunn Woodyard that Weyerhaeuser owns; that they have outbound business for pulpwood - approximately 1,250 cars in 1970 and they expect more for 1971. He further testified that Weyerhaeuser has no objection to the Concept and that they feel it would not affect them.

Mr. Robert Robbins, of Sharpsburg, testified that he works as an Agent for Priddy Fertilizer business and he farms. They receive fertilizer by train cars - anywhere from 6 to 10 cars a year - and he thinks the Concept would help. At present he deals with the Elm City agent.

Mr. J. D. Barkley, of Sharpsburg who owns the J. D. Barkley Company, is an operator of a supermarket and also sells coal from 12 to 15 cars a year and receives this coal by services from Seaboard. He stated that he feels the Concept would be advantageous; that presently there is no agent at Sharpsburg; that he transacts business by phone to Elm City which costs 15¢ per call and since the mobile agent would come to him, it would save money and it would also help him to have bills of lading signed at the time the mobile agent was there.

Mr. John Bass, of Wilson who is a partner in the Carolina Woodyard Company which is located at Contentnea near Black Creek, testified that they receive and ship pulpwood - approximately 400 cars a year - and thinks the Concept would improve services because they deal now through the Fremont office by way of the Wilson office. They call Wilson and Wilson relays the message to Fremont and they then get the bills of lading back from Fremont by way of the conductor on the train. Frequently the bills of lading are not dropped off and it might be several days or a week before they get them from Fremont. He feels that the Concept would speed up the bill of lading receipts so they could get paid earlier because the agent would be there to sign and give their copy back immediately. Mr. Bass further testified that his company ships approximately 400 cars a year.

Mr. W. O. Batchelor, who is a farm operator and mobile home dealer from Sharpsburg, a former Mayor of Sharpsburg and is now serving on the Board of Commissioners there, testified that he first read the notice of the proposed Mobile Agency Concept in the newspapers and that it was later explained to him by Mr. M. S. Jones of Seaboard and that Mr. Jones had asked him to appear at the hearing. He testified that he has used Seaboard's facilities in the past but does not do so now. He thinks the Concept would be beneficial to the City of Sharpsburg.

Witnesses for the Protestants were as follows:

Mr. Bailey Lipford, Jr., who is from Rocky Mount and is Treasurer of Evans Lumber Company in Nashville, testified that they shipped 175 cars of chips and lumber away from their mill in 1970; that they are thinking of adding a second shift, which would mean approximately 200 more cars a year on woodchips and in the future they plan to ship sawdust; that they have had good service from their Nashville agent who visits frequently, monitoring their production, controlling the flow of cars into and out of their plant without their having to contact him, and that if this kind of service stopped they would have to shut down their operations because the cars would not be there and in position during the plant's working hours; that this now happens infrequently, approximately four or five times a year; that it would be difficult for them to project their requirements as the agent has been doing for them and that he feels his company needs the close cooperation and supervision of a local resident railroad agent and feels that without it his company would have irregular service and it would cause uneconomical and severe consequences. He stated that the railroad plays a major part in their service and could cause a deterioration in service if not handled like it is presently being done. Mr. Lipford also testified that the company's problem would not be as complicated if they had a spur parallel to the main-line track and had a one-way delivery of cars under a stationary loading position.

Mr. John Michael Evans, of Rocky Mount and President of Evans Lumber Company, testified that the Concept would be critical to his company and they feel in order to get movement at the proper time they need an agent who can monitor more closely than they, because the agent knows the car dispatcher and can get these things done much better than they can do it. Mr. Evans stated that the present agent makes a special point to get big cars which is helpful to the company since their problem is complex in that they have a limited area where they can move cars into to load and that they load variable amounts. He feels the present agent can give them better attention with only 16 customers than the mobile agent could with 58 customers to serve.

Mr. Devon Edwards, of Spring Hope who is in the lumber business and connected with other businesses that use the services of Seaboard to ship woodchips, testified that he ships and receives building supplies; that in the last 18 months he has generated a volume of about 850 cars of freight, most of which was outgoing. He uses the services of the Spring Hope agent and his business has increased over the last year by about 30%. He further testified that the Concept had been explained to him and that he understands it; that he accepts some of it and some of it he does not like. He feels that it would not slow down operations of his business but states that early mailing of bills of lading would help him to get his money back faster. Mr. Edwards further testified that he is in daily contact with the Spring Hope agent and that cars are ordered by phone; that he is located a mile from the Masonite Corporation plant which is one mile east of Spring Hope, and stated that the Masonite plant will have an operation generating in excess of a million pounds of freight per day.

Gilbert R. Whitley, Mayor of the Town of Kenly, who is also in the printing and furniture business, testified against the Concept. He testified that the Town of Kenly unanimously went on record against it; that they have had no complaints against the present agent and he works closely with them on locating industry there.

William Troy Pope, Mayor of Lucama, testified in opposition to the Concept. He stated that the Board of Commissioners of Lucama voted unanimously against the proposed concept. They feel that the only way that the two types of service (present and proposed) can be made equivalent is for the mobile agent to remain in Lucama 40 hours per week; that in Lucama their hours would be shorted 37 hours of availability which means a 90% reduction in agency service. He also feels that safety is at stake in this proposal, referring to an instance where a depot agent spotted a fire on a train which could not be seen by the train crewmen.

Mr. J. W. Matthews, of Florence, South Carolina, and who is the General Chairman of the Transportation Communications of BRAC which is the labor union representing agents and

operators on Seaboard Coast Line Railroad Company, testified that another plan would be to dualize the small agencies letting one man handle two stations in one day. He thinks one agent for two stations on the Spring Hope branch and one agent for Kenly, Lucama (and maybe Elm City) could give adequate service. To his knowledge, the mobile agency's work is efficient and to his knowledge there are no complaints from the railroad against agents that he represents concerning service and that the public seems satisfied.

Having considered all the evidence and testimony presented, which is a matter of record in this proceeding, and upon a review of the entire record as a whole, the Commission 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 Wilson, North Carolina, area, for a six-month trial period, which said service would operate from a base station at Wilson and would serve the following agency and non-agency stations:

Agency	Non-Agency
Elm City	Contentnea
Nashville	Black Creek
Spring Hope	Bunn
Kenly	Momeyer
Lucama	Sharpsburg
	Vick

3. That the proposed Concept involves establishing a central office at Wilson, the office to be equipped with a telephonic service over which all of its customers in the involved area may phone the agency toll free.

4. That the mobile agent will use a specially equipped mobile van which will be supplied with all the necessary equipment and facilities of a normal office, along with a two-way radio.

5. The mobile agent will be expected to perform the usual duties of a railroad station agency. The base station agent in Wilson will inform the customers in the service area (before arrival of the train) that certain cars will be available for them and will answer inquiries by the

customers. The mobile agent will then visit the track(s) and the customer's office and confirm the service involved; will sign papers and bills of lading, inspect freight, handle claims, handle incidental bills, check up on demurrage records, etc.

6. The mobile agent will call on customers at the place of business rather than have the customers come to the agency as is the case at present.

7. The mobile agent will work six days a week, whereas the present stations are open only five days each week and will work longer hours if need be.

8. The mobile agent would be required to drive approximately 103 miles per day, involving approximately three hours of driving with the remaining five hours of working time to be left for handling documents which the present station agents now handle; that he will have approximately 58 customers to serve; that in the proposed Mobile Agency Concept in Wilson there would be, as compared to the Tarboro Mobile Agency Concept (already approved by this Commission), more cars per day shipped and about the same number of cars received; that waybills would be almost four times as many as in the Tarboro area; that there are approximately seven loaded cars per day handled within the Tarboro area, while approximately 18 loaded cars would be handled in the Wilson area.

9. That the mobile agency operation contemplates the closing of the fixed agency stations at the various locations and the substitution therefor of a mobile agency.

10. The implementation of the proposed plan would result in a reduction of service in the fixed agency stations of Elm City, Nashville, Spring Hope, Kenly and Lucama, but would result in improved service at the non-agency stations of Contentnea, Black Creek, Bunn, Momeyer, Sharpsburg and Vick.

11. The area is too large to be efficiently served by one (1) mobile agent, and therefore in order for the area to be efficiently served, the railroad should provide the services of two (2) mobile agents, one to serve the Nashville, Spring Hope, Bunn spur, and the other to serve the main-line stations between Sharpsburg and Kenly, and the spur-line stations of Contentnea and Black Creek. To achieve the most efficient degree of service, the mobile agent serving the Nashville, Spring Hope, Bunn spur should be located in Spring Hope, and the agent serving the other stations should be located in Wilson.

12. The evidence adduced at this hearing provides the basis only for Findings of Fact relating to a temporary, experimental operation of this Concept in the affected area and will be limited to the trial period requested in the application, following which it will be necessary to conduct

further public hearings for the purpose of determining whether or not the Concept is effectively serving the needs of the shipping and receiving public in the affected area.

CONCLUSIONS

This Commission has approved the implementation of the Mobile Agency Concept in other service areas of the Seaboard Coast Line Railroad Company, where it did not appear that the implementation of the Concept would result in a substantial reduction of service. The Commission concludes however, that the Applicant has not borne the burden of proof in this docket that the implementation of the Concept as proposed in the application will not result in a substantial reduction of service, but on the contrary concludes that the plan as proposed would result in a substantial reduction of service. The Commission therefore concludes that it must withhold its approval of the implementation of the plan as proposed, but does not find from the competent, material and substantial evidence that the plan may be satisfactorily implemented by the use of two agents rather than one, and that such an approach would not result in a reduction of service but in an apparent improvement in service.

The Commission therefore concludes that the Concept may be implemented by the use of two agents, one to serve the Spring Hope, Nashville, Bunn spur and the other to serve the other stations as set forth in the Findings of Fact above.

The Commission finally concludes that a formal and public hearing, to determine all issues involved, must be afforded prior to the final approval of the changes contemplated by the implementation of the Mobile Agency Concept as allowed in this docket.

IT IS, THEREFORE, ORDERED as follows:

(1) That subject to the further order of this Commission, Applicant be, and it hereby is, granted temporary approval and authority to initiate the Mobile Agency Concept and Plan in the affected area as modified hereinabove, said Plan to be made effective and implemented within thirty (30) days after the effective date of this Order.

(2) That said Mobile Agency operation shall be in accord with the Applicant's proposal as herein amended and modified, and shall be subject to supervision, inspection and investigation by the Commission and its Staff, pending further order of the Commission.

(3) Applicant shall file a report with the Commission which shall include all data accumulated by it on its Mobile Agency operation as herein authorized within fifteen (15) days after said Mobile Agency has been in operation for a period of six calendar months, upon the receipt of which the

Commission will consider the same and set the matter for further formal and public hearing.

(4) Applicant shall immediately report to the Commission any unforeseen problems or difficulties concerning any aspect of said Mobile Agency operation, in the event such should occur.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of October, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Seaboard Coast Line Railroad) ORDER
Company to Implement the Mobile Agency Concept) APPROVING
in the Conway, North Carolina, Area, for a) APPLICATION
Six-Month Trial Period) AS MODIFIED

HEARD IN: Northampton County Courthouse, Jackson, North Carolina, on August 12, 1971, at 10:00 A. M.

BEFORE: Chairman Harry T. Westcott and Commissioners Miles H. Rhyne and Hugh A. Wells (Presiding)

APPEARANCES:

For the Applicant:

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For the Protestants:

J. Russell Kirby, Esq.
Kirby, Webb & Hunt
P. O. Box 249
Wilson, North Carolina 27893
For: Town of Severn
Shippers at Town of Severn
Harrington Manufacturing Co., Lewiston

For the Commission Staff:

William Anderson, Esq.
Associate Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

WELLS, COMMISSIONER: On June 16, 1971, Seaboard Coast Line Railroad Company filed an application with this Commission seeking authority to implement the Mobile Agency Concept in the Conway, North Carolina, area, for a six-month trial period. The Commission being of the opinion that the matter affected the public interest, set the matter for hearing on Thursday, August 12, 1971, in Jackson, North Carolina, and required that notice be given.

Letters of protest were received by the Commission from the Towns of Severn, Woodville, and Lewiston, North Carolina, the Bertie County Economic Development Commission, the Severn Peanut Company, Vircar Plant Food, Inc., Carolina Oil Products, Meherrin Agricultural & Chemical Company, Carolina Cooperage Company, Standard Spray and Chemical Company, the Brotherhood of Railway Airline and Steamship Clerks, and the Severn-Pendleton Ruritan Club, which requested that the hearing be held in Jackson, North Carolina.

Letters in favor of the application were received by the Commission from Charles W. Priddy Company, Incorporated, Norfolk, Virginia, and National Peanut Corporation, Suffolk, Virginia.

The Honorable J. Russell Kirby was allowed to intervene on behalf of various protesting shippers and requested the issuance of a subpoena requiring Mr. M. E. Lassiter of Severn, North Carolina, to appear as a witness for the protestants.

The matter came on for hearing at the designated time and place with the Applicant and various of the Protestants being present and represented by counsel. The Applicant presented the testimony of Mr. J. H. Ingoldsby, Trainmaster of the Rocky Mount Division of the Seaboard Coast Line Railroad Company, and Mr. James A. Brough, of Augusta, Georgia, whose employer, Georgia Pacific, ships from Murfreesboro, Milwaukee and Conway. (Of these, Milwaukee is within the proposed mobile service area.)

Protesting witnesses included Mr. Lee E. Boomer, who operates the Rich Square Coal and Ice Company; Mr. C. B. Griffin, Mayor of Woodville and Chairman of the Bertie County Economic Development Commission; Mr. John J. Heller of Carolina Oil Products; Mr. Garland D. Barnes, of Meherrin Chemical Company, Severn, North Carolina; Mr. Wayne Summers of Standard Spray and Chemical; Mr. J. W. Barkley of Meherrin Agricultural and Chemical Company and the Severn-Pendleton Ruritan Club; Mr. George Robert Francis, Severn, North Carolina, of Vircar Plant Foods, Inc.; Mr. Rufus

Johnson, Mayor of Severn, North Carolina; Mr. William Brittain of Harrington Manufacturing Company, Lewiston, North Carolina; Mr. Marshall Edward Lassiter, Severn, North Carolina, who has been Station Agent at Severn since November 1966, and Mr. J. W. Matthews of the Brotherhood of Railway, Airline and Steamship Clerks.

Mr. Ingoldsby testified as to the Mobile Agency Concept generally and as regards to its applicability to the proposed service area. Mr. Brough testified as to his company's experience with the Mobile Agency Concept in South Carolina. The Protestants testified regarding various reasons for opposition to the proposal, citing individual problems in shipping and receiving and their particular needs for a station agency.

The entire testimony of all witnesses is a matter of record in this proceeding.

Having considered all of the evidence presented, and upon a review of the entire record as a whole, the Commission makes the following

FINDINGS OF FACT

(1) 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) The Applicant herein is requesting temporary authority to initiate a mobile agency service in the Conway, North Carolina, area, Northampton and Bertie Counties for a six-month period; the proposed service would operate from a base station at Conway and would serve the following agency and non-agency stations:

AGENCY STATIONS	NON-AGENCY STATIONS
Severn	Potecasi
Woodland	Roxobel
Rich Square	Kelford
Lewiston	Bure
Aulander	Milwaukee
Gates-Roduco	Pendleton

(3) In addition to the above, the proposed Concept involves the following usual mobile agency features:

A. A central office will be established at Conway 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.

B. 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.

C. 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.

D. 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.

E. The mobile agent will work six days a week, whereas the present stations are open only five days each week.

F. There will be a reduction of agents, but said agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

(4) The proposed implementation of the Mobile Agency Concept in the Conway area envisions that the agent would operate from Conway to Severn and back through Conway to Gates-Roduco and Aulander and thence through Lewiston, Rich Square and Woodland, back through Conway to Severn and return to Conway, also serving Potecasi, Milwaukee, Pendleton, Eure, Kelford and Roxobel en route.

(5) The mobile agent should be able to provide all agency service heretofore provided by six agents as well as providing comparable service for the six non-agency stations.

(6) The proposed mobile agency service area includes, particularly in Severn and Lewiston, a number of relatively small businesses which are aggressive outbound shippers of various agricultural and agrichemical products and raw materials. Many of these shippers have particular individual service requirements associated with the rendering of bills of lading, the ordering of cars and the spotting of cars.

(7) The industrial development efforts of various individuals and organizations in the rural Northampton-Bertie area have been aided significantly by the presence and active efforts of local agents.

(8) Certain industrial operations may require the availability of a local agent whose presence can coincide with the shippers' requirements; the mobile agency's

unscheduled presence will depend on the volume and nature of business at some other point on the route.

CONCLUSIONS

The Commission concludes that the Applicant has not borne the burden of proving that the Mobile Agency Concept as proposed can satisfactorily be implemented in the entire Conway area. This Commission has approved the implementation of said Concept in other service areas and is of the opinion that said Concept, as a modern and innovative approach to providing agency service, is a valid concept and should be implemented in those cases where the application of the Concept to the particular factual background of a particular service area is justified. It is the duty of this Commission, therefore, to consider the particular service requirements in an area for which an application has been made.

The Commission concludes that the implementation of the proposed plan in its entirety would constitute a "reduction in service". The Commission concludes that it must withhold its approval of such reduction because it appears from competent, material and substantial evidence in view of the entire record that the public convenience and necessity requires that the stations at Severn and Lewiston be kept open and that the Applicant by so doing will not incur costs out of proportion to the benefit to the public.

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 or modify 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.

The Commission therefore concludes that it should approve the implementation of mobile agency service in the service area as proposed, but with the exceptions that the stations in Severn and Lewiston should be kept open with a full-time agent.

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 Applicant be, and it is, hereby granted temporary approval and authority to initiate its Mobile Agency Concept and Plan in the area and as modified hereinabove, effective within thirty (30) days after the effective date of this order.

2. That said "Mobile Agency" operation shall be in accord with the Applicant's proposal as herein amended and 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 Applicant 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 Applicant 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 3rd day of September, 1971.

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

DOCKET NO. R-71, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Seaboard Coast Line Railroad) ORDER
Company to Implement the Mobile Agency Concept) APPROVING
in the Fayetteville, North Carolina Area, for) APPLICATION
a Six-Month Trial Period)

HEARD IN: Cumberland County Courthouse, Fayetteville, North Carolina, on August 17, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Applicant:

Richard D. Sanborn, Jr.
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202

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Rose, Thorp & Rand
Attorneys at Law
200 Green Street
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For the Protestant:

J. Russell Kirby
Kirby, Webb & Hunt
Attorneys at Law
P. O. Box 249, Wilson, North Carolina
For: Shippers at Stedman

John McManus, Jr.
McManus & McManus
Attorneys at Law
Red Springs, North Carolina
For: Town of Red Springs
Liberty Manufacturing Co., Inc.
J. Kelly Pearson

For the Commission Staff:

William Anderson
Associate Commission Attorney
P. O. Box 991, Raleigh, North Carolina

WOOTEN, COMMISSIONER: On June 25, 1971, Seaboard Coast Line Railroad Company (Applicant) filed with this Commission a Petition seeking authority to implement a mobile agency concept in the Fayetteville, 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 August 17, 1971, by its Order dated July 1, 1971. By this same Order, the Applicant was required to give notice of the time, place and purpose of the hearing by having an appropriate notice inserted in newspapers having general circulation in the area in which it proposed to provide mobile agency service approximately 10 days before the date of the hearing.

Letters of protest were received by the Commission from the Red Springs Chamber of Commerce; the Borden Chemical Company; the Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; Liberty Manufacturing Company; and J. Kelly Pearson, all of which

letters of protest are a matter of record. A letter in support of the application was received from Butler & Crumpler Milling Co., which is a matter of record in this proceeding.

Hearing was held at the captioned time and place with the Applicant and Protestants being present and represented by counsel.

Applicant presented evidence and testimony which tend to show that the improvement in highways, communications and computerization of agency accounting have made the mobile agency concept a feasible railroad operation.

Testimony and evidence of the Applicant further shows that it proposes to establish a governing agency at Fayetteville, North Carolina, 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 Fayetteville 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: Hope Mills, Parkton, Red Springs, Stedman, Roseboro, and Garland, North Carolina. Mobile agency service will also be provided to Applicant's non-agency stations at Lumber Bridge, Vander and Hayne, North Carolina, where at present agency services are not available to the public. The mobile agent will call on the 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 Fayetteville for whatever agency service they need anytime between the hours of 7:00 A.M. and 8:00 P.M., Monday through Saturday, instead of 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.

Applicant will install in the Fayetteville agency a communication system which will enable the agent on duty in the Fayetteville 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 Fayetteville, customers can obtain very quickly full information concerning car location.

Applicant has made a detailed study of the workload 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.

Testimony was offered by one supporting witness, Howard Mills, who stated that he had no objection to trying the new mobile agency concept for the six-month trial period.

Protestant witnesses presented testimony in opposition to the mobile agency concept with several stating that it did not meet their needs inasmuch as they felt with the removal of a fixed agent presently serving them, they would lose the benefits of service rendered by this local agent. The protestant witnesses further stated that they did not believe the mobile agency concept would satisfy their needs, but that they would be willing to see the matter tried on a trial basis in order to see if it works or not; however, they requested that the Commission continue their local agency service during such trial period.

Protestant J. Kelly Pearson testified that the planned operation of the mobile agency would not meet his needs for the reason that his business is not open on Monday mornings and that he needs the mobile agency at his place of business on Friday afternoon of each week in time sufficient prior to 5:00 P.M., to complete his business by 5:00 P.M., in order that the train on the following Monday could pick up his cars which were available for movement.

Six protestant witnesses testified in opposition to the application for the reason that they felt that the mobile agency concept constituted a reduction in agency service which they are now receiving, and expressed fear and doubt in trying a new service and made a plea against the loss of the local agent in the community, though these witnesses stated that they would be willing to try the matter and be convinced if such a concept was workable.

Having considered all of the evidence presented and upon a review of the entire record as a whole, the Commission 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 Fayetteville, North Carolina area, for a six (6) month period, which said service would operate from a base station at Fayetteville and would serve the following agency and non-agency stations:

Agency	Non-Agency
Hope Mills	Lumber Bridge
Parkton	Vander
Red Springs	Hayne
Stedman	
Roseboro	
Garland	

In addition to the above, the proposed concept involves the following features:

(1) A central office will be established at Fayetteville 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 six agents, but said agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

3. That the Applicant will make a monetary savings in operating expense by the establishment of this 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) three 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 Fayetteville 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.

10. That the proposed mobile agency operation will not adequately afford needed and presently existing service to the Applicant's customer, J. Kelly Pearson, Red Springs, North Carolina, and that such service can only be made available through an amendment in the proposed mobile agency

operation so as to allow the mobile agent to return to Red Springs, North Carolina, on Friday of each week in time sufficient to complete the business of said customer by 5:00 P.M., upon request of said customer.

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).

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 and herein amended 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 further concludes that the mobile agency concept as applied for should be amended so as to provide mobile agency service to the Applicant's Red Springs customer, Mr. J. Kelly Pearson, upon request of said customer, on Friday of each week in time sufficient to complete said customer's business by 5:00 P.M.

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 Applicant 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 Applicant's proposal as herein amended and 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 Applicant 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 Applicant 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 19th day of August, 1971.

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

DOCKET NO. R-71, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Seaboard Coast Line Railroad) ORDER
Company for Authority to Implement the) APPROVING
Mobile Agency Concept in the Goldsboro,) APPLICATION
North Carolina, Area, for a Six-Month Trial)
Period)

HEARD IN: Wayne County Courthouse, Courtroom No. 2, Goldsboro, North Carolina, on November 19, 1971, at 10:00 A. M.

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

APPEARANCES:

For the Applicant:

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Attorneys at Law
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Goldsboro, North Carolina

R. D. Sanborn
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida

For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
Raleigh, North Carolina

WOOTEN, COMMISSIONER: On August 12, 1971, Seaboard Coast Line Railroad Company (Applicant) filed with this Commission an application seeking authority to implement a Mobile Agency Concept in the Goldsboro, 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 November 19, 1971, by its Order dated August 19, 1971. By this same Order, the Applicant was required to give notice of the time, place and purpose of the hearing by having an appropriate notice inserted in newspapers having general circulation in the area in which it proposed to provide mobile agency service approximately 10 days before the date of the hearing.

Letter of protest was received by the Commission from the Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees. A letter in support of the application was received from the Duplin Development Commission. Said letters are a matter of record in this proceeding.

Hearing was held at the captioned time and place with the Applicant present and represented by counsel. No one appeared at the hearing in opposition to the application.

The applicant presented one of its employees, M. S. Jones, Jr., who explained the proposed Mobile Agency Concept for which authority is here sought to implement, and also presented five customers in the involved area in support of the application. The customers supporting the application included David Ringly, Harlan Piersol, John Hatfield, M. Gordon Chesson and Norwood Barfield. Also appearing in support of the application was Mr. Gordon Love, who is a customer of the applicant in the Fayetteville, North Carolina, area where a Mobile Agency Concept is presently in effect on a trial basis. Mr. Love testified that he had previously opposed the implementation of such a Concept in the Fayetteville, North Carolina, area but that after having tried it, he was in complete accord with that method of operation and advised that it rendered to him at his location better service than he was receiving before.

Having considered all of the evidence presented and upon review of the entire record as a whole, the Commission 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 the 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 Goldsboro, North Carolina, area for a six (6) month period,

which said service would operate from a base station at Goldsboro and would serve the following agency and non-agency stations:

Agency	Non-Agency
Fremont - Pikeville	Lorco
Winterville	Darg
Ayden	Nocar
Grifton	Farmex
Faison	Ripaco
Mt. Olive	Nufarms

In addition to the above, the proposed Concept involves the following features:

(1) A central office will be established at Goldsboro 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 call directly on Petitioner's customers and the customers will no longer have to go to the fixed railroad stations to transact business with Petitioner.

(5) Full agency service will be available at stations which are now non-agency stations.

(6) Agency service to the area will be available 13 hours a day from 7:00 A. M. to 8:00 P. M. rather than 8 hours per day as at present.

(7) Agency service to the area will be available 6 days per week rather than 5 as at present.

(8) Improved facilities for tracing freight shipments will be available through the governing agency at Goldsboro.

(9) Agency service will be more closely coordinated with local freight train service.

3. That the applicant will make a monetary savings in operating expense by the establishment of this 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) six 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 Goldsboro 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).

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 and herein amended 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 further concludes that a formal 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.

The Commission finally concludes that this matter may be formally approved upon the record, if justified, after the same is set for hearing, and noticed under a five-day protest provision.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That, subject to further order of this Commission, the applicant 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 applicant's proposal and 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 applicant 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 take appropriate action.

4. That the applicant 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 29th day of November, 1971.

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

DOCKET NO. R-4, SUB 66

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk Southern Railway Company - Application) ORDER
For Authority to Relocate Its Station Agency) APPROVING
Facilities At Elizabeth City, North Carolina) APPLICATION

BY THE COMMISSION: These proceedings arise on application filed February 9, 1971, by Norfolk Southern Railway Company (Applicant or Norfolk Southern) for authority to relocate its station agency facilities at Elizabeth City, North Carolina, from the present location near Burgess Street, off Poindexter Street to Houtz Mill crossing.

The Applicant states and, an investigation made by the Staff of the Commission confirms, that Norfolk Southern posted notices in regard to its proposed action and that same remained posted all in accordance with Rule R1-14(b)(1) of the Commission's Rules of Practice and Procedure.

The present station building located near Burgess Street off Poindexter Street (sometimes called Pennsylvania Avenue) is of wooden construction according to Applicant, is fifty or more years old, contains approximately 9,000 square feet of space and is badly in need of repair. Applicant is not handling any less-than-carload traffic, has only one employee, the agent, working in the building and does not feel it is practical to repair and maintain a station building of this size. Railway Express is not handled by Applicant at Elizabeth City.

Through an exhibit in the form of a map and a part of the application Norfolk Southern shows its tracks and operations at Elizabeth City. The location of the present station and the planned new station is shown. The present station is 5,600 feet off Applicant's main line extending from Chocowinity, North Carolina, to Norfolk, Virginia. The exhibit also shows the street route from the present station to the proposed new station on the main line at Houtz Mill Crossing.

Applicant at present is performing local switching at Elizabeth City with local crews who operate between Norfolk, Virginia, and Chocowinity, North Carolina, but for approximately one-half the time Applicant has a local switcher assigned and tied up to do this work. The railroad feels that a more efficient operation will result from moving its agent out to the proposed site on its main line since that employee will be nearer the trains and in close touch with switching operations. And as additional advantage to be gained, Applicant points out that from November to April it runs its locomotive engines 24 hours a day to avoid freezing and states that this necessary procedure has caused some complaints from people in the downtown area about the noise. In the event the application

is granted locomotives will, in the future, be tied up in the area of the proposed new station and enable Applicant to avoid complaints about the noise from people residing in the proximity of the present station.

The Applicant is only seeking authority to relocate its agency facilities. There will be no dimunition or change in the services now available to the shipping and receiving public.

In view of the foregoing, the Commission is of the opinion that the petition of Norfolk Southern Railway for authority to relocate its agency facilities at Elizabeth City, North Carolina, should be approved.

IT IS ACCORDINGLY ORDERED:

(1) That the application in this docket be, and the same is hereby, granted. Applicant is hereby authorized to relocate its agency facilities at Elizabeth City, North Carolina, as hereinbefore enumerated and described.

(2) That Applicant shall advise the Commission the date its agency facility at Elizabeth City is relocated at Houtz Mill Crossing.

(3) That the docket in the matter be, and same is hereby, closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-4, SUB 67

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk Southern Railway Company - Application) ORDER
For Authority to Relocate Its Team Track) GRANTING
Facility at Washington, North Carolina) APPLICATION

BY THE COMMISSION: Norfolk Southern Railway Company (Applicant) a common carrier of property by rail in North Carolina intrastate commerce by Application filed April 19, 1971, seeks authority to relocate its team track facility at Washington, North Carolina, from its present location at McNair and Water Streets to an existing track, which begins just north of Fourth Street, extending northward.

Applicant gave due notice of its intention to file its Application by the posting of notice in regard thereto and

same remained posted all in compliance with Rules of Practice and Procedure.

The proposed relocated site is geographically northeast of the present team track and about three-fourth of a mile distant by rail or by city streets. Applicant avers that its present team track facility is located in a changing area of Washington, North Carolina, whereas the proposed facility is in a more industrialized section of the city. Applicant alleges further, that the streets in the vicinity of the proposed new site for team track facility are two-way streets, whereas the streets near the present facility are one-way streets. Applicant believes that the two-way streets in the area will make the proposed team track facility more easily accessible to its patrons.

The Commission caused an investigation to be made into and concerning the proposed action of applicant which disclosed that persons and parties that have used the present team track in the past have no objection to the relocation of same as hereinbefore enumerated and described.

Upon consideration of the foregoing the Commission concludes that the proposed action of Applicant will not adversely affect the public interest, that good and sufficient cause has been shown and, that the application should be approved.

IT IS ACCORDINGLY ORDERED:

(1) That the application of Norfolk Southern Railway Company for authority to relocate its team track facility at Washington, North Carolina, from its present location at McNair and Water Streets to an existing track, which begins just north of Fourth Street, extending northward, be, and the same is hereby, approved.

(2) That the Applicant advise this Commission the date its team track facility at Washington, North Carolina, is relocated.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of May, 1971.

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

DOCKET NO. R-4, SUB 68

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk Southern Railway Company - Application) ORDER
For Authority to Relocate its Pass Track) GRANTING
Facility at Linden, North Carolina) APPLICATION

BY THE COMMISSION: By application filed June 2, 1971, Norfolk Southern Railway Company (Applicant or Norfolk Southern) seeks authority to relocate its pass track facility at Linden, North Carolina, to near the Kelly Springfield Tire Company plant north of Fayetteville, North Carolina.

Notice of proposed action was posted as required by Rule R1-14 of the Commission's Rules and Regulations.

In support of its application, Norfolk Southern states that its present pass track at Linden is 1,065 feet long and since Linden, North Carolina, is shown in the Open and Prepay Station List and this is the only sidetrack at Linden, it has also been considered a team track. Applicant states that this track was used regularly until August, 1959, when a nearby sand pit was closed and that since that time the track has been used very little. Since 1967, only seventeen (17) cars have been handled on this track, five (5) in 1967, six (6) in 1968, three (3) in 1969, and three (3) in 1970. All of these cars could have been handled at Bunn Level, North Carolina, located 4.5 miles north of Linden, where Applicant has a seven-car spur track.

Applicant further states that at Milepost 34.9 on the Fayetteville Branch it has a lead track opening into the new Kelly Springfield Tire Company plant and at this point a pass track is badly needed for switching purposes; that it is handling from fifteen (15) to eighteen (18) cars per day for this customer; that without a track to do such switching it is necessary to handle cars by this plant and place same on the following day as Applicant has access to the Kelly Springfield plant from only one direction and with the new track this delay could be eliminated and better service provided to this patron. The proposed new pass track would be 1,315 feet in length.

In the absence of the filing of protests the Commission, in the interest of the public, conducted an investigation into the proposed action of the Applicant. The investigation revealed that persons or parties that might be expected to have an interest in the matter have no objection to the proposed relocation of trackage.

Upon consideration of this matter, the Commission is of the opinion and concludes that the proposed action of the Applicant will not adversely affect 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 relocate its pass track from Linden, North Carolina, to near the Kelly Springfield Tire Company plant north of Fayetteville, North Carolina, be, and the same is hereby, approved.

(2) That Applicant make appropriate tariff publications to reflect removal of the track at Linden, North Carolina.

(3) That Applicant advise the Commission the date upon which the relocation of its pass track from Linden, North Carolina, is completed.

BY ORDER OF THE COMMISSION.

This the 18th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. R-29, SUB 187

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Railway Company - Petition For Authority) ORDER
to Make Schedule Changes in Its Trains Nos. 5 and) GRANTING
6 and 15 and 16) PETITION

BY THE COMMISSION: By letter received January 27, 1971, and treated as a petition, Southern Railway Company seeks authority to reschedule its Trains Nos. 5 and 6, The Piedmont, operating between Washington, D.C., and Birmingham, Alabama, and 15 and 16 between Salisbury, N.C., and Asheville, N.C., to limit regular stops by Trains 5 and 6 to major points converting all others to conditional stops and to transfer sleeper service now offered by Trains 5 and 6 to Trains 1 and 2 by the addition of a Charlotte drop-off car as more fully listed and described in the petition. Southern's petition is based upon its managements' belief that if by rescheduling as hereinbefore indicated the cost of maintaining existing passenger service can be justified Southern would rather remain out of the National Rail Passenger Corporation (Railpax) and continue to operate its existing passenger service at least, until January 1, 1975, as required by Railpax.

At this point a brief explanation of Railpax is necessary so that the relationship of this Federally created corporation to preserve for the future essential rail passenger service throughout the country can be more clearly understood.

On October 14, 1970, Congress passed the Rail Passenger Service Act, Public Law 91-518, creating The National Railroad Passenger Corporation (Railpax) which was signed into law by the President on October 30, 1970. Railpax is not a Federal agency but a "for-profit" corporation established under the District of Columbia Business Corporation Act. Under provisions of PL 91-518, the Secretary of Transportation was required to submit by

January 28, 1971, the final basic rail passenger train network and as here pertinent to Southern's petition the New York - New Orleans route proposed as a part of the basic system is over the rails of Southern via Greensboro, Salisbury and Charlotte. The Asheville - Salisbury train that Southern now operates is not on one of the basic routes and therefore, effective May 1, 1971, under the Railpax plan this service would be discontinued. The Secretary's responsibility ended with the selection of routes and the selection of stops along the basic network lies with Railpax and at present it is not known what North Carolina stations, if any, will be stops for Railpax trains.

Under the requirements of Railpax, Southern as well as all other railroads in the country now offering passenger service, must either contract with Railpax to be relieved of further responsibility of providing rail passenger service or continue to provide such service at the same level as is now being provided. There is no alternative. If service is surrendered to Railpax it will be required to provide service over the basic network, which begins functioning May 1, 1971, until at least July 1, 1973, or a period slightly in excess of two years. If Southern elects not to join Railpax then it must continue the same level of service it now provides until January 1, 1975.

This brief examination of the basic factors of Railpax brings us to the instant petition of Southern Railway Company for authority to reschedule certain trains and stops as hereinbefore described. The petitioner desires to reschedule these trains and stops in an attempt to determine if the operation of these trains on the proposed schedules can be justified outside of Railpax. Stated differently Southern's decision as whether to join Railpax depends to a certain extent upon the experience and information that will be provided by the operation of the subject trains upon the proposed schedules. The Commission's decision in granting or denying the instant petition depends, of course, upon which will be of greatest value to the traveling public of North Carolina. If the petition is denied then Southern will have no basis upon which to form an opinion except that which already exists and when Railpax takes over the responsibility of operating passenger trains the number of trains operating over Southern rails in North Carolina will almost certainly be reduced from six (6) to two (2). If the petition is granted then Southern will have additional information upon which to base their decision and the people of North Carolina will have a reasonable chance for the retention of all Southern passenger trains now operating in the State, at least until January 1, 1975.

Upon consideration of the Petition and information available to it concerning Railpax, the Commission concludes that good cause has been shown and that the Petition should be approved in order that the traveling public of North Carolina will have every available avenue of opportunity open to them to retain the passenger trains presently

operated by Southern Railway Company in North Carolina. The Commission considers that Railpax will materially reduce rail passenger service effective May 1, 1971, except for railroads voluntarily retaining their existing passenger service through January 1, 1975, and that as an experiment the Commission finds the request of Southern Railway Company to reschedule its Trains Nos. 5 and 6 and 15 and 16 as proposed offers the best opportunity for maintaining existing service in North Carolina on Southern Railway Company rails and is, in fact, approved as a possible increase in service as compared to the Railpax service for North Carolina, if the experience garnered by Southern results in its maintaining its service without joining Railpax.

Stated differently, the Commission concludes that when viewed in context with Railpax the request of petitioner, as hereinbefore enumerated and described, will result in an increase rather than a reduction in rail passenger service in North Carolina.

IT IS THEREFORE ORDERED:

(1) That the Petition of Southern Railway Company for authority to reschedule its Trains Nos. 5 and 6 limiting regularly scheduled stops to major points with all others that are now carried as flag, conditional or scheduled stops for these trains, converted to conditional stops, as set forth in Appendix A attached hereto and made a part hereof, along with the transfer of sleeper service now provided by Trains Nos. 5 and 6 to Trains Nos. 1 and 2 be, and the same is hereby, approved.

(2) That the Petition of Southern Railway Company for authority to reschedule its Trains Nos. 15 and 16 operating between Asheville and Salisbury, North Carolina, with no changes in stations stops or consist, as set forth in Appendix B attached hereto and made a part hereof, be, and the same is hereby, approved.

(3) That petitioner be, and same is hereby, required to give notice to the traveling public of the changes in schedules and service of its Trains Nos. 15 and 16 and 5 and 6 authorized hereby by the publication of revised schedules and the posting of same at stations served by said passenger trains.

(4) That in the event petitioner does not avail itself of the authority granted hereby same will expire and be null and void after April 30, 1971.

BY ORDER OF THE COMMISSION.

This the 12th day of February, 1971.

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

Appendix A

Train No. 5		Station	Train No. 6
b 2:12 P.M.		Reidsville	e 4:15 P.M.
s 2:50	Ar.	Greensboro Lv.	s 3:45
s 3:15	Lv.	Greensboro Ar.	s 3:30
b 3:34		High Point	e 3:10
b 3:44		Thomasville	e 2:59
b 3:56		Lexington	e 2:48
s 4:25	Ar.	Salisbury Lv.	s 2:25
s 4:35	Lv.	Salisbury Ar.	s 2:20
b 4:55		Kannapolis	......
b 5:09		Concord	e 1:45
s 5:30	Ar.	Charlotte Lv.	s 1:20
s 5:55	Lv.	Charlotte Ar.	s 1:00
c 6:14		Belmont	......
c 6:32		Gastonia	e12:30 P.M.
c 6:46 P.M.		Kings Mountain	......

Explanation of References

b - Receive revenue passengers for Atlanta, Ga., and beyond, discharge revenue passengers from Alexandria, Va., and beyond.

c - Discharge revenue passengers from Alexandria, Va., and beyond.

e - Receive revenue passengers for Alexandria, Va., and beyond, discharge revenue passengers from Atlanta, Ga., and beyond.

s - Scheduled stop

Appendix B

(1) Train No. 15	Station	(2) Train No. 16
5:00 P.M.	Salisbury	1:15 P.M.
s 5:43	Statesville	s 12:27 P.M.
f 6:20	Newton	f 11:55 A.M.
f 6:23	Conover	f 11:52
ms 6:40	Hickory	ms 11:40
f 6:54	Connelly Springs	f 11:24
f 6:59	Valdese	f 11:20
s 7:13	Morganton	s 11:06
f 7:23	Glen Alpine	f 10:59
s 7:50	Marion	s 10:33
s 8:06	Old Fort	s 10:17
f 8:35	Ridgecrest	f 9:48
s 8:41	Black Mountain	s 9:41
f 8:46	Swannanoa	f 9:30
f 8:52	Azalea (Oteen)	f 9:22
s 9:00 P.M.	Asheville	s 9:15 A.M.

Explanation of References

(1) - Train No. 15 operates Monday, Thursday and Saturday

(2) - Train No. 16 operates Sunday, Wednesday and Friday

f - Flag stop, stops on signal to receive or discharge revenue passengers

m - Box meals available upon notice to conductor

s - Scheduled stop

DOCKET NO. R-29, SUB 187

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Railway Company - Petition For Authority to Make Schedule Changes in Its Trains Nos. 5 and 6 and 15 and 16) ORDER MODIFYING PREVIOUS ORDER

BY THE COMMISSION: By Order in this docket dated February 12, 1971, the Commission authorized the Southern Railway to reschedule its Trains Nos. 5 and 6, operating between Washington, D.C., and Birmingham, Alabama, through North Carolina and Trains Nos. 15 and 16 operating between Salisbury and Asheville, North Carolina, and to operate said trains on the schedules set forth in Appendices "A" and "B" attached to, and a part of, the aforementioned Order.

By letter from Southern received in the offices of the Commission on February 16, 1971, and treated as a petition, the railroad requests that the Order of February 12, 1971, be modified by allowing Trains Nos. 5 and 15 to operate on a schedule through North Carolina forty (40) minutes later than originally authorized. In justification for the modification sought petitioner advises it is necessary and it believes advisable in order to avoid Train 5 leaving Washington, D.C., before the arrival of Penn Central Train 177 (The Federal) from Boston, Massachusetts, and New York, N.Y., with the thought that some southbound passengers might find that connection convenient.

Upon consideration of the foregoing and it being of the opinion that good cause has been shown the Commission concludes that the petition for modification of its prior Order herein should be allowed.

IT IS THEREFORE ORDERED:

(1) That the petition of Southern Railway for modification of the prior Order in this docket be, and same hereby is, allowed.

(2) That Appendices "A" and "B", attached to and a part of the Order in this docket dated February 12, 1971, be, and same are hereby, amended by changing the schedules of Trains 5 and 15 to be forty minutes later at all stations than now shown therein.

(3) That in all other respects the Order of February 12, 1971, remains in full force and effect.

BY ORDER OF THE COMMISSION.

This the 19th day of February, 1971.

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

DOCKET NO. R-71, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Seaboard Coast Line Railroad Company and Riegel Paper Corporation - Arbitration of Controversy Filed Under G.S. 62-40) ARBITRATION AWARD

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on Monday, October 4, 1971, at 2:00 P.M.

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

APPEARANCES:

For Seaboard Coast Line Railroad Company:

David J. Williams
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Seaboard Coast Line Railroad Company
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Charles B. Neely, Jr.
Maupin, Taylor & Ellis
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For Riegel Paper Corporation:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arises upon a controversy between Seaboard Coast Line Railroad Company (SCL) and Riegel Paper Corporation (Riegel) regarding their inability to agree as to the proper minimum weight per car applicable to certain carload shipments of wood chips moving between points on the Seaboard system in North Carolina and Riegel's paper plant at Acme, North Carolina, during the period from July 12, 1967, to September 26, 1968, said controversy being submitted by the parties in writing to the Commission for arbitration under the provisions of G.S. 62-40.

With proper notice to the parties, the matter was set for hearing as set out in the caption. The parties filed briefs and appeared through representatives and attorneys who presented oral arguments and submitted the controversy for arbitration and award by the Commission.

The parties stipulated that effective July 1, 1967, the Atlantic Coast Line Railroad Company (ACL) and the Seaboard Air Line Railroad Company (SAL) were merged into the present Seaboard Coast Line Railroad Company (SCL).

SCL STATEMENTS OF FACT

SCL contends that effective with the merger of the Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company on July 1, 1967, Supplement No. 102 was issued to Southern Freight Tariff Bureau, Tariff No. 960-B, ICC No. S-65 substituting the name Seaboard Coast Line Railroad Company for the names of Atlantic Coast Line Railroad Company and Seaboard Air Line Railroad Company, wherever these carriers appear in said Tariff No. 960-B. SCL further contends that the rates contained in Item 154050 of Tariff 960-B are applicable in this instance; that said Item 154050 directs the tariff user to Items 154000 and 154015 to determine the carriers whose rates appear in the various rate columns of Item 154050 as well as to determine the description items, which includes minimum loads to be observed or paid for by the shipper; that ACL rates were in Rate Column 6 of Item 154050, subject to description Item 820, which included the carload minimum weight, and that SCL rates were in Rate Column 5 of Item 154050, subject to description Item 810, which included its carload minimum weight.

SCL further contends that Item 70 of said Tariff 960-B, which reads:

> "When two or more carload rates are provided in the same rate item for application on the same commodity from and to the same points, apply that rate which results in the lowest charge based upon the actual or authorized estimated weight of the shipment, but not less than the minimum rate published in connection with the rate used"

is inapplicable.

SCL further contends that there is no tariff ambiguities in this matter, while conceding that where there is a doubt as to the meaning of a tariff provision it must be resolved in favor of the shipper.

RIEGEL PAPER CORPORATION STATEMENTS OF FACT

Riegel contends that the applicable charges as provided for in Southern Freight Tariff Bureau Tariff No. 960-B have been paid and that no further charges are due as alleged by SCL; that prior to the merger of ACL and SAL the rates and minimum weight provisions were shown separately for each carrier; that effective July 1, 1967, Supplement No. 102 to said Tariff 960-B mentioned above was issued, substituting the name of the surviving company, SCL, for the ACL and SAL where these carriers appear in said Tariff 960-B; that since the rates in question were shown separately and distinctly

for ACL and SAL prior to the merger, and effectiveness July 1, 1967, these changes resulted in two columns of rates in Item 154050, Column 5 and Column 6, for SCL with different minimum weight provisions for each, and that while the rates in Columns 5 and 6 are the same they do not in every instance produce the same charges because of the different minimum weight provisions.

Riegel further contends that this seemingly ambiguous situation is overcome by Item 70 of Tariff 960-B, which reads:

> "When two or more carload rates are provided in the same rate item for application on the same commodity from and to the same points, apply that rate which results in the lowest charge based upon the actual or authorized estimated weight of the shipment, but not less than the minimum rate published in connection with the rate used."

Riegel further contends that it determined the applicable charges on the involved shipments by applying the rate and minimum weight published in connection therewith that resulted in the lowest charge; that the cardinal rule of tariff interpretation is that a tariff must be strictly construed according to the language contained therein; that it is not proper to go beyond this language to ascertain the intention or objective of the tariff framer and that where a conflict, or reasonable doubt exists as to the correctness of two disputed basis for determining charges, the basis that produces the lowest charge should be used.

Based upon the record in this matter, the records of the Commission, the filings by the parties herein, including briefs, and the able oral arguments of counsel, the Commission make the following

CONCLUSION

That Riegel has paid to SCL the applicable charges as provided for in Southern Freight Tariff Bureau Tariff No. 960-B and that no further charges are due as alleged by SCL.

NOW, THEREFORE, THE COMMISSION
MAKES THE FOLLOWING AWARD

That Seaboard Coast Line Railroad Company have and recover nothing of Riegel Paper Corporation on account of the controversy herein.

BY THE COMMISSION.

This the 13th day of October, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 184

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Change in the Operation of Passenger Train Service Between Salisbury, and Asheville, North Carolina) ORDER ALLOWING MOTION

BY THE COMMISSION: By Order in this docket dated July 9, 1970, as amended, this Commission authorized the Southern Railway Company (Southern) to operate its passenger train service between its main line and Asheville, North Carolina, by changing the route of said trains from the route then operated between Greensboro and Asheville to the route used prior to 1949 between Salisbury and Asheville. The Order authorized Southern to reduce the schedules from daily service to three-round-trips-a-week service.

The aforementioned Order provided further that all reasonable and appropriate methods be utilized and explored by Southern with view of bringing about a reduction of expenses incurred in the operation of the trains as therein modified and to operate said trains insofar as possible and feasible in turn-around service with one set of train equipment and one crew. Further, that if Southern did not find such turn-around service possible or practical it endeavor to operate one train and one crew in one-way-each-day service running west to Asheville one day and east from Asheville to Salisbury the following day in three round-trips a week.

Southern chose the latter method of providing the service and under authority of Orders in Docket No. R-29, Sub 187, schedules for the operation were approved under which train No. 3 (formerly 15) departs Salisbury at 6:40 p.m., on Mondays, Thursdays and Saturdays and arrives Asheville at 10:40 p.m., while train No. 4 (formerly 16) operates on Sundays, Wednesdays and Fridays leaving Asheville at 9:15 a.m., and arriving Salisbury at 1:15 p.m.

The Commission now has for consideration a letter from Southern dated June 11, 1971 (treated as a Motion) in which it seeks authority to operate trains Nos. 3 and 4 between Salisbury and Asheville in each direction on Fridays, Sundays and Tuesdays observing the present schedules as hereinbefore enumerated and described. The railroad plans to add a completely renovated and refurbished dome car to the consist of the trains.

The revised operation of these trains now sought to be made effective by Southern has the approval and support of the Asheville Area Chamber of Commerce.

Upon consideration of the Motion of Southern Railway Company and the record in this docket as a whole the Commission concludes that the desire of the railroad to now

provide the required service by a turn-around-every-other-day operation is in agreement with the original views on the subject expressed by it and that same should be allowed.

IT IS ACCORDINGLY ORDERED:

(1) That the Motion of Southern dated June 11, 1971, as hereinbefore enumerated and described, be, and the same is hereby allowed.

(2) That Southern make such changes in its published schedules as may be necessary to clearly show the days of the week that the authorized turn-around service will be operated and appropriate notice thereof shall be posted at the stations served by the trains.

(3) That Southern notify this Commission the date upon which its trains will begin the revised service hereby authorized.

BY ORDER OF THE COMMISSION.

This the 16th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. R-29, SUB 188

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Railway Company and Carolina & North-) ORDER
western Railway Company - Application for) GRANTING
Authority to Make Certain Changes in Their) APPLICATION
Facilities at Hickory, North Carolina)

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 9, 1971, at 9:00 A.M.

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

APPEARANCES:

For the Applicant:

James M. Kimzey
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For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina 27602

No Protestants

WOOTEN, COMMISSIONER: This proceeding arises on the application of Southern Railway Company and the Carolina & Northwestern Railway Company for authority to (1) relocate their freight office now located in Hickory, North Carolina, to Oyama, North Carolina, for Southern Railway to (2) relocate its passenger station now located in Hickory to Conover, North Carolina, and to (3) temporarily move its passenger station in Hickory from the southside of Federal Street to the freight station on the north side of Federal Street prior to the relocation to Conover, North Carolina.

Considering the matter as affecting the public interest, the Commission scheduled a public hearing on the application at the above captioned date, time and place.

Applicants gave due notice of their intention to file their 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.

Applicants' Exhibit No. 2 attached to the application herein involved and offered into evidence at the hearing by their counsel reflects that the proposed freight office to be remodeled, as set forth in said petition, and made into a freight station and a passenger station on the north side of Federal Street appears to be adequate to meet the needs of the public during the interim or temporary period between the time Applicants close the Hickory station and moves said passenger functions to Conover, North Carolina, and their freight operation into the facilities at Oyama, North Carolina, a new station, some four (4) miles east of Hickory, North Carolina.

The agreement entered into on March 31, 1971, between Applicants and the City of Hickory and attached to the aforementioned petition and offered into evidence at the hearing by counsel for Applicants, reflects that said City is desirous of redeveloping and beautifying its downtown area and of improving the traffic circulation within its limits, which will require the relocation of certain facilities of the railroads located therein; that the City of Hickory commenced a condemnation proceeding against the railroad on February 22, 1971, concerning the facilities hereinbefore described; that the City suggested that the railroads relocate their properties and facilities named herein at or near Oyama; that the railroads, subject to the

provisions of Article II of said agreement, will convey to the City all their right, title, and interest in and to the properties herein involved within the limits of the City of Hickory; that the railroads covenant and state that their main line right-of-way in said City shall be used for only two tracks, for main line and passing use, and neither shall be used as a storage track for the purpose of allowing rolling equipment to be left standing thereon for any appreciable length of time, and that the City of Hickory will pay to the railroads the sum of $850,000.00 as consideration for such conveyance as named above, said payment to consist of cash or property and/or improvements thereto required by the railroads for relocation of their present properties and facilities to the new location at or near Oyama, North Carolina.

Following the hearing, Applicants waived their right to file briefs and the Commission took the matter under consideration. From the evidence adduced at the hearing and contained in the files of the Commission, the Commission makes the following

FINDINGS OF FACT

1. Applicants, Southern Railway Company and Carolina & Northwestern Railway Company are duly authorized and existing corporations and common carriers of persons and property by rail in North Carolina, are subject to the jurisdiction of the North Carolina Utilities Commission, are properly before it and the Commission has jurisdiction over the matter.

2. The City of Hickory is located in Catawba County approximately eight (8) and four (4) miles west of Conover and Oyama, North Carolina, respectively.

3. Applicants gave due notice of their intention to file their 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 June 16, 1971.

4. That the Applicants have agreed to convey to the City of Hickory their right, title and interest in and to certain of their properties within the limits of said City as hereinabove mentioned, and that the City of Hickory agrees to pay said Applicants the sum of $850,000.00 as consideration for such conveyances as hereinbefore described.

5. That the relocation of Applicants' freight facilities to Oyama, North Carolina, and their passenger facilities to Conover, North Carolina, will establish the same in areas approximately in the geographic and population center of Catawba County and thereby will be better enabled to serve

the public, and that, therefore, such relocation is in the public interest.

Upon the foregoing Findings of Fact and based upon the entire record as a whole, the Commission makes the following

CONCLUSIONS

Applicants have borne the burden of showing that public convenience and necessity no longer requires the continued maintenance of their present freight and passenger stations in Hickory, North Carolina, and that the proposed relocation of said facilities in the Hickory area as set forth and described in the application is in the public interest, therefore, the authority sought in the application should be granted.

IT IS, ACCORDINGLY, ORDERED:

1. That the application in this docket be, and the same is, hereby granted.

2. That the Applicants be, and the same are, hereby authorized to relocate their freight office now located in Hickory to Oyama, North Carolina.

3. That Southern Railway Company be, and the same is, hereby authorized to relocate its passenger station now located in Hickory to Conover, North Carolina, and to temporarily move its passenger station in Hickory from the south side of Federal Street to the freight station on the north side of Federal Street prior to the relocation to Conover, North Carolina.

4. That Applicants proceed immediately to accomplish the purposes and objections for which authority is herein granted and advise the Commission the dates of actual relocation of their facilities and operations herein authorized.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-105, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Dixie Dispatch Company, Inc., Failure to File Annual Report) ORDER CANCELLING CERTIFICATE

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 7, 1971

BEFORE: Commissioners John W. McDevitt (Presiding), Marvin R. Wooten and Hugh A. Wells

APPEARANCES:

For the Respondent: No one appeared.

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On June 25, 1971, the Commission issued a Show Cause Order directing Respondent Dixie Dispatch Company, Inc. to appear at a hearing scheduled on July 7, 1971, at 9:30 A.M. in the Commission Hearing Room, Raleigh, North Carolina, to show cause why its Certificate of Public Convenience and Necessity should not be revoked for failure to file annual report as required by the Commission under the provisions of G.S. 62-36.

The matter was called for hearing on July 7, 1971, and the Respondent failed to appear. The Commission records indicate that as of July 7, 1971, Dixie Dispatch Company, Inc. had not filed its annual report for the calendar year 1970 as required by the Commission.

The records of the Commission further indicate that a copy of the Show Cause Order dated June 25, 1971, was mailed on that date to Harold A. Baker, President of Dixie Dispatch Company, Inc., P. O. Box 817, North Wilkesboro, North Carolina. Additionally, the Show Cause Order was served by Commission Inspector H. W. Brookshire on July 3, 1971, upon Harold A. Baker.

Gene Clemmons, Chief Engineer/Telephone Service Division, testified that by memorandum dated April 26, 1971, the Commission had directed all regulated radio common carriers in North Carolina to file a copy of the Federal Communications Commission's annual report Form L with this Commission on or before April 30 of each year. He further testified that in accordance with the Commission's memorandum he had written on May 7 and May 28, 1971, respectively, relating to Mr. Baker the Commission's

requirements that the Form L report be filed and on each occasion requested that such report be filed by Dixie Dispatch Company, Inc.

Mr. Clemmons further testified that the certificate for radio common carrier operations was granted to Dixie Dispatch Company, Inc. on November 6, 1969, with certain stated conditions regarding the supplying of additional information, and that it was necessary for the Commission to issue a Show Cause Order on February 26, 1970, to obtain compliance with the requirements of the original Order granting the certificate, and that although certain items were furnished, it was necessary for the Commission to again issue a Show Cause Order on August 19, 1970, in order to obtain an appropriate detailed tariff, which said tariff was filed on October 2, 1970, approximately one year after the original certificate was granted.

Based upon the entire record of this proceeding and the records of the Commission as they relate to Dixie Dispatch Company, Inc., the Commission makes the following

FINDINGS OF FACT

(1) Respondent Dixie Dispatch Company, Inc. is a radio common carrier holding certificate No. P-105 issued by this Commission and is properly before the Commission in this proceeding.

(2) The Commission directed all regulated radio common carriers by memorandum dated April 26, 1971, to file a copy of the Federal Communication Commission's annual report Form L with this Commission on or before April 30 of each year.

(3) The Commission Staff, by letters of May 7 and May 28, 1971, advised Dixie Dispatch Company, Inc., by correspondence directed to Harold A. Baker, President, that its annual report Form L had not been received by the Commission and requested that such report be filed.

(4) The Commission's Show Cause Order dated June 25, 1971, was mailed to the Respondent on that date, and a copy of same was served on July 3, 1971 on Harold A. Baker by Commission Inspector H. W. Brookshire.

(5) The Commission records indicate that Respondent has failed to file its annual report as required by the Commission in accordance with G.S. 62-36.

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

CONCLUSIONS

Under the provisions of G.S. 62-36, the Commission has the authority to require any public utility to file annual reports in such form and of such content as the Commission

may require. Under authority granted by that statutory provision, the Commission issued a memorandum directed to all regulated radio common carriers on April 26, 1971. The requisite finding in this case is simply did the Respondent file its annual report for the calendar year 1970 in accordance with the Commission's requirements? Not only has the Respondent failed to file an annual report but the Commission has not received any response to its letters of May 7 and May 28, 1971, nor did the Applicant appear at the Show Cause Hearing scheduled on July 7, 1971.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Certificate of Public Convenience and Necessity to operate as a radio common carrier issued by this Commission to Dixie Dispatch Company, Inc. be, and the same hereby is, cancelled for failure of the Respondent to comply with the requirements of applicable law and the Rules and Regulations of this Commission in that the Respondent failed to file its annual report as required under the provisions of G.S. 62-36.

(2) That Dixie Dispatch Company, Inc. is herewith ordered to cease and desist continuing in any manner the radio common carrier operations authorized under the Certificate granted by this Commission.

(3) That a copy of this Order be transmitted to the Federal Communications Commission, Washington, D.C.

ISSUED BY ORDER OF THE COMMISSION.

This 9th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Barbara V. Cannon, d/b/a Greenville Radio Dispatch, for Certificate of Public Convenience and Necessity to Own, Maintain and Operate a Common Carrier Paging Service and Mobile Radio Service) ORDER GRANTING CERTIFICATE

HEARD IN: City Council Chambers, Municipal Building, Greenville, North Carolina, on April 23, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Applicant:

Sam O. Worthington
Attorney at Law
P. O. Box 691, Greenville, North Carolina

For the Commission Staff:

William E. Anderson
Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: Barbara V. Cannon, d/b/a Greenville Radio Dispatch, 107 East Redman Avenue, Greenville, North Carolina, filed with the Commission on January 27, 1971, an application for a Certificate of Public Convenience and Necessity, to own, maintain and operate a radio paging service and two-way mobile service in Greenville, North Carolina. On March 23, 1971, the Applicant filed amendments to the original application and such amendments revised the rate schedule and reduced the proposed service area. This matter was set for hearing on April 23, 1971, and upon request of the Applicant, the place of hearing was set in Greenville, North Carolina. Public notice of the hearing was published in the "The Daily Reflector," a newspaper having general circulation in and around the City of Greenville in the area which the Applicant proposes to operate.

Pursuant to said notice, the petition came on for the hearing at the time, place and date stated and the Applicant at the hearing offered testimony by Barbara V. Cannon and six public witnesses in support of the application and one witness, Mr. James Humphrey, regarding the maintenance of the radio system. There were no protestants at the hearing to oppose the granting of the Certificate. The Commission Staff called as a witness, Mr. F. L. Patterson, owner and operator of several radio common carrier systems in North Carolina.

Based upon the records of the Commission and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, Barbara V. Cannon, d/b/a Greenville Radio Dispatch, is required by Chapter 62 of the General Statutes to obtain a Certificate of Public Convenience and Necessity from this Commission to operate as a radio common carrier in North Carolina.

2. That radio common carrier service is not now provided at Greenville.

3. That there is a need for two-way and paging radio services in Greenville as testified to by six public witnesses including five physicians who practice in and around the Greenville area.

CONCLUSIONS

The Applicant in this proceeding seeks a Certificate of Public Convenience and Necessity to operate mobile radio common carrier service in intra-state communications in and around the Greenville area. The Applicant's revised application seeks a service area within a radius of forty (40) miles of Greenville and proposes to provide only basic communications service at a proposed rate of $10 per month to all customers. The Applicant proposes that the customer will own and maintain its own paging or two-way mobile equipment and that the Applicant will not provide equipment or maintenance service to mobile or paging units.

The Applicant presently operates a telephone answering service in Greenville and proposes that radio common carrier service will be provided through the answering service facilities now available. The Applicant does not propose to provide interconnection with the landline telephone systems which would enable its subscribers to have calls interconnected between mobile and landline telephones.

Six public witnesses in addition to the Applicant, Barbara V. Cannon, testified as to the need for two-way and paging radio service in the Greenville area. Five of the public witnesses were doctors in the Greenville area who testified that there was a need for mobile service in their day-to-day practices.

The Commission concludes that radio common carrier service is needed in the Greenville area to serve the public. The Commission further concludes that the Applicant should be granted a Certificate of Public Convenience and Necessity to provide a full radio common carrier service, including interconnection with the landline telephone system, in the Greenville area and that this service should offer equipment rental, maintenance and installation of two-way and paging equipment should the subscriber desire not to own, maintain and install their own equipment. The Commission further concludes that the Certificate should be granted on the basis that the Applicant, Barbara V. Cannon, immediately apply for a FCC Construction Permit and License to operate a radio system in the Greenville area for common carrier service, and that the Applicant shall within 90 days apply for such construction permit and license from the Federal Communications Commission and that if a license from the Federal Communications Commission has not been granted and operation of the system begun within 18 months of the date of issuance of this order, the Commission will consider withdrawing the Certificate of Public Convenience and Necessity.

The Commission also concludes that the Applicant, Barbara V. Cannon, should submit a contract for maintenance of base station and associated equipment as well as maintenance of two-way mobile and paging units to the Commission as proof of the Applicant's intention to provide the necessary maintenance for good quality service. The Applicant should secure a qualified engineer or other individual to design and supervise the construction of the radio system and to prepare the necessary forms to the FCC and that the Applicant, Barbara V. Cannon, should submit to the Commission a written agreement between the qualified individual and the Applicant indicating the services to be provided to the Applicant.

The Commission also concludes that the Applicant should file a detailed tariff indicating the services to be offered, the rates for such service, and the rules and regulations relating to services provided by the common carrier.

IT IS, THEREFORE, ORDERED That Barbara V. Cannon, d/b/a Greenville Radio Dispatch be granted a Certificate of Public Convenience and Necessity as authorized under Chapter 62 of the General Statutes of North Carolina to provide mobile radio common carrier service with interconnection to landline telephone service within the city of Greenville and within a 30 mile radius of the base station antenna located in Greenville and to provide radio paging service.

IT IS FURTHER ORDERED That the Applicant shall file within 90 days with the Federal Communications Commission an application for a license to operate the proposed radio common carrier system at Greenville, and

IT IS FURTHER ORDERED That

1. If the operation of the common carrier system has not begun within 18 months of the date of issue of this order, the Commission will consider withdrawing the Certificate of Convenience and Necessity from the Applicant, Barbara V. Cannon.

2. The Applicant shall submit to the Commission a contract for maintenance of base station and associated equipment as well as maintenance of mobile and paging equipment if such mobile and paging equipment maintenance is requested by the subscriber.

3. That the Applicant shall secure the services of a qualified engineer or other qualified person to design the radio system, supervise the construction of such system, and to assist in preparing the necessary forms to the Federal Communications Commission regarding a license, and that a written agreement be submitted to the Commission within 60 days of the date of this order between the Applicant, Barbara V. Cannon, and the qualified individual who will design, supervise construction and assist in preparing FCC

forms. The agreement shall contain the qualifications of the individual assisting the Applicant.

4. The Applicant shall submit to the Commission a copy of the FCC application Form 401.

5. The Applicant shall submit to the Commission within 90 days from the date of issuance of this order, a detailed tariff setting forth the service to be offered, the rates for such service and the rules and regulations pertaining to the service with the effective date to be upon commencement of operation of the system. The tariff shall be similar in form to Appendix "A" attached hereto.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-108

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
L. M. Lackey, d/b/a Mac's Television and) ORDER
Electronics - Application for Certificate to) DENYING
Operate as a Radio Common Carrier) CERTIFICATE

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, September 22, 1970 at 10:00 A.M.

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

APPEARANCES:

For the Applicant:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestants:

Ted R. Reynolds
Reynolds and Farmer
Attorneys at Law
316 W. Edenton Street
Raleigh, North Carolina
For: Two Way Radio of Carolina, Inc.

Thomas W. Steed, Jr.
and Arch T. Allen, III
Allen, Steed and Pullen
Attorneys at Law
Branch Banking & Trust Co. Building
Raleigh, North Carolina
For: E. L. Sherman, d/b/a Rowan Radio Fone

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
N. C. Utilities Commission
Raleigh, North Carolina

McDEVITT, COMMISSIONER: On June 18, 1970, L. M. Lackey, d/b/a Mac's Television and Electronics filed an application for a Certificate of Public Convenience and Necessity to operate as a radio common carrier in intrastate commerce with interconnection with existing telephone service at Statesville and Salisbury. Public hearing on the application was scheduled and held as captioned. E. L. Sherman, d/b/a Rowan Radio Fone and Two Way Radio of Carolina, Inc. were allowed to intervene by order dated July 23, 1970. The applicant thereafter filed a motion to dismiss the petition of Sherman and Two Way Radio for Leave to Intervene. Oral Argument on the Motion was heard and denied at the outset of the hearing.

Evidence offered by the applicant includes the testimony of Mr. and Mrs. L. M. Lackey, seven residents of Statesville and one resident of Charlotte. All of the witnesses agreed that there is need for the proposed service; four of the supporting witnesses testified they have a present need for the service and three of them without authority to speak for their employers testified that they do not have a present personal need for the service. Most of the witnesses were not aware of the availability of mobile radio telephone service at Statesville offered by Two Way Radio of Carolina and upon being asked stated that they would have no objection to being served by Two Way Radio.

Mr. L. M. Lackey testified that he has owned and operated Mac's Television and Electronics in Statesville since 1949; that he is currently servicing 320 mobile radio units and 65 base stations; that he has financial resources and qualified personnel to perform the proposed service; that the radio frequency he proposes to operate is now held by Intervenor, E. L. Sherman, d/b/a Rowan Radio Fone; that he does not have an FCC License to operate the proposed service but believes that he can obtain a license if he is granted a certificate by the North Carolina Utilities Commission; that various channels within the 152 megahertz band are located in Greensboro, Winston-Salem and Burlington and are not available to him because Statesville is within the range of those channels.

Two Way Radio of Carolina has a Certificate of Public Convenience and Necessity granted by the North Carolina Utilities Commission on January 20, 1966 authorizing it to provide mobile radio service as a common carrier of communications with interconnections with Southern Bell Telephone Company in the areas proposed to be served and as permitted by the licenses granted by the Federal Communications Commission. Two Way Radio holds three licenses granted by the FCC to serve three separate areas of North Carolina. One of these licenses issued April 2, 1965 is for radio station KIY 755 with base station located on Anderson Mountain near Denver, North Carolina, with authority to serve 200 mobile units. The estimated distance or radius of effective service from the base station is 45 air line miles. Iredell County including Statesville and the site of the proposed station is well within the 45 air line mile estimated service radius of station KIY 755. Furthermore, most of Rowan County, including Salisbury which is the location of the station operated by protestant, E. L. Sherman, d/b/a Rowan Radio Fone is also within the 45 air line mile estimated service radius of station KIY 755.

The testimony of Two Way Radio's President, Allen L. Guin, tends to show that Two Way Radio offers mobile radio telephone service to the public in Iredell and Rowan Counties and has interconnection with Southern Bell Telephone Company at Statesville. One of the public witnesses, Mr. Richard Revis, who resides in Statesville, testified that he is a subscriber of the service offered by Two Way Radio at Statesville.

Based upon the evidence adduced at the hearing and various documentary records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. There is public need for radio common carrier mobile telephone service in the area proposed to be served by the applicant which is available to the using and consuming public by Two Way Radio of Carolina.

2. Two Way Radio has interconnection with Southern Bell Telephone Company at Statesville, is currently serving and is able to serve every public witness who testified that he needs the proposed service.

3. The applicant, L. M. Lackey, is well qualified to own and operate the proposed service but he is seeking a Certificate to serve an area and to provide a service already served or capable of being serviced by two radio common carriers who hold Certificates granted by the North Carolina Utilities Commission to provide the same type of service, namely, Two Way Radio of Carolina and E. L. Sherman, d/b/a Rowan Radio Fone.

4. E. L. Sherman, d/b/a Rowan Radio Fone, holder of Certificate No. P-88 granted by the North Carolina Utilities Commission on October 28, 1966 is authorized to serve an area estimated to encompass a radius of 40 miles from the base station near Salisbury which area embraces Statesville and much of the territory which applicant proposes to serve. Applicant proposes to apply to the Federal Communications Commission for the FCC frequency now held by Rowan Radio Fone. Rowan Radio Fone has not interconnected with Bell Telephone Company at Salisbury nor did it make any effort to interconnect for about four years after it received its Certificate. Rowan Radio Fone did not file a tariff under which to operate between the date of the granting of the Certificate on October 28, 1966 and January 18, 1968. Rowan Radio Fone had a maximum of seven mobile radio telephones in operation under its Certificate, three of which were used by its own employees and four of which were billed to and paid for by Motorola Communications and Electronics for whom E.L. Sherman was and is a subcontractor, said units being those in the cars of Motorola employees who were in and out of the territory working with E. L. Sherman as subcontractor. Sherman has never had a mobile radio telephone subscriber other than those hereinbefore identified. Sherman has never advertised or made any significant or recognizable effort to obtain subscribers and develop the franchise for the benefit of the public. Sherman testified that he "made a deal" to sell his Certificate to Al Guin, President of Two Way Radio of Carolina on December 30 or 31, 1969 for $5,000.00 and thereafter informed various interested persons accordingly and did not solicit subscribers. Rowan Radio Fone did not have a business telephone until June 18, 1970, over four years after obtaining its Certificate. E. L. Sherman when asked, "do you think you have really fulfilled the role of a public utility" answered "no sir". (See page 344 of Transcript)

CONCLUSIONS

The Commission is governed by the following statutes in considering this application for a certificate:

> "G.S. 62-120. Certificate of convenience and necessity required; exceptions; rules and regulations.-No radio common carrier shall begin, or continue, the construction or operation of any radio system, or any extension thereof, or acquire ownership or control thereof either directly or indirectly without first obtaining from the Public Utilities Commission a certificate that the present or future public convenience and necessity requires or will require such construction, operation or acquisition; provided this article <u>shall not require</u>, nor shall it be so construed as to require, <u>any such carrier to secure a certificate for an extension within any authorized service area within which such person has heretofore lawfully commenced operations</u>, or for any extension within or to territory already served by such carrier, necessary in the ordinary course of business, or

for substitute facilities within or to any authorized service area or territory already served by such carrier, or for any extension into territory contiguous to that already served by such carrier and not receiving similar service from another such carrier when no certificate of convenience and necessity has been issued to or applied for by any other radio common carrier, or for the acquisition and operation of any plant or system heretofore constructed or hereafter constructed under authority of a certificate of convenience and necessity hereafter issued. The Commissioners are hereby authorized to prescribe appropriate and reasonable rules and regulations governing the issuance of such certificates. (1969, c. 766)

"G.S. 62-123. Granting of certificate for operation in established service area of another carrier.-The Commission shall not grant a certificate for a proposed radio common carrier or extension thereof into the established service area which will be in competition with or duplication of any other radio common carrier unless it shall first determine that the existing service is inadequate to meet the reasonable needs of the public and that the person operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service. (1969, c. 766.)"

The evidence is clear and the Commission concludes that the applicant is seeking to provide mobile radio telephone service of the same type and in substantially the same geographical area for which authority has been heretofore granted by the North Carolina Utilities Commission to Two Way Radio of Carolina and E. L. Sherman, d/b/a Rowan Radio Fone. Two Way Radio of Carolina has shown that it is ready, willing and able to provide and is actually providing mobile radio telephone service to subscribers in Statesville, North Carolina. Under the circumstances and in accordance with G.S. 62-123 above, the Commission is prohibited from granting a Certificate as a Radio Common Carrier to the applicant for the proposed service which is partially if not completely within the service area of Two Way Radio and therefore would be in competition with its service.

The evidence clearly shows that E. L. Sherman, d/b/a Rowan Radio Fone has not provided the service to the public which it is obligated to provide under the conditions of the certificate granted to it by the North Carolina Utilities Commission in Docket No. P-88 on October 28, 1966. The Commission concludes that Sherman has used the franchise for his private business and has failed or neglected to develop it for the benefit of the public as contemplated in the Certificate. It is the opinion of the Commission that the plan of E. L. Sherman to sell his certificate for $5,000.00 in the light of substantial evidence that he has willfully failed to operate it as a public utility, justifies investigation and show cause action to determine why his certificate should not be revoked.

IT IS, THEREFORE, ORDERED:

That the application of L. M. Lackey, d/b/a Mac's Television and Electronics, be and the same is, hereby denied and proceeding dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-88, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
E. L. Sherman, d/b/a Rowan Radiofone, Operating as a Radio Common Carrier Under a Certificate of Public Convenience and Necessity Granted by the North Carolina Utilities Commission) ORDER REVOKING CERTIFICATE

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 8, 1971

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

APPEARANCES:

For the Respondent:

Mr. Ted Reynolds
Reynolds & Farmer
Attorneys at Law
P. O. Box 27525, Raleigh, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: On May 3, 1971, the Commission entered an Order requiring E. L. Sherman, d/b/a Rowan Radiofone, to appear before the Commission and show cause why the certificate to operate as a radio common carrier issued to him by this Commission should not be revoked for failure to meet the obligations required for the holder of such certificate under the provisions of North Carolina General Statutes. This Order was based upon testimony of E. L. Sherman in Docket No. P-108, in which said docket Mr. Sherman protested the application of L. M. Lackey, d/b/a

Mac's Television and Electronics for a certificate to operate as a radio common carrier in an area around Statesville, North Carolina, which overlapped the certificated area of Mr. Sherman.

By Order of April 8, 1971, the Commission denied the application of L. M. Lackey in Docket No. P-108 and concluded that the evidence in that proceeding indicated that E. L. Sherman had failed or neglected to develop the radio common carrier franchise by him for the benefit of the public as contemplated in his certificate.

At the show cause hearing on July 8, 1971, the respondent offered evidence solely through the testimony of E. L. Sherman who testified that he had initially attempted to file for a radio common carrier permit in 1962, but abandoned the attempt until 1965. He further stated that he had at that time well-trained personnel to assist him in the operations of a radio common carrier system but subsequent to receiving his license from the FCC on December 27, 1966 and his certificate from this Commission on October 28, 1966, he lost the assistance of two such personnel, one having moved and the other having died. Mr. Sherman stated that in August, 1969, he approached Allen Guin representing Two-Way Radio of Carolina, Inc. and indicated to him that he could not develop such radio common carrier operation and discussed the possibility of a sale and transfer of such operations to Two-Way Radio of Carolina, Inc. and a contract was entered into on December 30, 1969. Mr. Sherman indicated that it was still his desire to transfer the franchise to Mr. Guin.

On cross-examination, Mr. Sherman testified that for the years 1967, 1968 and 1969, his total operations consisted of 7 mobile radio units, 3 belonging to him personally and 4 being paid for by Motorola, Inc.. Mr. Sherman stated that he is a subcontractor for Motorola, Inc.. He further testified that while his certificate originally authorized him to interconnect with Southern Bell Telephone & Telegraph Company at Salisbury, he made no attempts to make interconnection until September 1970. He further stated that he had no request from members of the public for such direct communication service as would be provided through interconnection. Although he mailed approximately 600 solicitations in October 1970, he stated that he received no request from anyone regarding radio common carrier services and further testified that prior to October 1970, he had not advertised his service in any manner to the public nor had he obtained a business telephone listing prior to 1970. Mr. Sherman stated that he had no customers at the end of the calendar year 1970, and such fact is further indicated in the annual report filed with the Commission on May 3, 1971. When questioned about the individuals or business representatives who testified in the original application hearing on May 26, 1966, he stated that not one of those persons or businesses actually utilized his service as a radio common carrier after the certificate was granted,

except for Motorola, Inc. In this regard, he testified that the brick and tile company involved in the original proceeding bought its own radio units, that the bottling company indicated in May 1966, after the hearing, that it was no longer interested and that the real estate operation went out of business. Mr. Sherman indicated as of the July 8 hearing, the radio common carrier operations consisted of one base station, and antenna system, a newly installed remote control unit, 3 mobile units which he owns but are not being operated, and that 4 other mobile units had been sold to the City of Salisbury.

The records of the Commission in Docket No. P-88 indicate that E. L. Sherman obtained a first class radio operator's license in 1937, and worked in Salisbury for a local broadcasting firm, that he has been a radio engineer for several radio broadcasting firms and has, in the past, been responsible for the design, development, installation, maintenance and repair for several thousand two-way radio systems, including systems for 4 telephone companies and 29 law enforcement departments. In obtaining a certificate of public convenience and necessity from this Commission, E. L. Sherman indicated at the hearing on May 26, 1966, that he proposed to furnish up to 40 mobile radio telephone units to various subscribers in the Salisbury area. The original application by Sherman was opposed by Two-Way Radio of Carolina, Inc.

Based upon the testimony of various individuals and business representatives, Mr. E. L. Sherman, d/b/a Rowan Radiofone, was granted a certificate on October 28, 1966, as follows:

> "...to construct, own and operate mobile radio communications system with a base point and transmission tower at Salisbury, North Carolina, with interconnection to the land-line telephone facilities of Southern Bell Telephone and Telegraph Company at Salisbury, North Carolina. This authority under this certificate is limited to a maximum of forty (40) mobile units and to a maximum territory of forty (40) air-line miles radius of Salisbury, North Carolina. The offering of service herein authorized is limited to those subscribers having their place of residence or principal place of business within the territory herein defined and having a principal identity, or community of interest, with the Salisbury, North Carolina, locality. Included in this authority is the right to establish such message centers within the certificated territory, and only within the certificated territory, as may be required to serve the territory and subscribers herein authorized. Further included in this authority is the right and requirement that Applicant provide a message relay and secretarial service for its subscribers as an integral part of its mobile radio service with said service to be included in the base rate charged subscribers for mobile radio service. Applicant is also authorized, upon call and demand and authorization

from the Federal Communications Commission to provide one-way paging services and like services wholly incident to mobile radio service as determined by the Federal Communications Commission."

The records of the Commission in Docket No. P-108 indicate that Mr. Sherman holds a Federal Communication Commission license and operates on a frequency of 152.120MHZ. The record of that proceeding further indicates that Mr. Sherman had not interconnected with Southern Bell at Salisbury and had made no attempt to do so until approximately 4 years after he received the certificate. He did not file his tariff under which he was to operate between the date of the granting of the certificate and January 18, 1968. When questioned by the Commission regarding his efforts to develop radio common carrier service in the Salisbury area, Mr. Sherman responded that he did not think he had fulfilled the role of a public utility and that was the reason he wanted to sell his operations to someone else.

Based upon the evidence adduced at the hearing and the records of the Commission as they relate to the respondent, particularly in Docket No. P-88 and P-108, the Commission makes the following

FINDINGS OF FACT

(1) Mr. E. L. Sherman, d/b/a Rowan Radiofone, is a radio common carrier holding certificate No. P-88 issued by this Commission on October 28, 1966, and is properly before the Commission in this proceeding.

(2) E. L. Sherman has extensive experience beginning in 1937 regarding the design, development, installation, maintenance, repair and operation of two-way radio systems.

(3) The respondent offered evidence in May 1966 as a basis of obtaining the certificate from this Commission which tended to justify service of up to 40 mobile radio units to various subscribers in the Salisbury area.

(4) Not one of the business representatives or individuals who testified on May 26, 1966, regarding public need for service by Mr. Sherman in the Salisbury area actually utilized his services after the certificate was granted by this Commission with the exception of Motorola, Inc.

(5) While the certificate issued by this Commission authorized Mr. Sherman to interconnect with Southern Bell Company at Salisbury, Mr. Sherman made no attempt to obtain such interconnection until approximately 4 years after he received the certificate.

(6) From October 28, 1966, until July 8, 1971, Mr. Sherman has not had in excess of 7 mobile radio telephones in operation under its certificate in any calendar year.

Three of those units were owned by Mr. Sherman personally and the remaining 4 units were paid for by Motorola, Inc. for which Mr. Sherman is a subcontractor.

(7) Prior to October 1970, Mr. Sherman utilized no advertising to the public regarding the availability of radio common carrier service.

(8) Prior to 1970, Mr. Sherman did not obtain and maintain a business telephone listing in the Salisbury telephone directory in order that members of the public might contact him in connection with utilization of his services as a radio common carrier.

(9) Since December 1969, at which time Mr. Sherman entered into a contract with Allen Guin, President of Two-Way Radio of Carolina, Inc. for the sale and transfer of his certificate, Mr. Sherman thereafter did not solicit subscribers and did not serve any customers or subscribers with respect to any type of radio common carrier service for 1970, except the October mailings.

(10) E. L. Sherman has willfully failed or neglected to conduct the radio common carrier operations authorized under his certificate and has neglected to develop same for the benefit of the public as contemplated by said certificate and his certificate should be revoked for failure to fulfill such obligations as required under his certificate as a public utility radio common carrier.

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

CONCLUSIONS

The Commission concludes that Respondent E. L. Sherman, d/b/a Rowan Radiofone, since the granting of his Certificate of Public Convenience and Necessity on October 28, 1966, has willfully failed or neglected to develop and conduct the radio common carrier operations authorized by his certificate for the benefit of the consuming public. Although inherent in the responsibilities of a certificated public utility radio common carrier, Mr. Sherman has failed to communicate to the public within his franchised area the availability of radio common carrier services. The evidence contained in the Commission records clearly demonstrates that prior to 1970, Mr. Sherman did not advertise in any manner his operations nor did he obtain and maintain a local business telephone directory listing. Mr. Sherman stated at the show cause hearing, that he mailed 600 postcards to the general public in October 1970, and obtained a business directory listing for that year, both upon the advice of his counsel during which time Mr. Sherman was actively opposing the application of L. M. Lackey, d/b/a Mac's Television and Electronics in Docket No. P-108. Mr. Sherman was also in the process of selling and transferring his operations to Allen Guin, President of Two-Way Radio of Carolina, Inc.,

said contract for sale having been entered on December 30, 1969. By his own admissions and as indicated by the Form L annual report filed for the calendar year 1970, after the contract was entered with Mr. Guin, Mr. Sherman did not solicit any subscribers for radio common carrier service except as above noted.

While his certificate originally authorized him to interconnect with Southern Bell at Salisbury in order to provide direct landline communication rather than relay through dispatchers, Mr. Sherman made no effort to obtain such interconnection until September 1970. Between October 28, 1966, and January 18, 1968, he did not file a tariff under which to operate. Since October 1966, up to and including the date of the hearing on July 8, 1971, Mr. Sherman never had in excess of 7 mobile radio units in operation in any calendar year. Three of these were used by his own employees and the remaining 4 were paid for by Motorola salesmen, who were working in and out of the territory. Mr. Sherman is a subcontractor for Motorola, Inc.

On September 22, 1970, in Docket No. P-108, which was the basis for the issuance of the show cause Order dated May 3, 1971, presently under consideration, Mr. Sherman responded to a question by the Commission indicating that he did not think he had fulfilled the role of a public utility and that was the reason he wanted to sell his operations so that someone else could do a better job.

Based upon his own admissions and statements concerning the manner by which he has conducted his operations since October 1966, the Commission concludes that it is abundantly clear that Mr. Sherman has made little effort to promote his radio common carrier operations under his responsibility as a public utility. The record does not reflect whether or not there is a public need today for radio common carrier services of the type which should have been offered by Mr. Sherman. It is noted that Mr. Sherman testified that he did not receive even one response to the approximate 600 postcards mailed to persons in his franchised area. To whom these cards were mailed and the contents thereof are not reflected on this record. It is conceivable that there may be some public need for radio common carrier service in the Salisbury area, but it is understandable that this record does not reflect the extent of any such need, if any exists, and that such may be attributable to the failure of Mr. Sherman to promote such operations in that area since October 1966. The Commission concludes that Mr. Sherman has virtually used the franchise granted by this Commission for his private business and has failed and neglected to conduct his operations for the benefit of the public.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Certificate of Public Convenience and Necessity issued by this Commission to Respondent

E.L. Sherman, d/b/a Rowan Radiofone, be, and the same hereby is, revoked and cancelled for failure of the Respondent to fulfill his obligations as a public utility radio common carrier and because of his willful failure and neglect to develop and conduct such operations for the benefit of the public in his franchised area.

(2) That E. L. Sherman, d/b/a Rowan Radiofone, is herewith ordered to cease and desist conducting in any manner the radio common carrier operations authorized under the Certificate granted by this Commission.

(3) That a copy of this Order be transmitted to the Federal Communications Commission, Washington, D. C.

ISSUED BY ORDER OF THE COMMISSION.

This 14th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-84, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Petition of Two-Way Radio of Carolina, Inc., and E.L. Sherman, d/b/a Rowan Radiofone, P.O. Box 124, Salisbury, North Carolina, for Authority to Sell and Transfer a Franchise and Certificate of Public Convenience and Necessity No. P-88 to Operate as a Common Carrier in Intrastate Communications Providing Mobile Radio Service with Interconnection with Existing Telephone Service) ORDER DISMISSING PETITION

BY THE COMMISSION: On July 1, 1971, joint Petition was filed by Two-Way Radio of Carolina, Inc., and E. L. Sherman, d/b/a Rowan Radiofone, for authority to sell and transfer Certificate of Public Convenience and Necessity No. P-88 issued by this Commission to E. L. Sherman, d/b/a Rowan Radiofone, relating to his operations as a Radio Common Carrier.

Inasmuch as the Commission, by Order of July 14, 1971, has revoked the Certificate of Public Convenience and Necessity held by E. L. Sherman, d/b/a Rowan Radiofone, for the reason that E. L. Sherman wilfully failed or neglected to conduct radio common carrier operations under the Certificate and for failure to fulfill obligations as were required under the Certificate as a public utility radio common carrier, the Commission is of the opinion that the joint Petition filed in Docket No. P-84, Sub 8, should be dismissed,

IT IS, THEREFORE, ORDERED that the joint Petition of Two-Way Radio of Carolina, Inc., and E. L. Sherman, d/b/a Rowan Radiofone, for authority to sell and transfer the franchise of E. L. Sherman, d/b/a Rowan Radiofone, be, and the same hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This 26th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-28, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of First Colony Telephone Company) ORDER
for Authority to Increase Its Rates and Charges) ALLOWING
for Telephone Service in Its Service Area) INCREASED
Within North Carolina) RATES

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on October 22, 1971

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

APPEARANCES:

For the Applicant:

G. Clark Crampton, Esq.
Joyner and Howison
Attorneys at Law
906 Wachovia Bank Building
Raleigh, North Carolina

Hugh V. White, Jr., Esq.
Hunter, Williams, Gay, Powell & Gibson
Attorneys at Law
P. O. Box 1535, Richmond, Virginia 23213

For the Commission Staff:

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

BY THE COMMISSION: On February 26, 1971, First Colony Telephone Company (First Colony), P. O. Box 431, Emporia, Virginia, 23847, by letter requested authority to raise its

rates on main station and extension telephone service effective April 16, 1971.

First Colony serves 169 subscribers in the Knotts Island area of North Carolina from its Pungo central office in Virginia. The North Carolina subscribers and the Virginia subscribers of the Pungo exchange have the privilege of being able to call over 350,000 stations toll free in the Norfolk and Virginia Beach area. In view of the fact that First Colony serves almost 10,000 customers of which only 169 are in North Carolina, there being no central office equipment located in North Carolina, the North Carolina Utilities Commission in the past has authorized the same rates for the Knotts Island subscribers as the Virginia Corporation Commission has authorized for the Pungo exchange subscribers located in Virginia.

Only four-party flat rate service is offered in the Knotts Island area at monthly rates of $10.00 and $5.50 for business and residence, respectively. New rates of $19.00 and $9.50 for business and residence four-party service, respectively, have been authorized for the Pungo exchange in Virginia by the Virginia Commission. First Colony requested to place the same rates in effect in the Knotts Island area and also to increase the business extension rate from $1.50 to $2.00 and residence extensions from $1.00 to $1.25 as authorized in Virginia.

The Commission being of the opinion that the request for increased rates affected the interest of the subscribers served by First Colony in North Carolina, by order entered on March 22, 1971, suspended until further order of the Commission the proposed effective date of First Colony's requested increases and set the matter for hearing in Raleigh, North Carolina, on May 13, 1971. First Colony was required to mail by first class mail to all of its North Carolina subscribers Notice of Hearing informing them of the requested increases and rates. After several postponements, the hearing was held in the Commission Hearing Room on October 22, 1971.

During the hearing First Colony stated that it had recently been granted a rate increase for its Virginia subscribers by the Virginia Corporation Commission and as a result of this increase its North Carolina subscribers were presently paying less for the same service than are the Virginia subscribers just across the line.

First Colony stated that 98.35% of its business is in Virginia and that 1.65% of its business is in North Carolina. It requested that the Commission consider the record and exhibits of the Virginia proceeding to determine the justness and reasonableness of its request in this proceeding.

Mr. Conrad J. Logan, Vice President - Operations, offered testimony concerning service. He testified that the Pungo

exchange is about fourteen miles north of the North Carolina State line and that North Carolina subscribers are scattered from the State line to a point about thirteen miles south of the State line and that North Carolina subscribers on Knotts Island are served from a repeater hut eight miles south of the State line. He testified that the only service offered was rural four-party service and that the company was not opposed to offering one-party service if there was a demand and if the rate was compensatory. Witness Logan testified further that some service problems encountered were a result of the subscribers being so far from the serving central office and also a result of the high line fill, but that the company was taking steps to increase the service reliability and thereby decrease the trouble reports.

Mr. Stuart McDaniel gave testimony concerning rate of return and revenue requirements. He stated that the rate of return on equity allowed by the Virginia Commission was 12%, resulting in a return on investment of 7.12% and that the original cost rate base allocated to North Carolina was $173,000 as of June 30, 1971; that the annual net operating income requirement based on these figures was $12,317; and that the proposed schedule of rates would produce $11,282 net operating income annually.

Mr. Gene Clemmons, Chief Engineer, Telephone Service Division, of the Commission Staff, offered testimony concerning service. He stated that while overall service was good, some areas needed improvement. He testified that the trouble report index per 100 stations was excessive and that in his opinion one- and two-party service should be offered to North Carolina subscribers. Mr. Clemmons also testified that the number of held orders had been excessive but that according to Mr. Logan's testimony that problem appeared to have been eliminated.

FINDINGS OF FACT

1. That First Colony is a duly franchised public utility providing telephone service to subscribers on Knotts Island, North Carolina, from its Pungo, Virginia exchange.

2. That the total increases in rates and charges as filed by company would produce $3,671 in additional gross revenue.

3. That the proposed increases will provide a return on original cost investment in North Carolina ($173,072) of 6.52% and a return on equity of less than 12%.

Based upon the Findings of Fact, as set forth above, the Commission makes the following

CONCLUSIONS

1. That since the Virginia subscribers of First Colony form such a large percentage (98.35) of the company's total

subscribers and that the number of North Carolina subscribers is so low (169) that the request of First Colony to put the rates approved by the Virginia Commission for its Virginia subscribers into effect in North Carolina should be granted.

2. That First Colony is providing adequate and efficient service, but evidence introduced by the Staff shows that one-party service should be offered and that an effort should be made to reduce trouble reports.

3. The Utilities Commission takes judicial notice of the President's Executive Order No. 11627, entered on October 15, 1971, establishing Phase II of wage and price controls under the Economic Stabilization Act of 1970 beyond the original 90-day period ending November 13, 1971, and the establishment of the Price Commission pursuant to said Order, and the rules and regulations of the Price Commission published in Volume 36, No. 220 Federal Register, November 13, 1971, § 300.016, Regulated Utilities, at p. 21,793, as amended in Volume 36, No. 222, Federal Register, November 17, 1971, at p. 21,953, requiring that regulated public utilities having gross receipts of $50,000,000 or more give notice to the Price Commission of any price increases authorized by regulatory agencies. The Utilities Commission is further advertent to public statements of guidelines and policies of the Price Commission, and takes notice of the release in the Price Commission News of November 29, 1971, requiring that regulatory agencies considering applications of regulated utilities for rate increase must certify that any increases approved meet the following criteria:

> The increase does not contribute to inflationary expectations.
>
> The increase is reduced to reflect productivity gains.
>
> The increase is the minimum rate which is necessary to assure continued and adequate service.
>
> Any increase in the rate of return on investment that is allowed must be required either by an increase in the cost of money or is necessary to assure continued adequate service.

The North Carolina rate procedure and the evidence in this proceeding, and the consideration thereof by the Commission, fixes the rates of First Colony in this proceeding on the basis that they will provide no more than the minimum return necessary to assure continued and adequate service of First Colony, and this Order considers the increased cost of money to First Colony over its imbedded cost of its debt capital. This Commission finds and so certifies that the increases are consistent with the four criteria established by the Price Commission as set out above, and the documentation for such findings are set out fully in the Findings of Fact and Conclusions herein, based on evidence of record of the

public hearings herein, and the rate increase approved here is authorized solely on the basis that it is necessary in order to assure continued and adequate service of First Colony to the public in its service area, considering the increased cost of service, the increased expenses of First Colony and the increased cost of money, and the purpose of the Economic Stabilization Act of 1970, as amended.

This Order is entered subject to the compliance of First Colony with all requirements of the Price Commission for notice of such increase and subject to such other rules and regulations of the Price Commission as may be applicable to such increase.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That First Colony be, and hereby is, authorized to increase its North Carolina intrastate telephone rates and charges to produce additional gross annual revenue not exceeding $3,671 by applying the increases to local service and extension stations as applied for and set forth below, effective with bills rendered in advance on the next billing date five days following the release of this Order.

	Business	Residence
Main Station 4-party service	$19.00	$9.50
Extension Station	$ 2.00	$1.25

2. That First Colony shall, within thirty (30) days of the date of this Order, file with this Commission tariffs making one-party business and residence service available to North Carolina subscribers at the same rates as one-party service in the Company's Virginia exchange.

3. That First Colony take necessary action to reduce the trouble reports per 100 stations to a consistent range of 8 per 100 stations or less by July 1, 1972.

4. That First Colony take necessary action to eliminate by July 1, 1972, all held orders for new service.

5. That First Colony file necessary revised tariffs reflecting the above authorized increase in four-party and extension rates.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-19, SUB 115

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application for Adjustment of Rates and Charges for General Telephone Company of the Southeast for Telephone Service in the Durham and Creedmoor Exchanges	) ORDER ALLOWING MODIFIED) INCREASES IN RATES AND) REQUIRING CERTAIN) SERVICE IMPROVEMENTS)

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, beginning February 2, 1971 - February 10, 1971; and County Commissioners Hearing Room, Durham County Courthouse, Durham, North Carolina, on February 11, 1971

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

APPEARANCES:

For the Applicant:

A. H. Graham, Jr.
Newson, Graham, Strayhorn, Hedrick & Murray
P. O. Box 2088, Durham, North Carolina 27702

John Robert Jones
Power, Jones, Bell & Schneider
One Hundred East Broad Street
Columbus, Ohio 43215

Ward W. Wueste, Jr.
General Telephone Company of the Southeast
P. O. Box 1412, Durham, North Carolina 27702

For the Protestants:

Claude V. Jones
City Attorney - Durham
111 Corcoran Street
Durham, North Carolina 27702
Appearing for: The City of Durham

Jean A. Benoy
N. C. Department of Justice
Ruffin Building - Room 124
Raleigh, North Carolina 27602
Appearing for: The Using and Consuming Public

For the Commission Staff:

Edward B. Hipp
Commission Attorney

Ruffin Building
Raleigh, North Carolina 27602

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: On July 14, 1970, General Telephone Company of the Southeast, hereinafter referred to as "Applicant", a wholly-owned subsidiary of General Telephone & Electronics Corporation, hereinafter referred to as "GT&E", filed application with the Commission seeking authority to increase its rates and charges which would have the effect of producing approximately $2,472,554 additional annual gross revenues to the Applicant with respect to its telephone operations in North Carolina. $1,858,849 and $613,705 were estimated by the Company in its application regarding the proposed increases to affect its local exchange and general exchange tariffs in the above amounts respectively. In addition to certain increases relating to private branch exchange service, key equipment and other miscellaneous equipment and service, the Applicant requested that it be authorized to increase its rates and charges in connection with the following classifications of telephone service as shown below:

DURHAM EXCHANGE

Business Service	Present Rate	Proposed Rate	Amount of Increase
One-Party	$15.50	$21.90	$6.40
Two-Party	13.00	20.40	7.40
Four-Party	10.00	18.90	8.90
Multi-Party	8.50	17.40	8.90
Extension	2.00	2.50	.50
Residence Service			
One-Party	6.25	8.95	2.70
Two-Party	5.25	8.20	2.95
Four-Party	4.25	7.45	3.20
Multi-Party	3.70	6.70	3.00
Extension	1.00	1.25	.25

CREEDMOOR EXCHANGE*

Business Service	Present Rate	Approved EAS Rate	Proposed Rate	Amount of Increase
One-Party	$10.00	$15.50	$21.90	$6.40
Two-Party	8.50	13.00	20.40	7.40
Multi-Party	6.25	8.50	17.40	8.90
Extension	2.00	2.00	2.50	.50

Residence Service

One-Party	5.25	6.25	8.95	2.70
Two-Party	4.25	5.25	8.20	2.95
Four-Party	3.75	4.25	7.45	3.20
Multi-Party	3.30	3.70	6.70	3.00
Extension	1.00	1.00	1.25	.25

* Present rates do not include toll free calling to Durham. Approved EAS rates authorized when toll free calling to Durham is established. Proposed rates include toll free calling to Durham. Amount of increase is difference between approved EAS rates and proposed rates.

The Commission, being of the opinion that the application affects the interest of the consuming public in the areas served by the Applicant, by Order of July 21, 1970, suspended until further Order of the Commission the proposed effective date of Applicant's requested increases, declared the proceeding to be a general rate case under the provisions of G. S. 62-137, and set the matter for investigation and hearing in Raleigh, North Carolina, on February 2, 1971. The Order further provided that the Applicant at its own expense publish notice of said hearing attached as Exhibit A to said Order in a newspaper having general coverage in the areas for which the requested increases are proposed to be applicable.

On August 7, 1970, application for Leave to Intervene was received by Claude V. Jones, Attorney for the City of Durham. By Order of August 10, 1970, the Commission allowed intervention by the City of Durham.

An amended application was filed on August 11, 1970, reflecting a narration of the Applicant's method of separation of major accounts, interstate and intrastate operations, and setting forth state allocation factors. Attached to the amended application were 11 exhibits relating to Company operating statistics and evaluation of Company plant.

On December 30, 1970, Intervenor City of Durham filed a request for extension of time in which to file prepared testimony. Extension was allowed to and including January 25, 1971, by Order of the Commission dated January 5, 1971.

Supplemental application was filed on January 18, 1971, reflecting completion of Applicant's 1969 separation cost studies. Attached to the supplemental application were six additional exhibits.

On January 18, 1971, the Commission Staff requested additional time to file a special report on intercorporate transactions of the Applicant. Extension of time was allowed to and including February 2, 1971, by Order of January 19, 1971.

The Attorney General, Robert Morgan, intervened on January 22, 1971, on behalf of the using and consuming public. The Commission's Order of January 26, 1971, recognized intervention by the Attorney General in this proceeding.

Applicant filed motion on March 31, 1971, to correct the transcript of this docket in the particulars described in said motion. The Commission, by correspondence dated April 13, 1971, requested all parties of record to file objections, if any, to such corrections becoming an official part of the record. No objections were indicated by any party of record by April 21, 1971. Accordingly, the Commission entered an Order on May 3, 1971, making the requested corrections an official part of the record.

Testimony and exhibits of the Applicant, the protestants, and the Commission Staff were duly filed in advance of the hearing in accordance with the rules of practice and procedure of the Commission, except wherein modified by Commission Order relating to extensions of time.

Public hearing began in Raleigh, North Carolina, on February 2, 1971. After seven days of hearing, including a special hearing set in Durham, North Carolina, for the taking of testimony of public witnesses, the formal hearings in this docket were completed on February 11, 1971. At their request, parties of record were afforded thirty (30) days from the date of the mailing of the last transcript within which time to file briefs. Briefs were filed within the time set by the Commission.

At the hearing, the Applicant offered evidence through the testimony of its witnesses George M. White, Vice President-Operations, relating to the Applicant's policies regarding its primary supplier of materials, Automatic Electric Company, hereinafter referred to as AE, a subsidiary of GT&E Corp.; Donald A. Redman, Vice President-Controller, with respect to accounting and financing of the Applicant and in regard to financial records of the Company; H. W. Meyer, Vice President-GT&E, regarding financial history of the Applicant, its capitalization, and recommended range of return on equity for the Applicant; J. S. Flannery, Controller of AE, regarding AE's dealings with subsidiaries of GT&E and with non-affiliate companies; J. J. McGrath, President-McGrath Engineering Corporation, with respect to trended or replacement cost of Applicant's investment made on the basis of visual observation and Company records; S.E. Wahlen, General Commercial Engineer, regarding the basis for development of rate classifications in this proceeding and new rate groupings; W. S. Duncan, Certified Public Accountant-Arthur Andersen & Company, regarding Company's dealings with their affiliates and resulting profits therefrom generally; and Claude O. Sykes, General Manager of General Telephone Company of the Southeast, who testified in connection with the Applicant's overall service improvement

program and the plans for future construction relating to Company's growth requirements.

Protestant City of Durham offered evidence through the testimony of Dr. Charles E. Olson, Public Utility Consultant of Van Scoyoc & Wiskup, Inc., Washington, D. C., relating to the Company's capital requirements, interest coverage ratio, return on equity and return on total capital.

The Utilities Commission Staff offered evidence through the testimony of J. W. Smith, Director of Economics and Accounting, relating to intercorporate dealings between the Applicant and its major supplier of materials, AE; Norman R. Peele, Staff Accountant, regarding the Commission audit of the Applicant's books and records; William R. Cash, Utilities Engineer, relating to plant operations and maintenance, plant in service investment per station and appropriate engineering practices generally regarding planning, construction and maintenance of telephone plant; and Gene A. Clemmons, Chief Engineer/Telephone Service Division, relating to the Commission Staff's investigation of specific levels of service rendered by the Applicant.

DIGEST OF TESTIMONY

The increases requested by the Applicant would amount to approximately $2,472,554 in overall additional annual revenues. Through its Durham and Creedmoor exchanges, the Applicant provides local and long distance telephone service in North Carolina to its subscribers.

The last general rate increase for the Applicant was made effective on February 1, 1969, pursuant to the Commission's Order of December 19, 1968 in Docket No. P-19, Subs 94 and 95.

The Applicant contends that it has been necessary since that time to substantially increase its intrastate investment in telephone plant because of projected subscriber demand for service. The Applicant is presently engaged in an overall program of service improvement including provision by December 31, 1973, of individual line service to all of its subscribers. The Applicant also is establishing extended area service for the Creedmoor-Butner-Durham area. The requirements and the time-frame for the above mentioned requirements have heretofore been set forth as requirements in the Commission's Order of May 19, 1969, which was a supplemental Order to the Applicant's last general rate proceeding.

Applicant contends that substantial investment in plant because of customer growth makes it necessary for the Applicant to seek funds from the capital market and that its level of return before the increases proposed in this proceeding are considered, is not of sufficient magnitude to afford the Company the necessary means and capability and financing necessary capital expenses.

The test period utilized by witnesses for the Applicant, the City of Durham and the Commission Staff was the 12-month period ended March 31, 1970.

The method of separating interstate and intrastate revenues and expenses utilized by the Applicant has been amply set forth in the record. The Commission Staff indicated that it was basically in accord with the allocation procedures utilized by the Company. No exception was taken to such procedures by the protestants and no evidence other than that of the Applicant and the Commission Staff was offered in connection with revenue and expense allocations in this proceeding.

The overall total operations of the Applicant for the test period, before adjustments, indicate gross operating revenues of $45,635,445; operating expenses and taxes of $36,647,145; with net operating income of $8,988,300 and net investment in plant in service of $175,892,973. (Redman Ex. Nos. 12, 13)

In connection with its North Carolina intrastate operations, the Applicant's evidence for the test period indicates, after certain adjustments, operating revenues of $9,438,957; operating expenses and taxes of $7,876,963; net operating income for return amounting to $1,649,261 and net telephone plant in service in North Carolina amounting to $33,467,015. (Redman Ex. Nos. 9, 10). Based upon his exhibits, Witness Redman arrived at a 4.78% rate of return on original cost before the increases proposed in this proceeding and 7.94% return after consideration of rates proposed by the Applicant. (Redman Ex. Nos. 3, 5). The majority of Applicant's exhibits, and those in particular of Witness Redman (with the exception of three additional exhibits filed by him at the hearing), were prepared using the separations data developed in the 1968 study; all Staff exhibits were prepared using 1969 separations data. Additionally, such exhibits include $1,071,668 attributable to telephone plant under construction and an intrastate portion of interest charged for construction amounting to approximately $73,273. Redman Exhibits 14, 15 and 16 were prepared using the 1969 separation data which coincides with the Staff; however, he did not compute a new rate of return to reflect the updated information in these exhibits.

The Commission Staff's evidence indicates a number of specific adjustments to revenues and expenses of the Applicant relating to wages, toll settlements, contracts with connecting Bell Company, depreciation, taxes, working capital and other adjustments reflected in the record of this proceeding.

These adjustments are set forth in the record herein and all such adjustments, including those made by the Applicant's witnesses and Dr. Olson for the City of Durham, have been considered thoroughly by the Commission in reaching its Findings of Fact and Conclusions herein.

Certain of the Commission Staff's adjustments merit further comment. The major adjustments reflected by the Commission Staff involve an adjustment of $1,380,680, resulting from what the Staff contends is excess plant which was not used and useful by the Applicant in rendering telephone service to its subscribers in relation to the test period. This plant was principally central office equipment and is reflected in Clemmon's Exhibits 20 and 22.

Secondly, the Commission Staff contends that $1,417,000 should be eliminated from the Company's investment figure as excess costs because of Applicant's dealings with AE, its major supplier and also an affiliate of GT&E. This adjustment was based upon reduction of rate of return on common equity to AE at 12%. Staff Witness Smith testified that, in his opinion, the dominant position of AE in the telephone equipment manufacturing market leaves only a few smaller low volume manufacturers in the market, if any, with competitive forces at their command. The witness was further of the opinion that AE's existence depends on the volume of business from the subsidiaries of GT&E and his recommendation for exclusion of excess profits was based upon the principle that equipment and other facilities purchased by the Applicant, or any other utility, from its affiliate should not, for rate making purposes, include a rate of return greater than comparable return on equity earnings of similar-type non-regulated companies.

The Commission Staff's evidence indicates, after adjustments but prior to the proposed increase, the Applicant's gross intrastate operating revenues for the test period amounted to $9,006,135 and when related to intrastate operating expenses of $7,379,024, resulted in a net operating income for return of $1,710,181, taking into account an annualizing factor of 5.0174% for the North Carolina division. According to the Staff's audit this resulted in a net investment in telephone plant of $32,148,587 and a 5.32% rate of return on net investment. This net investment figure includes consideration of $583,842 which is hereinafter excluded by the Commission. This amount relates to Butner-Creedmoor-Durham EAS intrastate portion.

Giving effect to the increases proposed in this proceeding, the Commission Staff's audit reflects projected gross operating revenues of $11,441,848; operating expenses of $8,665,593, resulting in projected net operating income for return of $2,859,325 and a net investment in telephone plant of $31,981,412. The rate of return on net investment reflected by the projected effect of the proposed increases was 8.94%. (Staff Ex. 1, Schedule 1).

Norman Peele of the Commission Staff testified that in connection with the Butner-Creedmoor-Durham EAS, scheduled to become effective on March 31, 1971, and estimated to require plant expenditures amounting to approximately $747,264, such was included by the Commission Staff in its

audit of the Company's telephone plant in service. Witness Peele further testified that such inclusion in the audit was made prior to his personal knowledge of the Lee Telephone Company case. The Applicant's North Carolina intrastate operations are further adjusted herein to delete construction work in progress and construction interest in accordance with Utilities Commission and Lee Telephone Company v. Morgan, Attorney General, 277 N.C. 255, decided November 18, 1970.

It is observed that the Commission Staff audit excluded from material and supplies the intrastate portion of certain reusable salvage material, specifically certain PABX equipment, amounting to approximately $178,512. The Staff's basis for such exclusion of that portion of material and supplies was that no representative of the Applicant could advise the Staff member preparing the audit as to which state the particular reusable equipment might be used. In making this adjustment, the Staff failed to make a corresponding adjustment to the depreciation reserve of the Company. It is therefore apparent that the adjustment of $178,512 should be re-adjusted to include that amount in the material and supplies figure indicated in the Staff audit.

Witness Clemmons for the Commission Staff testified in connection with independent investigations by the Staff at various dates prior to the hearing regarding specific levels of service being rendered by the Applicant. Based upon such investigations, he concluded that the level of service being offered by the Applicant has improved since his initial review in early 1968; however, it was his opinion that service rendered by the Applicant was not at an acceptable level as of the date of the hearing considering that problem areas still exist. (Trans. Vol. VI, p. 102, 103). The evidence indicates that the Applicant has improved its service in the areas of toll operator answer time, directory assistance answer time, in reducing the number of trouble initial reports per 100 stations, in connection with the dial equipment service index, in reducing subsequent trouble reports and in clearing times for trouble reports.

Investigations by the Commission Staff as set forth in the record of this proceeding indicate, however, that telephone service provided by the Applicant in several instances has not reached a reasonably acceptable level. The areas outlined by Staff Witness Clemmons as being areas in which the Applicant needs to make substantial improvements are: to reduce failure rates on local interoffice calls and maintain an acceptable level in that regard, provide a reasonable answer time on repair service calls, reduce failure rate on DDD calls, improve maintenance of public pay stations, provide directory assistance so that operator answer time will not be excessive, reduce total trouble reports per 100 stations, and reduce subsequent reports and repeat trouble reports.

Witness McGrath testified for the Applicant that the net trended book cost of plant of the Applicant as of the end of the test period was, in his opinion, $49,409,698. His studies were based on visual observation of the Applicant's plant and equipment during the week of April 27, 1970, and the Applicant's books and records. The nature of this study was to arrive at what the witness believed was the replacement cost today of the Applicant's plant, properties and equipment. This computation is separated to reflect the North Carolina intrastate portion of the Company's operations at approximately $40,781,543, as reflected in Redman Exhibit No. 16. No evidence of the fair value of the Applicant's properties used and useful in rendering its service to North Carolina subscribers was presented by either the protestants or the Commission Staff.

Witness Olson for Protestant City of Durham testified that, in his opinion, a reasonable return on equity for the Applicant would fall between 9.7% and 9.9%. He further testified that, in his opinion, a rate of return on total capital should range between 7.6% and 7.7% so as to produce a fair profit to the Applicant's stockholders. He noted that in connection with his testimony regarding the Applicant's rate base, earnings and its requested increases, his calculations would be subject to further adjustments by the Staff based upon its more detailed analysis of the Company's operations in this State.

During the course of the hearings, the Commission heard 50 public witnesses who testified regarding specific complaints and with respect to the Applicant's rates.

Based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

(1) General Telephone Company of the Southeast is a duly franchised public utility providing general telephone service to its subscribers in Durham, Creedmoor and Butner, and as a duly created existing corporation under the laws of this State, is properly before this Commission in this proceeding. The Applicant's rates and services are regulated by this Commission as provided in Chapter 62 of the North Carolina General Statutes.

(2) The increases requested by the Applicant would amount to approximately $2,472,554 additional gross annual revenues.

(3) The test period utilized by all parties in this proceeding was the 12-month period ending March 31, 1970.

(4) The method utilized by the Applicant in this Docket in separating its interstate and intrastate revenues and expenses reasonably reflects its North Carolina intrastate operations.

(5) With the elimination of approximately $747,264 in connection with the Creedmoor-Butner-Durham EAS plant under construction which was scheduled to be in service on March 31, 1971, the Applicant has invested in utility plant in service for its North Carolina retail customers as of the end of the test period, March 31, 1970, telephone plant in service of an original cost of $31,564,745. This figure reflects Applicant's net investment plus allowance for working capital, and is subject to further adjustments as hereinafter stated.

(6) Applicant's investment in telephone plant is adjusted herein in the amount of $690,340, representing 1/2 of the amount testified to by the Commission Staff as relating to excess margin in central office equipment in relation to the test period, and in consideration of approximately a 2 1/2 year engineering interval as being appropriate from the time equipment is placed in service to the time a further equipment addition is required. The Commission Staff's recommendation is reduced by 50% because a portion of the equipment considered to be excess margin during the test period will be utilized in the service improvement program of the Applicant in the immediate future.

(7) Applicant's net investment in plant is further adjusted by $978,000 in regard to the excess profits which are reasonably attributed to its dealings with its major supplier, Automatic Electric Company. This amount, however, is based on a 15% return to AE rather than the 12% return recommended by Witness Smith. These major adjustments, accompanied by standard related adjustments, yield an adjusted net investment in telephone plant for the Applicant's North Carolina intrastate operations of $30,107,171 for the test period.

(8) Applicant's revenue under present rates on an annualized basis for its customers served as of the end of the test period for its North Carolina intrastate operations is $9,011,448. Its reasonable operating expenses for that period amount to $4,130,999.

(9) The Commission finds that the fair value of the Applicant's properties used and useful in rendering intrastate telephone service to its North Carolina subscribers, considering original cost less depreciation and considering replacement cost by trending original cost by current cost levels, is $31,913,601.

(10) Applicant's net operating income for return at the end of the test period, and considering the adjustments hereinabove described, is $1,729,517, resulting in a rate of return on adjusted book value of 5.74%, which the Commission deems insufficient considering the Applicant's current operating conditions.

(11) The rate of return deemed necessary on the fair value of Applicant's properties, with sound management, to produce

a fair profit for its stockholders, considering economic conditions as they exist, and permitting Applicant to maintain its facilities and service and further permitting Applicant to improve its service in accordance with the terms of this Order, thereby fulfilling its obligations to its customers, is 7.53%, which said rate of return on fair value will afford Applicant an opportunity to realize additional annual gross revenues of $1,445,003. The Commission deems this amount of dollar return to the Applicant to be sufficient for it to compete in the market for capital funds on a reasonable basis to its customers and stockholders. This amount is a 16.04% increase over Applicant's present revenues and will afford the Applicant an opportunity to earn additional gross revenues in the above stated amount, being approximately 59.32% of the increases requested by the Applicant in this proceeding. The increases requested by the Applicant in excess of the above stated amount are deemed to be unjust and unreasonable by the Commission.

(12) The additional revenues provided by the increases herein approved will produce a total net operating income of $2,469,106 and will result in a return on common equity to the Applicant of approximately 8.94%.

(13) Applicant's present organization of engineering and plant functions established in late 1969 will retard rising plant investment cost and maintenance expenses and investment per station it contends will be experienced by it. The Commission Staff's study indicates and the Commission finds that the Applicant's present engineering design techniques and standards are efficient and economical.

(14) Applicant has made the following improvements in service to its subscribers in its North Carolina operations: (a) toll operator answer time, (b) directory assistance answer time, (c) reducing the number of trouble initial reports per 100 stations, (d) in connection with the dial equipment service index, (e) reducing subsequent trouble reports and (f) in clearing times for trouble reports. While there has been improvement in the quality of service, there remains a need for additional improvements. The Commission finds that the overall quality of service afforded by the Applicant to its subscribers is on the low side of providing reasonably adequate service. The following specific service improvements are determined to be necessarily required to be completed on or before July 1, 1972:

(1) Reduce failure rate on local interoffice calls to a range of 2%.

(2) Sustain service so the failure rate on intra-office calls is in the range of 1%.

(3) Provide answer time on repair service calls so that 90% or more are answered within 20 seconds.

(4) Reduce failure rate on DDD calls so that the failure rate on originating DDD calls is less than 5%.

(5) Maintain public pay stations so that 90% or more pay stations are in working condition on a continuing basis.

(6) Provide directory assistance service so that operator answer time will not exceed 10 seconds on more than 15% of the calls.

(7) Reduce total trouble reports per 100 stations so that the total trouble reports per 100 stations per month do not exceed 6 for the North Carolina division.

(8) Provide central office maintenance so that the Dial Equipment Service Index for each central office will be consistently 94 or higher.

(9) Reduce subsequent trouble reports and repeat trouble reports so that the percentage of subsequent reports and repeat reports will be consistently below 10%.

(10) Provide trouble clearing so that on a continuing basis at least 95% of all reported troubles during a month are cleared within 24 hours from the time the trouble is reported to the company.

(11) Provide service installation so that on a continuing basis at least 90% of all regular service installations are worked within 5 days and service orders not worked by the due date and missed for company reasons shall be consistently in the range of 5% or less.

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

CONCLUSIONS

The Commission concludes that the rate of return on the fair value of Applicant's properties of 7.53% will afford the Applicant an opportunity to earn approximately $1,445,003 additional annual gross revenues, being 59.32% of the increases, as indicated in Staff Exhibit No. 1 and 58.44%, requested by the Applicant.

The total amount applied for by the Applicant is not supported by this record and would produce a return greater

than that which could be deemed just and reasonable. The Commission concludes that additional gross revenues of $1,445,003 are necessary to provide a fair return to the Applicant on the fair value of its property.

The rates proposed by the Applicant are concluded to be unreasonable and unjust to the extent they produce any increases in annualized revenue to the Applicant at the end of the test period in excess of $1,445,003. Accordingly, the Commission concludes that the Applicant has not carried the burden of proving that the entire increases requested by it are just and reasonable, and that only a part of the increases proposed as hereinabove stated has been supported by the evidence in this record. The rates approved consistent with the premises of this Order are attached hereto as Appendix A in connection with the classifications of service afforded by the Applicant.

In regard to Applicant's dealings with Automatic Electric Company, the Commission concludes that in connection with Applicant's dealings with AE, said Company should for rate making purposes be limited to a return on common equity of 15%. The Commission concludes that AE's prices charged to the Applicant are unreasonable and excessive to the extent they produce a return higher than 15% on common equity. The excess profits adjustment of $978,000 is made necessary because of the close relationship existing between AE and the Applicant's North Carolina division which buys about 85% to 95% of its telephone equipment and supplies from AE. As a wholly-owned subsidiary of General Telephone & Electronics Corporation, AE has been the leading supplier of telephone equipment to non-Bell companies. The dominant position of AE in the telephone equipment manufacturing market leaves only a few small low-volume non-affiliated manufacturers in the market with very little, if any, competitive forces available to them. Despite the Applicant's contention that competition does exist in this market, the Commission is of the opinion and concludes that the method utilized in this proceeding of adjusting for excess profits relating to the dealings between the Applicant and AE more nearly treats the operation of AE as another division or extension of the telephone operations of the Applicant. It is, therefore, reasonable to subject AE to the same rates of return on common equity as are similar-type non-regulated companies. It is established law in this State that the doctrine of corporate entity may not be used as a means for defeating the public interest and circumventing public policy. The principle was recently enunciated in Lee Telephone case, supra, by the Supreme Court of North Carolina. Although the intercorporate dealings in that case were not directly involved in the Court's decision, abiding by that principle in this case, and with a thorough analysis of the record in this case, the Commission concludes that it is reasonable to deal with Automatic Electric Company and the Applicant for rate making purposes as one company subject to regulation by this Commission.

The Commission Staff evidence indicates that the Applicant as of the end of the test period had excess plant margin in central office equipment amounting to approximately $1,380,680. This figure was based upon Witness Clemmons determination that a 2 1/2 year engineering interval was a reasonable time period within which to plan and engineer equipment additions and to obtain and make operational appropriate equipment in that regard. This Order reduces that figure by 50% in view of the Commission's opinion and conclusion that a portion of this equipment is being consumed and utilized in the service improvement program which is ongoing and imminent with respect to the Applicant's operations.

In view of the exclusion of the Creedmoor-Butner-Durham EAS plant, which expenditure was construction beyond the test period in accordance with _Lee Telephone case_, _supra_, the adjustments in this Order of the Staff's recommendation regarding excess plant margin and excess profits resulting from intercorporate transactions with AE, the following method was utilized by the Commission in this proceeding in reaching its determination as set forth herein in regard to Applicant's net investment in plant:

Operating Revenues	$9,011,448
Operating Expenses	4,130,999
Depreciation	1,845,301
Taxes-Other than Income	1,061,254
Taxes-State Income	40,203
Taxes-Federal Income	194,458
Investment Tax Credit-Net	92,347
Total Operating Expenses	7,364,562
Net Operating Income	1,646,886
Add Annualizing Factor (5.0174)	82,631
Net Operating Income for Return	1,729,517
Investment in Telephone Plant	
Telephone Plant in service	37,246,338
Less Depreciation Reserve	6,724,475
Net Investment in Telephone Plant	30,521,863
Less Intercorporate Excess Profits	978,000
Net Investment Adjusted	29,543,863
Materials & Supplies	493,694
Cash (1 Month of Expenses)	360,139
Less: Federal Income Tax Accruals	(290,525)
Total Allowance for w/c	563,308
Net Investment Plus w/c	31,085,171
Net Investment Plus w/c-Adjusted	30,107,171

In connection with this rate proceeding, the Applicant, as reflected in witness Wahlen's testimony, has requested that the Commission authorize it (1) to establish certain rate

groups, (2) to set up an arrangement for the orderly progression of exchanges into appropriate rate groups as the calling scope of the exchange either increases or decreases, (3) to eliminate all zone charges for all grades of primary service within the exchange areas prior to completion of its schedule service improvement program sanctioned by the Commission, and eliminating the zone charges at that time as previously ordered by the Commission, (4) to package private branch exchange services, (5) to convert all remaining mileages, such as extensions and local private lines, to airline measurement instead of circuit measurement, (6) to begin charging for rotary service provided primarily to businesses. As reflected in Appendix A attached to this Order, being the schedule of rates approved by this Commission in regard to the classification of subscribers served by the Applicant, items 1 and 2 above are disapproved and Request 3, 4 and 5 are approved. The amount which the Applicant requested be charged for this service, there being no charge previously, has been reduced by the Commission as reflected in Appendix A.

Based upon the entire record of this proceeding, the Commission concludes that the rates to the extent approved herein are just and reasonable to the Applicant and to its customers and stockholders. To the extent that Applicant's request exceeds the increases allowed by this Order, its proposed rates are concluded to be unjust and unreasonable.

This Order does not alter requirements of any outstanding Order of the Commission.

The quality of service of the Applicant or any other public utility has meaning only in relation to the financial condition of the Company offering the service, the demands of the public and the cost of the service. The extent to which these criteria are relevant varies from one public utility to another.

The Commission has fully considered the testimony of the public witnesses who testified in this proceeding. While the quality of telephone service afforded by the Applicant to its subscribers in the Durham-Creedmoor-Butner exchanges has improved since its last general rate proceeding, the Commission concludes that Applicant's overall level of service is on the low side of reasonably adequate service. Pursuant to this Commission's responsibilities under applicable provisions of law, contained in Chapter 62 of the North Carolina General Statutes, that this Commission has within its regulatory responsibility the power to compel adequate service of any utility, the Commission concludes with respect to the Applicant in this proceeding, that certain specific and well-defined levels of service should be set forth as reasonable requirements which the Commission and the subscribers of the Applicant can expect of this Company, and a reasonable time-frame should be established within which to permit the Applicant to attain the prescribed levels of service. The Commission is of the

opinion that should the Applicant fail to comply with the service improvement provisions of this Order, the Commission should give serious consideration to issuance of show cause proceedings as to whether statutory penalties should be invoked. These service improvement provisions are regarded as independent of other requirements by the Commission which relate to service in prior orders and particularly, the improvement by the Applicant of its subscriber service to one party individual service by December 31, 1973.

IT IS, THEREFORE, ORDERED as follows:

(1) That the application in this docket be, and the same hereby is, approved insofar as it is consistent with the provisions of this Order and is disapproved in all other respects.

(2) That Applicant be, and the same hereby is, authorized to file and make effective on all bills rendered after June 1, 1971, its tariffs containing rates and charges in accordance with the rates and charges contained in Appendix A attached hereto and incorporated herein.

(3) That Applicant be, and the same hereby is, required to comply with the specific service improvement requirements in this Order by not later than July 1, 1972.

Issued by Order of the Commission.
This 11th day of May, 1971.

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

Commissioner McDevitt will file an opinion concurring in part and dissenting in part.

APPENDIX "A"
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
STATE OF NORTH CAROLINA
DOCKET NO. P-19,SUB 115

LOCAL EXCHANGE SERVICE RATES
DURHAM & CREEDMOOR EXCHANGES

BUSINESS SERVICE	
One-Party	$20.00
Private Branch Exchange Trunk	35.00
Semi-Public	30.00
Two-Party	18.50
Four-Party	17.00
Multi-Party	15.50
Extension	2.50
Private Branch Exchange Extension:	
Commercial	2.50
Converted to Main PBX Stations	#
Hotel-Motel	2.25
Converted to Main PBX Stations	#

RESIDENCE SERVICE

One-Party	$ 7.30
Two-Party	6.50
Four-Party	5.80
Multi-Party	5.05
Extension	1.25

See official Order in the Office of the Chief Clerk for complete Appendix "A."

DOCKET NO. P-19, SUB 115

WELLS, COMMISSIONER, DISSENTING:

Digest of Testimony

The so-called "Digest of Testimony" set forth in the majority order leaves much to be desired. It is difficult, if not impossible, to retrieve from the "Digest" a clear recapitulation of the rate base, operational expenses, cost of capital, and rate of return testimony offered by the Applicant, the Intervenors and the Commission Staff. In this context, the order is poorly written and difficult to follow and reflects either haste or a lack of comprehension of the basic implications of the evidence adduced at the hearing.

(a) Public Witnesses:

One of the more glaring omissions in the "Digest" has to do with the testimony of public witnesses, taken at a full day of hearings in Durham. The able and conscientious counsel for intervenor, City of Durham, accommodated both the Commission and the Company by effectively organizing public witnesses for the purpose of illustrating and illuminating some of the Company's more serious service shortcomings. Many of these witnesses went into considerable detail, relating months of frustrated effort to achieve effective and efficient disposition of their service complaints. For instance, a number of these witnesses testified that a single service complaint resulted in a number of appointments (often broken) with Company employees and repeated visits by Company service personnel to remedy fairly simple problems. Many others testified as to numerous billing errors by the Company which were extremely difficult to correct, often indicating that the Company could not or would not trace the source of the billing errors, leaving customers with little or no conviction that their telephone bills could be accepted in the future as being substantially correct or fair.

The majority order treats these substantial customer complaints as mere fly-specks on the telephone table and for all practical purposes ignores their very presence. Small wonder the public seldom bothers to make their views known to this Commission, for it is small thanks they get for doing so. The Commission is well aware of the years of less

than satisfactory service endured by the customers of this Company in the Durham area. This order, in effect, admits these circumstances; but the reading of this order would never lead you to believe that the Intervenors or the public witnesses made any contribution to the record in this case.

(b) Witness Smith:

Staff witness Smith presented lengthy and detailed testimony relating to inter-corporate transactions between General Telephone and Electronics Corporation (GT&E), the parent company of General Telephone Company of the Southeast (Applicant). This testimony revealed that GT&E more or less controls purchases of equipment and supplies by Applicant; and further, that prices paid back to GT&E (or its manufacturing subsidiary, Automatic Electric Company) were not truly competitive, but were comparatively high. The majority order gives scant insight into this testimony, but later uses it for a conclusion to reduce plant investment.

(c) Witnesses Clemmons and Cash:

In lengthy and detailed testimony, Staff witnesses Clemmons and Cash analyzed plant facilities, design, engineering, construction, investment, and adequacy and efficiency of service. Again, the majority order skims lightly over this evidence and leaves the reader with little or no insight as to what the record actually says. Vital to this evidence is the Staff testimony as to excess plant investment, high per station investment, deficiencies in maintenance and design, and shortcomings in service.

(d) Rate-base:

The "Digest" is particularly difficult to follow on rate-base evidence. It does not disclose the time sequence for plant investment, relating particularly to the heavy expenditures in recent years; nor the rapid escalation in recent years of per-station investment. The net investment and fair value is difficult to trace and ferret out.

(e) Cost of Capital:

Here, the "Digest" cupboard is quite bare, telling nothing of what the record shows on cost of capital, equity-debt ratio, etc., hence there is no disclosure of the manner in which the Commission arrived at its rate of return on equity.

Findings of Fact and Conclusions

(a) Rate-base:

The Commission should have allowed the full adjustments recommended by Staff witness Clemmons for excess plant margin. When Clemmons gave his testimony, he was fully aware of what was needed and of the plans to go to all one-

party service. He acknowledged all of this and still maintained that there was an excess of five-years' margin in central office trunking equipment. Contrary to the majority order Finding (No. 6), it is not apparent that any portion of this equipment will be utilized in the immediate future.

Staff witness Smith convinced me that transactions between Automatic Electric and Applicant reflect excessive profits to GTEE and should be adjusted so as to allow a maximum of 12% return to AE, rather than the rather generous 15% return allowed by the majority. Neither the evidence nor good judgement justifies the 15% allowed.

(b) Revenues and Expense:

The record indicates wasteful management and service practices. The majority has accepted the Applicant's operational expenses per se as being reasonable, based (apparently) upon sound management. The record cast doubt in this area, and while not conclusive, leaves ample room to find and conclude that operational expenses could and should be trimmed in the future, mainly out of a higher level of operational efficiency.

Assuming plant investment is to be reduced (as the majority order does, only not enough), there should be a corresponding reduction in depreciation expense.

Revenues have been adjusted to reflect a Staff recommended growth factor, reflecting an annual growth of income based on a station growth factor of 5% per year. This is unrealistic and seriously understates the Applicant's future revenues. The Company is rapidly progressing to an all one-party system, these changes taking place on a current schedule. This will, of course, enhance station revenue considerably. Toll revenues are already growing at a rate faster than 5%, and with the advent of a higher percentage of one-party stations will escalate at an even higher rate.

(c) Rates and Services:

The laws of this State, as set forth in Chapter 62 of the General Statutes, and as interpreted by our courts, require that public utilities provide adequate, efficient and economical service. Rates must be fair to the consumer and adequate for a fair rate of return to the investor. A fair rate to the consumer is inescapably tied to good service. A fair return to the investor is inescapably tied to sound and efficient management. The public policy is not to guarantee a fair rate of return to investors in public utility companies, but to provide rates under which, by sound and efficient management, the utility has the opportunity to earn a fair return. Service (the product) comes first; rates (the price) follow. It makes little economic or regulatory sense to say "we will set a rate and then see what we can give you for it". It does make sense to say

"here is the service being offered and here is the rate it is worth".

The majority order finds service to be short of the mark - not at a "fully acceptable" level. It even considers these failings so serious as to hold out the threat of statutory penalties. And yet, in the face of all this, it grants a 16% rate increase, following which it sternly orders service to be brought to the mark 14 months later.

My conclusions are that the majority has missed the point. This company - General Telephone of the Southeast - has a golden opportunity in North Carolina; an opportunity to provide excellent service and to earn a sound rate of return. But it has clearly not yet achieved either goal. The rate of return allowed by the majority is not sufficient. The rate increase allowed is not justified at this time.

The residents of Durham County want good telephone service from this Company. They are apparently willing to pay fairly for it when they get it.

I contend that the Commission should have reached a careful, detailed, fair rate base; that it should have then reached an assumed fair rate of return and rates to generate such rate of return; that it should have given the Company not more than 6 months in which to put its service house in order; and that this order should have provided for fair increased rates at that time, predicated upon a showing at that time of required service improvements.

Circumstances require me to comment that this dissent was hastily composed, though not lightly taken. Due to illness, I was precluded from participating in the Commission - Staff discussions leading to the majority order and have found it necessary to compose this dissent without benefit of those discussions. Otherwise, I would hope that this opinion might have been both better organized and more enlightening.

Hugh A. Wells, Commissioner

DOCKET NO. P-19, SUB 115

McDEVITT, COMMISSIONER, DISSENTING IN PART AND CONCURRING IN PART: The evidence presented by the Commission Staff and corroborated by public witnesses shows that the quality of telephone service provided by General Telephone Company of the Southeast at Durham-Creedmoor was not at an acceptable level at the time of the hearing. I disagree with the majority order finding that service "is on the low side of reasonably adequate" and the characterization of service deficiences as "service improvements....determined to be necessarily required to be completed on or before July 1, 1972."

Having thus lightly treated the serious service deficiencies which are well documented in the record, the majority fixed rates calculated to provide a fair return to General Telephone as if telephone service were at a fully acceptable level. In my judgement a substantial part of the additional revenues which were allowed by the majority order should have been withheld pending proof that the company has eliminated service deficiencies and meets the reasonable service standards recommended by the Staff.

The majority action in giving the company until July 1, 1972 to correct its service deficiencies while it enjoys rates calculated to provide a fair return on investment is not justified in light of the performance of the company. Three years have elapsed since the 1968 rate and service hearing in which General Telephone's rates were increased and it was ordered to make extensive improvements based upon findings of seriously inadequate service. The company had ample time within which to have taken the required action for it to now have fully acceptable telephone service. Some improvements have been made but service is still inadequate, a rate increase has been granted as if service were adequate and the company has been given another year - to July 1, 1972 - to accomplish what is long overdue.

General Telephone's parent and owner, General Telephone and Electronics Corporation, is the largest independent telephone company in the United States with the resources and knowledge which make it inexcusable for it to now have inadequate and deficient telephone service after fourteen years of ownership including the three-year period since the 1968 hearing in which inadequate service was established. Furthermore, the record shows that General Telephone did relatively little to develop the telephone system from the date of acquisition in 1957 until the year 1966. As a result, plant investment and maintenance expenses per station have risen dramatically in recent years during the period of highest labor and material cost while the company has made abnormally large investments to overcome plant deficiencies attributable to the lack of orderly planning and development which would have spread the cost of development over a longer period and permitted more efficient application of capital. The result is that the public is now faced with higher telephone rates than would otherwise be necessary.

I disagree with the majority action allowing only 50% of the recommended staff adjustment of $1,380,000 for excessive central office equipment and trunks. In arriving at its $1,380,000 adjustment, the Staff first allowed for sufficient plant margin to cover a reasonable engineering period of 2-1/2 years and then determined the cost of excess central office equipment and trunks beyond that period. The majority states that its adjustment of $690,340 was made "because a portion of equipment considered to be excess margin during the test period will be utilized in service improvement program of the applicant in the immediate

future." The language, "will be utilized...in the immediate future," is vague and indefinite in contrast to the staff evidence which is definitive and reasonable and in the absence of facts to the contrary constitutes the logical basis for the full adjustment of $1,380,000. Approval of excessive plant margin encourages unjustifiable inflation of the rate base and wasteful use of resources. The impact on the rate payer is that it distorts the relationship between investment and revenues making it appear that the company is earning less on its investment than is actually the case. The plant found by the Staff to represent excessive margin should properly have been excluded from the rate base, or on the alternate, the total revenues should have been adjusted upward to reflect future earnings of the excessive plant as it becomes used and useful.

I would concur with the majority order in allowing additional gross revenues of $1,445,003 if a substantial amount thereof were withheld pending the elimination of telephone service deficiencies and a further adjustment based upon an elimination from plant investment and a rate base of the $1,380,000 in excess central office equipment and trunks.

John W. McDevitt, Commissioner

DOCKET NO. P-29, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Lee Telephone Company, Martinsville,) ORDER
Virginia, for Authority to Increase its Rates and) ON
Charges Within the Area it Serves in North Carolina) REMAND

BY THE COMMISSION: This cause comes on for further consideration by the Commission in accordance with the Opinions and Judgements of the North Carolina Supreme Court filed on the 18th day of November, 1970, Utilities Commission v. Morgan, 277 N.C. 255, and on the 10th day of March, 1971, on rehearing, reviewing the Opinion and Judgement of the North Carolina Court of Appeals filed on May 6, 1970, in the above entitled action, and the Judgement of the North Carolina Court of Appeals filed on the 24th day of March 1971, all of which reversed the Order of this Commission entered in this docket on the 28th day of July, 1969, and remanded the matter to it for further consideration in accordance with said Opinions upon the present record or after such further hearing as the Commission shall deem proper.

By Order of the Commission dated December 22, 1970, this matter was set for Oral Argument upon Motion by the applicant filed on December 11, 1970, requesting certain authority for the continuation of the collection of the rates it was then collecting until final determination of

the cause, and to afford the parties hereto an opportunity to be heard on the procedure to be adopted by the Commission for determination of the proceeding herein on remand from the Supreme Court. No action was taken by the Commission on the applicant's said Motion for the reason that the case was at that time before the North Carolina Supreme Court upon Petition by the applicant for a Rehearing of the decision rendered by said Court. At said proceeding the parties stipulated and agreed that the two (2) members of this Commission who were not members of the Commission at the time of the original hearing herein, should read the record and participate fully in the further proceedings, consideration and determination of this matter.

It is noted that thirty (30) days have lapsed since the filing of the final Opinion and Judgement of the North Carolina Supreme Court and the action of the North Carolina Court of Appeals reversing and remanding the matter for further consideration, and that no party hereto has made any filings, motions, requests or statements of intent.

Upon consideration of the entire record, the evidence and testimony presented and received during the course of the hearings, and the Opinions and Judgements of the North Carolina Supreme Court filed on the 18th day of November 1970, and on the 10th day of March, 1971, the Commission concludes that there is sufficient evidence of record from which it can and should proceed to a determination of the issues in the cause without further proceedings, and, therefore, makes the following

FINDINGS OF FACT

1. Lee Telephone Company, 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 corporation with headquarters located in Martinsville, Virginia. Central Telephone and Utilities Corporation purchased controlling interest in the common capital stock of Lee in October 1965, and has operated the company since that time. Lee is a public utility providing general telephone service in both North Carolina and Virginia. The Company (Lee) serves 48,389 stations, of which 10,278 (21.24%) are located in North Carolina and are served through seven (7) exchanges, located at Danbury, Madison, Stoneville, Walkertown, Walnut Cove, Quaker Gap, and Sandy Ridge. The Company (Lee) added 595 stations to its system in this State during the twelve (12) months' period ending May 31, 1968.

2. The increase in rates and charges proposed by Lee are for local service in this State, and does not involve toll rates. The proposed increase is designed to produce $239,973 in additional gross revenue, of which $99,683 would accrue to the Company's use as additional net income after taxes and expenses. The average percentage increase proposed is 43.85%, which would add an average of $23.35 in

additional charges annually for each station in North Carolina for local service.

3. The test period used by the Company and the Staff was the same and included the twelve (12) month period ending May 31, 1968, upon which their computations and results were based. The period used and the methods of adjustment are in compliance with G. S. 62-133.

4. Allocations to the North Carolina operations of Lee from its total operations used by the Company and the Staff were for all practical purposes the same. They assigned gross plant and depreciation reserve accounts between the two (2) States on the basis of physical location of the same, except for the commonly used headquarters building, which was allocated on the basis of the ratio of plant located in North Carolina, applied to joint-use floor space. Operating revenues were allocated to the State in which earned, except for toll revenues, which were allocated on the basis of the origin point of the call, which resulted in an allocation to this State of 17.76% of the Company's total gross revenues, or $847,886. Revenue deductions were assigned to the State where charged, except for indirect expenses for the Martinsville, Virginia, and Lincoln, Nebraska, headquarters with reference to which the parties used the ratio of total stations to stations per exchange in allocating indirect charges for local service billing and accounting expenses and the ratio of total tickets to exchange tickets for toll billing and accounting expenses. Company capital structure and capital service requirements are allocated to North Carolina in the same ratio as net plant therein located, i.e., 21.6%.

5. No original cost study figures were presented. The plant investment figures used both in the Staff's presentation and the Company's presentation are unaudited book figures. They represent original costs only to the extent the Company's books have been kept in a generally uniform manner based on actual costs. This has been done since 1950, from which time continuing property records permit reasonable verification. The evidence discloses no serious variance prior to this time. Accordingly, for purposes of this case, adjusted book cost figures reasonably represent original cost figures.

6. The difference between the Staff's net end-of-period investment and that of the Company, after reflecting the proposed increase in rates, is due to the fact that the Company did not include the credit effect of income tax accruals, which amounts to $28,469. Therefore, the Company's end-of-period gross plant and plant under construction was $5,313,339, with an applicable depreciation reserve of $1,234,290, and a working capital allowance of $118,597 for a net end-of-the-period investment of $4,197,646, while the Staff's evidence produced figures in the amounts of $5,312,766; $1,245,088; $90,443; and $4,158,121, respectively.

We find that the reasonable net book investment for Lee Telephone Company's utility plant used and useful in rendering telephone service in this State at May 31, 1968, is $4,158,121, and that this figure reasonably represents the depreciated original cost, including plant under construction in the amount of $318,052. Deducting plant under construction from the above figure, we find that the reasonable net book investment for Lee Telephone Company's utility plant used and useful in rendering telephone service in this State at May 31, 1968, is $3,840,069, and that this figure reasonably represents the depreciated original cost thereof.

7. The Company evidence tended to show that the gross trended original cost of its allocated North Carolina utility plant is $6,017,320, with a trended depreciation reserve attributable thereto of $1,483,549, for a net trended original cost, including plant under construction and working capital allowance of $5,009,100. Deducting plant under construction ($318,052), we find the trended original cost of said plant after depreciation to be $4,691,048.

8. Having fully considered and given full weight to all of the evidence and the matters herein found as set forth above and below, we further find the fair value of Lee Telephone Company's public utility property used and useful in providing the service rendered to the public within this State to be $3,822,343, at the end of the test period.

In arriving at the above fair value of said property, we find the components of the same to be as follows:

(a) Plant installed in 1965 and prior years to be $3,400,000, which is less than the recorded book value in the light of the inadequate service hereinafter found to exist during the test period.

(b) Net plant additions for 1966 to be $187,303.

(c) Net plant additions for 1967 to be $748,195.

(d) Net plant additions for January-May 31, 1968, to be $610,973.

(e) Allowance for working capital to be $109,027.

(f) The reserve for depreciation to be $1,233,155 (which is a deduction item and is based on the ratio of book plant cost and book reserve for depreciation).

9. The evidence presented by the Staff and the Company is that the Company's annual gross operating revenues at the end of the test period after accounting adjustments were $847,886, and after accounting and pro forma adjustments the Company's evidence shows such revenues to be $1,010,988, and the Staff's evidence reflects such revenues to be

$1,013,260; we find the Company's annual gross operating revenues at the end of the test period to be $1,013,260.

10. The evidence as presented shows Company gross operating revenues under the proposed rates, (1) by the Company to be $1,250,001, and (2) by the Staff to be $1,247,971. We find annual gross operating revenues under the rates hereinafter found to be reasonable and approved would be $1,079,014.

11. We find actual, reasonable and legitimate total operation and maintenance expenses to be $430,044 from evidence presented by the Company, and the Staff showing the same to be $434,144 and $430,044 respectively.

12. Annual depreciation expense evidence by the Company shows an expense of $206,014, and the evidence by the Staff shows the same to be $204,837. We find the reasonable annual cost consumed by depreciation is $204,837.

13. The Company and Staff evidence places annual taxes under the present and the proposed rates as follows:

	Present Rates	Proposed Rates
By Company	$169,596	$308,926
By Staff	$161,337	$298,160

We find a reasonable and actual annual tax liability to be $161,337 under the present rates and $298,160 under the proposed rates, and that under the rates hereinafter found reasonable and approved that the Company's annual tax liability is estimated at $199,666.

14. The Company's evidence shows a net operating income for return of $216,990 under present rates and $316,673 under the proposed rates. The Staff shows $233,326 and $333,009 respectively. The evidence of the Company and Staff in this connection includes interest charged to construction, which must be deducted. Allowing for all operating revenue deductions herein found reasonable, we find the Company would have net operating income for return of $248,452 under the rates hereinafter found reasonable and approved, which excludes interest charged to construction in the amount of $12,306.

15. Capital structure allocated to North Carolina as heretofore found shows total capitalization of $4,139,575, consisting of $1,720,656 long-term debt (41.57%) at interest rates varying from 3% to 6-3/8%; equity capital (34.43%) totaling $1,425,319 and comprised of $542,439 in common capital stock; $207,623 in premium on common stock and stock expenses; and $675,257 in earned surplus; and short-term debt (24.0%) of $993,600 at 6% and 6-1/2%, of which $367,200 is in advances from the parent company.

16. Lee's reasonable annual fixed charges are $88,353 for long-term debt and $62,316 for short-term debt, for a total annual actual and reasonable debt service requirement of $150,669.

17. Applicant is earning 5.74% on its common equity attributed to North Carolina operations under present rates. The Company would earn 12.73% on its common equity under the proposed rates and, in view of the inadequate service being rendered by the Company at the end of the test period as hereinafter found, will be permitted to earn 7.66% return on common equity under the rates hereinafter found reasonable and approved.

18. The Company is earning a rate of return on the fair value of its property as herein found of 5.78% under present rates; it would earn 8.39% under the proposed rates, and will be able to earn 6.50% under the rates hereinafter found reasonable and approved.

19. 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 6.50%. Normally, a higher percentage rate of return on the fair value of the property in the range of 7.00% would be found just and reasonable and allowed by the Commission; however, we find a lower 6.5% rate of return to be just and reasonable in this case in the light of the inadequate service being rendered by the Company as hereinafter found.

20. 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 8.39% 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 6.50% on the fair value of the Company's property as herein found (i.e., $3,822,343), such rates are excessive, unjust and unreasonable. Rates charged in accordance with the schedule hereto attached and marked Appendix "A" 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, considering the inadequate service shown at the public hearing, as hereinafter found.

21. The quality of service rendered by Lee Telephone Company in this State is shown by the record to be inadequate, and is so found. In a measure, the Company conceded the overall justification for service complaints and stated its plans and intentions for improving its North Carolina facilities in the near future. The inadequate and poor quality telephone service offered by the applicant in

this State relates to many factors such as the nature, size and extent of the territory served, the fact that the telephone facilities when acquired by Central Telephone and Utilities Corporation in 1965 were engineered in such a way as to engender such service, the plant was inadequate and inefficient and, therefore, many of their problems were acquired upon purchase. However, we find from the nature and extent of the complaints made and from statements and testimony of company representatives that the service being rendered by Lee is substandard, and that such grade of service reflects the failure of the Company to take those steps necessary for the improvement of toll service, local central office service, proper maintenance and the reduction of unsatisfactory multi-party main station service as is economically feasible, as well as its failure to eliminate traffic overloads on toll trunks, extended area service trunks and central office equipment groups, and its failure to take sufficient action to improve transmission and reduce noise levels.

22. Centel Service Company is a wholly owned subsidiary of Central Telephone Company, which Company is a subsidiary of Central Telephone and Utilities Corporation, as is Lee Telephone Company. Centel Service Company was incorporated in Delaware in June 1967. Said Company was primarily engaged in processing orders from its operating affiliated companies (including Lee) for items of supplies and equipment used in their respective operations during the calendar year 1968. As of December 1968, Centel Service Company had about 700 different items of materials, supplies and equipment warehoused at four locations in this Country, one being in Martinsville, Virginia. During the calendar year 1968, Lee's purchases for its North Carolina operations from Centel Service totaled $542,751, which generated a net profit to Centel in the amount of $39,621 for a rate of net profit at 7.3%. Total sales by Centel Service during the year amounted to $13,222,551. There is no evidence in this record relating to comparative prices from other supply outlets.

23. This Commission entered its initial order in this case dated July 28, 1969, wherein the Commission approved a schedule of rates and charges contained in Appendix "A" attached thereto and incorporated therein to become effective on all bills rendered on and after August 1, 1969; subsequently, the Attorney General and Protestant moved the Commission to stay the effective date of its above Order, which Motion was denied; subsequently, the Attorney General of North Carolina and the Protestant petitioned the North Carolina Court of Appeals for a Writ of Supersedeas, seeking to stay the above Order of this Commission and the effective date of the rates therein approved, which said Petition was denied by said Court by Order dated August 26, 1969; said Order of the North Carolina Court of Appeals also provided, "that the proposed consent order be considered as a Motion in the Cause; that Lee Telephone Company put into effect such accounting procedures as may be necessary to enable it

to make any refunds that may be required upon final determination of this matter, and that it be so certified to the Chief Clerk of the North Carolina Utilities Commission"; Petition for Certiorari prior to decision by the Court of Appeals was denied by the North Carolina Supreme Court by its Order dated 21 January 1970; the initial Order of this Commission dated July 28, 1969, was reversed and remanded by the North Carolina Supreme Court (see Utilities Commission v. Morgan, Attorney General, Supra); Lee Telephone Company has collected rates on billings on and after August 1, 1969, which were authorized by said Order of this Commission; and that the rates so collected, to the extent that they exceeded the rates herein found to be just and reasonable, are unjust, unreasonable and unlawful and must be refunded with interest at 6% per annum to the extent that said rates so collected exceeded the rates established by this order.

24. Some comparison of the findings in this order and those of our initial order dated July 28, 1969, show the following:

	Initial Order	Remand Order
Additional Annual Gross Revenues Requested	$ 239,973	$ 239,973
Original Net Cost of Plant In Service	$4,158,121	$3,840,069
Trended Net Original Cost of Plant In Service	$5,009,100	$4,691,948
Fair Value of Plant in Service	$4,500,000	$3,822,343
Gross Annual Revenues At End of Test Period	$1,013,260	$1,013,260
Additional Gross Revenues Approved	$ 141,870	$ 65,754
Additional Net Operating Income For Return Under Approved Rates	$ 59,174	$ 27,432
Total Operation and Maintenance Expenses	$ 430,044	$ 430,044
Return on Equity Under Approved Rates	9.89%	7.66%
Return on Fair Value Under		
(a) Present Rates	5.19%	5.78%
(b) Proposed Rates	7.40%	8.39%
(c) Approved Rates	6.50%	6.50%
Percent of Requested Increase Approved	59.11%	27.40%
Percent Increase in Total Revenue Approved	13.99%	6.49%

CONCLUSIONS

1. Applicant, Lee Telephone Company, is properly before the 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 both original 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 the 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 substandard quality of service being rendered by Lee as one element bearing upon the value of its utility investment and the rate it should be permitted to earn, along with other factors, including, but not limited to, the nature, size and extent of the territory served, and the condition and level of its telephone facilities when acquired by Central Telephone and Utilities Corporation in 1965. We further conclude that it is our responsibility to require the highest standards 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 and within the limits of the statutory rate-making formula.

We have concluded, in view of the substandard quality of service being rendered by Lee during the test period, that a lower rate of return (6.5%) than normal (in the range of 7.0%) is just and reasonable in the instant case.

We have further considered the level of service, engineering and maintenance as of the end of the test period of that portion of the Company's property, which was acquired, installed and in use during 1965 (the year of acquisition), and have found and concluded that the same has a fair value of $3,400,000, less depreciation of $1,044,480, leaving a net fair value of $2,355,520, which is less than net book cost depreciated.

Utilities Commission v. Morgan, Attorney General, 277 N.C. 255 (1970); and on rehearing 278 N.C. filed 10 March, 1971.

4. From the record in this case, we conclude that the telephone service being offered the public in North Carolina by Lee is inadequate and of poor quality, particularly, in the areas of toll service and local central office service, during the test period and at May 31, 1968, the end thereof. Since our last Order in June 1968, in Docket No. P-29, Sub 54, the applicant has reduced the high percentage of unsatisfactory multi-party main station service from 38% to 21%. The progress made by the Company in this area is acknowledged; however, we conclude that the Company must continue its remedial action in all areas. One necessary factor in obtaining better service in the franchised area here involved is more abundant and improved equipment. We conclude that rates for a company rendering service which is substandard should be less than those for a company rendering an adequate level of service to the public.

5. That four (4) party service should be provided on a flat-rate basis in view of the fact that it will become the basic rural service after the multi-party service has been eliminated (not later than December 31, 1972) in accord with the Order of this Commission dated June 6, 1968, issued in Docket P-29, Sub 54.

6. That the applicant should continue filing its semi-annual reports relating to the quality of service being rendered in order to allow the Commission and its Staff to evaluate the Company's service and its improvement.

7. That the applicant should take action with all deliberate speed to provide adequate and sufficient telephone service to its subscribers within the rate structure herein found reasonable and approved. That the Commission has and shall continue its surveillance of service being rendered and the service improvement program being conducted by the Company.

8. That the objectives of the Company as presented, in the areas of the elimination of traffic overloads on toll trunks, extended area service trunks and central office equipment groups, and in the improvement of transmission and reduction of noise levels on all trunks, as well as the improvement in the efficiency of installing new telephone service and providing regrades should be met as a minimum and exceeded as desirable.

9. That the Company should: (1) provide facilities as soon as feasible for the interception of individual numbers on party lines; and (2) implement its plans for service improvement as filed with the Commission and as testified to in the hearing.

10. In the Order issued by this Commission in Docket No. P-29, Sub 54, the applicant was ordered to file a schedule for the progressive reduction of zone mileage charges so that such charges would be eliminated by December 31, 1972. Considering the low density and rural area which Lee serves and their high percentage of party line service, we conclude that it is not economically feasible to eliminate such charges by that date without a large increase in plant investment which would result in much higher rates under our statutory rate-making formula. We further conclude that such total elimination of zone charges should be deferred until such time as the density of the Lee area and Lee's financial condition and structure improves to a point that flat-rate service can be offered at a reasonable, just and acceptable rate. We, therefore, conclude that the target date of December 31, 1972, should be removed and eliminated, and that the Staff and Commission should continue to review the matter with the view to considering appropriate action in this area at such future time as circumstances indicate and permit.

11. Ordering Paragraph 3 in Docket No. P-29, Sub 54 required the applicant to file quarterly reports covering progress in upgrading service and the financial and operating conditions of the Company. The information being received through these reports is also being filed on regular and monthly basis by the Company in accord with other reporting requirements of the Commission. We, therefore, conclude that the continued filing of such quarterly reports required by the order is not necessary and that such requirement should be eliminated.

12. In view of the benefits which are derived from larger operating units and our knowledge of the deficiencies in the North Carolina portion of the applicant's operation, we conclude that serious consideration should be given to the possible merger of all North Carolina telephone operating properties owned and controlled by Central Telephone and Utilities Corporation into one North Carolina telephone operating company, which would effectively join the present North Carolina portion of Lee Telephone Company and Central Telephone Company into one operating unit in this State. To that end, we further conclude that the Applicant, Lee Telephone Company, and its parent corporation, Central Telephone and Utilities Corporation, should continue to make feasibility studies of such a possible merger, and that the Commission should continue its surveillance of these operations in order to insure that such a merger is effected at the earliest feasible date.

13. That the evidence presented justifies the rates and charges herein found reasonable and approved, and does not at this time justify the cancellation of all or any part of the franchise heretofore granted by this State to Lee Telephone Company.

14. The level of profitability of the Centel Service Company on its purchasing and distribution of materials and supplies for its affiliate, Lee Telephone Company, requires that the Commission take notice of this type of relationship. Such transactions must be consummated within a true arms-length environment if their results are to be accepted without adjustment or in-depth scrutiny. The Commission cannot permit parent holding companies to use affiliate companies as a device for transmitting an unreasonable level of profits to such parent holding company from goods or services supplied the operating company by way of an affiliate company (G. S. 62-153). It is the duty of the operating telephone company to prove that the prices it has paid for goods and services received from an affiliate are no greater than would have been paid through true arms-length bargaining, and in fact lower prices should necessarily be the result. In the instant proceeding, the reasonableness of the level of prices charged and paid was not clearly demonstrated and no in-depth study was made by the Commission Staff due to the fact that Centel Service Company had been in operation approximately one year at the time of the hearing. No adjustment is being made to the

rate base or in the operating expenses due to these intercompany transactions, and the Commission is not approving or disapproving the level of profitability of the transactions between these two affiliates. We conclude it to be appropriate for this Commission to reserve for future consideration any need for investigation and possible adjustments which may properly arise therefrom in connection with inter-affiliated company transactions.

15. We conclude that the effect of the action of the North Carolina Supreme Court, in Utilities Commission v. Morgan, Supra, in reversing and remanding the initial order of this Commission, was to declare the rates therein found by this Commission to be unjust and unreasonable and, therefore, unlawful; we have further found and we conclude that the rates herein approved are just and reasonable and, therefore, lawful; that the rates charged by Lee Telephone Company during the period August 1, 1969, to the effective date of this order, to the extent that such rates and charges exceeded the rates and charges herein approved, must be refunded with interest at the rate of 6% per annum; and further conclude that such refund should be made by check to each ratepayer at the earliest possible date, and within a reasonable period of time, and in any event, not later than August 15, 1971.

Accordingly, IT IS ORDERED:

1. That the application in this docket be, and it is, hereby approved to the extent of the rates approved herein. In all other respects the application is disapproved and denied.

2. That Applicant, Lee Telephone Company, is authorized to file and make effective on all bills rendered on and after May 15, 1971, its tariffs containing rates and charges in accordance with the schedule of rates and charges contained in Appendix "A" attached hereto and incorporated herein. No mileage charges other than those herein approved shall be made applicable to the rates and charges hereby approved and authorized.

3. That the applicant may immediately cease submitting reports required by Ordering Paragraph 3 of Order entered by this Commission in Docket No. P-29, Sub 54, on June 6, 1968.

4. That the requirements of Ordering Paragraph 5 in the Order issued by this Commission in Docket No. P-29, Sub 54, on June 6, 1968, insofar as the same pertains and relates to the total elimination of zone mileage surcharges, be, and the same are, hereby rescinded, and that the Commission and its Staff shall continue to review the matter of the total elimination of zone charges in the Lee service area with a view to considering and ordering appropriate action on the matter at such future date as circumstances indicate and permit.

5. That the applicant shall continue its feasibility studies of the possible merger of all North Carolina telephone operating properties owned and controlled by Central Telephone and Utilities Corporation into one North Carolina telephone operating company and shall file with this Commission the details and results of such feasibility study along with its recommendations thereon upon request by this Commission.

6. 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.

7. That the Company shall refund to its customers in lump sum, by check, all revenues which it received from its said customers during the period August 1, 1969, to May 15, 1971, which exceeded the rates and charges contained in Appendix "A" attached hereto and incorporated herein, to the extent of such excess, plus interest at the rate of 6% per annum; and that said refunds shall be made at the earliest possible date, and within a reasonable period of time, and in any event, not later than August 15, 1971.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

NEW

APPENDIX "A"

Lee Telephone Company
Docket No. P-29, Sub 61

MONTHLY LOCAL EXCHANGE RATE-GROUPINGS

Main Stations and PBX Trunks in Local Calling Area	Business					Residence				
	1-Pty*	2-Pty*	4-Pty**	M-Pty	Ext.	1-Pty*	2-Pty*	4-Pty**	M-Pty	Ext.
Group 1 0-4000	$12.70	$11.15	$ 9.65	$ 7.85	$1.75	$ 6.60	$ 5.65	$ 5.30	$ 3.45	$1.25
Group 2 4001-8000	13.20	11.65	10.15	8.35	1.75	6.95	6.00	5.70	3.65	1.25
Group 3 8001-16,000	13.95	12.40	10.90	9.10	1.75	7.35	6.40	6.10	4.05	1.25
Group 4 16001-32000	14.80	13.15	11.65	9.85	1.75	7.80	6.85	6.55	4.50	1.25
Group 5 32001-64,000	15.80	14.15	12.65	10.85	1.75	8.30	7.35	7.00	4.95	1.25

* Within Base Rate Area

** This service provided only outside the Base Rate Area

NEW

APPENDIX "A"

Lee Telephone Company
Docket No. P-29, Sub 61

MONTHLY LOCAL EXCHANGE RATES

	Business					Residence				
	1-pty*	2-pty*	4-pty**	M-pty	Ext.	1-pty*	2-pty*	4-pty**	M-pty	Ext.
Danbury (Group 1)	$12.70	$11.15	$ 9.65	$ 7.85	$1.75	$ 6.60	$ 5.65	$ 5.30	$ 3.45	$1.25
Madison (Group 2)	13.20	11.65	10.15	8.35	1.75	6.95	6.00	5.70	3.65	1.25
Sandy Ridge (Group 2)	13.20	11.65	10.15	8.35	1.75	6.95	6.00	5.70	3.65	1.25
Stoneville (Group 2)	13.20	11.65	10.15	8.35	1.75	6.95	6.00	5.70	3.65	1.25
Walkertown (Group 5)	15.80	14.15	12.65	10.85	1.75	8.30	7.35	7.00	4.95	1.25
Walnut Cove (Group 1)	12.70	11.15	9.65	7.85	1.75	6.60	5.65	5.30	3.45	1.25
Quaker Gap (Group 2)	13.20	11.65	10.15	8.35	1.75	6.95	6.00	5.70	3.65	1.25

* Within Base Rate Area

** This service provided only outside the base rate area

NEW
APPENDIX "A"
Lee Telephone Company
Docket No. P-29, Sub 61

ZONE MILEAGE CHARGES

Zone	Miles Outside Base Rate Area Over - Through	1-Party Zone Charges	2-Party Zone Charges
1	0 - 1/2	0.60	0.40
2	1/2 - 2 1/2	2.50	1.80
3	2 1/2 - 4 1/2	3.75	2.55
4	4 1/2 - 6 1/2	5.00	3.30
5	6 1/2 - 8 1/2	6.25	4.05
For each additional 2.0 mile zone or fraction thereof		1.25	0.75

Docket No. P-29, Sub 61

WELLS, COMMISSIONER, DISSENTING. This case has generated much useful and helpful discussion, but it is none-the-less characterized by delay and frustration. The Company's application was filed on October 2, 1968, and the hearing held March 4-7, 1969. Thus, from date of origin, the matter has been in litigation for over two and one-half years.

It would, therefore, be an easy thing to say that this case is an example of what is wrong with regulatory processes: expensive litigation, long delays, uncertain results. In a sense, such an evaluation is accurate; but, it would indeed be calculated upon an easy approach. It would, therefore, be a great pity for this litigation to fail to achieve some very positive results, so that the long delay and involved litigation may in the end become a milepost of regulatory law, rather than milieu of regulatory lapse.

In the beginning, the Commission majority made some basic mistakes, resulting in the need for this State's highest tribunal to twice consider the matter and twice instruct the Commission of its error. It now appears that the Commission majority has failed again to heed the basic tenets of Public Utility Law as written by our Legislature and interpreted by our Courts.

The Public Utility Laws of North Carolina are carefully structured to achieve a balance of powers and interest: The power of the sovereign to grant "franchises" or monopolies to certain economic enterprises and the interest of the public in the benefits to be expected from the artificially restricted sources of supply. The theory of this arrangement - and its only justification in a democratic society - is that service to the public will be superior.

To be sure, there are other facets of the arrangement which go to make up its success - or failure - but service to the public is the heart of the matter, the keystone upon which the entire structure depends, for it may be assumed that absent this superior service flowing to the public, the sovereign must respond to the public need by instituting a different arrangement.

What, other than service, are the other critical facets of the public utility monopoly? As in all business enterprise, capital (investment) is a basic ingredient, for without it, the enterprise cannot operate, and our Public Utility Laws have recognized this facet and made provision for it. Another basic aspect of the matter is management, for it is axiomatic that all businesses must have management. Last, but quite important to all concerned, the facet of rates fills out the scheme.

The Public Utility Laws of North Carolina do simply identify these four facets - they go on to quantify them.

Hence, the statutes and the decisions of the courts speak to and of just and reasonable rates, sound management, fair value of property (investment) and reasonable rates of return thereon, and adequate and efficient service. The matter can hardly be better put than in the Statutory Declaration of Public Policy adopted by the North Carolina General Assembly as enunciated in G.S. 62-2, Declaration of Public Policy.

As set forth there, and as reiterated in other sections of Chapter 62, the decisions of our courts and of the courts of the United States, the hallmark of Public Utility Law is service: adequate service, efficient service, economical service. All else must ultimately be structured, managed and resolved in this context and upon the predicate of service.

To the customer who is poorly or badly served, it is vain and empty to speak primarily to the niceties of fair value and return on investment and painful to speak of increased rates. But where service is good, i.e., adequate, efficient and economical, the customer may be expected to accept the fair return on investment and rates that go with it.

The record in this case is clear on at least one point - Lee's service was bad. It had been bad for a long time. It was bad when the subject application for increased rates was filed; it was bad during the test year; and it was still bad when the application came on for hearing. The bad service was due to bad management: management which had failed to provide necessary facilities and had failed to properly maintain the equipment and facilities on hand.

Bad service resulting from poor management can obviously be corrected by sound management, and it can be assumed that even sound management might require more funds in order to

provide good service. The problem in this case boils down to whose funds?

The initial majority order responded to the problem by requiring additional customer funds, in the form of higher rates, to assist management in providing good service. It structured these higher rates according to its interpretation of the statutory rate-making formula by adopting its version of the fair value of Lee's properties. On appeal, the Supreme Court has found that version of fair value to be erroneous and has made it abundantly clear that the error in valuation is in part attributable to the service factor.

The record and the court's opinion leave no doubt that Lee's properties, related to their service function, were substantially over-valued.

All this brings us to this point. When Lee came before the Commission in March 1968 the then existing rates were, by law, presumed just and reasonable. The burden was therefore upon Lee to prove to the Commission that increased rates were justified. It failed to carry this burden. The sophistication of the rate-making formula and the majority's insistent recapitulation of fair value cannot provide the cure for bad service related to bad management decisions and practices. Lee simply was not entitled to a return on those properties which were, in the ultimate sense, of little or no value to the ratepayers - either because the old properties were inadequate for the customers' reasonable needs or poorly maintained, or the new properties hastily acquired and apparently not sufficiently assimilated. The fair value of Lee's properties, when evaluated in the context of their usefulness in providing adequate and efficient telephone service was, in fact, much less than the dollar amount assigned to them on the books of the Company, and this is what the Commission should have found.

Upon a proper finding that the fair value of Lee's properties was substantially less than that shown on its books, it follows that a substantial portion of its depreciation expense should have been disallowed. Depreciation expense, not reflecting money actually spent, but being a bookkeeping device by which the integrity of the investment is sought to be maintained, such expense should not be allowed on that portion of properties found to be not contributing to the function of service.

Based upon such findings as to the value of property and the correlative adjustment in depreciation allowance, the Commission could have and should have concluded that Lee was, during the test year, earning a fair and adequate rate of return on the properties then being efficiently and usefully devoted to providing the telephone service for which its subscribers were paying. Instead of following this course, the majority has taken out of the rate base the work under construction (which was clearly required by the

Supreme Court's opinion), has reduced the book value of the old plant (installed up through 1965) by $70,000.00, trended the new plant according to the Company's figures, and thereby reached a rate base not substantially different from that found in the initial order, except for the deletion of the plant under construction.

The milepost of regulatory law has not been erected by the majority. The result of the majority order will be to impose upon the subscribers additional rates in the sum of $66,000.00 annually in order to give Lee's stockholder (its parent company) an additional $27,000.00 annual return on its investment. How much better for all concerned would it have been for the Commission to have stated firmly and clearly that higher or increased rates for public utility companies in North Carolina must in all cases be predicated upon adequate, efficient and economical service.

This dissent does not speak to the present. There is no place here for speculation what the situation may now be with Lee Telephone Company and its customers. This dissent is upon the record made in March 1968, and upon that record, the case for any rate increase must fall.

Hugh A. Wells, Commissioner

DOCKET NO. P-31, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application for Adjustment of Rates) ORDER ALLOWING PORTION
and Charges for Lexington Telephone) OF RATE INCREASE
Company)

PLACE: County Building Auditorium, Center Street, Lexington, N. C., March 16, 17 & 18, 1971; and

Resumed Hearing in Commission Hearing Room, Raleigh, North Carolina, April 2, 1971

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

APPEARANCES:

For the Applicant:

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P. O. Box 356, Lexington, North Carolina

For the Intervenors:

Robert B. Smith, Jr.
Attorney at Law
P. O. Box 551, Lexington, North Carolina 27292
For: Wayne H. Shoaf

For the Using and Consuming Public:

I. B. Hudson, Jr.
Department of Justice
Justice Building, Raleigh, North Carolina

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On August 14, 1970, Lexington Telephone Company, P. O. Box 808, Lexington, North Carolina (hereinafter called "Lexington Tel. Co."), filed an Application with the Commission for authority to increase its local monthly telephone rates and to reduce its charges for service outside the base rate service area, by changing from mileage charges to zone charges. The Application includes increases of $583,870 in monthly charges, with reductions of $35,313 in zone mileage charges, resulting in a total increase in revenue applied for of $548,563. Increases in other services included increase in semi-public coin telephone guarantees from $8.70 to $22.50 and increase of non-published and non-listed telephone numbers from 50¢ to $1.00.

The increases proposed in monthly telephone rates, compared with the present telephone rates, are as follows:

Business Service	Present Rate	Proposed Rate	Amount of Increase
One-Party	$7.70	$15.00	$7.30
Two-Party	6.75	12.00	5.25
Four-Party	5.25	10.95	5.70
Five-Party	5.25	9.50	4.25
Multi-Party	4.50	8.45	3.95
Residence Service			
One-Party	[illegible].60	7.85	3.25
Two-Party	3.75	6.90	3.15
Four-Party	3.10	6.50	3.40
Five-Party	3.25	6.20	2.95
Multi-Party	3.10	5.50	2.40

Present	Mileage and Zone Charges
One-Party	$.63 per 1/4 mile or fraction (airline)
Two-Party	.32 per 1/4 mile or fraction (airline)
Four-Party	.40 per 1 mile zone beginning 1 mile beyond B.R.A.
Five-Party	.25 3-1/2 miles from BRA to Service Area

Proposed	0-2 Miles From BRA	2-4 Miles From BRA	Boundary Over 4 Miles From BRA
One-Party	$.75	$1.50	$2.25
Two-Party	.35	.70	1.05
Four-Party	--	.40	.80
Five-Party	--	.25*	.25*

*Zone is 3-1/2 miles from BRA to Service Area Boundary

Other Services	Present	Proposed
Semi-Public Coin Telephone Guarantee	$8.70	$22.50
Non-Published and Non-Listed Telephone Numbers	.50	1.00

The Commission being of the opinion that the Application affected the interest of the consuming public in the area served by Lexington Tel. Co., by order of September 1, 1970, suspended until further Order of the Commission the proposed effective date of Lexington Tel. Co.'s requested increases, declared the proceeding to be a general rate case under G.S. 62-133, and set the matter for investigation and hearing in Raleigh, North Carolina, on March 16, 1971. Upon request of customers of Lexington Tel. Co., the place of hearing was subsequently moved to the County Building Auditorium, Center Street, Lexington, North Carolina.

Petitions to Intervene were filed and duly allowed for Wayne Shoaf, a customer, and for the Honorable Robert Morgan, Attorney General, on behalf of the using and consuming public.

The public hearing began in Lexington, North Carolina, on March 16, 1971.

On motion of counsel for the intervenor Wayne Shoaf for a Commission view of the new office building of Lexington Tel. Co. under construction during the test period, and no objection being made, the Commission granted the view of the building, to be made at the close of the testimony.

Lexington Tel. Co. filed proof of publication of Notice of the Hearing and Notice of Change of Place of Hearing.

During the hearing the applicant Lexington Tel. Co. offered testimony and evidence as follows:

William C. Harris, President of Lexington Tel. Co., identified and explained certain exhibits attached as part of the Application, and offered in support of the Application, including a Table of Present Rates, Proposed Rates, Fair Value of Telephone Plant in Service, Construction Projects as of the end of the Test Period on August 31, 1970, Fair Value Rate Base, and Schedules in Support of the Fair Value Rate Base and Cash-working Capital. Mr. Harris testified regarding revenues and expenses, net operating income, operating revenues and expenses as adjusted for accounting adjustments and other pro forma adjustments, accounting adjustments, pro forma adjustments, rate of return, and rate of return on common equity. Mr. Harris testified that Lexington Tel. Co. had investment in telephone plant at original cost of $7,232,493, less depreciation of $2,073,456, plant under construction, including new building, $1,259,561, materials and supplies $257,551, cash working capital $217,668, for a total original cost of plant, depreciated, including plant under construction, materials and supplies and cash working capital of $6,893,817; that the trended value of the telephone plant was $9,808,600 and, after deduction of depreciation in addition to plant under construction, materials and supplies and cash working capital, gave a fair value of the plant of $8,731,400; that the company had total operating revenues of $1,886,224 for the 12-months ending August 31, 1970, and after expenses and taxes had net operating income of $405,579; that after the proposed rate increase of $583,876 and after all adjustments for station growth and for modification of taxes and other expenses resulting therefrom, the company, under the proposed rates, would have net operating income for return of $605,275; that under the present rates the company had a ratio of net income to net original cost of plant of 5.99%, and return on fair value of plant of 4.729%; and that after the proposed rates the company would have a rate of return on net investment of 8.779% and on said fair value of plant a return of 6.932%; and a return on equity under the proposed rates of 12.762%.

A. L. Groce, consultant for Lexington Tel. Co., identified exhibits and offered testimony as to book cost of telephone plant, trended cost of telephone plant, net investment in telephone plant, total capital obligations, revenues and expenses, accounting adjustments and pro forma adjustments thereto, rate of return, measures of inflation, increase in telephone plant investment per main station, an exhibit of cost of construction, rate of return on capital obligations and rate of return, assuming rate increase. Mr. Groce testified that the company had net income of $343,476 under the present rates; would have net income of $599,823 under the proposed rates; had a negative return of .29% at the end of the test period on common equity under the present rates and would have $276,335 in net income for common equity under the proposed rates, with return after the increase of 8.74% on net original cost of plant, 6.91% on fair value of plant per petition, 7.27% on estimated fair value of plant

per Groce testimony, 8.63% on total capital obligations and 13.65% on common equity.

Bernard J. Campbell, general auditor of Lexington Tel. Co., testified in support of and identified company Exhibits 3 through 11 which were filed with the Commission on December 21, 1970, as follows: original cost of plant, trended value of telephone plant in service, telephone plant with depreciation accounts, materials and supplies, cash working capital, operating income for return, operating expenses, balance sheet, rates of return under present and proposed rates on original cost of plant and fair value of plant.

The Commission Staff offered testimony as follows:

Gene A. Clemmons, Chief Engineer Telephone Service, testified as to the results of his investigation of service rendered by Lexington Tel. Co., including investigation of complaints filed with the Commission, and testified that his field review and analysis of service indices indicate that the overall level of service provided by Lexington Tel. Co. is reasonably good. Mr. Clemmons further testified the company should take action to implement a continuing traffic study program, increase the frequency of the routine maintenance schedule for the Lexington Tel. Co. main office, provide further training for central office equipment men, make periodic measurements of transmission loss on DDD calls and eliminate held regrade applications, as well as eliminate all five-party and multi-party service. He also recommended that the company make a current depreciation study to determine average service life, net salvage and the depreciation reserve for each plant account. He further recommended a depreciation rate of 1.6% for the new business office building and a revised rate of 11.3% for the motor vehicle account.

Norman Peele, Commission Accountant, testified as to his examination of the company's books and records and his review of the company, exhibits, including review of revenues and expenses of the company the original cost of the plant in service, and his calculations of working capital, materials and supplies; and including revisions made at the resumed hearing, testified that the net operating income for return after adjustments was $417,578, producing a return of 7.68% on net investment in plant of $5,438,167; that after the proposed rate increase, the company would have net operating income of $666,216, producing a return of 12.35% on net investment of the company. Mr. Peele excluded from net investment the construction work in progress of $1,200,000, including the new office building construction of $923,000. Mr. Peele testified that the company had a return on common equity under present rates of 2.82% and would have a return on common equity under the proposed rates of 17.65%.

William Cash, Commission Telephone Engineer, testified that he reviewed the telephone plant and the engineering and design of the telephone plant, and that the plant was well designed from engineering and economic standpoints. Mr. Cash, however, strongly recommended that the company's buried plant construction policy be expanded to include buried service drops along all buried cable projects. Mr. Cash testified that the major cause of telephone service failure in times of extreme weather conditions, such as sleet storms, snow storms and strong winds, is failures in aerial drop plant.

Vern W. Chase, Chief Engineer Telephone Rates, testified that the new office building of the company under construction during the test period and partially occupied at the end of the test period was only 73.5% useful at that time, and the remaining 26.5% of the building was excessive plant margin. Mr. Chase further testified additional revenue from toll settlements with Southern Bell Telephone & Telegraph Company would not be as great as originally estimated in the Staff's audit, and should be reduced to additional toll revenue of $23,727. Mr. Peele revised the Staff Exhibits to reflect said reduced income, producing net income available for return under the proposed rate increase of $666,216, with resulting return on net investment of 12.35% and return on common equity of 17.65%. The revised Staff Exhibit resulted in return on common equity under the present rates of 2.82%.

The protestants presented the following witnesses and testimony:

Mrs. H. E. Foust, Rural Holly Grove, testified that she appeared for 384 members of the Amalgamated Clothing Workers of America who objected to the impact of the proposed rate increase because of the short work week in force at the clothing plant in which they were employed, and that the new office building of the company was an unreasonable expenditure, and on her personal telephone that her party line was often tied up in the evening.

Mrs. Aileen Swicegood, a customer, complained that while on a 1-party line she received other calls on that line.

Mrs. Ann Sechrist complained of improper toll charges.

Mr. Boyd Queen testified that he was on multi-party service and wanted 1-party service and could not secure 1-party service.

Mr. Roy Sena testified that his 3-party phone was busy approximately half the time and had noise and wrong numbers and other parties cutting into his line.

Mr. Thomas Brink testified that he was on 4-party service with 5 telephones connected and had been waiting 10 years for 1-party service.

All of the exhibits identified by the respective witnesses were received into evidence.

Based upon the entire record of the proceeding, including testimony and exhibits, the Commission makes the following

FINDINGS OF FACT

1. Lexington Tel. Co. is a duly franchised public utility providing telephone service to its subscribers through exchanges in Lexington, Welcome and Southmont, and serving the surrounding area of Davidson County, and is a duly created existing corporation under the laws of the State of North Carolina and is properly before the Commission in this proceeding for a determination as to the justness and reasonableness of its rates as regulated by the Commission under Chapter 62 of the North Carolina General Statutes.

2. The total increases requested by Lexington Tel. Co. would amount to $583,876 additional gross annual revenue, and the total reductions applied for in mileage charges would amount to $35,313 in additional gross annual reductions, leaving the combined additional increase in annual revenues of $548,563.

3. The test period utilized by all parties in this proceeding was the 12-months period ending August 31, 1970.

4. The original cost of applicant's investment in telephone plant in service is $7,937,186, less reserve for depreciation of $2,100,101, with a net investment in telephone plant in service of $5,837,085. This finding includes in net investment $692,225 of the cost of the new office building of the company, being 75% of the total cost of the building. The remaining 25% of the cost of the new building is excluded on the basis, and the Commission so finds, that only 75% of the space in the building was used and useful at the end of the test period, and 25% of the building was excess margin over and above that needed by the company in providing telephone service in its service area under reasonable management practices at the end of the test period.

5. That reasonable materials and supplies required for the operation of the business are $100,794; that reasonable cash working capital requirements are $229,394, of which $58,053 will be available from accrued Federal taxes under the return approved herein, and the total working capital requirements are $272,135.

6. That the combined net investment in plant in service and working capital allowances are $6,109,220.

7. That applicant's operating revenues under the present rates are $1,947,986; and reasonable operating expenses are $1,549,555, leaving net operating income of $398,431.

8. That the ratio of net income under the present rates, as applied to the net investment in telephone plant of $6,129,383, including working capital as adjusted for tax accruals under present return and three-fourths of the office building, is 6.5%.

9. That after fixed charges on bonds, preferred stock and short term notes there remains $28,196 under present rates for return on common equity of 1.68%.

10. That the Commission finds that the return on common equity of 1.68% is insufficient considering the applicant's current operating conditions and is insufficient for the applicant to compete in the market for capital goods and funds necessary to maintain and operate its present plant.

11. The Commission finds that the fair value of the applicant's property rendering telephone service to its North Carolina subscribers, considering the original cost less depreciation and considering replacement cost by trending original cost to current cost levels, is $7,000,000.

12. The rate of return deemed necessary on the fair value of applicant's property under sound management to produce a fair profit to stockholders, considering economic conditions as they exist, and permitting applicant to maintain its facilities and service and further permitting applicant to expand its service in accordance with the standards established by the Commission, is 7.56%, which said rate of return on fair value will require additional annual gross revenue of $285,251 on test period operations. This amount is 52% of the increase applied for by the applicant in this proceeding. The increases requested by the applicant in excess of the above amount are deemed to be unjust and unreasonable by the Commission and the additional revenues required by the rate of return established by this Order are deemed to be just and reasonable and to result in rates provided herein which may reasonably be charged by the applicant for telephone service rendered to its customers.

13. The rate of return of 7.56% on the fair value of the property allowed by this Order will provide a return on common equity after fixed charges of 9.5%, which the Commission finds is sufficient to allow the applicant to compete in the market for capital funds on a reasonable basis to its customers and stockholders.

14. That applicant's gross revenues under the rates approved herein, as applied during the test period, would be $2,233,237; that corresponding total operating deductions would be $1,703,741, with net operating income of $529,496.

15. Lexington Tel. Co. was holding 916 regrade requests at the end of January, 1971, which is 5.35% of the total company stations.

16. At the end of the test period, Lexington Tel. Co. had 2% of its main stations classified as five-party service and 9% classified as multi-party service.

SUMMARY

The Application of Lexington Tel. Co. in this proceeding seeks an increase in rates to produce $548,563 of additional revenue (proposed increases of $583,876, less $35,313 of proposed decreases in mileage charges), from the customers receiving service at the end of the test period, on an annualized basis.

The Commission has found as a fact that such proposed increase is unjust and unreasonable and will produce a return greater than a reasonable rate of return on the telephone plant in service and used and useful in such service at the end of the test period. The Commission further finds as a fact that the present rates of Lexington Tel. Co. are also insufficient to produce a fair rate of return to the company, and has found as a fact that an increase in the revenues in the amount of $285,251 (resulting from total increases in monthly rates of $320,564, less $35,313 of mileage reduction) is necessary to produce a reasonable rate of return on the fair value of the company's property in service at the end of the test period, and that increases in rates to produce such additional revenue are just and reasonable.

The following Table, based on the Findings of Fact, show the calculations for the $285,251 found to be a reasonable increase in the applicant's revenues from the records in this proceeding.

NET OPERATING INCOME AND NET INCOME COMPUTATIONS - LEXINGTON TELEPHONE COMPANY FOR TEST PERIOD ENDING AUGUST 31, 1970 - AFTER ADJUSTMENTS, AND EXCLUDING ONE-FOURTH OF BUILDING

ITEM	PRESENT RATES	INCREASE APPROVED	AT APPROVED RATES
Operating Revenues	$1,947,986	$285,251	$2,233,237
Operating Expenses	882,342		882,342
Depreciation	326,969		326,969
Taxes - other than income	177,288	17,115	194,403
Taxes - Federal Income	109,770	120,983	230,753
Taxes - State Income	19,622	16,088	35,710
Investment Tax - net	33,564		33,564
Total Operating Deductions	$1,549,555	$154,186	$1,703,741
Net Operating Income (Includes $8,436 growth allowance)	398,431	131,065	529,496

Investment in Telephone Plant			
Plant in Service	7,937,186		7,937,186
Less Depreciation Reserve	2,100,101		2,100,101
Net Plant in Service	5,837,085		5,837,085
Allowance for Working Capital			
Materials and Supplies	100,794		100,794
Cash (45 days)	229,394		229,394
Less: Federal Tax Accrual 1/6	(37,890)	20,163	(58,053)
Total Working Capital Allowance	292,298		272,135
Net Investment & Working Capital Allowance	6,129,383		$6,109,220
Ratio of Earnings to Book Value	6.50%		8.67%
Fair Value of Property			$7,000,000
Fair Value over Book Value			14.6%
Rate of Return on Fair Value			7.56%
Common Equity			$1,676,537

RETURN ON COMMON EQUITY
TEST PERIOD DATA - REVISED

ITEM	PRESENT RATES	APPROVED RATES
Net Operating Income for Return	398,431	529,496
Other Income or Loss	(2,355)	(2,355)
Income Available for Fixed Charges	396,076	527,141
Fixed Charges	294,296	294,296
Balance after Fixed Charges	101,780	232,845
Less: Preferred Dividends	73,587	73,587
Balance for Common Equity	28,193	159,258
Common Equity	1,676,537	1,676,537
Return on Common Equity	1.68%	9.50%

CONCLUSIONS

Based upon the Findings of Fact, as set forth above, the Commission makes the following conclusions:

1. The Commission concludes that only 52% of the proposed rate increase is necessary to provide a fair rate of return to Lexington Tel. Co. on the fair value of its property in service at the end of the test period.

2. The rates proposed by Lexington Tel. Co. in the Application are found to be unreasonable and unjustified to the extent that they produce any increase on the annualized

revenue on the customers at the end of the test period in excess of $285,251 (local monthly rate increases of $320,564, minus mileage rate reductions of $35,313).

3. The Commission has found and concludes that construction of the new office building of Lexington Tel. Co., at some distance removed from its former office and from its central office equipment, at a cost of $923,000, was completed and the building was partially occupied at the end of the test period on August 31, 1970, and the building was thus in service at said time to the extent of the portion found useful, as hereinafter described, even though the final bookkeeping entries had not been made to reflect this action. The testimony of the Commission engineer is that 26.5% of the square footage of the building is excessive margin, and the Commission finds and concludes that one-fourth of the building is not reasonably necessary for the present operation of the company nor as a reasonable margin for the foreseeable future, and that only three-fourths of the cost of the building should be included as used and useful plant at the end of the test period. This reduction in the plant in service from that shown in the applicant's service, together with the finding of a fair rate of return lower than that contended for by the applicant, and reductions in the fair value of the plant resulting from exclusion of one-fourth of the new office building and the finding of the fair value of the plant in service lower than that contended for by the applicant, have combined to reduce the amount of increased revenue necessary to produce a reasonable rate of return from that sought in the Application.

4. Lexington Tel. Co. is a closely held corporation and is a relatively small and, for the most part, a locally-owned independent telephone company. It has given the first offer of new issues of voting common stock to its existing stockholders and has raised a portion of its more recent equity capital through non-voting common stock. It has secured some of its short term capital by sale of cumulative preferred stock arranged through the personal credit of three of its officers and directors. Its capital structure is influenced by such methods of financing and is not readily comparable to utilities and telephone companies issuing all of their common stock and other securities on a widespread public market.

5. The Commission has found that the fair value of the plant is $7,000,000 and that a fair rate of return on the fair value of the plant is 7.85%, bringing a net income for return of $529,496. This produces a ratio of net income to the original cost of the property of 8.5%, and a return on common equity of 9.5%.

6. The ability of Lexington Tel. Co. to provide adequate service to its service area and to construct needed plant to meet the increased demand for telephone service under the provisions of the North Carolina law requires that its

earnings be maintained at a level so as to attract the capital for such programs. The increased cost of providing service, including increased wages and increases in the cost of equipment and the cost of installing new telephones with the attendant cost per main station in the central office and in the cable design are amply shown in the record. Increased interest charges must be covered with sufficient funds remaining for dividends to attract investors in common equities.

7. The reasonable ratio of common stock to total capital for the present economic conditions for Lexington Tel. Co. is 40% debt, 18% preferred stock, 17% short term notes to be converted into additional debt or equities as the economic conditions indicate, and 25% common equity in common stock.

8. Certain customers of Lexington Tel. Co. have indicated complaints as to the adequacy of service, particularly in connection with multi-party service and delays in receiving up-grades in service. The most frequent complaint was delay in filling requests for 1-party service from customers who are now on 4-party and multi-party service. The Commission's telephone engineers' review indicated that Lexington Telephone Company was providing reasonably good overall telephone service and is proceeding with construction to meet regrade requests and new service orders. The delays in upgrades of service in particular areas are being remedied by additional lines and central office plant in the continuing construction program. The Commission has considered the evidence of overall service and concludes that the grade of service rendered is adequate and is not a cause to penalize the return in this rate case; however, the Commission takes notice of the recommendations of the Commission Staff concerning areas of the Company's operations, including implementation of a continuing traffic study program, routine maintenance, training of central office equipment personnel, periodic transmission measurements on DDD calls, elimination of the regrade backlog, and elimination of all five-party and multi-party service. Such recommendations of the Staff should be implemented by the Company.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Application in this docket be, and the same is, hereby disapproved to the extent that the rates filed therein produce revenues in excess of those approved in this Order, and it is approved to the extent of the portion of said rate increases necessary to produce the additional revenues for the rate of return approved in this Order.

(2) That the applicant be, and hereby is, authorized to file and make effective on bills rendered on and after June 26, 1971, its tariffs containing rates and charges in accordance with the rates and charges contained in Appendix A attached hereto and incorporated herein, said rates being designed to produce additional revenue from increased

monthly charges of $320,564, and to provide reductions by elimination of monthly mileage charges and installing reduced zone charges in lieu thereof for a reduction of $35,313, with a net increase in total revenues of $285,251, based on test year operations.

(3) That the Applicant file with the Commission on or before July 1, 1972, a depreciation study indicating average service life, net salvage and depreciation rate for each plant account, and a study showing the depreciation reserve (actual or theoretical) for each plant account, upon which the Commission will base and establish a depreciation schedule for the Company.

(4) That the Applicant shall eliminate all five-party and multi-party service by December 31, 1972, and shall reduce the regrade backlog to 1% or less of the total stations by December 31, 1972.

(5) That the Company shall advise the Commission by December 31, 1971, of its action to implement a continuing traffic study program, training of central office equipment personnel, more frequent routine maintenance for the Lexington main office, and a continuing program of DDD transmission measurements, and use of buried service drops.

Issued by Order of the Commission.

This 25th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
LEXINGTON TELEPHONE COMPANY
DOCKET P-31, SUB 85

MONTHLY RATE SCHEDULE
LEXINGTON-SOUTHMONT-WELCOME EXCHANGES

BUSINESS

One Party	$12.70
Two Party	10.50
Four Party	7.50 (1)
Five Party	7.50 (2)
Multi Party	6.00

RESIDENCE

One Party	5.95
Two Party	5.10
Four Party	4.45
Five Party	4.60 (2)
Multi Party	4.45

GENERAL EXCHANGE TARIFF ITEMS

PRIVATE BRANCH EXCHANGE SERVICE

Trunk lines - One and one-half times the individual line business rate

SEMI-PUBLIC TELEPHONE SERVICE

Per Line - One and one-half times the individual line business rate

SWITCHING SERVICES AND EQUIPMENT

Pick-up	(3)
Holding	(4)
Visual Signal (Tariff Paragraph numbered 1 through 5)	(4)

EXTENSION BELLS AND GONGS

Extension bells and chimes, each	$1.00
Extension gongs and horns, each	1.50

EXTRA DIRECTORY LISTINGS

Per Line	.50
Non-Published	1.00
Non-Listed	1.00

ZONE CHARGES

	0-2 Miles From BRA	2-4 Miles From BRA	Boundary Over 4 Miles From BRA
One Party	$.75	$1.50	$2.25
Two Party	.35	.70	1.05
Four Party	--	.40	.80
Five Party	--	.25*	.25*

*Zone is 3-1/2 miles from BRA to Service Area Boundary

KEY AND PUSHBUTTON TELEPHONE SERVICE

Six button pushbutton station rate, including line pickup, hold, visual line hold and busy indicators and one common audible signal $5.30 (5)

Line termination including line hold, visual lamp control per central office line equipped $3.50 (5)

NOTES

(1) Obsolete service offering within BRA. Rate applies to those stations within BRA in service and thereafter until discontinued or otherwise replaced.

(2) Not furnished inside BRA. Rate applies to stations within 3-1/2 airline miles from BRA. Additional 25 cents per month now authorized will apply to stations more than 3-1/2 airline miles from BRA.

(3) Not applicable to 6 button pushbutton stations-included in package plan. Present rate will be applicable to feature if not a part of 6 button system.

(4) Existing rate eliminated and new rate authorized in this docket under a new package plan or other method.

(5) Line termination charges and station charges apply in lieu of key features, line equipment and system equipment charges. Regular tariff charges apply for each line (C.O. or P.B.X.) and for each extension.

DOCKET NO. P-70, SUB 100

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of the North Carolina Telephone Company to)
Effect a Service Improvement Plan and to Adjust Its) ORDER
Rates and Charges)

HEARD: In Union County Library Building, Monroe, North Carolina, on October 6 and October 7, 1970

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

APPEARANCES:

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For the Commission Staff:

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BY THE COMMISSION: This proceeding was instituted on April 6, 1970, by the filing of the Petition herein of North Carolina Telephone Company to effect a service improvement plan, and for approval of increases in rates on an exchange by exchange basis as said service improvement plan is completed, in the amount of $2.00 increase per main station per month for business customers and $1.45 per main station per month for residential customers. The schedule for completion and cutting over of the exchanges under the service improvement program for the 15 exchanges of the Applicant extends over a period from the "date of approval" for the Hemby Bridge Exchange through the conversion of the Lilesville Exchange on January 1, 1973.

The service improvement program proposed by the Applicant consists of installations of extensive additional central office equipment and outside plant facilities over a three-year period of 1970, 1971, and 1972. The Applicant estimated in its Application that the central office equipment additions, for the proposed service improvement program, would cost $1,119,044 and that the outside plant facilities would cost $1,434,727 for a total of $2,553,771. In addition, Applicant estimates that other project additions resulting from growth of the system will result in expenditures of $3,295,187 during the same three-year period.

The specific improvements in service proposed under the service improvement program are as follows:

(1) The provision of all one-party service within the base rate area of each exchange.

(2) The provision of one-party, two-party, and four-party service outside the base rate area with four-party to be the maximum party line service to be provided.

(3) The institution of zone rates on an airline basis in lieu of the present route mileage charges for one-party, two-party, and four-party service outside the base rate area; said zone rates to be a substantial reduction over the present mileage charges.

The Applicant represents in the Application that the increase in its rates proposed under the service improvement program is to produce a return on the capital investment required to provide the improved service to its subscribers. The increased rates are not proposed to become effective in any exchange until it is fully converted to the new service improvement plan.

By Order of May 8, 1970, the Commission declared the rate increase provisions of the service improvement plan to constitute a general rate case and set the proceeding for investigation and hearing. Public hearing was held as scheduled in the Union County Library Building, Monroe, North Carolina, on October 6 and 7, 1970.

The Commission Staff made accounting audits of the books and records of the Applicant for review of the rate return of the Company under the present and proposed rates, and the Staff Engineering Department conducted an investigation of the present service of the Applicant and reviewed the service improvement program as to the standards of design and engineering of the proposed construction.

At the hearing, the Applicant offered testimony of its President, Mr. Linn D. Garibaldi, and of its Chief Consulting Adviser, Mr. A. L. Groce, setting forth the needs of the service improvement program and the financial needs of the Company for the rate increases proposed as necessary to finance the service improvement program.

The Commission Staff offered the testimony of its Accounting Department, together with Exhibits showing the results of audits of the Company's books and records and the effect of the present revenues and expenses and the proposed revenues and expenses under the service improvement program, after the new construction and under the proposed level of rates, together with testimony of its Engineering Department in review of the service improvement plan and in review of the present quality of service of the telephone system.

Mr. Gene A. Clemmons, Chief Engineer - Telephone Service Division of the Utilities Commission, testified concerning the findings made during various service reviews of North Carolina Telephone Company during 1969 and 1970. Mr. Clemmons testified that the most current review of service indicated that service improvement is needed in regard to the quality of service provided at the Matthews exchange, the toll operator and directory assistance provided by the Marshville toll center, the traffic handling capability of equipment groups, and the central office maintenance; that additional maintenance and traffic personnel are required to enable the Company to improve the level of service; that a more efficient means of detecting central office troubles should be used by the Company; and that the Company had made progress in reducing the number of multi-party main stations.

Twelve customers of the Applicant offered testimony in protest of the proposed rate increase and in protest to the existing service of the Applicant, relating extensive complaints of troubles in the exchanges at Ansonville, Matthews, and Waxhaw arising from a variety of troubles, including slow operator answering time, telephone out-of-order, failure of direct distance dialing service, no dial tone, inaudible signals and voice service, interruptions of

service, in rainstorms, interruptions in extended area service to Charlotte, North Carolina, lack of repair service at night and weekends, wrong numbers, wrong intercepted messages, cross-talk, humming, failure to ring, incorrect dials and cut-offs.

The testimony of the Applicant and the Commission Staff discloses that the outside plant facilities of the Applicant during recent years have been designed and their construction overseen primarily by the Company's management personnel, generally without assistance of qualified engineers knowledgeable in telephone engineering. (The Company has obtained certain limited and specialized technical advice and assistance on inside plant equipment additions from equipment manufacturers and their engineering staffs.) The Staff's investigation into the proposed service improvement plan filed in this proceeding reveals that it is also planned and designed by the same personnel without participation of qualified engineers and without adequate commercial forecasts and engineering designs being made. The Commission Staff Engineers testified that the Applicant's proposed service improvement program is not based on adequate planning and will result in excessive expenditures for the system proposed in comparison with generally accepted engineering design criteria, and that the lack of an adequate engineering design of the present plant may have contributed to the interruptions in service and other customer complaints and troubles testified by the twelve customers who testified during the hearing.

Upon consideration of the entire record, the evidence and testimony presented during the hearing and the after-filed Exhibits by the Company in response to the Commission's request for evaluation of the Staff Engineering Report on the system, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, North Carolina Telephone Company, is a corporation duly organized and existing under the laws of the State of North Carolina and holds a franchise issued by the Commission to engage in the business of providing telephone service as a public utility in all or portions of the counties of Mecklenburg, Union, Stanly, Hoke, Scotland, Anson, Richmond, and Moore, with its principal office in Matthews, North Carolina.

2. The Applicant's telephone system is classified primarily as a rural system, serving exchanges in Hemby Bridge, Waxhaw, Laurel Hill, Matthews, Indian Trail, New Salem, Peachland-Polkton, Pinebluff, Marshville, Norwood, Wingate, Wadesboro, Morven, Ansonville, and Lilesville.

3. Applicant, as of May 31, 1970, served 18,877 stations in its 15 exchanges, 14,799 of which were residential stations and 4,078 were business stations. The present rates of the Applicant vary from $4.50 a month to $12.00 a

month for main station residential service within the base rate area, depending upon the grade of service and the exchange involved and the extended area service to Charlotte, and from $6.00 a month to $20.00 a month for main station business service within the base rate area, based upon similar classifications. In addition to the above basic rates, charges also apply outside the base rate area ranging from 25 cents for each two miles route measurement beyond the first two miles for multiparty service to a high of 63 cents for each one-quarter mile route measurement for one-party service. During 1969, mileage charges amounted to approximately $173,000 for all of the Company's exchanges. Applicant had a total investment of $14,924,742 in telephone plant at the end of the test period on May 31, 1970, before reserve for depreciation and before pro forma adjustments.

4. That during the test period ending May 31, 1970, Applicant had net operating income for return after pro forma adjustments of $842,195. Based on total net investment in telephone plant (plus allowance for working capital) of $11,796,023 further adjusted to remove telephone plant under construction and interest charged to construction, the Applicant had a rate of return of 6.98% on net investment, and a rate of return on common equity of 5.76%. The rate of return on common equity is below the return on net investment due to the high debt ratio and the cost of interest on debt for Applicant's recent plant additions, leaving a lower return for the stockholders' equity after payment of interest charges.

5. That the projected rate of return for pro forma 1972, based on an estimated net investment (plus allowance for working capital) of $13,300,096 and an estimated net operating income for return of $1,070,599 under the proposed rates, would be 8.05%. The supplementary exhibits (filed in this Docket on June 17, 1970, by the Applicant) project an 8.80% rate of return for pro forma 1972. The Applicant's projected rate of return on common equity for 1972, under the proposed rates and as filed in the supplementary exhibits to the Application is 13.59%. Under the Staff Exhibits, adjusted for the Lee decision (supra), the rate of return on common equity at proposed rates for 1972, is estimated to be 16.10%.

Correspondingly, based upon the present rate structure for pro forma 1972, we find that with an estimated $912,013 operating income and a projected net investment in plant of $13,300,096 that a rate of return on net investment for 1972 can be reasonably estimated to be 6.86%. Return on common equity for 1972, under the present rate structure is estimated to be 9.96%. These rates of return for 1972 are projections only and may vary depending on actual investments made and actual net operating income for 1972.

6. That the proposed zone rate charges, which will result in substantially lower add-on mileage charges for telephone service outside the base rate area, are fair and

reasonable and will contribute to improved service throughout the system.

7. That the annual rate reductions from the proposed conversion of route mileage charges to airline zone charges would result in revenue loss of $65,060.30 during the test year period. To maintain present levels of revenue, an offsetting increase of 45¢ per main station would produce approximately $74,000 during the test year period.

8. In regard to the present grade of service being offered by the Applicant, we find that the Company is not providing adequate and efficient telephone service as required by Chapter 62 of the General Statutes. The service is inefficient and inadequate due to the fact that the Company is not providing the necessary preventative and corrective maintenance of central office equipment and outside plant, has not adequately engineered and installed the required quantities of equipment to properly handle the traffic load, and is not providing adequate toll operator and directory assistance service at Marshville.

9. In regard to the engineering of plant and equipment, we find that the Applicant has not observed generally accepted engineering criteria in planning and designing for the proposed service improvement program and that unless revised, such omissions will result in excessive expenditures for plant and equipment. Specifically, the Applicant has not made commercial forecasts for use in sizing cables and equipment additions, has not maintained outside plant cable layout maps or cable schematics for use in determining the proper gauging or sizing of cable, has not followed in industry-wide accepted fine gauge cable concepts, and has not made use of subscriber line voice frequency repeaters. The Applicant does utilize the services of the engineering staffs of the manufacturers which supply inside plant equipment.

10. The Applicant, while competitively bidding the construction associated with buildings and building additions, has not employed formal competitive bidding practices when making major outside plant additions.

11. North Carolina Telephone Company maintains complete and up-to-date cable pair assignment records, station record cards, line and terminal records and staking sheets, and has established a very effective service order procedure and has installed three service centers equipped with the most advanced Noller remote control testing equipment in conjunction with radio dispatch maintenance trucks.

12. The Applicant's filed annual reports show that outside plant cable investments over the last five years included less than 25 percent buried cable. Present plans call for less than 20% buried under the proposed service improvement plan.

13. No trended or replacement cost data on the cost of plant in service was offered into evidence. While G. S. 62-133 allows consideration of replacement cost in arriving at a fair value of a utility's property, and in recent years this has been at a value higher than that based on original cost of the materials and equipment installed less depreciation, we have considered in determining fair value the lack of the Company's use of professional engineers in the design of the plant and, together with the lack of evidence on trended costs, find it reasonable to reach a fair value equal to the original cost of the property less depreciation of $11,796,023.

14. Based on test year operations and the Company's present debt-equity capital structure, we find that a rate of return in the range of 8.00% on the fair value of the Company's property and a return in the range of 12% on the common equity of the Company would represent just and reasonable returns on the Company's property and the common equity investment, assuming adequate service is being provided. However, because of the Company's presently inadequate service, we find that the present rate of return of 6.98% on the fair value of its property is just and reasonable and also is sufficient to proceed with the planned service improvement program. The 6.98% return on fair value produces a 5.76% return on common equity for the test period. The Commission finds that this 5.76% return on common equity is below the return on common equity normally found reasonable for utility equity investments. However, because of the highly leveraged composition of this Company's capital structure, resulting from the relatively low percentage of capital contributed by common equity (approximately 18%), and because of the projected increase in return on common equity in 1972 of 9.96% under the present rate structure and the 16.10% return predicted under the proposed rate structure, we do not find based on the aforesaid considerations and the present quality of service that this temporary low rate of return on common equity is unreasonable for the test year period operations. Also, the rate of return calculations do not take into account the additional revenues projected to accrue annually as a result of a new toll settlement with Southern Bell. From records on file with it, the Commission finds that these funds, projected to total approximately $39,000 in 1971, should be applied to offset increased costs associated with the proposed service improvement program.

CONCLUSIONS

In regard to the present quality of service being provided to the public by North Carolina Telephone Company, we conclude that it is not now at an adequate level and that the Company should be required to bring the level of service to an adequate level. We do believe that in view of the records which are current, the Company's service order procedure, and the new service centers utilizing remote control testing equipment, that marked improvement should

result in the Company's promptness of handling service orders and responding to maintenance problems.

In regard to the Service Improvement Plan, we conclude that the basic concept of the Applicant's proposed service improvement plan is prudent and should result, assuming the additions are properly designed and installed, in improved telephone service in the Applicant's service area upon completion. We further conclude that based on the projected rate of return for 1972 that it is reasonable and prudent for the Applicant to continue to implement the improvement plan subject to hereinafter discussed planning and engineering design requirements.

In regard to the proposed rate increases and revisions, we conclude no over-all revenue increase is justified, but that adjustments within the present rate structure to produce approximately the same amount of revenue as that to be lost in eliminating the present route mileage charges, are proper. Accordingly, we are approving the implementation of the proposed zone rate charges to become effective in all exchanges on March 1, 1971, along with a compensatory increase of 45¢ per main station in all exchanges.

In regard to the Applicant's lack of adequate planning and engineering, we conclude that it is imperative that this system strive to obtain the most economically and well engineered plant additions possible. This system's high investment per station, its present rates, and its rural characteristics dictate that any future plant additions be made efficiently and at the lowest possible cost consistent with sound engineering design and construction techniques. In this connection, we believe that this Company should employ adequate and qualified personnel on a full-time basis or consulting basis to make commercial forecasts and to adequately design plant and equipment additions based on such forecasts.

In regard to the Applicant's not bidding outside plant additions on a formal labor and material basis, we believe that this again is one area where possible cost savings should be explored. Similarly, the expanded use of buried cable should be investigated on the basis of its long-term cost savings, fewer service outages, and its inherent aesthetic values.

ACCORDINGLY, IT IS, THEREFORE, ORDERED:

1. That the following reductions and offsetting increases, designed to produce approximately zero net change in present revenues, shall be made effective on all bills rendered on and after March 1, 1971:

(a) The implementation of reduced mileage rates through the adoption of zone rates for one, two, and four-party service outside the base rate area is approved for all exchanges and such proposed zone rate charges

as included in the Company's Application are to become effective on all bills rendered on and after March 1, 1971. See Appendix "A" for a listing of zone rate charges as approved.

(b) Rates in all exchanges shall be increased by 45¢ per month for all main station telephones.

(c) That revised tariffs be filed with the Commission prior to March 1, 1971, covering the rate changes in (a) and (b) above.

2. That all other proposed increases and revisions are hereby denied without prejudice to their refiling or reconsideration in later applications.

3. That in regard to planning, engineering, and construction of its plant additions, the Applicant shall effect the following:

(a) Take immediate action to include as part of its management a qualified engineering staff or, alternately, utilize the services of a qualified engineering firm in order to fully plan and properly design plant additions.

(b) Take immediate action to prepare or have prepared cable layout maps, cable schematics and commercial forecasts.

(c) Investigate thoroughly the economics of employing formal competitive bidding (sealed bids) including labor and <u>materials</u> for major outside plant additions.

(d) Investigate thoroughly, utilizing qualified engineers, the advantages and long-range economics of making extensive use of direct buried cable plant in all exchange areas.

(e) Make, utilizing qualified engineers, cost studies to determine economic feasibility of COE conversions to 1500 ohms supervision limit for Automatic Electric central offices and 1500 ohms and 1900 ohms supervision limit for Stromberg Carlson central offices and the conversion to extensive use of subscriber line voice frequency repeaters and loop extenders.

4. That in regard to the preceding Ordering Paragraph 3, the Applicant shall file semi-annual reports with the Commission on the progress or status of implementing each phase of the Ordering Paragraph. Said reports are to continue until further notice by the Commission and the first report is due July 1, 1971.

5. That the Company take immediate action to improve central office and outside plant maintenance so that the number of subscriber trouble reports per 100 stations per month will be reduced to eight or less at each exchange. (It is noted that the Company's Standards of Service Policy states that the average number of trouble reports shall not exceed two per 100 stations per month systemwide.) This objective shall be met by August 1, 1972.

6. That the subsequent trouble reports per month at each exchange shall be reduced to 7% or less of the total monthly trouble reports. This objective shall be met by August 1, 1972.

7. That the Company shall make every effort to meet, by March 1, 1972, the requirement of its Standards of Service Policy on file with the Commission which states that equipment irregularities (including DDD calls) shall not exceed 0.6% of attempts.

8. That immediate action be taken to provide and maintain adequate toll and EAS service between Matthews and Charlotte. The dial equipment service index at Matthews shall be improved and maintained at a level of 94 or higher by March 1, 1972.

9. That the Company shall immediately initiate a traffic study program so that usage measurements are made on all trunks, equipment groups and sub-groups at least once each year and adequate equipment quantities engineered and installed in each exchange to handle the traffic load. Where traffic registers such as ATB and LTB are provided, they shall be made to operate properly and they shall be made to read at least once each week with the resulting data used in determining equipment requirements. The Company's Standards of Service Policy states that overflows because trunks or circuits in a desired group are busy shall not exceed 1.0% of attempts. Adequate trunks, grading, line and terminal balancing shall be provided in all exchanges by August 1, 1972, to meet or exceed this objective and equipment additions shall be based on traffic usage studies adjusted to reflect the busy season and growth.

10. That the toll operator service at Marshville be improved so that the percentage of manual toll answers within ten seconds shall be 90% or more and the percentage of directory assistance answers within ten seconds shall be 85% or more by March 1, 1972.

11. That the Commission Staff periodically review the Company's progress toward implementing the requirements of preceding Paragraph 3 and make periodic review of the Company's progress toward improvement of the quality of telephone service.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of February, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
APPROVED ZONE CHARGES

1-Party

Zones	Miles	Charges
I	0-1	$ 1.00
II	1-3	3.00
III	3-5	5.00
IV	5-7	7.00
V	7-9	9.00
VI	9-11	11.00
VII	11-13	13.00
VIII	13-15	15.00
IX	15-17	17.00

$2.00 each additional 2-mile band zone

2-Party

Zones	Miles	Charges
I	0-1	$ .50
II	1-3	1.50
III	3-5	2.50
IV	5-7	3.50
V	7-9	4.50
VI	9-11	5.50
VII	11-13	6.50
VIII	13-15	7.50
IX	15-17	8.50

$1.00 each additional 2-mile band zone

4-Party

Zones	Miles	Charges
I	0-1	$ .15
II	1-3	.55
III	3-5	.95
IV	5-7	1.35
V	7-9	1.75
VI	9-11	2.15
VII	11-13	2.55
VIII	13-15	2.95
IX	15-17	3.35

40¢ each additional 2-mile band zone

DOCKET NO. P-55, SUB 650

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Southern Bell Telephone and) ORDER
Telegraph Company for Authority to Adjust) ALLOWING
its Rates and Charges for Telephone Service) PORTION OF
in its Service Area within North Carolina) RATE INCREASE

HEARD: Commission Hearing Room, Raleigh, North Carolina

DATE: May 25, 1971, through June 9, 1971

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

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217 Ruffin Building
Raleigh, North Carolina 27602

BY THE COMMISSION: On November 27, 1970, Southern Bell Telephone & Telegraph Company, P. O. Box 240, Charlotte, North Carolina 28201 (hereinafter called "SOUTHERN BELL"), filed an Application with the Commission for authority to increase its local monthly telephone rates, centrex rates, service charges, listing service, extension and private line mileage, mobile telephone service, supplemental service, long distance message service and wide area telephone service charges, and to reduce its zone rates and its charges for color telephone sets. The Application includes increases totalling $23,880,711 in annual gross revenues during the test period ending June 30, 1970, with reductions of $781,718 in zone mileage and charges for color telephone sets, resulting in a total increase in annual revenue applied for of $23,098,993. The increases stated in amounts of additional annual revenue for the respective rates applied for are as follows:

1. Local Monthly Rate: $13,331,618

This covers proposed increases in main station rates, which would also affect PBX trunks, semi-public pay stations, joint user service, etc.

2. Zone Rates: (-)$517,228

Company proposes to reduce zone charges by approximately one-third, i.e., one-party service from 75¢ per zone to 50¢.

3. Centrex Service: $152,796

Proposed increases in systems and station rates.

4. Service Charges: $1,330,787

	Present	Proposed
Main Station in place	$ 5.00	$15.00
Main Station not in place	10.00	15.00
Extensions, moves & changes, restoration charge, bells & gongs	5.00	7.50
Minimum visit charge	-	10.00

5. Color Charge: (-) $264,490

Present charge $5.00 - proposed zero

6. Listing and Number Service: $672,875

Additional listings, business from .30 to .75, residence .30 to .50.

Non-list and non-publishes, presently no charge, proposed $1.00 & .50.

7. Extension and Private Line Mileage: $210,738

Change from route to airline and to eliminate charges between offices within an exchange.

8. Mobile Telephone Service: $145,054

This covers an approximate 100% increase in service and equipment charges, i.e., general service $7.00 to $14.00, Mobile Units $15.00 to $30.00.

9. Supplemental Service & Equipment: $777,519

Jacks, long cords, booths, PBXs and related equipment, chimes, bells, operator sets, lamp indicators, dialers, etc.

10. Long Distance Message Service: $6,942,740

Proposal to have DDD station rate around the clock, cheaper than operator handled. One schedule only for person calls, all hours, all days. Move to interstate mileage brackets.

11. Wide Area Telephone Service: $316,584

Full time rate $500 to $550. Also change in measure time.

Total Annual Revenue Increase: $23,098,993
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The increases proposed in monthly telephone rates vary for the 92 local exchanges served by Southern Bell in North Carolina in accordance with exchange rate groupings based

upon the calling scope or number of telephones within the calling scope of each local exchange. The increases proposed, compared with present telephone rates, with the resulting increase applied for, for the ten rate groupings based upon exchange size, are as follows:

		Residence				Business			
	Group	Ind.	2-Pty	4-Pty	Rural	Ind.*	2-Pty	4-Pty	Rural
Present	1	3.75	3.10	2.65	2.65	8.50	7.25	6.25	-
Proposed		5.25	4.20	3.40	3.40	11.25	10.00	8.50	-
Increase		1.50	1.10	.75	.75	2.75	2.75	2.25	-
Present	2	4.00	3.30	2.85	2.85	9.00	7.75	6.75	4.25
Proposed		5.45	4.35	3.50	3.50	11.75	10.50	8.90	8.90
Increase		1.45	1.05	.65	.65	2.75	2.75	2.15	4.65
Present	3	4.20	3.45	2.95	2.95	9.50	8.25	7.25	4.45
Proposed		5.65	4.50	3.60	3.60	12.50	11.25	9.50	9.50
Increase		1.45	1.05	.65	.65	3.00	3.00	2.25	5.05
Present	4	4.40	3.65	3.10	3.10	10.00	8.75	7.75	4.65
Proposed		5.85	4.70	3.75	3.75	13.25	12.00	10.10	10.10
Increase		1.45	1.05	.65	.65	3.25	3.25	2.35	5.45
Present	5	4.70	3.95	3.30	3.30	10.75	9.50	8.50	4.95
Proposed		6.10	4.90	3.90	3.90	14.00	12.75	10.70	10.70
Increase		1.40	.95	.60	.60	3.25	3.25	2.20	5.75
Present	6	5.00	4.25	3.50	3.50	11.50	10.25	9.25	5.50
Proposed		6.35	5.10	4.05	4.05	14.75	13.50	11.30	11.30
Increase		1.35	.85	.55	.55	3.25	3.25	2.05	5.80
Present	7	5.20	4.45	3.70	3.70	12.00	10.50	9.50	5.70
Proposed		6.60	5.30	4.20	4.20	15.75	14.25	12.05	12.05
Increase		1.40	.85	.50	.50	3.75	3.75	2.55	6.35
Present	8	5.35	4.60	3.85	3.85	14.25	12.75	11.25	5.85
Proposed		6.85	5.50	4.40	4.40	17.25	15.75	13.15	13.15
Increase		1.50	.90	.55	.55	3.00	3.00	1.90	7.30
Present	9	5.60	4.85	4.10	4.10	16.00	14.50	13.00	6.10
Proposed		7.10	5.70	4.60	4.60	18.75	17.25	14.25	14.25
Increase		1.50	.85	.50	.50	2.75	2.75	1.25	8.15
Present	10	5.85	5.10	4.35	4.35	17.75	16.25	14.75	7.10
Proposed		7.35	5.90	4.80	-	20.50	19.00	-	-
Increase		1.50	.80	.45	-	2.75	2.75	-	-

*Including Auxiliary Line Service

Examples of representative cities and towns in North Carolina served by Southern Bell, as placed within the above rate groupings for the rate increase applied for, are as follows:

Group 1 - Long Beach, Southport
Group 2 - Burgaw, Gibson
Group 3 - Boone, Laurinburg, Selma
Group 4 - Canton, Morganton, Reidsville
Group 5 - Goldsboro, Salisbury, Shelby
Group 6 - Gastonia, Burlington
Group 7 - Asheville, Greensboro
Group 8 - Winston-Salem, Raleigh
Group 9 - Charlotte, Belmont

The calling scope used for assigning exchanges to the above groups includes extended area service, thus placing small exchanges having extended area service with larger exchanges in the higher rate group applicable to the combined calling scope of the exchanges in the toll-free calling area.

The Commission being of the opinion that the Application affected the interest of the consuming public in the areas of North Carolina served by Southern Bell, by Order entered on December 11, 1970, suspended until further Order of the Commission the proposed effective date of Southern Bell's requested increases, declared the proceeding to be a general rate case under G.S. 62-133, and set the matter for hearing in Raleigh, North Carolina, on May 25, 1971. Notice of the Application and the date of hearing were published in newspapers of general circulation within the Southern Bell service area.

Petitions to Intervene were filed and duly allowed for Robert Morgan, Attorney General, for and on behalf of the using and consuming public of North Carolina, W. C. Harris, Jr., on behalf of the North Carolina Merchants Association, and Dellan E. Coker on behalf of the Department of Defense and all other Executive Agencies of the United States. Belk Stores Services originally intervened and subsequently withdrew from the proceeding.

The public hearing began in Raleigh, North Carolina, on May 25, 1971, and extended through June 9, 1971.

During the hearing, the applicant Southern Bell offered testimony and evidence as follows:

A. Max Walker, Vice President and Treasurer of Southern Bell, identified exhibits and offered testimony concerning a fair rate of return applicable to Southern Bell and the overall intrastate earnings requirement necessary to finance future growth. Mr. Walker testified that the average cost of all Bell System debt sold in 1971 through March 9 was 7.33% and the imbedded cost of debt capital as of June 30, 1970, was 5.6%; that the last issue of bonds of Southern Bell in the amount of $150,000,000 cost 9.13% interest rate on June 30, 1970; that the Southern Bell imbedded cost of debt is 6.09%, and that as long as new issues cost more than the imbedded cost, the imbedded costs will continue to rise; that a fair rate of return on Bell system equity "repriced"

in current dollars is 10.4%; that at this time the overall fair rate of return for use with a fair value rate base is about 8.38%; that property devoted to North Carolina intrastate operations amounts to $421,000,000; that net income $35,280,000 produces a fair rate of return applicable to fair value of the telephone property; that the deficiency in net operating income is $12,500,000, and gross revenues required to produce the net operating income of $12,500,000 would be $22,970,000, to produce a return of 8.38%.

Dr. Walter A. Morton, consultant for Southern Bell, identified exhibits and offered testimony as to a fair rate of return to Southern Bell on the properties subject to the jurisdiction of the North Carolina Utilities Commission. Dr. Morton testified that a 12.15% rate of earnings for AT&T on book equity and a 55% dividend payout will produce a percentage of dividends to book equity of 6.7%; that for application to an original cost rate base, 12.15% is the opportunity cost of equity capital to AT&T which, when adjusted, is 10.66% on the adjusted equity cost applicable to the equity portion of AT&T for use with a fair value rate base; that as of December 31, 1970, $8.46 is the overall cost of capital or 8.46% for application to a fair rate base; that 8.4% is the fair rate of return applicable to the fair value rate base of Southern Bell in this proceeding.

Kirby G. Pickle, Division Accounting Manager for North Carolina with Southern Bell, identified exhibits and offered testimony as to the Company's North Carolina properties used and useful in furnishing telephone service, the original costs of the properties, the revenues received and expenses, including taxes incurred in furnishing telephone service. Mr. Pickle testified that $421,595,305 is the amount of total in plant in service assigned to North Carolina intrastate operations; that $21,116,430 is the intrastate portion of telephone plant under construction account; that $347,622 is the amount of property held for future telephone use; that $2,535,951 is material and supplies; that $779,300 is cash working capital; that $446,374,608 is the total original cost of properties used and useful in furnishing intrastate telephone service in North Carolina as of June 30, 1970; that $96,543,738 is the depreciation reserve as of June 30, 1970; that $349,830,870 is the intrastate portion of North Carolina's total original cost of properties less that part which has been consumed by previous use and recovered by depreciation expense; that total intrastate revenues for North Carolina for the year ending June 30, 1970, were $137,842,392; that for the same year the total intrastate operating expenses and taxes were $113,628,807; that wage increases were estimated at a minimum of $4,050,000 for 1971; that for the year ended June 30, 1970, the intrastate net operating income was $24,213,585, and adjusted net income on a going basis was $22,780,199.

Arthur R. Tebbutt, consultant for Southern Bell, identified exhibits and offered testimony as to statistics and the theory in construction of price index numbers.

Mr. Tebbutt evaluated Southern Bell's North Carolina price indexes and their use by Mr. Proffitt in the determination of the current value or replacement cost of plant and equipment of the Company; discussed price movements in general for the economy, the uses made of price index numbers and their use in estimating the value of assets, and the theoretical background in the construction of price index numbers.

John D. Russell, consultant for Southern Bell, identified exhibits and offered testimony concerning indexes reflecting the changes in costs for the building account and for the contractor portion of the underground conduit, buried cable, and pole line accounts of the telephone company in North Carolina.

Charles H. Proctor, consultant for Southern Bell, identified exhibits and offered testimony concerning procedures for the selection of samples of buildings and manholes so that Southern Bell could examine these installations and develop cost indexes.

William E. Thornton, Price Manager, Western Electric Company, identified exhibits and offered testimony concerning price index numbers for central office equipment, stating that these indexes provide the Company with a useful measure in evaluating the impact of its performance on the cost of central offices to the telephone companies.

Ralph H. Proffitt, general equipment and building engineer for Southern Bell's operation in North Carolina, identified exhibits and offered testimony relating to the replacement cost of the Company's intrastate properties used and useful in furnishing telephone service in North Carolina as of June 30, 1970, which replacement was determined to be $444,657,650.

Ralph W. Pfouts, consultant for Southern Bell, identified exhibits and offered testimony to explain and document the economic growth of the United States and North Carolina in the postwar years. Dr. Pfouts testified that due to rapidly expanding population and economic growth, Southern Bell must be prepared to provide increasing quantities of telephone service in North Carolina; that Southern Bell should be in a position to provide both a larger quantity of service and an ever improving quality of service; that economic growth will continue; that economic policies designed to stimulate economic growth will increase demand, and increased demand means that upward pressure is put on the price level and these increases will apply to most or all of the costs that Southern Bell must incur; that if Southern Bell, in the face of increased costs, is not permitted to charge increased rates their costs increase faster than revenues, and profits will diminish resulting in being unable to finance the facilities necessary to provide the increased and improved service desired; that prices will increase in the range of 2.5 to 3.5% per year over the next twenty years, with prices

being 128 to 141% greater than their 1970 levels in 1980, and 164 to 199% greater than their 1970 levels in 1990; that during periods of increasing costs emphasis should not be placed on original cost of property used by a utility.

George J. Kamps, Engineering Manager-Price Surveys AT&T, identified exhibits and offered testimony as to the comparison of Western Electric's prices to the Bell System Companies with the prices of a general trade suppliers for similar products. Mr. Kamps testified that his studies show that Western's prices to the Bell Companies for telecommunications products are substantially lower than the prices of other suppliers in the general trade market; that for the range of products used in the North Carolina intrastate plants of Southern Bell, Western Electric's Bell prices are, overall, about 65% of the level of those currently representing the lowest prices of general trade suppliers.

Frederick J. Cofer, Director of Corporate Analysis for Western Electric, identified exhibits and offered testimony on company-wide financial data. Mr. Cofer testified that excluding business with the United States Government, sales to the Bell Telephone Companies have comprised almost 98% of Western's sales; that during 1969 at manufacturing, service and installation areas throughout North Carolina, Western employed more than 12,000 people with an annual payroll of over $112,000,000; that Western's profit margin per dollar of Bell sales averaged 4.9¢ per dollar of sales for the 45-year period from 1925 through 1969; that over the same 45-year period, Western's return on net investment applicable to its Bell business has averaged 9.0% compared with 11.8% by General Electric and Westinghouse and 11.7% averaged by the 50 largest manufacturing companies, and that for the 24-year post war period Western's return amounted to 9.2% while the 50 largest companies averaged 12.3% and General Electric and Westinghouse averaged 12.0% which respectively is a 34% and 30% greater return than that received by Western; that in spite of the significant use in the level of costs, the price level of total manufacturers sold to Bell customers has increased by only 1%.

Benjamin F. Hatfield, Assistant Vice President for Southern Bell, identified exhibits and offered testimony concerning his examination of Southern Bell's property in North Carolina and the facts necessary for a proper determination of the present fair value of the property used and useful in furnishing telephone service in North Carolina. Mr. Hatfield testified that $446,374,608 is the original cost of the property; that $349,830,870 is the original cost less that portion which has been consumed by previous use recovered by depreciation expense; that $444,657,650 is the replacement cost, or the present value of dollars used to build the Company's plant which exists today, reduced by the present value of the dollars recovered by depreciation expense; that on the basis of adjustments

$421,000,000 was the present fair value of the Company's intrastate properties in North Carolina as of June 30, 1970.

Donald A. Dobbie, Director-License Contract and Regulatory Matters for AT&T, identified exhibits and offered testimony concerning the organizational setup of the Bell System and services furnished under license contracts between AT&T and Southern Bell. Mr. Dobbie testified that for the year 1969, American received $1,217,000 from Southern Bell for license contract services applicable to North Carolina intrastate operations; that related expensed totaled $1,320,368; and average capital employed was $4,735,745 and net revenues from capital employed amounted to $246,779; that license contract payments and net revenues exceeded the expenses incurred by $143,413 which, if related to capital employed, represents a return of about 3%.

Robert E. Fortenberry, General Revenue Supervisor for Southern Bell, identified exhibits and offered testimony describing some of the services which Southern Bell receives under the license contract with American and gave some examples of savings which have accrued to the Company's intrastate operations as a result of those services.

Charles H. Garity, Assistant Vice President in Operations Staff for Southern Bell, identified exhibits and offered testimony concerning the proposed adjusted schedule of rates. Mr. Garity testified that the proposed adjusted schedule is based on the relative value of service concept; that the proposal would adjust groupings of exchanges and rating various classes of residence service between large and small exchanges producing the same increase at ends of the schedule, but with moderate variations in between; that the proposed rate schedule includes a heavier weighting toward residence service increases than toward businesses; that the annual revenue increase based on volumes as of June 30, 1970, as a result of the proposal, amount to $23,100,000 equating to the additional revenue required as shown in Southern Bell's petition.

John J. Ryan, Vice President and General Manager for Southern Bell, having overall responsibility for the Company's North Carolina operations, offered testimony requesting rate relief necessitated by increasing costs of providing phone service and increasing amounts of capital which must be obtained at higher costs than in the past.

The Commission Staff offered testimony as follows:

Gene A. Clemmons, Chief Engineer, Telephone Service Division, testified to the results of the Staff's review and investigation of the quality of service provided by Southern Bell in North Carolina. Mr. Clemmons' testimony indicated those areas of Southern Bell's which were at an acceptable level, and he also specified in detail those areas of Southern Bell's operations where the Staff found a need for service improvement. His testimony indicated certain

exchanges of Southern Bell which were not receiving as high quality service as other exchanges, and indicated action which Southern Bell should take to improve the service in those exchanges.

Dr. L. Randolph McGee, Commission consultant, offered testimony concerning past, present and future trends in prices, interest rates and general economic conditions; the capital structure of the Bell System and Southern Bell's operation in North Carolina; and a fair rate of return the Company should be allowed to earn in the immediate future. Dr. McGee testified that the rate of inflation will become considerably lower than the rates experienced during the past 5 or 6 years; that the change will occur in the immediate future and the annual rate of increase in the price level will average about 3% over the first half of the 1970's and 2-2 1/2% over the last half of the decade; that interest or the price of money will follow a pattern similar to that of prices in general, and referring to the "Bell System" the cost of bond money will be, on the average, between 5% and 6% over the 1970's; that with respect to the capital structure of the Bell System, the customers and Company's common shareholders would be better served if the Company moved toward a higher debt ratio increasing the Company's imbedded cost of debt, but would enhance the return on common equity; that a fair rate of return on total capital for the immediate future would be 7.7%.

Norman Peele, Commission Accountant, testified as to his examination of the Company's books and records insofar as the records pertain to the State of North Carolina, with the examination covering the 12-month period ended June 30, 1970. Mr. Peele testified that North Carolina intrastate operations yield a rate of return of 6.71%, but incorporation of the Ozark plan additional toll revenue would increase it to 6.81%, and approval of the proposed rates would increase the existing rate of return from 6.71% to 10.21%, on net investment, an increase of 3.41%; that approval of the increased rates would increase the return on common equity from 7.72% to 12.73%; that debt represents 30.46% of the capital structure with common equity representing the balance of 69.54%, based on long term debt and equity.

Vern W. Chase, Chief Engineer Telephone Rates, testified that the results of his review of the division of plant investment, expenses and revenue between inter and intrastate operations of the Company within North Carolina was made in accordance with the Separations Manual as published by the National Association of Regulatory Utility Commissioners and the Federal Communications Commission; that he reviewed the procedures used to reach the toll settlements between the Company and its connecting companies and concluded the estimates are reasonable under the cirucmstances; that his review of the effect that the January 1, 1970, and January 1, 1971, toll separations had or will have on the Company's operations found that the

separations changes are based on the best available information; that on the basis of his study of the rate proposals, rate groups one and two, as proposed by Southern Bell, should be combined, service connection charges should be increased only where the instrumentalities are not in place; that he has reservations on the proposed minimum visit charge of $10.00; with certain exceptions, the proposal to charge for private and semi-private numbers is fair, the Company's proposal to reduce zone charges on main station and PBX services outside of the base rate area is sound and should be continued, the Company's proposal to alter its intrastate long distance message telephone service rates is an improvement over the interstate schedule, and recommends that if the Company is entitled to additional revenue, the Commission first look to the proposed intrastate toll rate schedule for additional revenue, but a grant of increased intrastate toll rates to Southern Bell would necessitate a rate increase for the other telephone companies in North Carolina.

Public witnesses W. W. Finlator and John Speights made statements opposing a rate increase for Southern Bell.

The protestants presented the following witness and testimony:

Dr. Charles E. Olson, consultant for the Attorney General, offered testimony concerning a cost-of-service study, including a determination of a fair rate of return to be applied to the fair valuation of Southern Bell's property and plant. Dr. Olson testified that the bare bones cost of equity to AT&T is between 8.5 and 9.0% and that the Commission should set Southern Bell's cost of equity capital between 9.25 and 9.50% which would permit AT&T to attract capital on reasonable terms; that a fair rate of return for Southern Bell is between 7.65 and 7.80% and that such a finding by the Commission would enable the Company to carry on its future financing program and provide an adeuqate return for its shareholders; that the going rate of return on the North Carolina intrastate operation on June 30, 1970, was 7.63% and since the range of a fair rate of 7.65 to 7.80% is so close to the going rate, an increase in rates of only $1,500,000 is justified.

All of the exhibits identified by the respective witnesses were received into evidence, except those portions thereof stricken upon objection made as shown in the record.

Based upon the entire record of the proceeding, including testimony and exhibits, the Commission makes the following

FINDINGS OF FACT

1. Southern Bell is a duly franchised public utility providing telephone service to its subscribers in 92 local exchanges in North Carolina, extending from Haywood County and Waynesville on the west through major cities and

counties in the Piedmont area of North Carolina to New Hanover County and Wilmington in the east; and is a duly created existing corporation authorized to do business in North Carolina and is properly before the Commission in this proceeding for a determination as to the justness and reasonableness of its rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. The total increases in rates and charges as filed by Southern Bell would produce $23,880,711 in additional gross annual revenue, and the total reductions filed in zone charges and the color set charge would amount to $781,718 in annual reductions, leaving the combined additional increase in annual revenues applied for of $23,098,993.

3. The test period utilized by all parties in this proceeding was the twelve months' period ending June 30, 1970.

4. The original cost of applicant's investment in telephone plant in service in its four state company-wide service area of Georgia, Florida, South Carolina and North Carolina on June 30, 1970, was $3,203,196,241, of which $567,870,986 was in service in the State of North Carolina. Of the total plant in service in North Carolina, 74.27% was devoted to intrastate service under rates subject to the jurisdiction of the Utilities Commission, constituting intrastate plant in service in North Carolina on June 30, 1970, of $417,725,574, less reserve for depreciation of $97,213,848, with a net investment in intrastate telephone plant in service in North Carolina on June 30, 1970, of $320,511,726.

5. That reasonable materials and supplies required for the operation of intrastate business in North Carolina are $2,038,998; that reasonable cash working capital requirements are $1,360,567; that there was available at the end of the test period $2,842,739 of Federal tax accruals available for use as working capital, with a total net working capital requirement in the rate base requirements of $556,816.

6. That the combined net investment in plant in service and working capital allowances at the end of the test period June 30, 1970, were $321,068,542.

7. That Southern Bell's total operating revenues in intrastate commerce in North Carolina during the test period under the present rates were $132,905,869; that reasonable operating expenses for said intrastate service for the test period are $114,366,703, including $4,050,000 of additional wages as the minimum additional wage increase already committed by the applicant to its employees under the record herein; leaving net operating income of $18,539,166, adjusted for end-of-period income of the plant in service,

by additional net income of $938,559, with net operating income adjusted for the test period of $19,477,725.

8. That the ratio of net income under the present rates as applied to the net investment in telephone plant of $321,068,542, including working capital as adjusted for tax accruals, is 6.07%.

9. That after fixed charges on bonds and short-term notes of $6,486,536 for the test period as allocated to the North Carolina intrastate operation, there remains net income for equity of $14,522,268; that the common equity investment in intrastate service in North Carolina at the end of the test period was $216,561,373, producing a return on common equity under the present rates on intrastate service in North Carolina at the end of the test period of 6.71%.

10. That the Commission finds that the return on common equity of 6.71% is insufficient to compete in the market for capital funds on terms which are reasonable and which are fair to the Company's customers and its existing investors, considering changing economic conditions and other factors as they exist, and to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise.

11. The Commission finds that the fair value of the applicant's property rendering intrastate telephone service to its North Carolina subscribers, considering the original cost less depreciation and considering replacement cost by trending original cost to current cost levels, is $353,000,000.

12. The rate of return deemed necessary on the fair value of the applicant's property devoted to intrastate service in North Carolina, under sound management to produce a fair profit to stockholders, considering economic conditions as they exist and permitting applicant to maintain its facilities and service, and further permitting applicant to expand its service in accordance with the standards set by the Commission, is 7.40%; that to earn said rate of return on fair value will require additional annual gross revenue of $13,295,087 based on test period operations, after adjustments for probable future revenues and expenses based on the plant and equipment in operation at the end of the test period. This amount is 57.56% of the increase applied for by the applicant in this proceeding. The increases applied for by the applicant in excess of the above amount are deemed to be and are found to be unjust and unreasonable by the Commission, and rate increases to produce the additional $13,295,087 revenues required for the rate of return approved by this Order are found to be just and reasonable and to require the rate increases approved herein, which may reasonably be charged by the applicant for telephone service rendered to its customers in intrastate service in North Carolina.

13. The rate of return of 7.40% on the fair value of the property allowed by this Order will provide a return on common equity after fixed charges of 9.50%, which the Commission finds is sufficient to allow the applicant to compete in the market for capital funds on a reasonable basis to its customers and to its existing stockholders.

14. That applicant's gross revenues under the rates approved herein in Appendix A and Appendix B attached to and made a part of this Order, as applied during the test period, would be $146,143,773; that the fixed charges computed for the test period based upon the known imbedded cost of debt for Southern Bell of 6.02% at the time of the hearing, as applied to the debt allocated to North Carolina intrastate service at the end of the test period of $94,833,040 in long-term debt and $22,597,003 in short-term debt, produces fixed charges of $7,069,313; that the probable future operating expenses for the test period are found to include $4,050,000 of additional wages as the minimum additional wage increase already committed by the applicant to its employees in accordance with the record herein; that total operating deductions for test period operations adjusted to the rate increases allowed herein will be $121,290,629, with net operating income for the test period of $26,111,564; that adjusted for the approved rate increases, the ratio of equity to long-term and short-term debt is 64.84%, being actual common equity allocated to Southern Bell's intrastate operation in North Carolina, and said net income of $26,111,564 plus other income of $1,531,079, produces income available for fixed charges in the amount of $27,642,643, and after payment of fixed charges of $7,069,313, leaves $20,573,330 available for common equity; that said balance of $20,573,330 for common equity of $216,561,373 produces a return on common equity of 9.50%.

15. That Southern Bell's overall service is at a reasonably adequate level, but evidence introduced by the Staff shows that certain areas of the Company's service should be improved.

SUMMARY

The Application of Southern Bell in this proceeding seeks increases and decreases in rates to produce $23,098,993 of additional revenue from the customers receiving service at the end of the test period.

The Commission has found as a fact that such proposed total increases are unjust and unreasonable and will produce a return greater than a reasonable rate of return on the telephone plant in service at the end of the test period. The Commission further finds as a fact that the present rates of Southern Bell are insufficient to produce a fair rate of return to the Company, and has found as a fact that an increase in the revenues in the amount of $13,295,087 (resulting from total increases of $14,076,805, less

reductions of $781,718) is necessary to produce a reasonable rate of return on the fair value of the Company's property in service at the end of the test period, and that increases in monthly rates, toll charges, and other charges to produce such additional annual revenue are just and reasonable. The distribution of said total annual increases over the respective monthly rates, toll rates, and other rate changes filed herein are discussed under the Conclusions in this Order, and the prescribed increases for each specific charge are set out in the ordering paragraphs and Appendix "A" and Appendix "B" of this Order.

The following Tables, based on the Findings of Fact, show the basis for the $13,295,087 found to be a reasonable annual increase in the applicant's revenues from the record in this proceeding.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NET OPERATING INCOME AND NET INCOME COMPUTATIONS
FOR THE TEST PERIOD ENDING JUNE 30, 1970
AFTER ADJUSTMENTS

North Carolina Intrastate	Present Rates	Approved Increase	After Increase
Operating revenues	$133,480,605	$ 13,295,087	$146,775,692
Uncollectibles	(574,736)	(57,183)	(631,919)
Total operating revenues	132,905,869	13,237,904	146,143,773
Operating expenses	66,931,609	132,379	67,063,988
Depreciation	22,432,443		22,432,443
Taxes - other than income	14,237,444	797,705	15,035,149
Taxes - state income	961,455	703,503	1,664,958
Taxes - Federal income	10,093,789	5,290,339	15,384,128
Allocation of AT&T taxes	(290,037)		(290,037)
Total operating deductions	114,366,703	6,923,926	121,290,629
Net operating income	18,539,166	6,313,978	24,853,144
Add: End-of-period adjustment	938,559	319,861	1,258,420
Net operating income for return	19,477,725	6,633,839	26,111,564
Investment in Telephone Plant			
Plant in service	417,725,574		417,725,574
Less: Depreciation reserve	97,213,848		97,213,848
Net plant in service	320,511,726		320,511,726

Allowance for Working Capital			
Material and supplies	2,038,998		2,038,998
Cash	1,360,557		1,360,557
Less: Federal tax accruals	2,842,739	881,723	3,724,462
Total allowance for working capital	556,816	(881,723)	(324,907)
Net investment and working capital allowance	321,068,542		320,186,819
Ratio of Earnings to book value	6.07%		8.16%
Fair value of property			353,000,000
Rate of return on fair value			7.40%
Common equity	216,561,373		216,561,373

( ) Denotes negative amount.

RETURN ON COMMON EQUITY
TEST PERIOD DATA, AS ADJUSTED

	Present Rates	Approved Rates
Net operating income for return	$ 19,477,725	$ 26,111,564
Other income or loss	1,531,079	1,531,079
Income available for fixed charges	21,008,804	27,642,643
Fixed charges	6,486,536	7,069,313
Balance for common equity	14,522,268	20,573,330
Common equity	216,561,373	216,561,373
Return on common equity	6.71%	9.50%

Based upon the Findings of Fact, as set forth above, the Commission makes the following

CONCLUSIONS

1. The Commission concludes that no more than 57.56% of the total rate increase filed is necessary to provide a fair rate of return to Southern Bell on the fair value of its property in service at the end of the test period.

2. The rate increases proposed by Southern Bell in the Application are found to be unreasonable and unjustified to the extent that they produce total increases on the annualized revenue from the customers at the end of the test period in excess of $13,295,087 (increases of $14,076,805, minus decreases of $781,718).

3. The Commission has found that the fair value of the plant in service is $353,000,000 and that a fair rate of return on the fair value of the plant is 7.40%, bringing net income for return of $26,111,564. This produces a ratio of net income to the original cost of the property of 8.16% and a return on common equity of 9.5%.

4. The Commission finds and concludes that the said approved annual increase in rates of $13,295,087 should be derived from the increases as applied for on (a) long distance message telephone service, (b) centrex service, (c) listings and number service, (d) extension and private line mileage, (e) mobile telephone service, (f) supplemental service and equipment, and (g) wide-area telecommunications service; that the decreases should be allowed as applied for on (h) zone charges and (i) color telephone set charges; that the increase should be denied entirely in (j) service charges; and that the balance of the total annual increases approved of $4,858,499 should be derived from increases in the (k) monthly rate for local telephone service. The evidence of record justifies the increases in the rates approved as described above, but does not support the increase filed for service charges. The service charge increases as filed would increase the service charges where the main station is in place from $5.00 to $15.00, and increase the charge when the main station is not in place from $10.00 to $15.00, and the Commission finds that the same charge to a station which is in place as to a station which is not in place, is not justified, and the increase in the service charge is denied at this time.

5. The Commission has long supported a reduction in the zone charges for telephone service to customers outside of the base rate area in North Carolina in order to reduce this burden upon the telephone service to rural customers, and finds and concludes that the reduction in zone rates proposed in the Application are just and reasonable in order to remove a portion of the differential in rates to rural customers as compared with the base rate to urban customers. The elimination of the $5.00 charge for color telephone sets is approved on the grounds that the evidence does not justify an extra charge based on the color of the telephone set.

6. The Commission finds that the local monthly rate is a fixed charge or flat rate charge for furnishing of the basic telephone set on the customer's premises, without regard to the amount of use an individual customer may make of his telephone set (except as reflected in the classification of customers, for rate purposes, between residential and

business customers) and that as much of the necessary and approved increases in rates as possible should be placed on charges for service and for actual use of the telephone set and telephone plant, with as small an increase in the local monthly rate as possible. For this reason, the Commission approves all of the other increases and decreases except (j) above, as filed, and reduces the increases filed for the local monthly rate from $13,331,618 to $4,858,499. Most of the increases in cost of furnishing service shown in the record to justify the rate increases relate to increases in expenses from actual use of the telephone set and telephone plant, and the Commission finds that such increases in costs should be provided from the use charges, special charges and toll charges as described above, and that only the balance of the increase necessary be derived from the local monthly rate, and has so prescribed in the approved rate increases set forth in Appendices "A" and "B" attached hereto.

7. Southern Bell is a subsidiary corporation of American Telephone & Telegraph Corporation (AT&T) and the testimony of the Southern Bell witnesses is to the effect that the capital structure of Southern Bell is subject to control by AT&T as to the ratio of debt and equity invested in the financing of Southern Bell. At the end of the test period, Southern Bell derived 64.84% of its capital structure from common equity and 35.16% from long-term and short-term debt based on $216,561,373 of equity and $117,430,443 of debt applicable to intrastate service in North Carolina. At the same time, AT&T was increasing the percentage of debt in its capital structure from 33% debt to approximately 45% debt and 55% equity.

8. The return on equity of a utility company must necessarily be influenced by the debt-equity ratio because of the leverage factor from the fixed charges applicable to debt, with the remainder of the earnings available for common equity. The cost of equity capital varies with the equity ratio in the capital structure of a company, as the lower the percentage of debt in the capital structure the lower the risk to equity capital, and the lower the cost of equity capital, with a low debt ratio. For the corresponding reason, equity capital can expect a higher rate of return when the company utilizes the leverage of a high debt ratio, with high fixed charges and high risk to equity, but with all remaining earnings available to the smaller ratio of equity capital. The customers of a utility also benefit from higher debt ratios inasmuch as the interest charges are a deductible expense for income tax purposes, and the combined 48% federal income tax rate and 6% state income tax rate results in a substantial lower net cost of debt capital than equity capital to the ratepayer, even with the high cost of debt capital at recent high interest rates approximating some returns on equity. For these reasons, the Commission has allowed a return on equity in the amount of 9.5%. The Company has the opportunity of increasing the low debt ratio of 35.16% of its capital structure and producing a greater return on the reduced

ratio of equity, from the rates which are approved in this proceeding, by utilizing the leverage of debt capital. The testimony would support a range of return on equity to cover such increase in the return on equity derived from the increase in the debt ratio, and this opportunity is within the discretion of the Company and its parent AT&T in determining the debt-equity ratio to finance the planned major increases in plant construction over the next five years.

9. The testimony and the Southern Bell exhibits are that the $6,942,740 of additional annual revenue from the increases in intrastate long distance telephone rates, as filed and as approved in this Order, constitute an increase to Southern Bell's revenue from the increase in toll rates.

10. Southern Bell's overall service is good, however, Commission Staff testimony indicates certain areas of the Company's operations which require improvement, and such improvement should be required of the Company by the Commission.

11. The ability of Southern Bell to provide adequate service in its service area and to construct needed plant to meet the increased demand for telephone service under the provisions of North Carolina law requires that its earnings be maintained at a level so as to attract the capital needed for such service and the construction program proposed. The increased cost of providing service, including increased wages and the increases in the cost of equipment and the cost of installing new telephones and improving service to existing telephones, with the attendant per main station in the central office are amply shown in the record. Increased interest charges must be covered with sufficient funds remaining for dividends to attract investors in common equity.

12. That in order to simplify local exchange rate groupings, the rate groupings for local exchanges should be and are hereby modified to combine present groups 1 and 2 as a new group 1 from 0 to 7,000 main stations and PBX trunks, by renumbering groups 3 through 9 as new groups 2 through 8 at the revised calling scopes included in the filing herein, except to expand new group 8 to include from 115,000 to unlimited main stations and PBX trunks, and present group 10 is deleted: and the changes in rate groupings as filed herein are otherwise denied.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the applicant Southern Bell Telephone & Telegraph Company be, and hereby is, authorized to increase its North Carolina intrastate telephone rates and charges to produce additional annual gross revenue not exceeding $13,295,087, by applying total increases of $14,076,805, less total decreases of $781,718, based upon stations and operations as of June 30, 1970, as hereinafter set forth.

2. That the local monthly rates prescribed and set forth in Appendix "A" thereto attached setting forth increased monthly local subscriber rates which will produce additional gross revenue of $4,858,499 from said end-of-test-period customers are hereby approved to become the monthly station rates to be charged by Southern Bell in North Carolina, effective with bills rendered in advance on the next billing date or dates five days following the release of this Order, with the revisions in rate groupings as shown in Appendix "A".

3. That the increase in intrastate toll rates filed in this proceeding, and approved as filed and as set out in Appendix "B" attached hereto, shall be the intrastate toll rates of Southern Bell to become effective at 12:01 a.m. on August 9, 1971, to produce additional revenue of $6,942,740, based on operations and plant in service at the end of the test period June 30, 1970.

4. That the increases in (a) centrex service of $152,796; (b) listing and number service of $672,875; (c) extension and private line mileage of $210,738; (d) mobile telephone service of $145,054; (e) supplemental service and equipment of $777,510; and (f) wide area telephone service of $316,584; and the decreases in (g) zone rates of $517,228 and in the (h) color set charge of $264,490, are hereby approved as filed in this proceeding, to produce additional annual revenue from the combined increases and decreases for customers and service at the end of the test period June 30, 1970, in the amount of $1,493,848, to become effective as the rates and charges of Southern Bell for said services effective with bills rendered in advance on the next billing date or dates five days following the release of this Order.

5. That the increase in service charges, as filed herein to produce annual additional revenue of $1,330,787, are hereby denied.

6. That Southern Bell shall file necessary revised tariffs reflecting the above increases and decreases, to be effective as of the dates prescribed above.

7. That Southern Bell shall take the necessary action to improve service as indicated in Appendix "C" attached to this Order, and that the Commission Staff shall make further periodic reviews and report Southern Bell's progress to the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 2nd day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

MCDEVITT, COMMISSIONER, CONCURRING: I agree with the Findings of Fact, Conclusions and ordering clauses of the Commission to the extent that they produce needed additional annual gross revenue not exceeding $13,295,087, but I have certain reservations about the sources of these revenues, the failure of the Company to completely eliminate zone charges, and other aspects of the rate structure which justify a supplementary concurring statement which will be filed.

I do not request that the issuance of this Order be delayed therefor.

John W. McDevitt, Commissioner

APPENDIX "A"
SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY
DOCKET P-55, SUB 650

EXCHANGE RATE GROUPING
Main Stations and PBX Trunks In
Local Service Area

Group		Monthly Flat Rate							
		Residence				Business			
		Ind.	2-pty	4-pty	Rural	Ind.	2-pty	4-pty	Rural
1.	0-7000	4.55	3.60	3.10	3.10	9.95	8.80	8.00	8.00
2.	7001-12,000	4.75	3.75	3.20	3.20	10.70	9.55	8.60	8.60
3.	12,001-22,000	4.95	3.95	3.35	3.35	11.45	10.30	9.20	9.20
4.	22,001-33,000	5.20	4.15	3.50	3.50	12.20	11.05	9.80	9.80
5.	33,001-48,000	5.45	4.35	3.65	3.65	12.95	11.80	10.40	10.40
6.	48,001-75,000	5.65	4.55	3.80	3.80	13.95	12.55	11.15	11.15
7.	75,001-115,000	5.90	4.75	4.00	4.00	15.45	14.05	12.25	12.25
8.	115,001- Up	6.15	4.95	4.20	4.20	16.95	15.55	13.35	13.25

Exchange	Residence Ind.	Residence 2-pty	Residence 4-pty	Residence Rural	Business Ind.	Business 2-pty	Business 4-pty	Business Rural
Acme	5.65	4.60	3.95#	3.95**	12.65	11.50	10.25**	
Anderson	5.45	4.35	3.65#	3.65**	12.95	11.80	10.40**	
Apex	5.65	4.55	3.80#	3.80**	13.95	12.55	11.15**	
Arden	5.65	4.55	3.80**		13.95	12.55		
Asheville	5.65	4.55	3.80**		13.95	12.55		
Atkinson	4.55	3.60	3.10**		9.95	8.80	8.00**	
Belmont	6.15	4.95			16.95	15.55		
Bessemer City	5.45	4.35			12.95	11.80		
Black Mountain	5.45	4.35	3.65**		12.95	11.80		
Blowing Rock	4.55	3.60			9.95	8.80		
Bolton	4.55	3.60	3.10**		9.95	8.80		
Boone	4.75	3.75	3.20**		10.70	9.55		
Burgaw	4.55	3.60	3.10*	3.10**	9.95	8.80	8.00**	
Burlington	5.45	4.35	3.65#	3.65**	12.95	11.80	10.40**	
Canton	4.95	3.95	3.35*	3.35**	11.45	10.30	9.20**	
Caroleen	4.95	3.95			11.45	10.30		
Carolina Beach	5.20	4.15			12.20	11.05		
Cary	5.65	4.55	3.80#	3.80**	13.95	12.55	11.15**	
Castle Hayne	5.20	4.15	3.50**		12.20	11.05		
Charlotte	6.15	4.95	4.20**		16.95	15.55		
Cherryville	5.20	4.15	3.50**		12.20	11.05	9.80**	
Claremont	4.75	3.75	3.20**		10.70	9.55	8.60**	
Cleveland	4.95	3.95			11.45	10.30		
Clyde	4.95	3.95	3.35**		11.45	10.30		
Davidson	6.15	4.95	4.20**		16.95	15.55		
Denver	4.95	3.95	3.35**		11.45	10.30	9.20**	
Ellenboro	4.95	3.95	3.35**		11.45	10.30		
Enka-Candler	5.45	4.35	3.65**		12.95	11.80		
Fairmont	4.95	3.95	3.35*	3.35**	11.45	10.30	9.20**	
Fairview	5.45	4.35			12.95	11.80		
Forest City	4.95	3.95	3.35*		11.45	10.30	9.20**	
Gastonia	5.45	4.35			12.95	11.80		

Gatewood	5.20	4.15	3.50**		12.20	11.05		
Gibson	4.55	3.60			9.95	8.80		
Goldsboro	5.20	4.15	3.50#	3.50**	12.20	11.05		
Grantham	4.95	3.95			11.45	10.30		
Greensboro	5.65	4.55	3.80**		13.95	12.55		
Grover	4.95	3.95			11.45	10.30		
Hamlet	4.75	3.75			10.70	9.55		
Hendersonville	4.95	3.95	3.35*		11.45	10.30	9.20**	
Huntersville	6.15	4.95	4.20**		16.95	15.55		
Julian	5.65	4.55	3.80**		13.95	12.55		
Kimesville	5.20	4.15	3.50**		12.20	11.05		
Kings Mountain	5.45	4.35			12.95	11.80		
Knightdale	5.65	4.55	3.80#	3.80**	13.95	12.55		
Lake Lure	5.55	4.55	3.95**		12.05	10.90		
Lattimore	4.95	3.95	3.35**		11.45	10.30		
Laurinburg	4.75	3.75	3.20**		10.70	9.55	8.60**	
Lawndale	4.95	3.95	3.35#	3.35**	11.45	10.30	9.20**	
Leicester	5.45	4.35	3.65**		12.95	11.80		
Lenoir	4.95	3.95	3.35*	3.35**	11.45	10.30	9.20**	
Lincolnton	4.95	3.95	3.35*	3.35**	11.45	10.30	9.20**	9.20**
Locust	4.55	3.60	3.10**		9.95	8.80		
Long Beach	4.55	3.60			9.95	8.80		
Lowell	5.45	4.35			12.95	11.80		
Lumberton	4.95	3.95	3.35#	3.35**	11.45	10.30	9.20**	
Maggie Valley	4.95	3.95	3.35**		11.45	10.30		
Maiden	4.95	3.95	3.35**		11.45	10.30		
Milton	5.20	4.15	3.50**		12.20	11.05	9.80**	
Monticello	5.65	4.55	3.80**		13.95	12.55		
Morganton	4.95	3.95	3.35*		11.45	10.30	9.20**	
Mt. Holly	6.15	4.95			16.95	15.55		
Mt. Olive	5.20	4.15	3.50*	3.50**	12.20	11.05	9.80**	
Newland	4.70	3.75	3.25**		10.10	8.95		
Newton	5.20	4.15	3.50*		12.20	11.05	9.80**	
Pembroke	4.95	3.95			11.45	10.30		
Raleigh	5.90	4.75	4.00#	4.00**	15.45	14.05	12.25**	
Reidsville	4.95	3.95	3.35#	3.35**	11.45	10.30	9.20**	

Rockingham	4.75	3.75			10.70	9.55		
Rowland	4.95	3.95			11.45	10.30		
Ruffin	4.95	3.95			11.45	10.30		
Rutherfordton	4.95	3.95	3.35*		11.45	10.30	9.20**	
Salisbury	5.20	4.15	3.50#	3.50**	12.20	11.05	9.80**	9.80**
Saxapahaw	5.45	4.35	3.65#	3.65**	12.95	11.80	10.40**	
Scotts Hill	5.20	4.15			12.20	11.05		
Selma	4.75	3.75			10.70	9.55		
Shelby	5.20	4.15	3.50**		12.20	11.05	9.80**	
Southport	4.55	3.60			9.95	8.80		
Spruce Pine	4.70	3.75	3.25**		10.10	8.95	8.15**	
Stanley	5.45	4.35			12.95	11.80		
Statesville	4.95	3.95	3.35*	3.35**	11.45	10.30	9.20**	
Stony Point	4.95	3.95			11.45	10.30		
Summerfield	5.65	4.55	3.80**		13.95	12.55		
Swannanoa	5.45	4.35			12.95	11.80		
Taylorsville	4.55	3.60	3.10*	3.10**	9.95	8.80	8.00**	8.00**
Troutman	4.95	3.95	3.35**		11.45	10.30		
Waynesville	4.95	3.95	3.35*		11.45	10.30		
Wendell	5.95	4.85	4.10**		14.25	12.85		
Wilmington	5.20	4.15	3.50#	3.50**	12.20	11.05	9.80**	
Winston-Salem	5.90	4.75			15.45	14.05		
Wrightsville Beach	5.20	4.15			12.20	11.05		
Zebulon	6.40	5.30	4.55#	4.55**	14.70	13.30	11.90**	

* Obsolete Service Offering IBRA
** Obsolete Service Offering throughout Exchange
\# Obsolete Service Offering on Inward Movement

DOCKET NO. P-50, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Thermal Belt Telephone Company)
for Increase in Rates and Charges) ORDER

HEARD IN: Polk County Courthouse, Columbus, North Carolina, on Thursday, September 30, 1971, at 9:30 a.m.

BEFORE: Commissioners Marvin R. Wooten, Hugh A. Wells, and John W. McDevitt (presiding)

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Box 1406, Raleigh, North Carolina 27602

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

McDEVITT, COMMISSIONER: This matter arose when Thermal Belt Telephone Company, Inc., filed an application with this Commission seeking adjustments in all of its rates in and for its North Carolina operations, effective March 26, 1971.

On March 18, 1971, the Commission issued an Order setting the matter for hearing, declaring the matter to be a general rate case pursuant to G. S. 62-137, and requiring public notice.

By subsequent Orders, the Commission extended the time for filing certain reports and changed the hearing date to September 30, 1971. The matter came on for hearing at the time and place set. The Applicant and the Staff presented witnesses and testimony, and several members of the public testified in opposition to the full rate increase as proposed.

FINDINGS OF FACT

General

1. Corporate History. Thermal Belt Telephone Company is a duly created and existing corporation with headquarters in Tryon, North Carolina. It is authorized to do business in North Carolina and is a public utility providing a general telephone service in North Carolina and South Carolina. The Company serves 6,728 stations, of which 4,863 (72.28%) are

in North Carolina and are served through three (3) exchanges, located at Tryon, Columbus, and Green Creek. The Company added 386 stations to its North Carolina system during the twelve (12) months' period ended September 30, 1970. Controlling interest in the common capital stock of Thermal Belt was purchased by Mid-Continent Telephone Corporation in December, 1965, and it has effectively operated the Company since that time.

2. Nature of Increase. The proposed increase in rates for local service in North Carolina is intended to produce $105,617 in additional gross revenue, of which $66,802 will accrue to the Company's use. This income would add an average of $21.72 in additional charges annually for each station in service at September 30, 1970, in North Carolina. The average percentage increase in local service proposed in North Carolina is 39.20%, with a range of from 29% to 68%. The Company proposes to expand all of its base rate areas to include entire exchanges and will eliminate all zone charges; therefore, the same rate will then be applicable regardless of location within any exchange. Toll rates are not involved in the proceeding.

3. Test Period. Both the Company's and the Staff's computations and results are based on the end of the same test period; i.e., the twelve (12) months' period ended September 30, 1970. This test period and the methods of adjusting for the end of the period are reasonable in compliance with G. S. 62-133.

4. Allocations Procedures. With the exception of depreciation expense and the method of computing Federal and State income taxes, the Company and the Staff used substantially identical methods in determining the portions of Applicant's total operations allocable to North Carolina, viz:

(a) Plant Allocations. Gross plant and depreciation reserve accounts were assigned between South Carolina and North Carolina on the basis of actual physical location except for the commonly used headquarters building and land at Tryon, North Carolina, which were allocated to North Carolina operations by the ratio of main stations located in North Carolina (69.88%) to total Company main stations applied to joint-use floor space.

(b) Revenue Allocations. Gross operating revenues were recorded on the basis of the State in which earned; therefore, no allocation was necessary. Total gross revenues applicable to North Carolina operations totaled $437,236 or 63.45% of total Company gross revenues.

(c) Operating Expenses. Operating expenses were allocated to North Carolina on the ratio of main

stations located in North Carolina to total Company main stations (69.88%).

(d) Depreciation Expense. The Company allocated depreciation expense to North Carolina on the ratio of main stations located in North Carolina to total Company main stations, as was used to allocate operating expenses. The Staff computed depreciation expense on the depreciable plant allocated to North Carolina and charged that amount against North Carolina operations. The method of computing depreciation used by the Staff resulted in annual depreciation expense of $5,736 less than the method used by the Company.

(e) Taxes. Taxes were for all practicable purposes assigned on the basis of the State where charged. In computing Federal and State income taxes, the Company allocated operating expenses and depreciation expense on the ratio of North Carolina gross revenues to total Company gross revenues (63.45%). The Staff allocated operating expenses on the ratio of main stations located in North Carolina to total Company main stations (69.88%). The Staff computed depreciation on the depreciable plant allocated to North Carolina. The method of allocating operating expenses and depreciation expense for the purpose of computing Federal and State income taxes by the Staff is the same as (c) and (d) above.

(f) Capital Allocations, Capital Structure and Service Requirements. Total Company capital structure and capital service requirements are attributed to the Company's North Carolina operations in the same ratio as gross plant is allocated; i.e., 66.45% is assigned to North Carolina.

5. The End-of-Period Net Investment Including Allowance for Working Capital. The Company arrived at an end-of-period gross plant investment of $2,674,116, with applicable depreciation reserve of $518,040, and working capital allowance of $94,982 for a net end-of-period investment including allowance for working capital of $2,251,058. The Staff evidence shows an end-of-period gross plant investment of $2,649,388, applicable depreciation reserve of $524,115, and working capital allowance of $71,691, for an end-of-period net investment including allowance for working capital of $2,196,964.

The difference between the Staff's net end-of-period investment including allowance for working capital and the Company's net investment is primarily due to the following:

(a) The Staff increased the reserve for depreciation in the amount of $6,075, the adjustment to increase depreciation expense to the amount computed on

depreciable plant in service at the end of the test period.

(b) The Company included construction work in progress in the amount of $24,728 applicable to North Carolina. The Staff did not include construction work in progress.

(c) In computing the allowance for working capital, the Company used the formula allowance of 1/8 of operating expenses. The Staff used 1/12 of operating expenses. Also, the Company included taxes as part of operating expenses. The Staff did not include taxes as a part of operating expenses. The Staff deducted average Federal and State income tax accruals, but the Company deducted only average Federal income tax accruals as a credit to the allowance for working capital.

We find that the reasonable end-of-period net investment including allowance for working capital for Thermal Belt Telephone Company's utility plant used and useful in rendering telephone service in North Carolina at September 30, 1970 (the end of the test period), is $2,197,955.

6. Trended Original Cost. The Company introduced evidence tending to show that the gross trended original cost of its allocated North Carolina utility plant in service is $3,027,862, with a trended depreciation reserve attributable thereto of $607,311, for a net trended original cost of $2,420,551.

7. Fair Value Rate Base. Having fully considered and given full weight to the reasonable original cost of Thermal Belt's property used and useful in providing the service to the public within this State, less that portion of the cost which had been consumed by previous use recovered by depreciation expense, the replacement cost of the property as shown by trending such depreciated cost to current cost levels, and the evidence before the Commission relating to the present condition and use of the Company's property in the State, the fair value of Thermal Belt Telephone Company's public utility property used and useful in providing the service rendered to the public within this State is $2,328,500.

Operating Revenues

8. Estimated Revenue Under Present Rates. The Company presented evidence tending to show that its annual gross operating revenues under present rates is $437,236. The Staff's evidence agrees with this figure. We find the Company's reasonable annual gross operating revenues under present rates $437,236.

9. Estimated Revenues Under Proposed Rates. The Company evidence tends to show gross operating revenues under the

proposed rates to be $542,853; the Staff's comparable evidence agrees with this figure; annual gross operating revenues under the rates hereinafter found to be reasonable and approved would be $533,678.

Operating Revenue Deductions

10. Depreciation Expense. The Company's evidence shows annual depreciation expense of $143,570 and the Staff shows $124,967. We find the reasonable annual cost consumed by depreciation is $124,967.

11. Taxes. The Company shows annual taxes of $54,395 under the present rates and $109,695 under the proposed rates. The Staff shows $63,795 in taxes under present rates and $100,321 under the proposed rates. We find a reasonable and actual annual tax liability to be $63,795 under the present rates and $102,610 under the proposed rates. Under the rates hereinafter found reasonable and approved, the Company's reasonable annual tax liability is estimated at $97,781.

12. Other Operating Expenses. Total operating expenses are shown by the Company to be $197,231; by the Staff to be $196,532. We find $196,532 in total operating expenses to be actual, reasonable, and legitimate.

Capital Structure and Requirements

13. Net Operating Income for Return. The Company's evidence tends to show a net operating income for return of $45,624 under present rates and $95,774 under the proposed rates. The Staff shows $53,973 and $125,765, respectively. Allowing for all operating revenue deductions herein found reasonable, the Company would be permitted net operating income for return of $116,429 under the rates hereinafter found reasonable and approved.

14. Capital Structure. Capital structure allocated to North Carolina shows total capitalization of $2,148,763, consisting of $1,157,923 long-term debt (53.89%) at an interest rate of 2%; equity capital (26.52%) totaling $569,807 and comprised of $67,779 in common capital stock, $265,800 in capital surplus and $236,228 in earned surplus; and $421,033 in advances from the parent Company (19.59%) at an interest rate of 8%.

15. Debt Service. Applicant's reasonable annual fixed charges are $23,159 for long-term debt and $33,683 for the advances from the parent corporation for a total annual actual and reasonable debt service requirement of $56,842.

16. Capital Costs -- Common Equity. Applicant, for the test year, failed slightly to cover its fixed charges after taxes and had no earnings on its common equity attributed to North Carolina operations under present rates. The Company would earn 12.10% on its common equity under the proposed

rates. It would be permitted to earn 10.27% return on common equity under the rates hereinafter found reasonable and approved.

17. Rate of Return. The Company is earning a rate of return of 2.32% on the fair value of its property under present rates. It would be permitted to earn a rate of return of 5.19% on the fair value of its property as herein found under the proposed rates. The rates hereinafter found reasonable and approved would permit the Company to earn a rate of return of 5% on the fair value of its property as herein found.

18. Fair Rate of Return. Giving full consideration to enabling Thermal Belt Telephone Company by sound management to produce a fair profit for its stockholders, considering changing economic conditions and all other factors of record and supported by competent, material, and substantial evidence, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to enable the Company to compete in the market for capital funds which are reasonable and which are fair, both to its customers and its existing investors, a fair rate of return on the fair value of the Company's utility property is 5%.

20. Rates. 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 5.19% 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 the fair rate of return on the fair value of the Company's property as herein found (5% on $2,328,500), such rates are excessive, unjust, and unreasonable. Rates charges in accordance with the schedule marked Appendix "A" attached hereto 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.

Service

21. Testimony was presented at the hearing regarding the quality of telephone service provided by Thermal Belt Telephone Company and based upon the testimony and evidence introduced at the hearing, the Commission finds that an adequate level of service is being provided by the Company in North Carolina.

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

CONCLUSIONS

The Commission concludes that telephone service provided by Thermal Belt Telephone Company in North Carolina is at an adequate level. The finding of an adequate level of service by the Commission does not mean that there are not any areas of a Company's operation which does not need improving to eliminate a service affecting situation or to reduce the possible development of future service-affecting conditions. With such considerations in mind, the Commission recognizes recommendations made by the Commission staff concerning certain action which should be taken by Thermal Belt. These recommendations included further periodic tests on DDD and study of operator answer time with the results provided to the Commission. Thermal Belt Telephone Company has provided the results of periodic DDD tests in conjunction with Southern Bell in South Carolina and the results of the latest of those periodic tests show that the DDD failure rate has been reduced to less than 1%. Also, the results of periodic operator answer time studies were provided with the latest study showing that 87% of the answers were within six (6) seconds.

Regarding the other recommendations of the Commission staff, the Company should concentrate efforts on reducing the trouble reports in the Green Creek exchange and initiate a program of periodic traffic usage studies on line, terminal, and trunk groups for use in traffic load balancing and equipment additions.

The ability of Thermal Belt to provide adequate service in its service area and to construct needed plant to meet the increased demand for telephone service under the provisions of North Carolina law requires that its earnings be maintained at a level so as to attract the capital needed for such service and construction. The increased cost of providing service, including increased wages and the increases in the cost of equipment and the cost of installing new telephones and improving service to existing telephones are amply shown in the record. Increased interest charges must be covered with sufficient funds remaining for dividends to attract investors in common equity.

The Commission has found that the fair value of the plant in service is $2,328,500 and that a fair rate of return on the fair value is 5%. The Commission concludes that an increase in annualized operating revenues less uncollectibles of $96,442, or no more than 91.31% of the proposed rate increase, is necessary to provide a fair rate of return to Thermal Belt. The approved increase produces a return on common equity of 10.27%.

While the application of Thermal Belt Telephone Company in this proceeding seeks an increase under the proposed rates to produce $105,617 of additional revenue from the customers at the end of the test period on an annualized basis, the

following tables based on the Findings of Fact show the calculations for the $96,442 found to be reasonable from the record in this proceeding:

NET OPERATING INCOME FOR RETURN AND NET INCOME DERIVATIONS
THERMAL BELT TELEPHONE COMPANY - NORTH CAROLINA OPERATIONS
FOR THE TEST PERIOD - YEAR ENDED SEPTEMBER 30, 1970

	At Present Rates	Increase Approved	After Approved Rates
Operating Revenues			
Gross operating revenues	441,101	97,318	538,419
Uncollectibles	(3,865)	(876)	(4,741)
Total operating revenues	437,236	96,442	533,678
Operating Revenue Deductions			
Operation & maintenance exp.	196,532	-	196,532
Depreciation	124,967	-	124,967
Taxes other than income	44,487	5,839	50,326
Income taxes - State	-	3,759	3,759
Income taxes - Federal	-	24,388	24,388
Income taxes - deferred accelerated depreciation	19,548	-	19,548
Investment tax credit normalization	2,127	-	2,127
Investment tax credit amortization	(2,367)	-	(2,367)
Total operating revenue deductions	385,294	33,986	419,280
Net operating income	51,942	62,456	114,398
Add: Annualization adjustment	2,031	-	2,031
Net operating income for return	53,973	62,456	116,429
Net other income (loss)	(1,089)		(1,089)
Income available for fixed charges	52,884		115,340
Fixed charges:			
Interest on long-term debt	23,159		23,159
Interest on advances from parent corporation	33,683		33,683
Total fixed charges	56,842		56,842
Net Income (Loss) for Common Stockholders	(3,958)		58,498
Common stockholders equity	569,807		569,807
Rate of return on common stock-holder equity	-		10.27%

CAPITAL STRUCTURE AND INTEREST REQUIREMENTS
THERMAL BELT TELEPHONE COMPANY - N. C. OPERATIONS

Type Capital	Amount	Total %	Annual Interest Requirements
Long-term debt	$1,157,923	53.89	$23,159
Advances from parent corporation	421,033	19.59	33,683
Common equity	569,807	26.52	
Total capitalization	$2,148,763	100.00	$56,842

THERMAL BELT TELEPHONE COMPANY - N. C. OPERATIONS
RATES OF RETURN ON NET INVESTMENT
YEAR ENDED SEPTEMBER 30, 1970

	Original Cost		Fair Value Rate Base	
	Present Rates	Approved Rates	Present Rates	Approved Rates
Telephone plant in service	2,649,388	2,649,388		
Less: Reserve for depreciation	524,115	524,115		
Net telephone plant in service	2,125,273	2,125,273		
Allowance for working capital:				
Material & supplies	44,174	44,174		
Cash	42,582	42,582		
Less: Average Federal and State income tax accruals	-	14,074		
Net allowance for working capital	86,756	72,682		
Total rate base for return	2,212,029	2,197,955	2,328,500	2,328,500
Net operating income for return	53,973	116,429	53,973	116,429
Rates of return on net investment	2.44%	5.30%	2.32%	5.00%

The Utilities Commission takes judicial notice of the President's Executive Order No. 11627, entered on October 15, 1971, establishing Phase II of wage and price controls under the Economic Stabilization Act of 1970 beyond the original 90-day period ending November 13, 1971, and the establishment of the Price Commission pursuant to said Order, and the rules and regulations of the Price Commission published in Volume 36, No. 220, Federal Register, November 13, 1971, § 300.016, Regulated Utilities, at p. 21,793, as amended in Volume 36, No. 222, Federal

Register, November 17, 1971, at p. 21,953, requiring that regulated public utilities having gross receipts of $50,000,000 or more give notice to the Price Commission of any price increases authorized by regulatory agencies.

The Utilities Commission is further advertent to public statements of guidelines and policies of the Price Commission, and concludes that the North Carolina rate procedure and the evidence in this proceeding, and the consideration thereof by the Commission, fixes the rates of Thermal Belt in this proceeding on the basis that they will provide no more than the minimum return necessary to assure continued and adequate service. The return actually earned by Thermal Belt from the rates previously in effect produced a rate of return of only 2.32% and if continued without the rate increase approved here, would not be adequate to assure continued and adequate service, and this Commission finds and so certifies that the increases are consistent with the criteria established by the Price Commission, and the documentation for such findings are set out fully in the Findings of Fact and Conclusions herein, based on evidence of record of the public hearings herein.

The rate increase approved here is authorized solely on the basis that it is necessary in order to assure continued and adequate service to the public in Thermal Belt's service area, considering the increased cost of service, the increased expenses of Thermal Belt and the increased cost of money, and the purpose of the Economic Stabilization Act of 1970, as amended.

This Order is entered subject to the compliance of Thermal Belt with all requirements of the Price Commission for notice of such increase and subject to such other rules and regulations of the Price Commission as may be applicable to such increase.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Thermal Belt Telephone Company, be, and hereby is, authorized to increase its North Carolina intrastate local exchange telephone rates and charges to produce additional annual gross revenue not exceeding $97,318 by applying total increases of $97,318 based upon stations and operations as of September 30, 1970, as hereinafter set forth.

2. That the local monthly rates prescribed and set forth in Appendix "A" hereto attached setting forth increased monthly local subscriber rates which will produce additional gross revenue of $96,442 from said end-of-test-period customers are hereby approved to become the monthly station rates to be charged by Thermal Belt in North Carolina, effective with bills rendered in advance on the next billing date or dates five days following the release of this Order.

3. That Thermal Belt shall file necessary revised tariffs reflecting the above increases and decreases, to be effective as of the dates prescribed above.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
Thermal Belt Telephone Company
Docket No. P-50, Sub 40

Monthly Local Service Rates

Tryon, Columbus, and Green Creek Exchanges

Residence, one-party	$ 8.75
Residence, two-party	7.75
Residence, four-party	6.25
Residence extensions	1.00
Business, one-party	$14.75
Business, two-party	11.75
Business, four-party	9.75
Business extensions	2.00

Main station rates applicable at all locations within the service areas without mileage or zone charges.

DOCKET NO. P-50, SUB 40

WOOTEN, COMMISSIONER, CONCURRING: The Order in this case is another example of "bare bones" regulation during times of rapid inflation, which is not compatible with the financial health of this utility, and in my opinion is not in the long-term best interest of the ratepayers. I recognize the efforts of the President of the United States to curb the rate of future inflation, however, this case is based upon a test year ending September 30, 1970, almost a year prior to the President's August 1971 freeze on prices.

"Bare bones" rate regulation during inflationary periods, coupled with orders for further expenditures of greater sums of money to improve service found to be adequate, amounts to saying to this utility to "starve yourself into fatness", and "spend yourself into riches".

The reduction of a rate increase request for the sake of reduction only is not the spirit nor intent of this State's utilities laws. However, the reduction in rates made in this order is not as great as might have been, and for that reason and in order that this Order may issue and become

effective, I vote in the affirmative, but record my view that the Commission has granted less than a just and reasonable increase herein.

Marvin R. Wooten, Commissioner

DOCKET NO. P-9, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of United Telephone Company of the Carolinas, Inc., for Authority to Adjust Its Rates and Charges for Telephone Service in Its Service Area Within North Carolina) ORDER ALLOWING PORTION OF RATE INCREASE

DATE AND PLACE OF HEARING:

June 22, 1971, in the Superior Courtroom, Moore County Courthouse, Carthage, North Carolina.

June 23, 1971, in the Auditorium of the Greensboro Public Library, Greensboro, North Carolina.

August 30, 1971, in the Hearing Room of the Commission, Raleigh, North Carolina.

September 20 - 24, 1971, in the Hearing Room of the Commission, Raleigh, North Carolina.

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:

R. C. Howison, Jr.
Joyner and Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
For: United Telephone Company of the Carolinas, Inc.

Wade Barber
Barber, Holmes and Covington
Attorneys at Law
P. O. Box 126, Pittsboro, North Carolina
For: United Telephone Company of the Carolinas, Inc.

For the Protestants:

W. Lamont Brown
Attorney at Law
Southern Pines, North Carolina
For: Sandhills Community College
Mr. Eugene Watts
Mr. Edward M. Durant

Raymond D. Thomas and
John G. Wolfe, III
Attorneys at Law
118 West Mountain Street
Kernersville, North Carolina
For: Telephone Subscribers

For the Intervenors:

I. Beverly Lake, Jr.
Assistant Attorney General
Attorney General's Office
Revenue Building
Raleigh, North Carolina
For: The Using and Consuming Public

For the Commission Staff:

Edward B. Hipp
Commission Attorney
and
William Anderson
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: On January 27, 1971, United Telephone Company of the Carolinas, Inc., (hereinafter United), 385 West Pennsylvania Avenue, Southern Pines, North Carolina 28387, filed an application with the Commission for authority to increase its local monthly telephone rates, service charges, listing service, auxiliary service, key systems, joint-user rates, semi-public pay stations, PBX central office trunks, extension and private line service and mobile telephone service, and to reduce its zone rates and its charges for color telephone sets. The application includes increases totaling $1,392,793.58 in annual gross revenues during the test period ending December 31, 1970, with reductions of $59,926 in zone mileage charges and $32,796 in charges for color telephone sets, resulting in total increases in annual revenue applied for of $1,300,071.58. The increases in stated amounts of additional annual revenue for the respective rates applied for are as follows:

1. Local Monthly Rate: $1,126,210.80
This covers proposed increases in main local exchange service rates.

2. Zone Rates: (-)$59,926.00
Company proposes to reduce zone charges by increasing the width of the zones and extensions of their base rate areas.

3. Listing and Number Service: $11,565.00

4. Service Charges: $36,038.00
The company proposes to increase the non-recurring charges applying to service connections, installations, moves and changes.

5. Color Charge: (-)$32,796.00

6. Auxiliary Service: $6,402.00

7. Key Systems: $103,911.28
The increases in service requested are applicable to central office trunks, PBX trunks (for key systems on a PBX or PABX or key telephones).

8. Joint-User: $337.00

9. Semi-public Pay Station: $26,928.00

10. PBX Central Office Trunks: $72,451.50

11. Extension and Private Line Service: $8,650.00

12. Mobile Telephone Service: $300.00

The increases proposed in the monthly telephone rates vary for the 14 local exchanges served by United in North Carolina in accordance with exchange rate groupings based upon calling scope or number of telephones within the calling scope of each local exchange. The increases proposed, compared with present telephone rates, with resulting increases applied for, for the 14 exchanges and groupings based upon exchange sizes are as follows:

	Residence				Business			
	1-Pty	2-Pty	4-Pty	8-Pty	1-Pty	2-Pty	4-Pty	8-Pty
Bonlee and Goldston								
Present	3.75	3.00	2.50	2.50	6.25	5.25	4.25	-
Proposed	7.20	5.45	4.25	4.25	11.05	9.25	7.25	-
Increase	3.45	2.45	1.75	1.75	4.80	4.00	3.00	-
Pittsboro								
Present	4.45	3.70	3.00	3.00	8.05	6.95	5.65	4.85
Proposed	7.85	6.10	4.75	4.75	13.30	11.40	8.90	7.70
Increase	3.40	2.40	1.75	1.75	5.25	4.45	3.25	2.85
Siler City								
Present	4.80	4.05	3.20	3.20	8.95	7.80	6.35	-
Proposed	8.40	6.65	5.15	5.15	14.80	12.70	9.95	-
Increase	3.60	2.60	1.95	1.95	5.85	4.90	3.60	-

Gibsonville								
Present	5.85	5.10	4.10	4.10	11.80	10.35	8.50	-
Proposed	10.95	9.20	6.95	6.95	20.80	17.50	14.00	-
Increase	5.10	4.10	2.85	2.85	9.00	7.15	5.50	-

Carthage, Pinehurst, Robbins, Southern Pines, Vass, and Whispering Pines								
Present	6.25	5.50	4.45	4.45	12.75	11.25	9.25	6.50
Proposed	10.20	8.45	6.60	6.60	19.40	16.75	13.35	9.80
Increase	3.95	2.95	2.15	2.15	6.65	5.50	4.10	3.30

Fuquay-Varina, Angier, and Kernersville								
Present	6.25	5.50	4.45	4.45	12.75	11.25	9.25	-
Proposed	12.10	10.35	7.75	7.75	23.30	19.40	15.65	-
Increase	5.85	4.85	3.30	3.30	10.55	8.15	6.40	-

The Commission, being of the opinion that the application affected the interest of the using and consuming public in the area of North Carolina served by United, by Order entered on February 24, 1971, suspended until further order of the Commission the proposed effective date of United's requested increases, declared the proceeding to be a general rate case under G. S. 62-133 and set the matter for hearing in Raleigh, North Carolina, and for the hearing of public witnesses in Carthage and Greensboro, North Carolina, as reflected in the record of the case herein. Notice of the application and the dates of hearings were published in newspapers of general circulation within United's service area. Notice of Intervention was duly filed by the Attorney General of North Carolina, Honorable Robert Morgan, on February 16, 1971, for and on behalf of the using and consuming public of North Carolina. Attorney W. Lamont Brown appeared representing Eugene Watts, Edward M. Durant, and Sandhills Community College as protestants, and Attorneys Raymond D. Thomas and John G. Wolfe, III, appeared representing the Kernersville, North Carolina, telephone subscribers protesting the rate increases requested. Other members of the public were present at hearings in Carthage and Greensboro and their protests duly noted in the record.

During the hearing, the applicant, United, offered testimony and evidence as follows:

Mr. Edwin W. Smail, President of United Telephone Company of the Carolinas, Inc., testified that the company's last previous rate increase application was filed on February 14, 1958, based on a test year ending December 31, 1957, in which the Commission allowed an increased schedule of rates and charges effective with billings on and after June 3, 1958. He testified generally that the company had experienced substantial increases in the costs of doing business during the thirteen-year period since the company's last rate case, citing various examples; that the increased costs are reflected in the company's investment in telephone plant. He noted that the gross plant additions in North Carolina in the test year 1970 alone exceeded the total investment in North Carolina of thirteen years ago by 10%.

He testified that as of the close of business on Thursday, September 9, 1971, the company has no customers on lines serving more than four customers, even though certain of the customers are classified as multi-party customers. Mr. Smail testified regarding the company's proposal as set out in detail by Witness Nicar to reduce certain rates and charges for certain subscribers by exchanges in the base rate areas. Mr. Smail testified regarding the testimony of Staff witness Mr. Vern W. Chase that the company "could live with" Mr. Chase's proposal to decrease the charges applying for each zone whereby all customers outside the BRA will receive a reduction in zone charges.

Mr. Smail testified that the company has shown a higher growth rate in North Carolina than the industry as a whole, and forecasts that the gross additional plant investment in North Carolina for the five years 1971 through 1975 will approximate $27,334,000 and that the additional capital funds will be furnished through internally generated funds and through short-term loans which are ultimately converted into additional long-term debt and equity, such that $9,680,000 of the additional financing requirements of $25,695,000 will be furnished from internally generated funds, leaving $16,015,000 to be furnished from outside financing; that this estimate is based on receiving the full amount of the requested rate relief and to receive less than the requested relief would decrease the internally generated funds and increase the amounts needed from outside financing. Mr. Smail testified that debt sold in the test year (Series I, First Mortgage Bonds issued in February 1970 at 9.5%) cost 2.6 times the cost of debt thirteen years ago; that the company had a test year composite rate of interest on long-term debt of 6.49%; that the Indenture securing the company's first mortgage bonds provides that additional bonds may be issued only if the interest covered in twelve consecutive months of the fifteen calendar months preceeding the proposed issue date is at least two times the interest on the bonds to be outstanding after the issuance of the new bonds.

Mr. John J. Jaquette, Senior Vice President - Finance, of United Utilities, Incorporated ("U.U.I."), testified that he had responsibilities for long-term and short-term financing for UUI and for all of the subsidiaries including the applicant. Mr. Jaquette testified and offered exhibits in support of the 8.46% rate of return on net investment as requested in the application. He explained that the parent company, UUI, buys all of the common stock of United of the Carolinas and can continue to do so only so long as it has a reasonable expectation of adequate earnings; that United of the Carolinas obtains debt capital by competing in the national bond market and that currently there are twenty-seven institutions holding portions of its outstanding bond issues; that increases have occurred in the interest cost of debt capital since January of 1967, with weighted interest costs rising from 6.01% to 9.48% between 1967 and 1970. Mr. Jaquette testified that the last issue recorded for United

of the Carolinas in February 1970 was at a coupon rate of 9-1/2% and that the applicant after merger of Greenwood-United Telephone Company (of South Carolina) into it has arranged for the sale of $7,000,000 at a coupon rate of 8.38%; that the company has not been large enough to be issued a credit rating in the past, but he anticipates the combined company after the merger is of sufficient size to receive a credit rating and that after the merger a bond issue of the combined company might soon be accorded an "A" rating when the interest coverage is improved; that an "A" rating would expand the market for United of the Carolinas' bonds and could reduce the interest rate by as much as 1/2 of 1%; that the interest coverage to obtain an "A" rating would probably need to be 3-1/2 to 4 times coverage before income taxes. Mr. Jaquette testified that the imbedded cost of debt was 6.49% as of December 31, 1970. He testified that in his opinion the current rate of return is insufficient.

Mr. Jaquette testified that in his opinion the cost of equity capital to United of the Carolinas is approximately 13.00%. This figure was based on a 10-year cost of new equity to UUI, since United of the Carolinas does not have its own market experience to determine the cost of its equity; that the determination of a return on equity "is not an exact science. It requires judgment..." and that his premise that the rate of return must be the average rate of return of the parent over a period of years should not be the only criterion used by the Commission. He testified that United of the Carolinas recorded a rate of return to common equity of 8.92% for the test year, a return on allocated common equity in North Carolina of 7.56% and 6.24% on North Carolina intrastate.

Mr. Jaquette testified that in his opinion the fair cost of capital for United of the Carolinas is 8.30% (or on an allocated basis, 9.50%); that in a calculation of this type, the level of the debt-equity ratio is important; that the actual capital ratio must be both "representative of the recent past" and representative of management's objectives for the near term future.

Mr. Charles A. Brickman is a Vice President of Kidder Peabody & Company, Inc., which is a major investment banking firm operating on an international scale, doing a general securities underwriting business and managing equity and debt offerings for issuers, in addition to its brokerage business, and has acted as the investment banker for UUI and its subsidiaries since 1949; he testified as to the considerations taken into account by the two rating services in determining bond ratings and that United of the Carolinas had not attempted to obtain a rating as of yet because a rating of less than "A" would be of no meaningful help in marketing the issue; that the level of earnings of United of the Carolinas is not sufficient to meet the standards of a rating service for an "A" rating. He testified that the demand for funds from both public and private sectors and

accordingly, interest rates, will remain high, based on calculations regarding the ongoing demand for funds just to refund maturing debt.

Mr. Charles D. Ehinger, Vice President - Engineering and Operations of United Utilities, Incorporated, testified and offered exhibits as to the relationships between U.U.I. and its subsidiary, United of the Carolinas, as well as the North Electric Company and United Systems Service, Inc. He described the North Electric Company as a supply company and the United Systems Service, Inc., as a subsidiary making various management, accounting, legal and engineering service available to the subsidiaries on a contractual basis for services rendered and on the basis of an allocated assessment to cover expenses of the service company which are not directly rendered.

Mr. D. M. Gedeon, Controller of North Electric Company ("North"), testified and offered exhibits regarding the sale of equipment to affiliated United companies as well as to non-affiliates, explaining that United of the Carolinas, by virtue of being a member of the United System has the advantage of the purchasing power of the whole system in determining the discount applied to its purchases.

Mr. John D. Russell, Group Vice President - Public Utilities Division of the American Appraisal Company, Inc., testified that the American Appraisal Company, Inc., was engaged by United Telephone Company of the Carolinas to prepare a trended original cost appraisal of the telephone properties in North Carolina and has prepared such an exhibit. He testified that his estimate of the trended original cost of the United Telephone Company of the Carolinas' North Carolina utility plant in service as of December 31, 1970, after an adjustment for observed depreciation, is $17,703,059. He testified that the company's facilities are "modern, well designed within industry standards and a major portion constructed in recent years" although "a relatively few facilities contain some degree of obsolescence." Mr. Russell testified that he made an analysis of the adequacy of the company's present annual accrual rates by account and offered as an exhibit recommendations for adjustments to the accrual rates. Mr. Russell testified that in his opinion the present composite annual rate of 4.83% is not adequate and should be revised upward to 5.31% with a corresponding increase in the annual dollar accrual of $83,439 over the present amount.

The testimony of Mr. Aubrey A. Woolford, Chief Engineer of the Southeast group, United Telephone Systems, was directed to the proposition that some portion of the telephone plant included in Account 100.2, "Telephone Plant Under Construction", is actually in use rendering service to customers and producing revenue although for accounting purposes the dollar value representing that plant has not been transferred into Account 100.1, "Telephone Plant in Service", because the book transfer does not occur until a

particular project is fully completed and all of it has been put into service for the public; that 15 projects representing authorized gross additions of $977,416 were in various percentages of "cut-over" into service, ranging from 20% through 100%. The study tracking the cut-over date of this telephone plant indicated that net additions in service at December 31, 1970, of $392,511 represented that portion of the 15 projects that were in service at that date, and that this figure of $392,511 was included in Mr. Wolfe's Exhibit "A", figure for "telephone plant under construction".

Mr. Luther G. Wolfe, Controller of United Telephone Company of the Carolinas, Inc., appeared as the company's accounting witness, identified exhibits and offered testimony as to the company's interstate and intrastate property used and useful in furnishing telephone service, the original cost of the properties, the revenues received and expenses incurred in furnishing telephone service. Mr. Wolfe testified that $14,205,323 represents the net investment in telephone plant allocated to North Carolina intrastate operations; that $686,678 represents materials and supplies; that $327,467 represents cash working capital; that $15,219,468 is the total original cost of property used and useful in furnishing intrastate telephone service in North Carolina as of the end of the test period; that $780,044 is the depreciation reserve as of the end of the test period; that $14,205,323 is the intrastate portion of total original cost of properties, less that part which has been consumed by previous use and recovered by depreciation expense; that local service revenues were $2,383,629 while toll service revenues were $1,264,623; that the total intrastate operating expenses and taxes were $3,022,648, with an intrastate net operating income of $771,809, for a net operating income for return, after end-of-period adjustments for net income on a going basis of $806,772.

Mr. Robert M. Nicar, General Commercial Manager - Southeast Group of the United Telephone System offered into evidence a proposed schedule of rates and charges including increases in the basic local service rates, proposed changes in zone charges, number service charges, colored telephone sets, private branch exchange trunks, semi-public telephone service, joint-user service, auxiliary service and equipment, key telephone systems, mileage charges for extension lines, private lines, and tie lines and mobile telephone service. He testified that the proposed spread represents pricing based on calling scope and zone band considerations, and the proposed change in zone bands consists of enlarging zone bands from approximately 2 miles in width to approximately 4 miles in width, such that under the proposal, present zone 1 and present zone 2 would be combined into a new zone 1 and so on.

Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Division, offered testimony and exhibits as to the nature of the Staff's review and investigation of the service provided

by United of the Carolinas in its North Carolina exchanges, and as to the results of that service review and investigation. Mr. Clemmons testified in detail as to the various indices used, results obtained in each type of test and pointed out certain areas in which there is a need for service improvement.

Mr. Clemmons testified that his review of the company's proposed changes in depreciation rates indicated that in his opinion certain of the proposals made by the company were unsatisfactory, and he offered an exhibit indicating alternative proposals for changes to be made in United's depreciation rates.

Mr. Vern W. Chase, Chief Engineer, Telephone Rate Division, testified regarding the relationship of rates as proposed by the company for various classifications, i.e., residential and business, one-, two- and four-party service, calling scopes, and zone charges. Regarding the proposed zone band changes, Mr. Chase testified that the company's proposal would give no relief to the subscribers residing in the first two mile zone, and accordingly, Mr. Chase offered two alternate proposals for changes in the zone charges. Mr. Chase also testified that in his opinion, it is advisable to speed-up the upgrading process.

Mr. Norman R. Peele, Senior Accountant, offered testimony and exhibits regarding the examination of the books and records of United Telephone Company of the Carolinas, Inc., made by the Commission Accounting Staff covering the twelve months ending December 31, 1970. Mr. Peele testified that North Carolina intrastate operations yield a rate of return on net investment, plus working capital of 5.56% and approval of the proposed rates would increase the existing rate of return 9.49%; that approval of increased rates would increase the return on common equity from 5.48% to 14.82%; that total debt represents 58.82% of the capital structure with common equity representing the balance of 38.26%.

The protestants presented the following witness and testimony:

Dr. Charles E. Olson, Associate Professor in Public Utilities and Transportation, Department of Business Administration, University of Maryland. Dr. Olson testified regarding his review of the company's rate application in view of cost of service, including cost of capital, rate of return, and rate base determination. He testified that in determining a fair rate of return, individual determinations are made of the cost of long-term debt capital, short-term debt, non-investor supplied capital, preferred stock and common equity, that each of these components is then weighted by the reasonable percentage it bears to the total capitalization; that he accepts Mr. Jaquette's presentation of the cost of long-term debt at 6.49% as reasonable; that the reasonable cost of short-term capital is the prime rate, currently 6%; that he applied both the discounted cash flow

approach and the earnings price ratio method in estimating the cost of equity capital; that in his opinion the cost of equity capital to United Utilities is between 10.35% and 10.60%, based on the test year debt-equity ratios; that the total cost of capital is between 8.14% and 8.21%, and that the fair rate of return for United of the Carolinas is between 8.15% and 8.20%. Dr. Olson further testified that in his opinion the fair value rate base in this case consists of the investment in telephone plant in service minus the depreciation reserve without including materials and supplies and cash working capital.

The following public witnesses testified regarding rates and service in the Carthage, North Carolina, hearing: Jere W. McKeithan, John Shaw, Arthur Ervin Long, Mrs. R. C. Morphis, Eldon Thompson, Lawrence Cooper Davis, Walter Schoonmaker, Harold Harry Naes, James Daniel McKeithan, John Etchion, Mrs. Barbara Whitaker, Bruce Marion, Eugene A. Watts, Edward W. Durant, Edward Milton Harris, Jr., William Brandon Poindexter, Larry E. Barnes, Ray McCullough, Mrs. Ann Daurity, Mrs. Sue T. Lucas, Mrs. Charles Green, Leo L. Matthews, James Donald Cook, Charles McLaurin, Noah Key, Effie Gilchrist, Mrs. Valerie Nicholson.

The service complaints voiced by public witnesses concerned delays in completing both long distance calls and toll-free calls between exchanges, particularly long distance, and delays in response to customer complaints. Other problems recited by the public witnesses included service interruptions and diminished voice transmission during rainstorms. In addition, the public witnesses from Chatham County, particularly from the Goldston and Bonlee exchanges, indicated dissatisfaction with their limited toll-free calling scopes, and many of the witnesses were generally opposed to an increase up to the full rates requested.

The following public witnesses heard in Greensboro were from the Kernersville and Gibsonville exchanges, primarily from the Kernersville exchange: Mayor Roger P. Swisher, Mrs. Linda Range, Robert G. Copeland, Mrs. Anne Smith, Mrs. C. D. Thigpen, Harvey Pulling, Chuck Taylor, William B. Duncan, Lawrence Coleman, Rev. Don Ellis, Norman Crews, Mrs. Joretta Holt, John Lain, Glenn Carter, Rev. Wayne Coley, Mayor Ralph Foster, Mrs. Paul Kiger, Mrs. Edward Shouse, Baxter Little, Ed Corum, Bob Brown, W. B. Beal, Irving Grigg, Mrs. Wilma Martineau, E. C. Haycook, Violet Carter, Mrs. John Wolfe, O'Dell Solomon.

The public witnesses primarily spoke out in opposition to the extent of the proposed rate increase above present rates. A number of these witnesses found the service in their exchanges to be adequate. Some witnesses recited difficulties with delayed responses in both operator and direct dial response calls. In addition, a number of witnesses expressed interest in regrades to one-party

service and an interest in increased extended area service to other exchanges.

At the close of the hearing in this matter, the applicant offered the testimony of Mr. John M. Bigbee. Mr. Bigbee testified that he has been Vice President of Operations of the Southeast Group of the United System, but that on September 1, 1971, he returned to Southern Pines as Vice President and General Manager of United Telephone Company of the Carolinas. Mr. Bigbee appeared as a rebuttal witness to comment on the testimony and exhibits of Mr. Clemmons regarding the Staff's review of the company's service. Mr. Bigbee testified regarding the failure rate on interoffice calls, that the failure rate on such calls to non-United exchanges was a rather high percentage of the total failures; that the failure rate for DDD service indicated by Mr. Clemmons is an excessive failure rate but that the particular circuit problem involved in that test had been corrected; that in response to Mr. Clemmon's recommendation that "the company should also make periodic tests on dial connections to determine where service affecting problems exist and the necessary corrective action," each district in North Carolina now has a Service Analyzer Unit, which is rotated on a regularly scheduled basis to the exchanges in the district; that regarding the subscriber trouble reports per 100 stations, the company has instituted a computerized trouble analysis program which will provide information with which to improve this condition; that to improve operator answer time at both Siler City and Southern Pines, units have been installed whereby operator answer time will be studied on a continuous basis for manual toll but on an alternating basis between directory assistance and DDD answer time; that all of the held orders for new service will be completed by the end of 1971, and that as of the time of the hearing, there are no multi-party customers on the company's lines; that all trunk additions scheduled for 1971 would be provided in 1971; that the company has budgeted for permanent metering facilities to determine on a continuing basis the proper trunk ratings in the Southern Pines and Siler City toll centers; that the company is engaged in phasing-out rural distribution wire and installing underground cable. Mr. Bigbee testified that there are two areas of improvement particularly needed, (1) DDD and (2) improving trouble reports per 100 stations.

All of the exhibits identified by the respective witnesses were received into evidence.

Based upon the entire record of the proceeding, including testimony and exhibits, the Commission makes the following

FINDINGS OF FACT

1. United is a duly franchised public utility providing telephone service to its subscribers in 14 local exchanges in Piedmont, North Carolina, and is a duly created and existing corporation authorized to do business in North

Carolina and is properly before the Commission in this proceeding for a determination as to the justness and reasonableness of its rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. The total increases in rates and charges as filed by United would produce $1,392,793.58 in additional gross annual revenue, and the total reductions filed in zone charges and the color set charge would amount to $92,722 in annual reductions, leaving the combined additional increase in annual revenues applied for of $1,300,071.58.

3. The test period utilized by all parties and set by the Commission in this proceeding was the twelve months' period ending December 31, 1970.

4. The original cost of applicant's investment in telephone plant in service in its two state company-wide service area of South Carolina and North Carolina on December 31, 1970, was $32,166,518, of which $19,411,316 was in service in the State of North Carolina. Of the total plant in service in North Carolina, 86.30% was devoted to intrastate service under rates subject to the jurisdiction of the Utilities Commission, constituting intrastate plant in service in North Carolina on December 31, 1970, of $16,751,570, less reserve for depreciation of $2,546,263, with a net investment in intrastate telephone plant in service in North Carolina on December 31, 1970, of $14,231,307.

5. That under present rates, reasonable materials and supplies required for the operation of intrastate business in North Carolina are $686,678; that reasonable cash working capital requirements are $458,181; that there was available at the end of the test period $19,961 of Federal tax accruals, plus $15,985 of State income tax and miscellaneous other accruals, available for use as working capital, with a total net working capital requirement in the rate base requirements of $1,108,913.

6. That under present rates the net investment in plant in service and working capital allowances at the end of the test period December 31, 1970, were $15,340,771 (for intrastate operations).

7. That United's total operating revenues in intrastate commerce in North Carolina during the test period under the present rates were $3,794,458; that reasonable operating expenses for said intrastate service for the test period are $2,991,892, leaving net operating income of $802,566, adjusted for end-of-period income of the plant in service, by additional net income of $36,481 with net operating income adjusted for the test period of $839,047.

8. That the ratio of net income under the present rates as applied to the net investment in telephone plant

(intrastate) of $15,316,880, including working capital as adjusted for tax accruals, is 5.48%.

9. That after fixed charges on bonds and short-term notes of $655,111 for the test period as allocated to the North Carolina intrastate operation, there remains net income for equity of $334,000; that the common equity investment in intrastate service in North Carolina at the end of the test period was $6,346,116, producing a return on common equity under the present rates on intrastate service in North Carolina at the end of the test period of 5.26%.

10. That the Commission finds that the return on common equity of 5.26% is insufficient to compete in the market for capital funds on terms which are reasonable and which are fair to the Company's customers and its existing investors, considering changing economic conditions and other factors as they exist, and to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise.

11. That the replacement cost determined by trending original cost to current cost levels of the applicant's property rendering intrastate service in North Carolina is found to be $16,595,299.

12. The Commission finds that the fair value of the applicant's property rendering intrastate telephone service to its North Carolina subscribers, considering the original cost less depreciation and considering replacement cost by trending original cost to current cost levels, is $16,417,436.

13. The rate of return deemed necessary on the fair value of the applicant's property devoted to intrastate service in North Carolina, under sound management to produce a fair profit to stockholders considering economic conditions as they exist and permitting applicant to maintain its facilities and service, and further permitting applicant to expand its service in accordance with the standards set by the Commission, is 7.69%; that to earn said rate of return on fair value will require additional annual gross revenue of $968,293 based on test period operations, after adjustments for probable future revenues and expenses based on the plant and equipment in operation at the end of the test period. This amount is 74.48% of the increase applied for by the applicant in this proceeding. The increases applied for by the applicant in excess of the above amount are deemed to be and are found to be unjust and unreasonable by the Commission, and rate increases to produce the additional $968,293 revenues required for the rate of return approved by this Order are found to be just and reasonable and to require the rate increases approved herein, which may reasonably be charged by the applicant for telephone service rendered to its customers in intrastate service in North Carolina.

14. The rate of return of 7.69% on the fair value of the property allowed by this Order will provide a return on common equity after fixed charges of 11.48%, which the Commission finds is sufficient to allow the applicant to compete in the market for capital funds on a reasonable basis to its customers and to its existing stockholders.

15. That applicant's gross revenues under the rates approved herein in Appendix "A" attached to and made a part of this Order, as applied during the test period, would be $4,789,266; that the fixed charges computed for the test period based upon the known imbedded cost of debt for United of 6.65% at the end of the test period, as applied to the debt allocated to North Carolina intrastate service at the end of the test period of $7,950,506 in long-term debt and $3,351,015 in short-term debt, produces fixed charges of $618,344; that total operating deductions for test period operations adjusted to the rate increases allowed herein will be $3,530,445, with net operating income for the test period of $1,262,068; that adjusted for the approved rate increases, the ratio of equity to long-term and short-term debt is 41.68% (which is the average ratio for the past 5 years), and said net income of $1,262,068 plus other income of $150,064, produces income available for fixed charges in the amount of $1,412,132, and after payment of fixed charges of $618,344, leaves $793,788 available for common equity; that said balance of $793,788 for common equity of $6,912,963 produces a return on common equity of 11.48%.

16. That United is providing reasonable, adequate and efficient telephone service to its subscribers in its service area in this State, however, evidence introduced by the Commission Staff and public witnesses reveals that certain areas of service should be improved.

17. That the reasonable depreciation rates to be applied by the Company and used in computing the company's depreciation expense are the rates shown in Appendix B attached hereto and made a part of this Order.

18. That the calling scope for the subscribers in United's Goldston and Bonlee exchanges is 345 and 582, respectively, which is found to be lower than is reasonable, and in order to increase their calling scope to a reasonable level, the company must afford extended area service to both of said exchanges with the company's Siler City exchange. (See Appendix "D")

SUMMARY

The application of United in this proceeding seeks increases and decreases in rates to produce $1,300,071.58 of additional revenue from the customers receiving service at the end of the test period.

The Commission has found as a fact that such proposed total increases are unjust and unreasonable and will produce

a return greater than a reasonable rate of return on the telephone plant in service at the end of the test period. The Commission further finds as a fact that the present rates of United are insufficient to produce a fair rate of return to the company, and has found as a fact that an increase in the revenues in the amount of $968,293 is necessary to produce a reasonable rate of return on the fair value of the company's property in service at the end of the test period, and that increases in monthly rates and other charges to produce such additional annual revenue are just and reasonable. The distribution of said total annual increases over the respective monthly rates and other rate changes filed herein are discussed under the Conclusions in this Order, and the prescribed increases for each specific charge are set out in the ordering paragraphs and Appendix "A" of this Order.

The following Tables, based on the Findings of Fact, show the basis for the $968,293 found to be a reasonable annual increase in the applicant's revenues from the record in this proceeding.

UNITED TELEPHONE COMPANY OF THE CAROLINAS
NET OPERATING INCOME AND NET INCOME COMPUTATIONS
FOR THE TEST PERIOD ENDING DECEMBER 31, 1970
AFTER ADJUSTMENTS

	Present Rates	Approved Increase	After Increase
North Carolina Intrastate			
Operating revenues	$3,820,973	$968,293	$4,789,266
Uncollectibles	(26,515)	(6,719)	(33,234)
Total operating revenues	3,794,458	961,574	4,756,032
Operating expenses	1,651,343		1,651,343
Depreciation	770,025		770,025
Taxes - Other than income	439,588	57,695	497,283
Taxes - State income	23,023	56,439	79,462
Taxes - Federal income	107,913	424,419	532,332
Total operating deductions	2,991,892	538,553	3,530,445
Net operating income	802,566	423,021	1,225,587
Add: End-of-period adjustment	36,481		36,481
Net operating income for return	839,047	423,021	1,262,068
Investment in Telephone Plant			
Plant in service	16,751,570		16,751,570
Less: depreciation reserve	2,546,263		2,546,263
Net plant in service	14,205,307		14,205,307
Allowance for Working Capital			
Materials and supplies	686,678		686,678
Cash	458,181		458,181
Less: Federal tax accruals	(17,699)	(70,736)	(88,435)
State tax accruals	(15,587)	(14,110)	(29,697)
Total allowance for working capital	1,111,573	(84,846)	1,026,727

Net investment and working capital allowance	15,316,880	(84,846)	15,232,034
Ratio of earnings to book value	5.48%		8.28%
Fair value of property			16,417,436
Rate of return on fair value			7.69%
Common equity	6,346,116		6,912,963

( ) Denotes negative amount.

RETURN ON COMMON EQUITY
TEST PERIOD DATA, AS ADJUSTED

	Present Rates	Approved Rates
Net operating income for return	$ 839,047	$1,262,068
Other income or loss	150,064	150,064
Income available for fixed charges	989,111	1,412,132
Fixed charges	655,111	618,344
Balance for common equity	334,000	793,788
Common equity	6,346,116	6,912,963
Return on common equity	5.26%	11.48%

Based upon the Findings of Fact, as set forth above, the Commission makes the following

CONCLUSIONS

1. The Commission concludes that no more than 74.48% of the total rate increase filed is necessary to provide a fair rate of return to United on the fair value of its property in service at the end of the test period.

2. The rate increases proposed by United in the application are found to be unreasonable and unjustified to the extent that they produce total increases on the annualized revenue from the customers at the end of the test period in excess of $968,293 (increases of $1,061,015, minus decreases of $92,722).

3. The Commission has found that the fair value of the plant in service is $16,417,436 and that a fair rate of return on the fair value of the plant is 7.69%, bringing net income for return of $1,262,068. This produces a ratio of net income to the original cost of the property of 8.28% and a return on common equity of 11.48%.

4. The Commission finds and concludes that the said approved annual increase in rates of $968,293 should be derived from the increases on (a) Key Telephone Systems, (b) Listings and Number Service, (c) Extension and Private Line Mileage, (d) Mobile Telephone Service, (e) Auxiliary Service and Equipment, (f) PBX Trunks, (g) Semi-public Telephone Service, and (h) Joint-user Service: that decreases should be allowed on (i) Zone Charges and

(j) Color Telephone Set Charges; that the increase should be denied entirely in (k) Service Charges; and that the balance of the total annual increases approved of $968,293 should be derived from increases in the (l) Monthly Rate for Local Telephone Service. The evidence of record justifies the increases in the rates approved as described above, but does not support the increase filed for service charges. The service charge increases as filed are denied at this time, in line with the Commission's policy of maintaining uniform service charges for all telephone companies operating in this State.

5. The Commission finds and concludes, (a) that the reduction in zone charges should be increased from the company's request of a $59,926.00 reduction to an $80,429.00 reduction in order that zone rate relief will be provided for customers in the first zone for which provision was not made in the application; (b) that the increases as applied for, on number and listing service, auxiliary services, extension line and private line services, and mobile telephone services, are approved as reasonable and appropriate; (c) that the multiplier (method of determining) rates for joint-user services, semi-public pay station and PBX central office trunks as applied for are just and reasonable and should be and are approved; (d) and that the increase as applied for on key systems is not approved for the reason that the company converted said charges from an itemized to a package charge, with the proposal reducing the rate per station, and increasing the cost of the central office lines, yet the company offered no evidence justifying a reduction in charges per station and, while offering some evidence that additional costs are incurred justifying charges on rates higher than business one-party, failed to justify the full increase applied for.

6. The Commission has long supported a reduction in the zone charges for telephone service to customers outside of the base rate area in North Carolina in order to reduce this burden upon the telephone service to rural customers, and finds and concludes that the reduction in zone rates herein approved are just and reasonable in order to remove a portion of the differential in rates to rural customers as compared with the base rate to urban customers. The elimination of the charge for color telephone sets is approved on the grounds that the evidence does not justify an extra charge based on the color of the telephone set.

7. The Commission finds that the local monthly rate is a fixed charge or flat rate charge for furnishing of the basic telephone set on the customer's premises, without regard to the amount of use an individual customer may make of his telephone set (except as reflected in the classification of customers, for rate purposes, between residential and business customers) and that as much of the necessary and approved increases in rates as possible should be placed on charges for service and for actual use of the telephone set and telephone plant, with as small an increase in the local

monthly rate as possible. For this reason, the Commission approves the increases and decreases except (k) above, and reduces the increases filed for the local monthly rates. Most of the increases in cost of furnishing service shown in the record to justify the rate increases relate to increases in expenses from actual use of the telephone set and telephone plant, and the Commission finds that such increases in costs should be provided from the use charges and special charges as described above, and that only the balance of the increase necessary be derived from the local monthly rate, and has so prescribed in the approved rate increases set forth in Appendix "A" attached hereto.

8. United entered this rate proceeding with an equity ratio of 38.26%, and proposes to increase that ratio in the near term future to approximately 48%, yet its historical average equity ratio for the period 1965 - 1970 was 41.68%, and we conclude that the proper equity ratio to be used in this proceeding is the historical average of 41.68% as being fair, just, reasonable, and equitable to the company and its stockholders and ratepayers. The return on equity of a utility company must necessarily be influenced by the debt-equity ratio because of the leverage factor from the fixed charges applicable to debt, with the remainder of the earnings available for common equity. The cost of equity capital varies with the equity ratio in the capital structure of a company, as the lower the percentage of debt in the capital structure the lower the risk to equity capital, and the lower the cost of equity capital, with a low debt ratio. For the corresponding reason, equity capital can expect a higher rate of return when the company utilizes the leverage of a high debt ratio, with high fixed charges and high risk to equity, but with all remaining earnings available to the smaller ratio of equity capital. For these reasons, the Commission has allowed a return on equity in the amount of 11.48%. The company has the opportunity of increasing the low equity ratio of 38.26% of its capital structure, in determining the debt-equity ratio to finance the planned major increases in plant construction over the next five years, and the testimony supports an equity ratio range herein found reasonable and used.

9. United's overall service is good, however, Commission Staff testimony and the testimony of public witnesses indicate certain areas of the company's operations which require improvement, and such improvement should be required of the company by the Commission.

10. United has now eliminated multi-party service in all of its exchanges. It is a major participant in EAS service among all exchanges in Moore County. Despite the eroding of its rate of return United has invested larger and larger sums of money in new and modern telephone plant so that most of its plant is only a few years old. This is evidenced by the fair value evaluation herein made on its plant in service. The company has been and is replacing aerial wire with underground cable at a reasonably rapid rate and its

held orders are relatively few. The company has adequate and qualified service, repair and operating personnel, and appears to be working diligently to correct those service difficulties which do exist, a portion of which was occasioned by United's rapid growth and upgrading of facilities with new and complex equipment which is not yet thoroughly debugged. The service problems of this company are unlike service problems arising from old, obsolete plant which has suffered from inadequate maintenance and neglect. We conclude that United must continue to be alert to its service problems and act responsibly to eliminate them.

11. The ability of United to provide adequate service in its service area and to construct needed plant to meet the increased demand for telephone service under the provisions of North Carolina law requires that its earnings be maintained at a level so as to attract the capital needed for such service and the construction program proposed. The increased cost of providing service, including increased wages and the increases in the cost of equipment and the cost of installing new telephones and improving service to existing telephones, with the investment per main station in the central office are amply shown in the record. Increased interest charges must be covered with sufficient funds remaining for dividends to attract investors in common equity.

12. The Utilities Commission takes judicial notice of the President's Executive Order No. 11627, entered on October 15, 1971, establishing Phase II of wage and price controls under the Economic Stabilization Act of 1970 beyond the original 90-day period ending November 13, 1971, and the establishment of the Price Commission pursuant to said Order, and the rules and regulations of the Price Commission published in Volume 36, No. 220 Federal Register, November 13, 1971, § 300.016, Regulated Utilities, at p. 21,793, as amended in Volume 36, No. 222, Federal Register, November 17, 1971, at p. 21,953, requiring that regulated public utilities having gross receipts of $50,000,000 or more give notice to the Price Commission of any price increases authorized by regulatory agencies. The Utilities Commission is further advertent to public statements of guidelines and policies of the Price Commission, and takes notice of the release in the Price Commission News of November 29, 1971, requiring that regulatory agencies considering applications of regulated utilities for rate increase must certify that any increases approved meet the following criteria:

The increase does not contribute to inflationary expectations.

The increase is reduced to reflect productivity gains.

The increase is the minimum rate which is necessary to assure continued and adequate service.

Any increase in the rate of return on investment that is allowed must be required either by an increase in the cost of money or is necessary to assure continued adequate service.

The North Carolina rate procedure and the evidence in this proceeding, and the consideration thereof by the Commission, fixes the rates of United in this proceeding on the basis that they will provide no more than the minimum return necessary to assure continued and adequate service of United, and this Order considers the increased cost of money to United over its imbedded cost of its debt capital. The return actually earned by United from the rates in effect immediately prior to the price freeze on August 15, 1971 (which have been in effect since 1957), if continued without the rate increase approved here, would not be adequate to assure continued and adequate service, and this Commission finds and so certifies that the increases are consistent with the four criteria established by the Price Commission as set out above, and the documentation for such findings are set out fully in the Findings of Fact and Conclusions herein, based on evidence of record of the public hearings herein, and the rate increase approved here is authorized solely on the basis that it is necessary in order to assure continued and adequate service of United to the public in its service area, considering the increased cost of service, the increased expenses of United and the increased cost of money, and the purpose of the Economic Stabilization Act of 1970, as amended.

This Order is entered subject to the compliance of United with all requirements of the Price Commission for notice of such increase and subject to such other rules and regulations of the Price Commission as may be applicable to such increase.

13. That the depreciation rates shown in Appendix "B" should be authorized for use by United in computing reasonable annual depreciation expense on and after December 31, 1970.

14. That the company should proceed with dispatch to afford extended area service to its Goldston and Bonlee exchanges with its Siler City exchange in order to provide a reasonable and adequate calling scope for the customers in the said Goldston and Bonlee exchanges; that upon the completion of the establishment of said extended area service, the company should file with the Commission on one day's notice tariffs placing into effect the Siler City exchange local service rates for application in the company's Goldston and Bonlee exchanges; and that the additional revenue provided by the additional rate increases resulting from the application of the Siler City exchange rates in the Goldston and Bonlee exchanges should be sufficient to compensate the company for the additional investment required for the establishment of such extended area service.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the applicant, United Telephone Company of the Carolinas, Inc., be, and hereby is, authorized to increase its North Carolina intrastate local exchange telephone rates and charges to produce additional annual gross revenue not exceeding $968,293, by applying total increases of $1,081,572, less total decreases of $113,279, based upon stations and operations as of December 31, 1970, as hereinafter set forth.

2. That the local monthly rates prescribed and set forth in Appendix "A" hereto attached setting forth increased monthly local subscriber rates which will produce additional gross revenue of $879,244 from said end-of-test-period customers are hereby approved to become the monthly station rates to be charged by United in North Carolina, effective with bills rendered in advance on the next billing date or dates five days following the release of this Order.

3. That the increases in (a) listing and number service of $11,565; (b) extension and private line mileage of $8,650; (c) mobile telephone service of $300; (d) auxiliary service and equipment of $6,402; (e) private branch exchange service of $61,205; and the decreases in (f) zone rates of $80,429 and in the (g) color set charge of $32,796 are hereby approved as filed in this proceeding, to produce additional annual revenue from the combined increases and decreases for customers and service at the end of the test period December 31, 1970, in the amount of $86,101, to become effective as the rates and charges of United for said services effective with bills rendered in advance on the next billing date or dates five days following the release of this Order.

4. That the increase in key telephone service charges, as filed herein to produce additional annual revenue of $103,911 is hereby amended as outlined in Appendix "A" to produce an annual revenue increase of $90,750.

5. That the increase in service charges, as filed herein to produce annual additional revenue of $36,038, are hereby denied.

6. That United shall file necessary revised tariffs reflecting the above increases and decreases, to be effective as of the dates prescribed above.

7. That the reasonable depreciation rates approved for United are those shown on Appendix "B" attached hereto and shall be the effective rates for United on and after December 31, 1970.

8. That United shall take the necessary action to improve service as indicated in Appendix "C" attached to this Order, and that the Commission Staff shall make further

periodic reviews and report United's progress to the Commission.

9. That United shall take the necessary action to install and place in service extended area calling service for its Goldston and Bonlee exchanges to its Siler City exchange as soon as is practicable; and that the company shall file tariffs with this Commission making the Siler City exchange local service rates herein approved applicable to its Goldston and Bonlee exchange customers effective upon the inservice date of the said extended area service installation herein ordered.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of December, 1971.

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

APPENDIX "A"
UNITED TELEPHONE COMPANY OF THE CAROLINAS, INC.
DOCKET NO. P-9, SUB 113

LOCAL SERVICE RATES

Rates by Exchanges

	Residence			
Exchange	Ind.	2-pty	4-pty	Rural
Angier	11.20	9.60	7.00	7.00
Bonlee	5.45	3.95	3.30	-
Carthage	9.45	7.60	5.85	-
Fuquay	11.20	9.60	7.00	7.00
Gibsonville	10.15	8.35	6.15	-
Goldston	5.45	3.95	3.30	-
Kernersville	11.20	9.60	7.00	-
Pinehurst	9.45	7.60	5.85	-
Pittsboro	6.65	4.90	3.70	3.70
Robbins	9.45	7.60	5.85	-
Siler City	7.75	6.00	4.50	4.50
Southern Pines	9.45	7.60	5.85	-
Vass	9.45	7.60	5.85	-
Whispering Pines	9.45	7.60	5.85	-

Exchange	Business			
	Ind.	2-pty	4-pty	Rural
Angier	21.65	17.75	14.00	-
Bonlee	9.40	7.60	5.60	-
Carthage	17.75	15.10	11.70	-
Fuquay	21.65	17.75	14.00	-
Gibsonville	19.15	15.85	12.35	-
Goldston	9.40	7.60	5.60	-
Kernersville	21.65	17.75	14.00	-
Pinehurst	17.75	15.10	11.70	-
Pittsboro	11.65	9.75	7.25	6.05
Robbins	17.75	15.10	11.70	-
Siler City	13.15	11.05	8.30	-
Southern Pines	17.75	15.10	11.70	-
Vass	17.75	15.10	11.70	-
Whispering Pines	17.75	-	-	-

Note: See official Order in the Office of the Chief Clerk for complete Appendix "A" and Appendices "B," "C," and "D."

DOCKET NO. P-9, SUB 113

WELLS, COMMISSIONER, DISSENTING. The Majority Order in this case allows United Telephone Company of the Carolinas, Inc., to increase its charges for local service by over 40%, and will allow some individual local rates to be increased as high as 80%.

The predicates upon which the Majority have reached this result are erroneous, unreasonable, and unjust to United's customers in North Carolina:

1) The rate of return on common stock equity allowed to United's sole stockholder, United Utilities, Inc., is too high, and should not have exceeded 10.40%.

2) In deriving that rate of return, the Majority failed to take into account additional toll revenues which United will receive as a result of the Commission's Order in Docket No. P-100, Sub 26, establishing higher intrastate toll rates for United's customers; nor that United's local service revenues based on plant in place at the close of the test year were substantially understated.

3) The return on fair value is excessive, being predicated on a fair value which is seriously overstated and not based on any objective evidence or standard to be found in this record.

The Majority Order, though giving lip service to the President's Executive Order establishing price controls, makes it clear that the guidelines established thereunder mean little or nothing to the members of the North Carolina Utilities Commission who supported this Order.

Once again, the Majority of this Commission when confronted with serious service deficiencies in a telephone rate proceedings has glossed over the substantial service problems brought to its attention by the utility's customers, and rather than frankly stating in this case that this company has left much to be desired in many areas of service and customer relations, reaches the puzzling result of (1) finding service to be efficient, and (2) orders numerous service improvements.

It is clear from the record in this case that United needed reasonable rate relief; but it is just as clear that the Majority Order has gone much too far, favoring the utility over its customers.

Hugh A. Wells, Commissioner

I concur with the Dissenting Statement of Commissioner Wells in Docket No. P-9, Sub 113.

John W. McDevitt, Commissioner

DOCKET NO. P-7, SUB 536

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Carolina Telephone and Telegraph Company - 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 Carolina Telephone and Telegraph Company (Company), filed under date of September 2, 1971, through its Counsel, Herbert H. Taylor, Jr., Tarboro, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell, for cash, at competitive bidding $20,000,000 principal amount of its Debentures bearing interest at the rate of _____% per annum, and due October 1, 2001.

2. To execute and deliver to the Trustees an Indenture dated as of October 1, 1971, to secure payment of said Debentures.

3. To issue 375,000 shares of additional Common Stock of the par value of $20.00 at the price of $40.00 per share for a total of $15,000,000 to United Utilities, Incorporated upon receipt of the purchase price therefor, and United Utilities, Incorporated has agreed to purchase the same at said price.

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina, with its principal office located in Tarboro, North Carolina; is

the owner and operator of telephone communications systems in forty (40) counties in the eastern part 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.

2. During the past ten years, the demand for telephone service has been steadily increasing. Telephones in service increased from 201,814 stations at June 30, 1961, to 459,681 at June 30, 1971. At June 30, 1971, there were 202 unfilled orders and applications for service. Currently, 956 customers wish to have their service upgraded from party to individual lines or lines shared with fewer people.

3. The increased demand for service has been the direct cause of high level construction activities, which during the past 11 1/2 years has grossed some $273,045,000. It is estimated that the gross expenditure for the last six months of 1971 will approximate $23,572,000. The current estimate for plant additions during 1972 is $53,000,000.

4. At June 30, 1971, the amount of bank borrowings outstanding was $16,860,000 and at August 31, 1971, the amount was $22,685,000. It is expected that the construction requirements of the Company will necessitate additional bank borrowings for like purposes in the future.

5. The Company proposes, subject to the approval of this Commission, to issue and sell $20,000,000 aggregate principal amount of its 30 year Debentures, due October 1, 2001, at competitive bidding. The Petitioner proposes to issue a Public Invitation for Sealed Written Proposals for the Debentures subject to a Statement of Terms and Conditions Relating to Sealed Written proposals, the bids to be made upon a specified Form of Proposal, to which will be annexed the Purchase Contract.

6. The Company proposes to issue 375,000 shares of additional Common Stock of the par value of $20.00 at the price of $40.00 per share for a total of $15,000,000 to United Utilities, Incorporated upon receipt of the purchase price therefor and United Utilities, Incorporated has agreed to purchase the same at said price.

7. The net proceeds derived from the sale of the Debentures and the Common Stock will be applied first to payment of amounts owing by the Company on its short-term obligations, and the excess, if any, to be expended on its construction program.

8. The proposed Indenture, under which the Debentures will be issued, contains sinking fund provisions providing for the retirement of one percent of the original principal amount of the Debentures annually beginning in 1972.

9. It is estimated that the cost to the Company for the issuance and sale of the Debentures and of the Stock will not exceed $130,000.

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;

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Carolina Telephone and Telegraph 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 at competitive bidding $20,000,000 principal amount of its Debentures due October 1, 2001;

2. To execute and deliver to the Trustees an Indenture, dated as of October 1, 1971, as security for payment of the Debentures;

3. To issue and sell to its parent United Utilities, Incorporated $15,000,000 aggregate amount of Common Stock of the per share par value of $20.00 at a price per share not less than book value computed on the month end book value per share preceding the date the actual sale takes place;

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; and

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.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of September, 1971.

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

DOCKET NO. P-7, SUB 536

WELLS, COMMISSIONER, DISSENTING. The majority order neither discloses nor discusses the shift in the capital structure of this company occasioned by the proposed financing approved by this order.

Prior to the proposed financing dealt with in this order, the capital structure of this company consisted of 56.2% long-term debt and 43.8% stockholder equity. Assuming that debt financing is a less expensive form of acquisition of capital funds than issuing common stock, the Commission should require justification for any shift in the company's capital structure which would have the effect of increasing stockholder equity and decreasing debt. While the change occasioned by the approval of this financing is not critical, it would be preferable for whatever shift might take place to be in the direction of increased debt and decreased equity, rather than the other direction.

The application has shown no justification for the increase in equity occasioned by this financing, and the Commission has not found any facts in the majority order which would justify this change.

For these reasons I dissent from the Commission order, for the purpose of emphasizing my belief that there should be a stronger position of debt financing in this company and that its debt position should not be diminished in favor of increased equity holdings.

Hugh A. Wells, Commissioner

DOCKET NO. P-10, SUB 307

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Central Telephone Company, Central Telephone & Utilities Corporation and New Centel, Inc., for approval of the merger of Central Telephone Company into New Centel, Inc., and for authorizations in connection therewith and with certain other related reorganizations, including authorizations for issuance of securities, assumption of obligations and transfer of ownership and control of the franchise and certificate of public convenience and necessity of Central Telephone Company	ORDER APPROVING MERGER, ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS AND GRANTING RELATED AUTHORIZATIONS

This cause comes before the Commission upon the Application of Central Telephone Company (Centel), Central Telephone & Utilities Corporation (CTU), and New Centel, Inc. (New Centel), filed under date of April 16, 1971,

through its Counsel, Ross, Hardies, O'Keefe, Babcock & Parsons, Chicago, Illinois, and Richard G. Long, Roxboro, North Carolina, wherein approval is sought as follows:

> For the merger of Centel into New Centel, Inc., the transfer of ownership and control of the franchise and certificate of public convenience and necessity of Centel to New Centel, the issuance of securities by New Centel and the assumption of obligations of Centel by New Centel, and related matters.

By order entered May 10, 1971, the matter was set for hearing on June 11, 1971, unless no protests were received by the Commission on or before June 4, 1971. On May 19, 1971, Centel gave to its stockholders due notice of the application and of the opportunity to oppose the grant of the authorizations sought. No protests have been received which justify or require holding a hearing. Accordingly, pursuant to the aforesaid order of May 10, 1971, the matter will be determined on the basis of the application and the information heretofore filed with the Commission.

FINDINGS OF FACT

1. Centel is a Delaware corporation duly qualified to transact business as a foreign corporation in the State of North Carolina. Centel is a public utility as defined in paragraph (23)(a)(6) of Section 62-3 of the Public Utilities Act of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. CTU is a Kansas corporation which, at December 31, 1970, owned approximately 96 percent of the common stock, representing approximately 91 percent of the voting power, of Centel.

3. New Centel is a Delaware corporation incorporated on December 14, 1970. New Centel has outstanding 10 shares of common stock, all of which are owned by CTU. New Centel was formed solely for the purpose of effecting the reorganization of Centel proposed herein. New Centel is duly qualified to transact business as a foreign corporation in the State of North Carolina.

4. CTU is the parent of certain other corporations providing telephone service in certain areas in Florida, Illinois, North Carolina, Virginia and Wisconsin, to wit:

(a) Lee Telephone Company (Lee Telephone), a Virginia corporation. At December 31, 1970, CTU owned approximately 99.8 percent of the common stock of Lee Telephone.

(b) Central Telephone Company of Illinois (Centel Illinois), an Illinois corporation. At December 31, 1970, Centel owned approximately 96 percent of the common stock, representing approximately 87 percent of the voting power, of Centel Illinois.

(c) La Crosse Telephone Corporation (La Crosse), a Wisconsin corporation. At December 31, 1970, Centel owned approximately 94 percent of the common stock of La Crosse.

(d) Virginia Telephone & Telegraph Company (Virginia Telephone), a Virginia corporation. At December 31, 1970, Centel owned approximately 88 percent of the common stock of Virginia Telephone.

(e) Southeastern Telephone Company (Southeastern), a Florida corporation. At December 31, 1970, Centel owned approximately 96 percent of the common stock, representing approximately 94 percent of the voting power, of Southeastern.

5. A series of mergers and asset acquisitions is proposed, the purpose of which is to simplify the corporate structure of CTU and its subsidiaries, to facilitate further expansion, and to eliminate the minority common stock interests in the subsidiaries of CTU. As a first step, it is proposed that Centel be merged into New Centel under the laws of Delaware. If such merger is effected, the holders of the minority common stock of Centel will receive voting preferred stock of New Centel convertible into common stock of CTU. The holders of preferred stock of Centel will receive voting preferred stock of New Centel without the conversion privilege but with provisions similar, in terms, to the provisions of preferred stock of Centel now outstanding. No preferred stock will be issued to CTU; the Centel common stock held by CTU will be cancelled. The New Centel stock which is proposed to be issued is described below. It is also proposed that CTU form a new Virginia corporation (New Lee Telephone) to which it will transfer shares of CTU common stock in exchange for all of New Lee Telephone's common stock. New Lee Telephone will thereafter acquire all of the assets and assume the liabilities of Lee Telephone in exchange for the CTU common stock, the holders of the minority common stock of Lee Telephone receiving CTU common stock. Lee Telephone will then be dissolved. No CTU common stock will be distributed to CTU.

6. An agreement of merger between Centel and New Centel has been approved by the Boards of Directors of Centel and New Centel and by CTU, as sole stockholder of New Centel. The Commission is advised that since the application was filed, the agreement also has been approved by the stockholders of Centel.

7. At the present time, New Centel owns no utility properties and conducts no business. If the merger of Centel into New Centel is effected, the name of New Centel will become Central Telephone Company; New Centel will own all of the utility properties now owned by Centel, and no others; New Centel will conduct the telephone utility business now being conducted by Centel, and no other; and New Centel will be a public utility as defined in paragraph

(23)(a)(6) of Section 62-3 of the Public Utilities Act and will be subject to the jurisdiction of this Commission.

8. Also, if the merger of Centel into New Centel is effected, New Centel will own the stock now owned by Centel in La Crosse, Centel Illinois, Virginia Telephone and Southeastern. It is proposed that New Centel form new Wisconsin, Illinois, Virginia and Florida corporations (New La Crosse, New Centel Illinois, New Virginia Telephone and New Southeastern) and receive all of the common stock of each of these corporations in exchange for voting preferred stock of New Centel. One class of this preferred stock would be convertible into CTU common stock. The other classes would not have such conversion privilege but each would be similar to a class of preferred stock of Centel Illinois or Southeastern now outstanding. It is proposed that the following reorganizations would then be effected:

(a) New La Crosse would acquire all of the assets and assume the liabilities of La Crosse in exchange for New Centel preferred stock with a conversion privilege, which would be received by the holders of the minority common stock of La Crosse. La Crosse would then be dissolved. No convertible preferred stock of New Centel would be distributed to New Centel.

(b) Centel Illinois would be merged into New Centel Illinois. Pursuant to the merger, holders of the common stock of Centel Illinois would receive shares of convertible preferred stock of New Centel. Holders of preferred stock of Centel Illinois would receive shares of preferred stock of New Centel without the conversion privilege but with provisions similar, in terms, to the provisions of the preferred stock of Centel Illinois now outstanding. No shares of convertible preferred stock of New Centel would be distributed to New Centel.

(c) Virginia Telephone would be merged into New Virginia Telephone. Pursuant to the merger, holders of the minority common stock of Virginia Telephone would receive convertible preferred stock of New Centel. No shares of convertible preferred stock of New Centel would be distributed to New Centel.

(d) Southeastern would be merged into New Southeastern. Holders of the minority common stock of Southeastern would receive convertible preferred stock of New Centel. Holders of shares of preferred stock of Southeastern would receive shares of preferred stock of New Centel without the conversion privilege but with provisions similar, in terms, to the provisions of the preferred stock of Southeastern now outstanding. No shares of convertible preferred stock of New Centel would be distributed to New Centel.

9. Applications have been or will be filed with the Minnesota Public Service Commission, the Nevada Public Service Commission and the Federal Communications

Commission, all of which have jurisdiction over some aspect of the merger of Centel into New Centel. In each of the other proposed reorganizations, stockholder approval is required, and the approval of at least one state public utility commission and, except where no transfers of licenses for microwave operations are involved, the approval of the Federal Communications Commission must be obtained. Although the applicants are not aware of any reason why all necessary approvals should not be obtained, CTU has retained the option to abandon all or any part of the program if any requisite consent to or authorization of any part of the program cannot be secured or is granted upon conditions which CTU deems unacceptable. Accordingly, the program may be accomplished in full, partially or not at all.

10. With regard to New Centel's accounting, there will be no change in the property accounts and depreciation reserve of Centel in the recording of the transfer of Centel's properties to New Centel on the books of New Centel; these will be carried over in the same amounts to the books of New Centel.

As noted above, in the merger of Centel into New Centel there will be issued convertible preferred stock of New Centel for the minority common stock of Centel. Also, the capital stock expense of Centel will not be carried over on New Centel's books in the merger; rather, it will be written off against retained earnings. As a consequence of these two facts, the pro forma common stock equity of Centel as of December 31, 1970, would be reduced by $5,448,356. Therefore, in order to preserve the common stock equity of New Centel, it is proposed that CTU make a capital contribution of that amount, by way of a credit against construction advances owing to CTU ($12,155,000 at March 31, 1971).

11. The classes and the maximum numbers of shares and maximum principal amounts of securities (subject to reduction through interim operations of sinking funds or purchase funds in certain instances) to be issued or assumed by New Centel are as follows:

9,000,000 shares of Common Stock without par value;

614,905 shares of Convertible Junior Preferred Stock without par value but with a stated value of $10 per share;

The following series of Cumulative Preferred Stock without par value but with a stated value as indicated:

35,000 shares, $2.50 Dividend Series, of the stated value of $50 per share;

10,400 shares, $1.50 Dividend Series, of the stated value of $25 per share;

231,225 shares, $1.24 Dividend Series,
of the stated value of $25 per share;

4,853 shares, $5 Dividend Series,
of the stated value of $100 per share;

54,000 shares, $4.70 Dividend Series,
of the stated value of $100 per share;

50,000 shares, $6 Dividend Series 1,
of the stated value of $100 per share;

45,000 shares, $6 Dividend Series 2,
of the stated value of $100 per share;

89,983 shares, $1 Dividend Series,
of the stated value of $20 per share;

250,000 shares, $1.13 Dividend Series,
of the stated value of $20 per share.

Except for the last four of these series, which will be issued in replacement of substantially identical shares of Southeastern and Centel Illinois, each such series will replace a substantially identical series of Centel now outstanding.

The following outstanding First Mortgage Bonds of Centel to be assumed by New Centel by a supplement to the Indenture from Centel to The First National Bank of Chicago and William K. Stevens, as Trustees, dated June 1, 1944, as amended:

$ 1,128,000,	Series A,	3-1/4%,	due June 1,	1974;
$ 341,000,	Series B,	3-1/4%,	due June 1,	1974;
$ 380,000,	Series C,	3-1/4%,	due June 1,	1974;
$ 220,000,	Series D,	3-1/8%,	due September 1,	1975;
$ 390,000,	Series E,	3-5/8%,	due December 1,	1976;
$ 563,000,	Series F,	3.80%,	due December 1,	1977;
$ 602,000,	Series G,	4.20%,	due November 1,	1978;
$ 1,293,000,	Series H,	4-1/2%,	due October 1,	1981;
$ 898,000,	Series I,	5-1/4%,	due September 1,	1972;
$ 1,922,000,	Series J,	4-5/8%,	due May 1,	1983;
$ 1,748,000,	Series K,	5%,	due June 1,	1984;
$ 2,235,000,	Series L,	5-2/8%,	due December 1,	1985;
$ 2,617,000,	Series M,	4-1/2%,	due October 1,	1979;
$ 1,326,000,	Series N,	4-3/4%,	due September 1,	1983;
$ 3,023,000,	Series P,	5-1/8%,	due May 1,	1986;
$ 4,789,000,	Series O,	5-1/8%,	due February 1,	1987;
$10,146,000,	Series R,	4-3/4%,	due June 1,	1988;
$11,356,000,	Series S,	4.85%,	due June 1,	1989;
$ 7,760,000,	Series T,	6-3/8%,	due October 1,	1992;
$12,125,000,	Series U,	6.70%,	due April 1,	1993;
$24,593,000,	Series V,	8%,	due July 1,	1994;

$500,000 of outstanding 4-1/4% Sinking Fund Debentures due July 1, 1975 of Centel to be assumed by New Centel by a

supplement to the Indenture from Centel to Continental Illinois National Bank and Trust Company of Chicago, successor to Harris Trust and Savings Bank, as Trustee, dated as of May 1, 1948, as amended;

$750,000 of outstanding 4-1/2% Subordinated Debentures due December 1, 1976 of Centel to be assumed by New Centel by a supplement to the Indenture from Centel to The Northern Trust Company, as Trustee, dated as of December 1, 1956;

$30,000,000 of outstanding 9-1/4% Sinking Fund Debentures due October 1, 1995 of Centel to be assumed by New Centel by a supplement to the Indenture from Centel to Harris Trust and Savings Bank, as Trustee, dated as of October 1, 1970;

$5,150,000 of outstanding Promissory Notes due October 1, 1986 of Centel.

Also, New Centel will assume the liability of Centel for construction advances from CTU ($12,155,000 as of March 31, 1971), made pursuant to authorization from this Commission for Centel to borrow from CTU up to $20,000,000 on open account with interest at the prime rate in effect for short-term loans by banks to top credits.

12. The securities will not be sold, as such. Rather, they will be issued in the reorganizations discussed above in exchange for securities of Centel (the issuance and sale of all of which previously have been approved by this Commission), La Crosse, Centel Illinois, Virginia Telephone and Southeastern. New Centel currently has 10 shares of stock outstanding. Upon the merger of Centel into New Centel, each such share will be converted into 900,000 shares, for a total of 9,000,000 shares of common stock to be outstanding after the merger. The debt securities listed above are obligations of Centel which will be assumed by New Centel. The Cumulative Preferred Stock will be issued in exchange for preferred stock of Centel having substantially identical terms, except that four of the series of Cumulative Preferred Stock (the $6 Dividend Cumulative Preferred Stock, Series 1; the $6 Dividend Cumulative Preferred Stock, Series 2; the Cumulative Preferred Stock, $1 Dividend Series; and the Cumulative Preferred Stock, $1.13 Dividend Series) will be issued in exchange for preferred stock of Centel Illinois and Southeastern.

The Convertible Junior Preferred Stock of New Centel (the Convertible Preferred) will be issued to the minority common stockholders of Centel and the other companies. It will be convertible into common stock of CTU, but it will provide expressly that the conversion privilege may not be exercised until the expiration of five years after the initial issue of shares of such class. During this period the Convertible Preferred will not be redeemable. Thereafter, on 30 days' notice, it will be redeemable at $25 per share (which will also be its liquidation preference over the common stock of

New Centel). The Convertible Preferred will be subordinate in rank, both as to dividends and assets, to the other classes of preferred stock of New Centel. It will have a fixed dividend rate of $2 per annum per share payable in priority to dividends on the common stock of New Centel. The initial conversion rate of the Convertible Preferred (subject to anti-dilution protection) will be 1.4 shares of common stock of CTU for each share of Convertible Preferred.

13. The ratio of exchange of the Convertible Preferred for the minority common shares of Centel is one (1) share of Convertible Preferred for each share of common stock of Centel. The respective ratios of exchange for the minority common shares of Centel Illinois, La Crosse, Virginia Telephone and Southeastern are:

.50 for each Centel Illinois common share
.83 for each La Crosse common share
.82 for each Virginia Telephone common share
.91 for each Southeastern common share

Since, at the initial conversion ratio (subject to adjustment pursuant to anti-dilution provisions), each share of Convertible Preferred is exchangeable for 1.4 shares of common stock of CTU, the corresponding figures in terms of CTU common shares are:

1.4 for each Centel common share
.70 for each Centel Illinois common share
1.162 for each La Crosse common share
1.148 for each Virginia Telephone common share
1.274 for each Southeastern common share

In the opinion of White, Weld & Co., an investment banking firm unaffiliated with CTU, these exchange and conversion ratios are fair and reasonable to all the interests concerned.

14. CTU has agreed to transfer to New Centel, prior to the expiration of the five-year period during which the Convertible Preferred cannot be redeemed, either in exchange for New Centel common stock to be issued or as a capital contribution, the total number of shares of CTU common stock necessary for the conversion of all of the Convertible Preferred stock discussed herein. Such transfer will be in consideration of the enhancement of its common equity position in New Centel resulting from the elimination of (i) the preferential claim of the Convertible Preferred to dividends out of the earnings of New Centel and (ii) the preferential claim of the Convertible Preferred to the assets of New Centel. Assuming no dissents, the number of shares of CTU common stock which would be issuable upon conversions of all the Convertible Preferred (at the initial conversion rate) and in elimination of the Lee Telephone minority common stock interest would be 862,306.

15. If all the mergers and asset purchases contemplated by the program proposed by the Applicants are effected, CTU will hold 100% of the common equity of New Centel and New Lee Telephone and New Centel will hold 100% of the common stock (no other class being outstanding) of New Centel Illinois, New La Crosse, New Virginia Telephone and New Southeastern. Only New Centel, of all the subsidiaries, will have any preferred stock outstanding. The elimination of all minority interests in Centel and the other subsidiaries of CTU will have several advantages:

(i) It will simplify the corporate structure of the CTU system.

(ii) It will facilitate the financing of Centel and the other subsidiaries of CTU and their further expansion.

(iii) It will permit the minority common stock holders in Centel and the other subsidiaries to get out of situations where they are locked in with no adequate market for their holdings.

16. The expenses to be incurred in connection with the reorganizations herein proposed, including the issuance of such securities and the assumption of such obligations, are estimated to be $250,000 (a substantial part of which already has been expended in testing the feasibility of the concepts) and include attorneys' and accountants' fees, transfer agents' fees, printing costs, organization expenses, recording charges, regulatory agency fees, travel expenses, telephone and postage charges and miscellaneous expenses. New Centel will pay all the expenses of effecting the merger.

17. The pro forma balance sheet of New Centel if the merger of Centel into New Centel and all of the other proposed reorganizations discussed herein had been consummated on December 31, 1970, is as follows:

ASSETS

Telephone plant	$226,708,134
Less: Reserve for depreciation	44,542,770
	182,165,364
Investments, at cost:	
Common stocks and long-term notes of subsidiaries	112,096,010
Other investments	33,842
	112,129,852
Current assets:	
Cash	2,218,591
Materials and supplies	3,109,487
Other current assets	9,768,493
	15,096,571
Prepaid accounts and deferred charges	1,853,562
	$311,245,349

LIABILITIES

Common stock	$101,078,411
Retained earnings	20,558,030
	121,636,441
Preferred stock	36,124,635
Premium on convertible junior preferred stock	4,749,336
Long-term debt	125,093,000
Total capitalization	287,603,412
Current liabilities	16,243,563
Reserves and deferred credits	7,398,374
	$311,245,349

18. The plant and capital of Centel now devoted to providing the public the service covered by the certificate of public convenience and necessity issued to Centel will remain unimpaired and will be owned by New Centel after the merger and New Centel thereafter will continue to provide a continuity of at least equivalent service to the public now served by Centel.

19. Applicants have carried the burden of proof required by the relevant sections of the General Statutes of North Carolina.

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:

(a) The merger of Centel into New Centel is justified by the public convenience and necessity and

(b) The issuance of the securities and assumption of obligations by New Centel, as described above, are:

(i) For a lawful object within the corporate purposes of New Centel;

(ii) Compatible with public interest;

(iii) Necessary, appropriate for and consistent with the proper performance by New Centel of its service to the public as a utility and will not impair its ability to perform such service; and

(iv) Reasonably necessary and appropriate for the purposes set forth herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Centel and New Centel are authorized to consummate the merger of Centel and New Centel as outlined herein.

2. Centel is authorized to transfer all of its public utility assets and franchises to New Centel and New Centel is authorized to acquire the same.

3. New Centel is issued a franchise and certificate of public convenience and necessity to operate the telephone facilities now operated by Centel in North Carolina effective as of the legal date of said merger.

4. The franchise and certificate of public convenience and necessity now held by Centel are cancelled and declared null and void effective as of the legal date of said merger.

5. In conjunction with said merger, New Centel is authorized to issue not to exceed the following numbers of shares of the classes and series of stock described, on the terms and for the purposes set forth herein:

9,000,000 shares of common stock without par value;

614,905 shares of Convertible Junior Preferred Stock without par value but with a stated value of $10 per share;

The following series of Cumulative Preferred Stock without par value but with a stated value as indicated:

35,000 shares, $2.50 Dividend Series, of the stated value of $50 per share;

10,400 shares, $1.50 Dividend Series, of the stated value of $25 per share;

231,225 shares, $1.24 Dividend Series, of the stated value of $25 per share;

4,853 shares, $5 Dividend Series, of the stated value of $100 per share;

54,000 shares, $4.70 Dividend Series, of the stated value of $100 per share;

50,000 shares, $6 Dividend Series 1, of the stated value of $100 per share;

45,000 shares, $6 Dividend Series 2, of the stated value of $100 per share;

89,983 shares, $1 Dividend Series, of the stated value of $20 per share;

250,000 shares, $1.13 Dividend Series, of the stated value of $20 per share;

6. In conjunction with said merger, New Centel is authorized to assume and for all purposes to be treated as the issuer of not to exceed the following principal amounts

of obligations of Centel, on the terms and for the purposes set forth herein:

The following outstanding First Mortgage Bonds issued under an Indenture from Centel to The First National Bank of Chicago and William K. Stevens, as Trustees, dated June 1, 1944, as amended:

$ 1,128,000, Series A, 3-1/4%, due June 1, 1974;
$ 341,000, Series B, 3-1/4%, due June 1, 1974;
$ 380,000, Series C, 3-1/4%, due June 1, 1974;
$ 220,000, Series D, 3-1/8%, due September 1, 1975;
$ 390,000, Series E, 3-5/8%, due December 1, 1976;
$ 563,000, Series F, 3.80%, due December 1, 1977;
$ 602,000, Series G, 4.20%, due November 1, 1978;
$ 1,293,000, Series H, 4-1/2%, due October 1, 1981;
$ 898,000, Series I, 5-1/4%, due September 1, 1972;
$ 1,922,000, Series J, 4-5/8%, due May 1, 1983;
$ 1,748,000, Series K, 5%, due June 1, 1984;
$ 2,235,000, Series L, 5-2/8%, due December 1, 1985;
$ 2,617,000, Series M, 4-1/2%, due October 1, 1979;
$ 1,326,000, Series N, 4-3/4%, due September 1, 1983;
$ 3,023,000, Series P, 5-1/8%, due May 1, 1986;
$ 4,789,000, Series Q, 5-1/8%, due February 1, 1987;
$10,146,000, Series R, 4-3/4%, due June 1, 1988;
$11,356,000, Series S, 4.85%, due June 1, 1989;
$ 7,760,000, Series T, 6-3/8%, due October 1, 1992;
$12,125,000, Series U, 6.70%, due April 1, 1993;
$24,593,000, Series V, 8%, due July 1, 1994;

$500,000 of 4-1/4% Sinking Fund Debentures due July 1, 1975, issued under an Indenture from Centel to Continental Illinois National Bank and Trust Company of Chicago, successor to Harris Trust and Savings Bank, as Trustee, dated as of May 1, 1948, as amended;

$750,000 of 4-1/2% Subordinated Debentures due December 1, 1976, issued under an Indenture from Centel to The Northern Trust Company, Trustee, dated as of December 1, 1956;

$30,000,000 of 9-1/4% Sinking Fund Debentures due October 1, 1995, issued under an Indenture from Centel to Harris Trust and Savings Bank, as Trustee, dated as of October 1, 1970;

$5,150,000 of Promissory Notes due October 1, 1986;

7. New Centel is authorized to execute all such supplemental indentures and other documents as may be necessary to enable it to assume such obligations.

8. The Applicants submitted financial exhibits, including balance sheets and income statements of Centel as of and for the year ended December 31, 1970, prepared on both a corporate and consolidated basis, adjusted to reflect the merger and the issuance of Convertible Preferred in

exchange for the minority interests in the common stock of Centel and in the common stocks of its subsidiaries.

9. The proposed transactions will constitute "purchases" rather than "poolings of interest" within the meaning of Accounting Principles Board Opinion No. 16. The additional investment to be made by CTU in Centel and Lee will be recorded at the market value of the CTU common stock issuable. Since this amount will probably exceed the underlying book value of the additional interest in Centel and Lee to be acquired, the excess might, unless the Commission otherwise prescribes, be required under Accounting Principles Board Opinion No. 17 to be amortized to income in the consolidated financial statements of CTU and subsidiaries over a period of time.

10. The current market value of 862,306 shares of Applicant's common stock is greater than the underlying book value of the minority common stock interests in subsidiaries to be eliminated, but the book value of 862,306 shares of Applicant's common stock outstanding, based on Applicant's consolidated balance sheet at December 31, 1970, is less than the underlying book value of the minority common stock interests in subsidiaries to be eliminated. Amortization of the excess of the market value of Applicant's common stock to be issued over the underlying book value of the minority interests in common stocks of subsidiaries to be eliminated would reduce Applicant's reportable earnings available for common stock dividends which, in turn would tend to increase the cost of new common stock equity capital to Applicant, to the detriment of the public served by Applicant. It is appropriate and consistent with proper accounting practice that the excess of the "cost" of the minority interests in common stock of subsidiaries eliminated (computed at the market value of Applicant's common stock issued therefor) over the underlying book value thereof be written off against Applicant's premium on common stock account, concurrently with the issuance of such common stock of Applicant.

11. The tariffs, local exchange rates and charges which are now in force and effect and which have heretofore been approved for Centel shall continue in force and effect as the authorized tariffs, rates and charges of New Centel until changed as provided by law.

12. CTU is authorized to acquire the ownership of all of the common stock of New Centel and control of the public utility assets and franchises of New Centel through its merger with Centel, and CTU is the parent corporation of New Centel within the meaning of and for the purposes set forth in G.S. 62-3(23)c.

13. CTU is authorized to advance to New Centel and New Centel is authorized to borrow from CTU to the same extent as this Commission has previously authorized with respect to Centel and CTU in Docket No. P-29, Sub 42, as amended.

14. All authorizations and consents heretofore granted or given to Centel by the Commission and then in effect shall become authorizations to New Centel as of the legal date of the merger and all duties and responsibilities heretofore prescribed by the Commission and then extant shall become the duties and responsibilities of New Centel as of the legal date of the merger.

15. Exercise of the aforementioned authorizations is contingent upon the taking of all appropriate corporate actions and the securing of all authorizations, approvals or consents from all governmental authorities having jurisdiction in the matter which are or may be necessary to permit consummation of the merger of Centel into New Centel and all related transactions.

16. The aforementioned authorizations are granted upon the understanding that upon the subject merger New Centel will continue as the surviving corporation under the name of Central Telephone Company.

17. New Centel shall file in duplicate with this Commission, within a period of thirty (30) days following completion of the merger of Centel into New Centel, a verified report of actions taken and transactions consummated with regard to that merger and, within a period of thirty (30) days following completion of all of the other proposed reorganizations (or all which shall not have been abandoned), a verified report of actions taken and transactions consummated with regard to such other reorganizations.

18. That the Commission retains jurisdiction in this proceeding to the end that it may make such further order or orders in the premises as it may deem to be proper and desirable.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-16, SUB 112

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Concord Telephone Company - Application) ORDER GRANTING
for Authority to Issue and Sell First Mort-) AUTHORITY TO
gage Bonds, Series H, 8 1/2% in the) ISSUE AND SELL
Aggregate Principal Amount of $1,250,000) BONDS

This cause comes before the Commission upon an application of The Concord Telephone Company (Company), filed under date of July 19, 1971, through its Counsel, Eugene T. Bost, Jr., Concord, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell $1,250,000 principal amount of First Mortgage Bonds, 8 1/2%, Series H, due 2001, to institutional investors for cash at 100% of the principal amount; and

2. To execute and deliver to a certain Trustee a Fifth Supplemental Indenture dated as of August 1, 1971, to an amended original Indenture of Mortgage dated as of August 1, 1958, to secure payment of said Series H Bonds.

FINDINGS OF FACT

1. The Company is a North Carolina Corporation duly organized and existing under and by virtue of the laws of the State of North Carolina, is a telephone company engaged in the business of operating a telephone communications system in its franchised area; is a public utility as defined in paragraph (23)(a)(6) of Section 62-3 of the Public Utilities Act of North Carolina; and in its operation is subject to the jurisdiction of the North Carolina Utilities Commission.

2. The Company as of June 15, 1971, owes $1,150,000 in short-term loans which were invested in the expansion and improvement of its plant and facilities.

3. The Company now proposes to issue and sell $1,250,000 principal amount of First Mortgage Bonds, 8 1/2%, Series H, due 2001, by means of an already negotiated transaction to three institutional investors to be delivered and the purchase thereof consummated on or about August 1, 1971, and to execute and enter into with each of the institutional investors a Bond Purchase Agreement.

4. The Company proposes that the Series H Bonds will be created and issued under its Indenture of Mortgage dated as of August 1, 1958, by and between the Company and Cabarrus Bank and Trust Company, as Trustee, as supplemented and amended by various supplemental indentures.

5. The net proceeds derived from the sale of said Series H Bonds will be used to discharge short-term borrowings now owed and the balance, if any, will be applied to its 1971 construction program estimated to be $2,250,000.

6. The Company estimates that expenses to be incurred in connection with the issuance and sale of the Bonds will approximate $23,325.

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 The Concord 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 $1,250,000 principal amount of its First Mortgage Bonds, 8 1/2%, Series H, due 2001, to institutional investors for cash at 100% of the principal amount;

2. To execute and deliver to a certain Trustee a Fifth Supplemental Indenture dated as of August 1, 1971, to an amended original Indenture of Mortgage dated as of August 1, 1958, to secure payment of the Bonds;

3. 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;

4. To file with this Commission, when available in final form, one copy each of the Bond Purchase Agreement and the Fifth Supplemental Indenture; and

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.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-19, SUB 129

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of General Telephone Company of the Southeast for Authority to Issue 1,507,220 Shares of Common Stock, $25 Par Value, as a Dividend and to Issue and Exchange 1,478,780 Shares of $25 Par Value Common Stock for Common Stock of General Telephone Company of Alabama	) ORDER GRANTING AUTHORITY TO DECLARE A STOCK DIVIDEND AND EXCHANGE STOCK

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on July 30, 1971

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

APPEARANCES:

For the Applicant:

K. Byron McCoy
Newsom, Graham, Strayhorn, Hedrick & Murray
Attorneys at Law
423 Central Carolina Bank Bldg.
Durham, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: On July 9, 1971, General Telephone Company of the Southeast (Applicant) filed application for authority to issue securities in accordance with the provisions of G.S. 62-160 and 161.

The Commission set the application for hearing on July 30, 1971, by Order of July 26, 1971. The matter came on for hearing at the time specified in the Commission's Order. Applicant seeks approval of the Commission as follows:

1. To issue 1,507,220 shares of its common capital stock of the par value of $25 per share to its parent, General Telephone & Electronics Corporation, by the transfer of $37,680,500 from other capital account to stated capital; and

2. To issue 1,478,780 shares of its common capital stock to General Telephone & Electronics Corporation in exchange for 1,478,780 shares of common stock in General Telephone Company of Alabama.

At the hearing, Frederick C. Rahdert, President of General Telephone Company of the Southeast, testified that General Telephone Company of Georgia, General Telephone Company of North Carolina, Mutual Telephone Company and Pee Dee Telephone Company were merged into Applicant on December 31, 1970. At the time of the merger the equity of the companies merged was included on the books of the Applicant as other capital. He stated that the purpose of the application was to convert this "other capital" into stated capital of the Applicant. Additionally, he testified that the application further seeks approval of a share for share exchange of Applicant's common stock for shares of General Telephone Company of Alabama, to implement plans making the latter a wholly-own subsidiary of the Applicant. Mr. Rahdert further testified that the equity ratio of the Applicant's total capital would change under the application herein from 52.8% to 58.8% and stated that he regarded the 58.8% equity as being a high equity ratio, but that such ratio would make it possible to sell additional debt issues more readily. He stated that the equity ratio resulting from this application would decline about November 1971 to 55% and at the end of 1971, as a result of additional borrowing, he expected the equity ratio to be 53.43%. With regard to the Applicant's financing in 1972, Mr. Rahdert stated that by the end of June 1972, the Applicant expected its equity ratio to be 48% and by December 1972, to be 46%. He also stated that 46% would be in line with the Applicant's testimony on several occasions before this Commission that it considers it desirable to maintain an equity ratio of 45% for the purpose of being able to market the Applicant's debt.

Based upon the entire record of the proceeding, the Commission makes the following

FINDINGS OF FACT

1. The Applicant is a Virginia corporation doing business in the State of Virginia and duly qualified to transact business as a foreign corporation in the States of Georgia, North Carolina, South Carolina, Tennessee and West Virginia and it owns and operates telephone properties in each of the states mentioned in this paragraph.

2. General Telephone Company of Georgia, General Telephone Company of North Carolina, Mutual Telephone Company, Inc., and Pee Dee Telephone Company, Inc., were merged into Applicant on December 31, 1970. Prior to the merger, the Applicant had become the owner of all of the common stock of each of the merged companies as a result of a capital contribution of such stock to it from General Telephone & Electronics Corporation, said capital contribution being recorded on the Applicant's books as other capital.

3. Applicant proposes to convert its other capital by the issuance of 1,507,220 shares of its $25 par value common

stock as a stock dividend payable to its only shareholder, General Telephone & Electronics Corporation.

4. Applicant also proposes to issue 1,478,780 shares of its common stock to General Telephone & Electronics Corporation in exchange for a like number of shares of common stock in General Telephone Company of Alabama. The shares to be exchanged constitute all of the outstanding common stock of General Telephone Company of Alabama and will make that company a wholly owned subsidiary of General Telephone Company of the Southeast.

CONCLUSIONS

From a review and study of the application, its supporting data and other information on file with this 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 General Telephone Company of the Southeast be and it is hereby authorized, empowered and permitted under the terms and conditions set forth in the application:

1. To issue 1,507,220 shares of its common capital stock of the par value of $25 per share to General Telephone & Electronics Corporation by the transfer of $37,680,500 from other capital to stated capital;

2. To issue 1,478,780 shares of its common capital stock to General Telephone & Electronics Corporation in exchange for 1,478,780 shares of common capital stock of General Telephone Company of Alabama; and

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

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-29, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Lee Telephone Company, New Lee, Inc., Central Telephone & Utilities Corporation, Central Telephone Company and New Centell, Inc. for approval of the sale of all of the assets, subject to assumption of all of the liabilities, of Lee Telephone Company to New Lee, Inc., and for authorizations in connection therewith, including authorizations for assumption of obligations, transfer of ownership and control of the franchise and certificate of public convenience and necessity of Lee Telephone Company and certain transactions with affiliates	ORDER APPROVING SALE OF ASSETS AND ASSUMPTION OF OBLIGATIONS AND GRANTING RELATED AUTHORIZATIONS

This cause comes before the Commission upon the Application of Lee Telephone Company ("Lee"), New Lee, Inc. ("New Lee"), Central Telephone & Utilities Corporation ("CTU"), Central Telephone Company ("Centel"), and New Centel, Inc. ("New Centel"), filed under date of June 17, 1971, through its Counsel, Ross, Hardies, O'Keefe, Babcock & Parsons, Chicago, Illinois, and Richard G. Long, Roxboro, North Carolina, wherein approval is sought as follows:

> For the sale of all the assets, subject to assumption of all the liabilities, of Lee to New Lee and for authorizations in connection therewith, including authorizations for assumption of obligations, transfer of ownership and control of the franchise and certificate of convenience and necessity of Lee and certain transactions with affiliates.

On the basis of the application and the information heretofore filed with the Commission, the Commission makes the following findings of fact.

FINDINGS OF FACT

1. Lee is a Virginia corporation duly qualified to transact business as a foreign corporation in the State of North Carolina. Lee is a public utility as defined in paragraph (23) (a) (6) of Section 62-3 of the Public Utilities Act of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. At March 31, 1971, Lee had outstanding 421,129 shares of common stock.

2. New Lee is a Virginia corporation incorporated on June 2, 1971. New Lee was formed solely for the purpose of effecting the proposed reorganization of Lee. Prior to consummation of such reorganization, New Lee will be duly qualified to transact business as a foreign corporation in the State of North Carolina. New Lee has outstanding 10 shares of common stock.

3. CTU is a Kansas corporation which, at March 31, 1971, owned 420,409 shares or approximately 99.8% of the common stock of Lee. CTU owns all of the common stock of New Lee. CTU is affiliated with Lee and New Lee within the meaning of paragraph (23)(c) of Section 62-3 of the Public Utilities Act of North Carolina.

4. Centel and New Centel are Delaware corporations and are affiliated with Lee and New Lee within the meaning of paragraph (23)(c) of Section 62-3 of the Public Utilities Act of North Carolina. By order in Docket No. P-10, Sub 307, this Commission authorized the merger of Centel into New Centel.

5. Lee proposes to sell and New Lee proposes to acquire all of the assets of Lee in consideration of (i) the receipt by Lee of 1,440 shares of common stock of CTU (CTU has agreed to furnish to New Lee the shares necessary for the purpose), (ii) the surrender by CTU of the shares of common stock of Lee then held by CTU and (iii) the assumption by New Lee of all of the liabilities of Lee.

Upon such sale of assets, Lee would own 1,440 shares of CTU common stock and would have no liabilities. It is proposed that Lee then be liquidated. Upon such liquidation, each of the minority stockholders of Lee, who hold a total of 720 shares of Lee, would be entitled to receive two shares of CTU common stock for each share of Lee common stock then held by such minority stockholders.

6. At the present time, New Lee owns no utility properties and conducts no business. Effective upon the proposed sale of assets and assumption of liabilities, the name of New Lee will become Lee Telephone Company; New Lee will own all of the utility properties now owned by Lee, and no others; New Lee will conduct the telephone utility business now being conducted by Lee, and no other; and New Lee will be a public utility as defined in paragraph (23)(a)(6) of Section 62-3 of the Public Utilities Act and will be subject to the jurisdiction of this Commission.

7. The proposals necessary to accomplish the above described reorganization of Lee have been approved by the Boards of Directors of Lee and New Lee. They must also be approved by the stockholders. CTU, as sole stockholder of New Lee, already has given its approval. The approval of Lee's stockholders will be sought at a special meeting of stockholders which has been called for the purpose. A copy of the notice of such special meeting was submitted as

Exhibit A to the application herein. The affirmative vote of more than two-thirds of the outstanding stock of Lee, which is assured, since CTU intends to vote the Lee shares owned by it in favor of the proposals, is required. Dissenting stockholders will be entitled, upon compliance with the procedures prescribed by the law of Virginia, to receive cash equal to the value of their shares as agreed upon or as may be determined under the law.

In addition to stockholder approval and the authorization of this Commission, the approvals of the Virginia State Corporation Commission and the Federal Communications Commission must be obtained, and consents to the transfer of certain of Lee's franchises must be obtained. CTU has retained the option to abandon the reorganization if any requisite consent or authorization cannot be secured or is granted upon conditions which CTU deems unacceptable.

8. With regard to New Lee's accounting, there will be no change in the property accounts and depreciation reserve of Lee in the recording of the transfer of Lee's properties to New Lee on the books of New Lee; these will be carried over in the same amounts to the books of New Lee.

The obligations of Lee to be assumed by New Lee include

(a) not in excess of the following principal amounts of First Mortgage Bonds outstanding under an Indenture from Lee to The First National Bank of Martinsville and Henry County, as Trustee, dated December 1, 1946, as amended (which Indenture, as amended, New Lee will assume by a supplemental indenture):

$ 684,000,	Series A, 3%,	due December 31, 1971;
$ 300,000,	Series B, 3-1/8%,	due December 31, 1971;
$ 500,000,	Series C, 3-5/8%,	due December 31, 1971;
$ 504,000,	Series D, 3-1/2%,	due July 31, 1979;
$ 880,000,	Series E, 4-5/8%,	due May 31, 1983;
$1,250,000,	Series F, 5%,	due May 31, 1986;
$3,395,000,	Series G, 6-3/8%,	due November 1, 1971;

(b) not in excess of $270,000 principal amount of 5% Sinking Fund Debentures due June 1, 1978, outstanding under an Indenture from Lee to The First National Bank of Martinsville and Henry County, as Trustee, dated as of June 1, 1958, as amended (which Indenture, as amended, New Lee will assume by a supplemental indenture);

(c) not in excess of $10,000,000 of construction advances from CTU to Lee, bearing interest at the prime rate for short-term bank loans ($6,250,000 at June 22, 1971).

9. The expenses to be incurred in connection with the reorganization of Lee, including the assumption of such obligations, are estimated to be $25,000 and include attorneys' and accountants' fees, printing costs, organization expenses, recording charges, regulatory agency

fees, travel expenses, telephone and postage charges and miscellaneous expenses. New Lee will pay all the expenses of effecting the reorganization.

10. The elimination of the minority interests in Lee will have several advantages:

(i) It will simplify the conduct of the corporate affairs of Lee;

(ii) It will facilitate the financing of Lee and its further expansion; and

(iii) It will permit the minority common stockholders in Lee to get out of a situation where they are locked in with no adequate market for their holdings.

11. The transfer of the assets of Lee to New Lee, including the utility franchise and the certificate of public convenience and necessity to provide telephone service in the area which Lee has heretofore been authorized to serve will not impair service to the public; New Lee will continue to provide a continuity of at least equivalent service to the public now served by Lee; and such transfer is justified by the public convenience and necessity.

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:

(a) The sale of Lee's assets, subject to liabilities to New Lee, including the transfer to New Lee of Lee's franchise and certificate of public convenience and necessity, is justified by the public convenience and necessity; and

(b) The assumption of Lee's obligations by New Lee, as described above, are:

(i) For a lawful object within the corporate purposes of New Lee;

(ii) Compatible with public interest;

(iii) Necessary, appropriate for and consistent with the proper performance by New Lee of its service to the public as a utility and will not impair its ability to perform such service; and

(iv) Reasonably necessary and appropriate for the purposes set forth herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Lee and New Lee are authorized to consummate the reorganization outlined above;

2. Lee is authorized to transfer all of its public utility assets and franchises to New Lee and New Lee is authorized to acquire the same;

3. New Lee is issued a franchise and certificate of public convenience and necessity to operate the telephone facilities now operated by Lee in North Carolina effective as of the effective date of said reorganization;

4. The franchise and certificate of public convenience and necessity now held by Lee are cancelled and declared null and void effective as of the legal date of said reorganization;

5. In conjunction with said reorganization, New Lee is authorized to assume and for all purposes to be treated as the issuer of not to exceed the following principal amounts of obligations of Lee for the purposes set forth herein:

The following outstanding First Mortgage Bonds of Lee to be assumed by New Lee by a Supplement to the Indenture from Lee to The First National Bank of Martinsville and Henry County, as Trustee, dated December 1, 1946, as amended:

$ 684,000,	Series A, 3%,	due December 31, 1971;
$ 300,000,	Series B, 3-1/8%,	due December 31, 1971;
$ 500,000,	Series C, 3-5/8%,	due December 31, 1971;
$ 504,000,	Series D, 3-1/2%,	due July 31, 1979;
$ 880,000,	Series E, 4-5/8%,	due May 31, 1983;
$1,250,000,	Series F, 5%,	due May 31, 1986;
$3,395,000,	Series G, 6-3/8%,	due November 1, 1971;

$270,000 of outstanding 5% Sinking Fund Debentures due June 1, 1978, of Lee to be assumed by New Lee by a supplement to the Indenture from Lee to The First National Bank of Martinsville and Henry County, as Trustee, dated as of June 1, 1958, as amended.

$10,000,000 of construction advances from CTU or Centel or New Centel to Lee bearing interest at the prime rate for short-term bank loans ($6,250,000 at June 22, 1971).

6. There were submitted balance sheets and an income statement as of and for the 12 months ended March 31, 1971, and showing the adjustments to reflect the proposed reorganization of Lee. The accounting treatment of the proposed transaction as reflected in such exhibits appears to be appropriate and in accordance with sound practice and, accordingly, New Lee is directed to account for the proposed transaction as contemplated by such exhibits;

7. New Lee is authorized to execute all such supplemental indentures and other documents as may be necessary to enable it to assume such obligations;

8. The tariffs, local exchange rates and charges which are now in force and effect and which have heretofore been approved for Lee shall continue in force and effect as the authorized tariffs, rates and charges of New Lee until changed as provided by law;

9. CTU is authorized to acquire the ownership of all of the common stock of New Lee and control of the public utility assets and franchises of New Lee through the reorganization, and CTU is the parent corporation of New Lee within the meaning of and for the purposes set forth in G.S. 62-3(23)c;

10. CTU, Centel and New Centel are authorized to advance to New Lee and New Lee is authorized to borrow from such companies to the same extent as this Commission has previously authorized with respect to Lee and CTU and Centel in Docket No. P-29, Sub 42, as amended;

11. All authorizations and consents heretofore granted or given to Lee by the Commission and then in effect shall become authorizations to New Lee as of the effective date of the reorganization and all duties and responsibilities heretofore prescribed by the Commission and then extant shall become the duties and responsibilities of New Lee as of the effective date of the reorganization; and as of the effective date of the reorganization New Lee shall be substituted for Lee in all proceedings before the Commission to which Lee is a party;

12. Exercise of the aforementioned authorizations is contingent upon the taking of all appropriate corporate actions and the securing of all authorizations, approvals or consents from all governmental authorities having jurisdiction in the matter which are or may be necessary to permit consummation of the reorganization;

13. The aforementioned authorizations are granted upon the understanding that upon the reorganization New Lee will change its name to and continue in existence as Lee Telephone Company; and

14. New Lee shall file in duplicate with this Commission, within a period of thirty (30) days following transfer of Lee's assets to New Lee, a verified report of actions taken and transactions consummated with regard to that transfer.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of July, 1971.

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

DOCKET NO. P-31, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Lexington Telephone Company -- Application for Authority to Issue and Sell Preferred Stock and Sinking Fund Note(s)	) ORDER GRANTING) AUTHORITY TO) NEGOTIATE SALE) OF SECURITIES

This cause comes before the Commission upon an application of Lexington Telephone Company (Company), filed under date of November 23, 1971, through its Counsel, Stoner, Stoner and Bowers, Lexington, North Carolina, wherein approval of the Commission is sought as follows:

1. To negotiate the sale by private placement 4,000 shares of cumulative preferred stock of the par value of $100 per share to produce $400,000 and paying a fixed annual dividend of $____ per share;

2. To negotiate the sale by private placement a long-term sinking fund note or notes in the aggregate amount of $500,000 at an annual interest rate of ____%.

FINDINGS OF FACT

1. The Company is a public utility as defined in paragraph (23)(a)(6) of Section 62-3 of the Public Utilities Act of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

2. At October 31, 1971, the Company had short-term loans outstanding in the amount of $1,461,000 and that the note holder desires that a substantial portion of this amount be retired.

3. To provide the necessary funds to repay $900,000 of short-term borrowings the Company proposes to issue and sell 4,000 additional shares of cumulative preferred stock to produce $400,000 and $500,000 in long-term sinking fund notes through private placement with the dividend rate for the cumulative preferred stock and the interest rate on the sinking fund notes to be determined as a result of negotiations.

4. The increased equity resulting from the authority herein sought will enable the Company to borrow up to an additional amount of $1,300,000 from banks as needed for the completion of projects under construction.

5. Under long-term note agreements now existing -- all of which have been approved by the Commission -- the total capitalization is limited to a maximum of 60% debt including bank borrowing if the notes are for, or can be renewed for, a period extending beyond one year from the date of

borrowing. The capitalization at 10-31-71 consisted of common and preferred stock in the amount of $2,379,800; long-term notes in the amount of $2,679,000; bank borrowing in the amount of $1,461,000; and surplus in the amount of $580,385, making a total of $7,100,185 resulting in a debt ratio of 58.31%. After sale of the $400,000 in preferred stock, $500,000 in long-term debt and reducing the bank borrowing by $900,000 the total capitalization will remain $7,100,185. The debt ratio would then be 52.67%. Approximately $1,300,000 can then be borrowed from banks on short-term notes to pay Automatic Electric Company the $170,000 owed them and to complete the improvement and expansion projects through 1972, before reaching a debt ratio of the 60% maximum allowed under our note agreements.

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 Lexington Telephone Company be, and it is hereby authorized, empowered and permitted, subject to the limitations contained in paragraph 3 following:

1. To enter into negotiations for the private placement for the sale of 4,000 shares of cumulative preferred stock with a dividend rate of $____ per share;

2. To enter into negotiations for the private placement for the sale of $500,000 sinking fund notes to bear an annual interest rate of ____%;

3. The sale of the cumulative preferred stock and sinking fund notes shall not be consummated until the results of negotiations have been made a matter of record in this proceeding and a supplemental order entered by this Commission approving the dividend rate for the cumulative preferred stock and the interest rate to be borne by the sinking fund notes; and

4. That this proceeding be, and the same is, continued on the Docket of the Commission, without day, 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 results of negotiations 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 14th day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-44, SUB 59

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Oldtown Telephone System, Incorporated) ORDER GRANTING
- Application for Authority to Borrow from) AUTHORITY TO
the United States of America an Additional) BORROW FUNDS
Amount of $939,000)

This cause comes before the Commission upon an application of The Oldtown Telephone System, Incorporated (Company), filed under date of January 15, 1971, through its Counsel, R. Kason Keiger, Winston-Salem, North Carolina, wherein authority of the Commission is sought as follows:

1. To borrow from the United States of America the additional amount of $939,000 and to execute its Mortgage Note or Notes therefor; and

2. To execute, record and file a Deed of Trust to secure payment of said Note(s).

FINDINGS OF FACT

1. The Company is a North Carolina Corporation duly organized and existing under and by virtue of the laws of the State of North Carolina; is a telephone company engaged in the business of operating a telephone communications system in its franchised area; is a public utility as defined in paragraph (23)(a)(6) of Section 62-3 of the Public Utilities Act of North Carolina; and in its operation is subject to the jurisdiction of the North Carolina Utilities Commission.

2. The Company proposes, subject to the approval of this Commission, to borrow from the United States of America additional funds in the amount of $939,000. The funds will

be borrowed under the terms of a Telephone Loan Contract dated March 14, 1956, as amended.

3. The amount and purpose of said loan is to complete the elimination of 2 and 4 party service in the King and Lewisville exchange areas and to provide direct extended area service trunking from the Oldtown Exchanges to Southern Bell Exchanges in Winston-Salem.

4. The Mortgage Note(s) will bear interest at the rate of two per cent per annum on the unpaid principal balance and thirty-five years from the date of each said Note or Notes, the principal remaining unpaid, if any, and the interest thereon, shall become due and payable.

5. The costs and expenses in connection with the filing of this application, the pledging of assets and the issuance of said Note(s) will be $1,733.

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 The Oldtown Telephone System, Incorporated, be, and it is hereby authorized, empowered and permitted, under the terms and conditions set forth in the application:

1. To borrow from the United States of America the additional amount of $939,000 and to execute its Mortgage Note or Notes therefor;

2. To execute, record and file a Deed of Trust to secure payment of said Note(s);

3. To devote the proceeds to be derived from the borrowing authorized herein to the purposes set forth in the application; and

4. To file with this Commission, in duplicate within thirty (30) days following the issuance of its Mortgage

Note(s) a report setting forth the date of issuance and the amount borrowed.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

DOCKET NO. P-9, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of the United Telephone Company of the Carolinas, Inc. for Consent of the Merger of Greenwood-United Telephone Company, Inc. into it, United Telephone Company of the Carolinas, Inc., and for Authority to Issue and Exchange $16,369,500 of First Mortgage Bonds of United Telephone Company of the Carolinas, Inc. for its Outstanding Securities and the Outstanding Securities of Greenwood-United Telephone Company Inc. Pursuant to Said Merger, and for Authority to United Telephone Company of the Carolinas, Inc. to Increase the Amount of its Outstanding Capital Stock by the Sum of $3,500,000) ORDER APPROVING MERGER AND FINANCING

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina

DATE: April 6, 1971

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

APPEARANCES:

For the Applicant:

Wade Barber
E. S. Holmes
Barber, Holmes & Covington
Pittsboro, North Carolina

For the Commission's Staff:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

No Protestants

BY THE COMMISSION: On 23 March 1971, United Telephone Company of the Carolinas, Inc. (hereinafter also styled "CAROLINAS"), filed with this Commission a Petition for approval of the proposed merger of CAROLINAS with Greenwood-United Telephone Company, Inc., of Greenwood, South Carolina (hereinafter also styled "GREENWOOD"). The matter came on for hearing at the time and place set by the Order issued on 1 April 1971. The Petitioner was represented by Wade Barber, Esq. and E.S. Holmes, Esq., of Pittsboro, North Carolina, and offered as witnesses Mr. Carson H. Furrow, 1004 Carolina Avenue, Bristol, Tennessee, who is Vice President, Secretary and Treasurer of United System - Southeast Group Companies, including CAROLINAS and GREENWOOD, and Mr. John J. Jaquette, 2330 Johnson Drive, Westwood, Kansas, who is Senior Vice President - Finance of United Utilities, Incorporated, the parent company.

Mr. Furrow described the proposed merger as outlined in the Petition, explaining the necessity for the issuance of new CAROLINAS bonds pursuant to the proposed new Indenture to existing holders of First Mortgage Bonds of CAROLINAS and GREENWOOD in exchange for outstanding bonds of both companies. He explained that the present Indenture's after-acquired property clause provides that if a supplemental indenture had been proposed in the proposed merger, the total investment in GREENWOOD properties at the date of the exchange and all subsequent construction would have been frozen as protection to its outstanding bonds such that this property could not be used by the proposed surviving company for future issues of bonds.

The bondholders of CAROLINAS have agreed to approve the new Indenture provided the new bonds carry an interest rate 25 basis points greater than the existing rate on each series of bonds of that company outstanding and to be exchanged. This will create an additional fixed cost of approximately $33,548.00. The bonds of GREENWOOD will be exchanged at the existing rate of interest. The negotiations were handled through Kidder, Peabody & Co., Incorporated, and Counsel for the company. United Telephone Company of the Carolinas, Inc., is the financially stronger of the two merging companies. The existing Indenture required approval of all bondholders.

Mr. Furrow has projected certain increased efficiencies in management, administration and operations which should result from the merger by way of eliminating several types of separate activities carried on by CAROLINAS and GREENWOOD separately at the present time. The operational efficiencies are anticipated to result in a savings of approximately $70,000 to $80,000, before allowing for the increased interest cost attributable to the 25 basis points.

Mr. Jaquette as Chief Financial Officer for the parent company explained that the proposed merger would result in a larger company, able to market larger bond issues in the future by public offerings rather than by private placements

sooner than CAROLINAS or GREENWOOD alone would be able to do so. Mr. Jaquette also testified that the bonds of the combined company would be more likely to obtain an "A" rating, allowing a reduction in future interest rates. He testified that there have been no applications for bond ratings previously because of the small size of the two companies; he is of the opinion that the size of the two companies would preclude obtaining an "A" rating individually at the present time, or individually in the future. He testified that although the earnings coverage would not allow an "A" rating immediately, the anticipated earnings of the combined company and the savings from the operational efficiencies are anticipated to result in a status which could obtain an "A" rating within approximately two years.

Based upon Petition and the evidence adduced at public hearing, the Commission makes the following

FINDINGS OF FACT

1. United Telephone Company of the Carolinas, Inc., is a North Carolina corporation which owns and operates telephone properties in North Carolina exchanges located in Moore, Randolph, Chatham, Harnett, Wake, Alamance, Guilford and Forsyth Counties, and owns and operates telephone properties in the State of South Carolina as a foreign corporation in exchanges in Allendale, Beaufort, Dorchester, Hampton, Jasper and Orangeburg Counties. CAROLINAS has a divisional general office and place of business in Southern Pines, North Carolina.

2. Greenwood-United Telephone Company, Inc., is a South Carolina corporation which owns and operates telephone properties located in Greenwood, Saluda, McCormick, Abbeville, Newberry and Laurens Counties, South Carolina.

3. Greenwood-United Telephone Company, Inc., proposes to merge into United Telephone Company of the Carolinas, Inc. GREENWOOD will cease to be a corporation and CAROLINAS will assume all of the assets, liabilities and business of GREENWOOD and will continue to carry on business as United Telephone Company of the Carolinas, Inc. All outstanding capital stock of GREENWOOD will be cancelled and the capital surplus of CAROLINAS will be increased by the amount of the capital account now on the books of GREENWOOD.

4. The surviving corporation will be approximately 50% larger than CAROLINAS is presently. The increase in size of CAROLINAS is one of several factors which are anticipated ultimately to place CAROLINAS in such a position that it may obtain "A" ratings for its bonds and subsequently obtain less expensive financing.

5. Bondholders of CAROLINAS have exercised their prerogative under the current Indenture to acquire an increase in interest in the amount of 25 basis points as a

condition for the exchange, as CAROLINAS is the stronger of the two companies. A new Indenture will be issued eliminating the existing Indentures of the two companies. As of July 1, 1971, CAROLINAS proposes to create a new series of First Mortgage Bonds in the aggregate amount of $16,369,500, which is the same amount of bonds then to be outstanding by the two companies, and to have the identical maturity dates as the present bonds now outstanding. An exchange offer has been made and informal acceptance of such offer has been received from all bondholders.

6. All the outstanding capital stock of the two companies is owned by United Utilities, Incorporated, a Kansas corporation. United Utilities, Incorporated, and CAROLINAS have agreed that CAROLINAS will issue to United Utilities, Incorporated, common capital stock, book value $48.00 per share, as payment on outstanding advances owing to United Utilities, Incorporated, common capital stock in the amount of $3,500,000.

7. Among the assets of GREENWOOD are radio licenses on file with the Federal Communications Commission. These licenses are "other than broadcast" and are to be acquired by CAROLINAS and operated in providing telephone service.

Based upon the Petition and Exhibits and evidence adduced at the public hearing, the Commission reaches the following

CONCLUSIONS

The proposed merger of Greenwood-United Telephone Company, Inc., into United Telephone Company of the Carolinas, Inc., and the security issues and exchanges incident to said merger under the terms and conditions set forth in the Petition and the exhibits attached thereto appear to be for a lawful object within the corporate purposes of the Petitioners, compatible with the public interest, necessary and appropriate for and consistent with the proper performances by Petitioner of its service to the public, such that they will not impair its ability to perform that service, and reasonably necessary and appropriate for such purposes. Accordingly, the proposed merger and the financing incident thereto should be approved.

IT IS THEREFORE ORDERED:

1. That United Telephone Company of the Carolinas, Inc., is hereby authorized to acquire all of the assets, liabilities and business of Greenwood-United Telephone Company, Inc., and to increase the amount of paid-in capital of CAROLINAS by the amount of the capital account now on the books of GREENWOOD.

2. That United Telephone Company of the Carolinas, Inc., is hereby authorized to create a new series of First Mortgage Bonds as of July 1, 1971, in accordance with the

Petition and to issue such Bonds pursuant to the proposed CAROLINAS' Indenture.

3. That United Telephone Company of the Carolinas, Inc., is hereby authorized to issue to United Utilities, Incorporated, common capital stock, book value $48.00 per share, in payment of outstanding advances in the amount of $3,500,000 by United Utilities, Incorporated.

4. That United Telephone Company of the Carolinas, Inc., is hereby authorized to acquire, along with all other assets, the radio licenses of Greenwood-United Telephone Company, Inc., now on file with the Federal Communications Commission. The effective date of the transfer of those certificates is suspended until a date five days subsequent to certification by CAROLINAS to this Commission that the necessary authorizations from the Federal Communications Commission have been issued, and that all steps necessary to consummate the merger have been accomplished.

5. That United Telephone Company of the Carolinas, Inc., is hereby required to file with this Commission copies of all book entries relative to the effectuation of this merger and the financing incident thereto.

6. That United Telephone Company of the Carolinas, Inc., is hereby required to maintain such separate accounts for North Carolina operations as may be required by the Commission's Rules and Regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 517

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition of Mr. Raymond Edwards, et al., Route 1, Box 4-A, Wade, North Carolina, Requesting Telephone Service Through the Fayetteville Exchange Instead of the Dunn Exchange from Carolina Telephone and Telegraph Company	ORDER DENYING PETITIONS AND DISMISSING THE SAME

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on January 12, 1971, 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 Respondent:

Herbert H. Taylor, Jr.
Taylor, Brinson & Aycock
Attorneys at Law
P. O. Box 308, Tarboro, North Carolina
For: Carolina Telephone and Telegraph Company

For the Intervenors:

R. Allen Lytch
Wilson, Brewer & Lytch
Attorneys at Law
P. O. Box 305, Dunn, North Carolina 28334
For: Tart & Tart, Inc., Wade, North Carolina, together with parties desiring service to remain as is.

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
217 Ruffin Building
Raleigh, North Carolina

WOOTEN, COMMISSIONER: On September 10, 1970, two petitions were filed with the North Carolina Utilities Commission by Mr. Raymond Edwards, et al., Route 1, Box 4-A, Wade, North Carolina, wherein certain existing telephone subscribers in the Wade community served by the Dunn Exchange of Carolina Telephone and Telegraph Company, and residents of the Wade community, who do not now subscribe to telephone service, requested that they be provided with telephone service from the Fayetteville Exchange of Carolina Telephone and Telegraph Company. The petition submitted by exisitng subscribers was signed by 13 such subscribers, and the petition submitted by non-subscribers was signed by 16 such non-subscribers.

At the present time the section where these petitioners live is included in the Dunn Exchange, and is composed of a northern section of Cumberland County, adjacent to Harnett County, in which is located Dunn, North Carolina, and service through the Dunn Exchange requires toll charges on calls to and from Fayetteville, their county seat. These petitioners, both subscribers and non-subscribers, state that they have telephone service or such service is available through the Carolina Telephone and Telegraph Company's Dunn Exchange out of Harnett County; that they live in Cumberland County, in Wade, and in the Wade community; that Fayetteville is the county seat of

Cumberland County, and that convenience and necessity requires that they have their service through the Fayetteville Exchange instead of the Dunn Exchange.

Upon receipt of the above mentioned petitions, the Commission obtained the names and addresses of existing telephone subscribers now served by the Dunn Exchange and within the Town of Wade and within a certain area just outside of Wade which is included in the Dunn Exchange but located in a northern portion of Cumberland County, and proceeded to poll the 72 existing subscribers. The results of the poll indicated that 40 subscribers wanted Fayetteville service, 12 wanted to retain Dunn service and 13 would protest an effort to transfer the area from Dunn to Fayetteville (7 of the 13 is also included in the 12).

Fourteen subscribers did not reply to the Commission poll.

The Commission, being of the opinion that this matter should be considered in an open public hearing, issued its order of December 3, 1970, setting the matter for hearing at this time and place; further ordering that a copy of said order be served on each of the petitioners, each of the 72 subscribers polled and on Carolina Telephone and Telegraph Company; that Carolina Telephone and Telegraph Company should cause notice of this proceeding to be published in a newspaper or newspapers having general circulation in the service area affected by said proposed change once a week for two successive weeks preceding the hearing date; and that it shall be incumbent upon all interested parties who so desire, including Carolina Telephone and Telegraph Company, to offer evidence at the hearing in support of or in opposition to the transfer of the Wade Community from the Dunn telephone exchange to the Fayetteville telephone exchange.

The petitioners offered a number of witnesses, both subscribers and non-subscribers to telephone service, who reside in that portion of the Dunn Exchange located in Cumberland County. These witnesses included Raymond Edwards, Rev. Robert Temple, Merrill McLaurin, Jeannette Lee, Stewart Murray, Nancy Dixon, Roger McKeithan, Wayne Barefoot, Edward Williams, Margaret Griffin, Robert Bethea, Clara Murphy, Jeane Caulder, Cora May McNeill. In addition to the above named witnesses, the petitioners tendered 15 witnesses. The intervenors presented several witnesses who are subscribers to telephone service of Carolina Telephone and Telegraph Company in the Dunn Exchange and who reside in that portion of said exchange located in Cumberland County, North Carolina, who did not desire a change from Dunn Exchange service to Fayetteville Exchange service. These witnesses included Mary Tart Fowler, Doris Gardner, Emily Bunce and Ray Fussell.

In addition, the Commission's Telephone Engineer, Mr. Vern Chase, testified for the Commission's Staff.

Carolina Telephone and Telegraph Company tendered Mr. Earl Wooten, who is the Forecast and Tariff Manager for Carolina Telephone and Telegraph Company, for such examination as the Commission or any of the parties might desire to conduct.

Witnesses for the petitioners all testified that they desired telephone service through the Fayetteville Exchange for various personal reasons, including the following: such service would help develop the progress of the community; many of the witnesses work in Fayetteville and such a change would give them direct toll free calling and communication between the points of their employment and residence; it would allow one church to obtain local telephone service to a greater number of its members and officers; that many of the witnesses' children attend schools which are on the Fayetteville Exchange, necessitating toll calls to communicate with them during the school day; some business men testified that their businesses were located in Fayetteville and that their homes were located in the Dunn Exchange, necessitating long distance calls in communicating with homes and customers after hours; that the local voluntary fire department is on the Fayetteville Exchange while the people in the Wade community living in Cumberland County are on the Dunn Exchange; a number of the witnesses worked either in Fort Bragg or Fayetteville or had spouses who worked in one of these places and desired local communications between their homes and these points; some of the witnesses testified that their doctors and hospitals were in Fayetteville; that the businesses of several individuals, including a beauty parlor and a franchised camp ground, would be enhanced by such a change from Dunn to Fayetteville Exchanges; and that others of the witnesses testified that their banking business was conducted in the Fayetteville Exchange.

The intervenors' witnesses testified that the main industry located in the Wade community, to wit: Tart and Tart, Inc., desired to retain service from the Dunn Exchange where its railroad, legal and banking business was conducted; others testified for the intervenors requesting a continuation of the Dunn service, giving reasons identical, but in reverse, to those stated by the petitioners' witnesses.

The evidence offered indicates that the Fayetteville-Dunn Exchange boundary line is a very short distance south of the southern limits of the Town of Wade; that Wade is located along U. S. Highway 301 about equal distance from Fayetteville to the south and Dunn to the north. Calls between the two exchanges are subject to toll charges. Testimony was also offered to the effect that there is considerable community of interest between some of the people in Wade and those in the Fayetteville Exchange and conversely between some of the people in Wade and those in the Dunn Exchange, and each group testified that it would be more economical and convenient for them to have the respective telephone service from the exchange requested.

It is noted that this identical question was presented to this Commission in Docket No. P-7, Sub 222 and the request or petition for change in that docket was denied by this Commission after hearing by Order dated April 5, 1963.

The company stated, and Mr. Earl Wooten testified, that they are perfectly willing after 1971 to afford service to the Wade community from either the Dunn or the Fayetteville Exchanges, but not from both in view of the fact that to duplicate service would be a wasteful duplication at the expense of the ratepayers. It is noted that the territory involved is a part of the Dunn Exchange by Order of this Commission and that the engineering of telephone plant in the Fayetteville Exchange presently under way would allow for service from either the Fayetteville or Dunn Exchanges after 1971, but not from both.

FINDINGS OF FACT

Considering the evidence and exhibits presented in this case in their entirety and the records of this Commission, the Commission finds the following facts:

1. The Town of Wade is located on U. S. Highway 301 about equal distance from Fayetteville on the south and Dunn on the north. It has a small population and receives telephone service through the Dunn Exchange of Carolina.

2. Carolina also has an exchange at Fayetteville, which is the largest exchange Carolina has, and the boundary line between the two exchanges is just a short distance south of the town limits of Wade.

3. The telephone subscribers in the Dunn Exchange and those in the Fayetteville Exchange are not responsible for the location of the boundary line between the two exchanges, this boundary line having been submitted to the Commission by Carolina on the representation that the location was proper, and was approved by the Commission in 1957 or 1958.

4. There are approximately 72 subscribers presently receiving Carolina telephone service in the Wade community located in Cumberland County; a poll of these 72 subscribers resulted in 58 replies which indicated that 40 of said subscribers desired Fayetteville Exchange service while 12 desired to continue their present Dunn telephone service and 13 stated that they would protest a change in service presently available in this community; 7 of those stating that they would protest are included in the 12 who indicated that they desired to continue their Dunn service, and 14 subscribers did not reply to the Commission poll.

5. A rather large number of telephone subscribers in the immediate section of Wade, who have service through the Dunn Exchange, desire that the Dunn Exchange service be continued and that no part of their community be transferred to Fayetteville Exchange service.

6. The Town of Wade and the City of Fayetteville are both in Cumberland County. The Town of Dunn is in Harnett County.

7. The transfer and inclusion of Wade and its immediate vicinity to the Fayetteville Exchange territory would have the effect of eliminating toll calls between subscribers in Wade and subscribers in the Fayetteville Exchange and would enatle these subscribers to call their county officials without having to pay long distance charges.

8. The community of interest between the people living in Wade and the immediate vicinity is somewhat divided, some part being with Fayetteville and others with Dunn.

9. The territory in and around the Wade community located in Cumberland County has been surveyed. Engineering has been done and construction of telephone plant is under way which would afford Carolina Telephone and Telegraph Company the option of serving this community either through its Dunn or Fayetteville Exchanges, but not through both exchanges without duplicating facilities, which would result in wasteful extravagance at the expense of the ratepayers.

10. In order to furnish service to these people out of Fayetteville, it will be necessary to add a considerable amount of cable and lines, which cannot be done prior to 1972, and only then, without wasteful duplication, from either/or, but not from both exchanges.

11. In the light of the fact that this telephone boundary line has been established over a period of years and that there is a mixed community of interest between the subscribers with each of the telephone exchanges here involved, the Commission finds that public convenience and necessity does not require a change in the exchange boundary lines at this time.

CONCLUSIONS

It is the generally accepted policy throughout the telephone industry to avoid duplication of lines and service at any point. It is not practical to serve any community with duplicating service facilities, part from one exchange and part from another, whether the exchanges be in the same company or in different companies. At Wade and in the surrounding territory telephone service has been made available through facilities out of the Dunn Exchange. A large number of people have accepted this service and are using it. Fayetteville, which is in the Fayetteville Exchange, is practically the home of Fort Bragg. Here tremendous development, growth and expansion has taken place. This kind of development and expansion has not been experienced at Dunn. In view of the growth at Fayetteville and in view of the fact that Wade is in Cumberland County, of which Fayetteville is the county seat, it was and is inevitable that eventually people living in Wade and the

immediate section would find need for exchange service from Fayetteville due to occupational needs and the large number of people who find it convenient to live at Wade and be employed in the Fayetteville and Fort Bragg areas. In this situation, of course, there is found considerable expediency for telephone service without a required toll charge.

On the other hand, there are in Wade and immediate territory numbers of people who have subscribed to the service out of Dunn, who are satisfied with this service, do not want it changed and upon whom it would work some hardship to require a change.

As a matter of practicality, part of the people in the Wade area cannot have Fayetteville Exchange service and the other part Dunn Exchange service upon an economically sound and reasonable basis. It is likewise just as impractical to require people in Wade and the Wade area who have service from Dunn to give up that service and take Fayetteville service which they do not want in order that the others may have the Fayetteville service which they desire.

Situations of this kind create hard problems of law and fact, which test and try the temperament of those who have to resolve them. After all is said and done, giving full and complete consideration to every possible effect here involved, the Commission concludes: (a) that it could not and should not require Carolina to serve part of the subscribers in Wade and the Wade community from one exchange and the other part from another exchange through a duplication and paralleling of facilities, (b) that the facts and circumstances as presented do not justify the transfer of the area here in question from the Dunn Exchange to the Fayetteville Exchange and thereby deprive certain subscribers of the right to service they already have and desire to keep in order that others may have a different service which they desire, and (c) the petitions should be dismissed and the relief denied.

IT IS, THEREFORE, ORDERED as follows:

That each of the petitions filed in this matter be, and the same are, hereby dismissed, the relief sought therein is denied and this action is dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of April, 1971.

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

DOCKET NO. P-16, SUB 106

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition of Sears, Roebuck and Company, Highway 29 North, Concord, North Carolina, Seeking Rate Relief, Complainant v. The Concord Telephone Company, Concord, North Carolina, Defendant	ORDER APPROVING RATE AND DISMISSING COMPLAINT

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on September 7, 1971, at 2:00 P.M.

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

APPEARANCES:

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For the Defendant:

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For: The Concord Telephone Company

For the Commission Staff:

William E. Anderson
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North Carolina Utilities Commission
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WOOTEN, COMMISSIONER: This matter arose upon the filing of a Petition and Complaint by Sears, Roebuck and Company,

Highway 29 North, Concord, North Carolina (hereafter Sears), on December 17, 1970, seeking rate relief for private branch telephone and exchange (PBX) service rendered by Concord Telephone Company (hereafter Concord), Concord, North Carolina.

By Order of the Commission dated January 7, 1971, the Complaint was served on Concord, which answered the same on January 28, 1971; Notice to Sears of Answer filed by Concord was issued by the Commission on February 9, 1971; Sears requested a hearing on February 11, 1971; and the matter was finally set for hearing as captioned, all in accord with Commission Rule R1-9.

The Commission's initial order setting this matter for hearing placed the burden on Sears to establish the matter set forth in its Complaint and to support the relief sought; placed the burden of proof on Concord to offer evidence to support and justify its Answer denying the relief sought by Sears; and authorized and directed its Staff to investigate the matters set forth in the Complaint and in the Answer filed herein and to offer evidence thereon at the hearing.

Upon the call of the matter for hearing, Concord and Sears stipulated and agreed that they did enter into a five-year contract in which Concord agreed to furnish and install a private branch exchange (PBX) for Sears at its store in the shopping center on Highway 29 North, Concord, North Carolina; that Concord has on file with the Commission a special tariff establishing a rate for the telephone system serving Sears as contracted for in its General Exchange Tariff Section 36; that Sears' telephone bill for the month of February 1970, amounted to $2,140.30 which Concord agrees is approximately correct, but points out that said bill includes Federal excise tax and many rates other than the one involved in the complaint herein; and that the basic monthly rate on the basic equipment (the PBX) amounts to $960.00, which produces an annual rate of $11,520.

Sears offered and introduced into evidence Exhibit A attached to Concord's Answer, which sets forth the original cost to Concord of the PBX system and also Concord's other costs to show a total installation cost. Sears, Roebuck and Company presented one witness in support of its complaint, Mr. H. Moulard, who testified that he lives in Atlanta, Georgia; that he is employed by Sears, Roebuck and Company; that he holds a Bachelor of Science degree in economics from Louisiana State University; that he has been employed by Sears for 23 years and his present title is Communication Manager in the Southern territory; that in connection with his responsibilities as Communication Manager, he is responsible for all of the telephonic-telegraphic communication systems that Sears uses at all of its units in the Southern territory; that his responsibility covers 141 retail stores, 75 appliance stores, 350 catalogue sales offices and 3 order plants; that Sears has several different sizes and kinds of PBX systems in a number of its various

operations in the Southern territory; that he is generally familiar with the PBX types of telephone systems; that he contacted Concord and requested the PBX system which has been installed; that the PBX system which has been installed is what is known as 100T Leich piece of equipment with 120 line capacity; that he is familiar with this equipment and that his company has similar equipment located in other Sears' operations placed there by other telephone companies; that Sears has a PBX system located in its Charlotte, North Carolina, store which is approximately half again as large as its Concord PBX, which system was placed in the Charlotte store by the Southern Bell Telephone and Telegraph Company; that he is familiar with the cost of their Charlotte PBX; that his company also has a similar piece of equipment located in their Gastonia store, which was also placed by Southern Bell Telephone and Telegraph Company; that he has been in touch with General Telephone Company in Durham, recently in regard to the installation of a PBX system in the Sears store located there; that his company has similar PBX equipment to that located in Concord throughout the Southern region; that Concord Telephone Company has instructed Sears' employees in Concord in the operation and use of the PBX system; and that Sears has been charged $960 per month for its PBX equipment by Concord since the month of February 1970.

The witness, Moulard was asked a number of questions regarding charges by other telephone companies in North Carolina and throughout the South for similar or identical equipment, to which objections were lodged, and which objections were sustained by the Commission. Questions were also asked of the witness regarding the filing of tariffs with this Commission by Southern Bell Telephone and Telegraph Company and General Telephone Company with reference to PBX equipment, to which objections were sustained. Tariffs of Southern Bell and General approved in Docket No. P-55, Sub 632 and Docket No. P-19, Sub 115, respectively, were offered into evidence to which objection was made by Concord and sustained by the Commission.

Concord offered two witnesses, one George H. Richmond, Executive Vice President and General Plant Manager, and Phil W. Widenhouse, Executive Vice President and Assistant Secretary and Treasurer. Both men were tendered and recognized as expert witnesses, Mr. Richmond as an expert in telephone utility plant management, administration and maintenance and in telephone utility rate design and application; Mr. Widenhouse as an expert in the fields of public utility accounting, valuations and cost. Witness Richmond traced the step-by-step contacts between Sears and Concord, which, after a number of changes in instructions by Sears, resulted in the installation of an Automatic Electric Company type 100T PABX telephone system with eight, two-way dial tandem lines and equipment for 20 additional lines. Richmond further testified that, considering the cost of equipment and installation and service cost which went into providing the specialized telephone system required by

Sears, in his opinion, $960 would be a fair and reasonable monthly rate for Sears at the Carolina Mall Shopping Center at Concord.

Witness Widenhouse testified that Concord's total installed cost for the Sears telephone system was $40,789.60; that the total installed cost was the first factor considered in determining the Sears telephone rate; that also considered was $11,785.00 total annual cost of the Sears system, such as annual maintenance expense of $2,982, annual depreciation cost of $2,549, administration expenses of $1,224, cost of money and income tax annual cost of $3,711, annual ad valorem taxes of $612, and annual North Carolina gross receipts tax of $707; that depreciation was computed based on a 16-year service life of the equipment; that $11,785 annual cost would result in a monthly rate of $982 to Sears; that the $960 per month rate established by the tariff was reasonable and as based on cost of service, was actually on the low side, but not to the extent as to be unduly burdensome to Concord or its ratepayers in general.

The Commission Staff presented one witness, in the person of Vern W. Chase, Chief Engineer of the Telephone Rate Division of the North Carolina Utilities Commission, who testified that the rates complained of in this proceeding were based on the in-service costs of the equipment and the operating cost associated therewith; that, in his opinion, this was the fairest method to figure rates in this case; that the rates for this unit should support its costs and not be subsidized by other Concord ratepayers; that he determined to his satisfaction that the figure of $40,789.60 for total installed cost, as stated in the telephone company's Answer, was reasonable; that, in his opinion, a monthly rate higher than $960 could have been justified; that, in his opinion, the monthly rate of $960 charged by Concord was not comparable to the $268.50 charged by Southern Bell since the different basic charges by different companies included different elements and items, such as, for example, Southern Bell charges more for items outside the basic rate, such as $5.50 for extensions as compared with $2.25 charged by Concord; that because of the rate-making procedures used by various utilities, comparison cannot be determined exactly by looking at a particular rate; that before rates can be effectively comparable, it is necessary to go behind the rate itself and determine exactly what is or what is not included and to determine accompanying accessorial charges; and that because Concord, Southern Bell and General Telephone Company use different tariff writing techniques and rate-making procedures, he was unable to make any meaningful comparison between them.

Based on the pertinent records of the Commission and the competent evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That Sears, Roebuck and Company is a duly created and existing corporation legally doing business in this State; that Sears and Concord Telephone Company entered into a contract whereby Concord agreed to furnish and install a private branch telephone and exchange service at its place of business in a shopping center located on Highway 29 North, Concord, North Carolina; that Sears is a business telephone subscriber of Concord; that Concord Telephone Company is a duly franchised telephone public utility operating in this State; and that the parties are properly before this Commission with reference to matters over which this Commission has appropriate jurisdiction.

2. That the basic monthly rate charged by Concord to Sears for the private branch telephone and exchange service is $960 and is in accord with Concord's tariff on file with this Commission.

3. That the telephone system here involved cost Concord a total installed cost of $40,789.60; that the total annual costs of $11,785 is reasonable and includes: (1) annual maintenance expense of $2,982, (2) annual depreciation cost of $2,549, (3) administrative expense of $1,224, (4) cost of money and income tax cost of $3,711, (5) ad valorem tax of $612 and (6) gross receipts tax (North Carolina) of $707; and that depreciation computed on a 16-year service life of the equipment is reasonable.

4. That the $960 per month rate established by Concord and on file with this Commission is reasonable and is based on a reasonable cost of service.

5. That the $11,785 annual cost results in a monthly rate of $982 to Sears, and the establishment of a lower rate of $960 is not unreasonable and is not unduly burdensome to the telephone company or to its ratepayers in general.

CONCLUSIONS

The Commission concludes that the cost of furnishing specialized telephone service to a subscriber must be borne by the subscriber requesting such service or otherwise be subsidized by the general body of ratepayers; and that the cost of such service can only be properly related to a reasonable cost of service study as has been done in this case by Concord.

Sears has agreed to a five (5) year contract, and in the light of such contract, the service life established at 16 years is reasonable.

The Commission further concludes that in the pricing of the service here involved, Concord properly and reasonably founded its rate level on the basis of cost; and that Sears, in this case, receives the benefit of a highly specialized

PBX telephone system for which it should pay the rate reasonably so established.

In North Carolina, rate comparison evidence is not admissible in public utility cases in the absence of proof of comparable costs and conditions under which the companies operate. One who seeks to rely on another utility's rate as being the proper rate must first establish the reasonableness of such rate, which can only be done by first showing comparability of costs, operating conditions of respective companies, and of a number of the various elements included in or excluded from such rate. Utilities Commission v. Piedmont Natural Gas Company, Inc., 254 N.C. 734, 120 S.E. 2d 77 (1961); Utilities Commission v. Municipal Corporations, 243 N.C. 193, 90 S.E. 2d 519 (1955). We conclude that Sears' failure to introduce requisite evidence showing comparative costs, operating conditions, and elements included in or excluded from the rate herein, renders evidence offered by it, of the rates of other companies, incompetent. There has been no showing whatsoever by Sears that the rates of other companies were either comparable or reasonable.

The Commission concludes that Concord improperly included combined city and county ad valorem tax in its annual costs computations for the reason that the property here in question is located outside the City of Concord. However, it appears that a deduction of that portion of the $612 ad valorem tax computation applicable to city taxes would not reduce the $11,785 total annual cost sufficient to establish the $960 monthly basic rate above the realm of reasonableness. It is noted that the record does not indicate the portion of the ad valorem tax computation applicable to city tax; however, a reduction of the full $612 would not materially affect the reasonableness of the monthly charge.

The rate involved in this proceeding was filed with the Commission by the company and became effective as provided by law. It is well settled in this State that rates fixed and established under the provisions of Chapter 62 of the General Statutes of North Carolina are prima facie evidence that they are just and reasonable. N. C. G.S. 62-132; State v. Municipal Corporations, 243 N.C. 193, 90 SE 2d 519 (1955).

Three expert witnesses testified that the $960 monthly rate for Sears' specialized telephone service was fair, just and reasonable on the basis of cost of service, and no other reasonable rate was testified to, and based on the entire record, we conclude that Concord has carried the burden placed upon it by this Commission and has thereby justified its Answer denying the relief sought in the Complaint.

We finally conclude that Sears has failed to carry the burden placed upon it by this Commission and the laws of

this State, and has thereby failed to establish the matters set forth in its Complaint or the relief which it sought.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Petition and Complaint herein filed by Sears, Roebuck and Company be, and the same is, hereby dismissed; and

2. That the relief sought herein by Sears, Roebuck and Company be, and the same is, hereby denied; and

3. That this docket be, and the same is, hereby closed and discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 670

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Desire of Certain Subscribers of the Marietta, North Carolina Theoretical Telephone Exchange of Southern Bell Telephone and Telegraph Company Who Desire Fairmont, North Carolina Telephone Service Rather Than the Existing Lake View, South Carolina Telephone Service) ORDER

HEARD IN: The District Courtroom, Center Street, Fairmont, North Carolina, on October 8, 1971, at 10:00 A.M.

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

APPEARANCES:

For the Respondent:

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For: Southern Bell Telephone and Telegraph Company

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

WOOTEN, COMMISSIONER: During March, 1971, it came to the attention of the Commission that certain existing telephone subscribers in the Marietta, North Carolina community served from the Lake View, South Carolina telephone exchange desired that their service be provided from the Fairmont, North Carolina telephone exchange. Both of these exchanges are owned by Southern Bell Telephone and Telegraph Company. Marietta has been considered as a theoretical exchange for over twenty-five years as it does not have exchange central office facilities located within its exchange service area.

Upon receipt of the above mentioned information, this Commission obtained the names and addresses of the existing telephone subscribers then being served in the Marietta theoretical exchange and proceeded to poll the 131 subscribers therein by mail. The poll was conducted to determine: (1) those subscribers who desired to have Fairmont telephone service and have their Lake View, South Carolina telephone service discontinued; (2) those subscribers who desired to retain their Lake View, South Carolina telephone service; and (3) those who would protest if an effort was made to transfer the Marietta community from the Lake View, South Carolina exchange to the Fairmont, North Carolina telephone exchange. The results of the poll indicated that 57 subscribers wanted Fairmont service, 34 wanted to retain their Lake View service and 33 would protest if an effort was made to transfer the area from Lake View, South Carolina, to the Fairmont, North Carolina telephone exchange.

Upon the completion of the above referred to poll, the Commission was of the opinion that this matter should be considered in an open public hearing, and upon its own motion ordered: (1) that the matter would be set for hearing in the District Courtroom, Center Street, Fairmont, North Carolina, at the captioned date and time; (2) a copy of the Order be served by first class mail on each of the 131 subscribers in the Marietta theoretical telephone exchange; (3) that Southern Bell Telephone and Telegraph Company publish a public notice in a newspaper or newspapers having general circulation in the service area affected by said proposed change once a week for two successive weeks preceding the hearing date; and (4) that it be incumbent on all interested parties who so desired, including the telephone company, to offer evidence at the hearing in support of or in opposition to the transfer of the Marietta area consisting of the Marietta theoretical telephone exchange from the Lake View, South Carolina telephone exchange to the Fairmont telephone exchange.

When this matter was called for hearing, Mr. Paul S. Oliver, Jr., identified himself as a customer of Southern Bell Telephone and Telegraph Company residing in the theoretical Marietta exchange who would serve as a spokesman for that group of subscribers desiring to have their telephone service connected to and rendered from Southern Bell's telephone exchange in Fairmont, North Carolina, instead of the present service from Southern Bell's Lake View, South Carolina telephone exchange. In addition to Mr. Oliver, other interested parties testified and/or made statements to the Commission favorable to the proposed change, who included Leon M. McLean, Ray Davis, John D. Jones, Highway Patrol Sgt. Dobson, R. C. Davis, Mrs. Stacy Watson, Tommy R. Walters and B. N. Evans. Additionally, 47 other customers of Southern Bell who reside in the theoretical Marietta exchange indicated that they desired their telephone service to be rendered from Fairmont, North Carolina, instead of Lake View, South Carolina.

Upon the completion of the evidence and testimony by subscribers favoring the change to Fairmont service, Mr. T.C. Parham identified himself as a Southern Bell subscriber residing in the theoretical Marietta exchange and as spokesman for the subscribers in said area who desired to retain their present service and opposed a change in service to the Fairmont telephone exchange. In addition to Mr. Parham's testimony, other subscribers living in North Carolina who testified against the change were Cleo Goodyear and Walter Mack Collins. Also testifying against the proposed change were Minnie Bullock and Edna Hayes, who reside in South Carolina and who advised that they preferred the North Carolina Marietta customers to continue their present service. Additionally, 21 other customers of Southern Bell who reside in the theoretical Marietta exchange indicated that they desired telephone service to be rendered from Lake View, South Carolina, and preferred that there be no change in the present telephone service being offered in their community.

Southern Bell Telephone and Telegraph Company offered one witness in the person of Mr. George K. Selden, Jr., who is the company's State Forecast and Rate Supervisor for the North Carolina area. Mr. Selden testified in detail regarding the history of the theoretical Marietta telephone exchange, the system of telephone service being rendered in said theoretical exchange and discussed at length what he called the feasibility, or lack thereof, of any change in the present service being offered by his company. It was the position of Southern Bell Telephone at the hearing that it desired not to make any change in the present system of telephone service being offered to the subscribers in the theoretical Marietta exchange and recommended that such service be continued through its Lake View, South Carolina telephone exchange.

After closing the record in this case and subsequent to the hearing, the Commission was advised by Southern Bell

that upon further consideration and in view of the fact that the poll taken by the Commission indicated that a majority of the subscribers involved desired Fairmont service and further in view of the fact even a larger majority of persons appeared at the hearing favoring the North Carolina service, that it had concluded that Southern Bell should serve the subscribers involved who live in North Carolina out of the Fairmont exchange for the additional reason that under normal operating conditions the Marietta subscribers would properly be served from a North Carolina exchange under the jurisdiction of the North Carolina Utilities Commission. The company further advised that in the light of its conclusion it was proceeding with plans for serving the people in the Marietta area living in North Carolina from the Fairmont exchange as soon as practicable.

Based upon the record of evidence adduced at the hearing in this case and the Commission records, the Commission makes the following

FINDINGS OF FACT

1. That Southern Bell Telephone and Telegraph Company is a public utility rendering telephone service in this State which is subject to the jurisdiction of and regulation by this Commission.

2. That the Marietta, North Carolina community is located in the southernmost part of Robeson County, North Carolina, adjoining the State of South Carolina, and that said community is provided local telephone exchange service by Southern Bell from Bell's Lake View, South Carolina telephone exchange.

3. That there are 131 North Carolina citizens living in the Marietta, North Carolina community whose telephone service is rendered through Bell's Lake View, South Carolina telephone exchange.

4. That all calls by the Marietta community citizens to any and all parts in North Carolina must be toll calls requiring an additional charge.

5. That police and fire protection afforded the affected citizens is located in Fairmont and Lumberton, North Carolina, and that if the Marietta community is served by Bell's Fairmont, North Carolina telephone exchange, all calls for such protection and to other local governmental offices would be direct, local, and without additional charge.

6. That 56 of the 131 subscribers appeared at the hearing and indicated that they favored receiving telephone service from Bell's Fairmont, North Carolina telephone exchange instead of their present Lake View, South Carolina office; and that only 24 of the 131 subscribers appeared in opposition to the proposed change in telephone service.

7. That the majority of the citizens affected have a community of interest with Fairmont and Lumberton in Robeson County, North Carolina, as contrasted with Lake View, South Carolina.

8. That it is in the public interest and in the interest of the citizens located in the Marietta community that they be afforded telephone service through a North Carolina telephone exchange regulated by and subject to the jurisdiction of this Commission.

CONCLUSIONS

The historical development of the service in the Marietta theoretical exchange presents a dilemma for the Commission. While the Commission is hesitant to reach a decision which would in any way diminish the present service of the Marietta subscribers, the Commission is nevertheless compelled to conclude that the basic service for the community should be to Fairmont and Robeson County; and while the Commission would prefer that the present service to Lake View be maintained in addition to the new service, we do not feel that we have the jurisdictional basis upon which to order Bell to continue to provide such service after Fairmont service is initiated. In the event that Bell should see fit to continue the Lake View service for its Marietta subscribers, the Commission would take no exception to such action on Bell's part.

Bell, by letter dated October 20, 1971, has advised the Commission of its willingness to initiate Fairmont service for the subscribers in the Marietta area, and we assume that Bell is in a position to immediately initiate plans to provide such service. We therefore conclude that Bell should proceed with their plans for the providing of such service, should inform the Commission of their proposed in-service date for such service and should make a public announcement to inform the Marietta subscribers of said proposed in-service date.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Southern Bell shall proceed with its plans to serve the subscribers living in North Carolina in the Marietta community with telephone exchange service in and through its Fairmont, North Carolina telephone exchange as soon as practicable.

2. That Southern Bell file with the Commission its plan for the providing of such service and an anticipated scheduling of the same.

3. That this docket be, and the same is, hereby discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-89, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Triangle Telecasters, Inc., Durham, North Carolina, Seeking Extended Area Toll-Free Telephone Service, Complainant v. Chapel Hill Telephone Company, General Telephone Company of the Southeast and Southern Bell Telephone and Telegraph Company, Defendants	ORDER REQUIRING EXTENDED AREA SERVICE BETWEEN DURHAM AND CHAPEL HILL; PROVIDING CONTINUING SURVEILLANCE AS TO RALEIGH; REQUIRING PROPOSAL BETWEEN DURHAM AND HILLSBOROUGH

PLACE: Commission Hearing Room, Raleigh, North Carolina

DATE: October 14, 1970

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

APPEARANCES:

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For the Commission's Staff:

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William E. Anderson
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BY THE COMMISSION: This proceeding was instituted on March 23, 1970, by the filing of a Petition by Triangle Telecasters, Inc., Durham, North Carolina (hereinafter called "Triangle Telecasters"), seeking extended area toll-free telephone service between Chapel Hill, Durham and Raleigh, North Carolina.

By Order issued April 8, 1970, the Commission served the Petition on Chapel Hill Telephone Company, General Telephone Company of the Southeast (hereinafter called "General Telephone") and Southern Bell Telephone and Telegraph Company (hereinafter called "Southern Bell") as a complaint under Rule R1-9 of the Commission's Rules directing said telephone companies as defendants to satisfy the complaint or to file answer or otherwise plead to the Petition,

treated as a complaint. Answers were duly filed by the three defendants and by Order entered on May 18, 1970, the Commission served said answers on Triangle Telecasters, with opportunity to indicate whether the said answers satisfied the complaint or if Triangle Telecasters desired a hearing. Triangle Telecasters having advised the Commission that the answers did not satisfy the complaint and that the complainant desired hearing, the Commission, on June 15, 1970, issued the Order herein setting hearing and investigation on the Petition of Triangle Telecasters for toll-free service.

The Commission Order of June 15, 1970, incorporated in the proceeding the standard procedures of the Commission for investigating extended area toll-free service for telephone exchanges, and the Commission Staff was directed to initiate toll-calling studies and to develop other pertinent information by the hearing date for proper consideration of extended area toll-free service between Raleigh, Durham, Chapel Hill and other neighboring telephone exchanges where it should appear there may be a substantial interest in toll-free calling to the area specified by Triangle Telecasters.

The proceeding was heard in Raleigh, North Carolina, on October 14, 1970, and appearances entered as indicated above by all parties in interest. The petitioner Triangle Telecasters offered testimony of its President and of numerous citizens appearing and testifying in support of the Petition, including individual customers and representatives of businesses in the Raleigh, Durham, Chapel Hill area - referred to as the Research Triangle area - on their behalf and on behalf of business and civic organizations supporting such toll-free service.

The telephone engineer of the Commission testified as to the results of 30-day toll-calling studies of the toll calls made during October 1969 between Raleigh, Durham and Chapel Hill and between nearby exchanges at Angier, Apex, Cary, Clayton, Creedmoor, Efland, Fuquay-Varina, Hillsborough, Knightdale, Oxford, Pittsboro, Roxboro, Wake Forest, Wendell and Zebulon. Exhibits were introduced showing traffic and analysis of all calls made between said exchanges, including the number of subscribers making calls, total messages, total revenue, percent of total main stations making calls, and calls per main station during the study period. The Commission's telephone engineer testified that, based on his experience in evaluating extended area service proposals, the studies did not show such overall substantial toll call use at the present time between Chapel Hill and Raleigh and between Durham and Raleigh to indicate that a majority of subscribers would vote for rates to cover the additional cost of service with Raleigh included at this time, but that there was sufficient toll use in one direction to show interest in service from Chapel Hill to Durham, from Hillsborough to Durham and from Oxford to Durham.

The defendants offered testimony, indicating the substantial added cost of additional plant required to service the increased use from toll-free service, the necessity for extensive studies to determine the feasibility of such extended area service, and the present revenues from the toll calls now supporting the limited utility plant providing such service on a toll basis, which would be lost by toll-free service. The basic position of the defendants is that they stand ready to make such studies as are warranted and justified by toll use studies to determine feasibility and cost of providing extended area service, and to provide such service when it can be supported by sufficient customers willing to pay the additional cost of such toll-free service.

Briefs were duly filed by Chapel Hill Telephone Company and General Telephone Company of the Southeast on January 8, 1971, and by Southern Bell Telephone & Telegraph Company on January 11, 1971.

On February 5, 1971, Triangle Telecasters filed a Motion for supplementation of the record to include in the record the toll calling studies conducted by General Telephone, Southern Bell and Chapel Hill Telephone in October, 1970, establishing more recent toll-calling data than the October, 1969, data in the record at the hearing. Southern Bell, General Telephone and Chapel Hill Telephone filed such October, 1970, toll traffic studies with the Commission. No objection was filed to the Motion of Triangle Telecasters, and on March 4, 1971, the Commission issued its Order allowing the Motion to supplement the record and incorporate in the record the toll-calling study of General Telephone dated January 25, 1971, the toll-calling study of Southern Bell dated February 11, 1971, and the toll-calling study of Chapel Hill Telephone dated May 1, 1971, all of which were attached as exhibits to the Commission Order of March 4, 1971, and incorporated thereby into the record of the proceeding as late-filed exhibits.

The toll-calling studies of October, 1970, show that the percent of customers calling from Chapel Hill to Durham increased from 51.96% in 1969 to 56.82% in 1970, and that the calls per main stations increased from 2.69 to 2.9 calls per main station.

The October, 1970, study of Chapel Hill Telephone shows the calls from Chapel Hill to Raleigh increased from 27.68% of main stations making calls in 1969 to 33.2% in 1970, with the calls per main station increasing from .955 in 1969 to 1.1 calls per main station in 1970.

The October, 1970, toll-calling study from Raleigh to Durham shows the percent subscribers making calls increased from 14.2% in 1969 to 15.1% in 1970, and that the calls per main station increased from .526 to .596 calls per main station.

The October, 1970, toll-calling studies show that the calls from Raleigh to Chapel Hill increased from 7.5% of main stations making calls in 1969 to 8.9% of main stations making calls in 1970, and from .229 calls per main station in 1969 to .3068 in 1970.

Based upon the testimony, exhibits and evidence of record, the Commission makes the following

FINDINGS OF FACT

1. That the petitioner Triangle Telecasters, Inc., treated as complainant herein, is a duly organized television broadcasting company with offices located in Durham receiving telephone service from General Telephone Company of the Southeast at its Durham exchange, and broadcasting television programs throughout the Research Triangle area and soliciting advertising and program material by telephone to Raleigh, Durham and Chapel Hill, with a lawful interest in seeking extended area toll-free telephone service in the Raleigh, Durham and Chapel Hill Research Triangle area.

2. That the defendants Chapel Hill Telephone Company, General Telephone Company of the Southeast and Southern Bell Telephone and Telegraph Company are duly organized and authorized to provide telephone service in Chapel Hill, Durham and Raleigh, respectively; that all three said defendants hold themselves out to serve the public with telephone service in their respective service areas and are ready, willing and able to study and consider the installation of extended area service between said exchanges when toll use studies demonstrate sufficient customer use to warrant cost studies, and when such extended area service is economically feasible and can be provided at rates acceptable to a majority of customers to compensate for the additional cost of providing toll-free extended area service.

3. That toll-free extended area service requires installation of major additional telephone plant to serve the increased number of calls made between exchanges when converted from a toll service to a toll-free service, and based on the installation of such major additional telephone plant and the loss of the toll revenues from the existing toll service, the standard extended area service procedure adopted by the Commission provides that the additional cost of providing said toll-free service shall be assigned to the customers of the exchanges involved rather than to the telephone company's general ratepayers, and such additional costs shall not be approved by the Commission, except upon feasibility studies to determine the number of customers utilizing said existing toll service and a poll of customers showing a substantial number of customers willing to pay such additional cost for such service.

4. That the toll-calling studies and the traffic studies of present toll calls between Durham and Raleigh and between Chapel Hill and Raleigh do not indicate sufficient percentage of customers calling or per station toll calls at the present time to warrant the expense of full extended area cost studies and extended area voting procedures at the present time, although toll use and toll-free interest has increased as the Cities of Raleigh, Durham and Chapel Hill have grown and expanded in proximity with the development of the Research Triangle, and the continuation of such growth and extended area service interest warrant continuing surveillance and further review of such toll-calling studies at appropriate times in the future.

5. That the toll studies and traffic studies in evidence show a sufficient use of toll service between Chapel Hill and Durham to require that General Telephone and Chapel Hill Telephone Company proceed with planning and installation of toll-free extended area service between Durham and Chapel Hill.

CONCLUSIONS

The Research Triangle Park has established a unifying factor of mutual interest to the public in Raleigh, Durham and Chapel Hill in the Research Triangle area. It is essential to such an economic area that good communications be available. Telephone service is the basic method of communications to provide ready availability of communications throughout the area. The present toll system for telephone service between these towns inhibits free use of the telephone system in the Research Triangle region. General subscribers are reluctant to make free use and access of the telephone system when based upon individual toll charges.

The toll use studies show 56.82% of Chapel Hill main station telephones called Durham during October, 1970, an average of 2.9 calls per main station during the month, and the Commission finds from this record that public convenience and necessity require that toll-free extended area service be provided between Chapel Hill and Durham.

On the other hand, the toll use studies between Raleigh and Durham and between Raleigh and Chapel Hill indicate far less use of toll service, as follows:

POINT-TO-POINT	PERCENT SUBSCRIBERS MAKING CALLS		CALLS PER MAIN STATION	
	1969	1970	1969	1970
Raleigh-Durham	14.2%	15.1%	.52	.597
Durham-Raleigh	17.0		.54	
Raleigh-Chapel Hill	7.5	8.9	.23	.3068
Chapel Hill-Raleigh	27.6	33.2	.95	1.1

The Commission concludes that this customer usage does not demonstrate a present demand and need for toll-free service sufficient to make the expensive in-depth cost studies preparatory to a poll of the subscribers to include Raleigh in the service at the present time.

The alternative to toll service for customers having extensive need for communications in the area is to subscribe to foreign exchange service from the other exchanges involved. The present high rates for foreign exchange service make this alternative to toll service too expensive for all but a very few customers.

Another alternative would be reductions in the toll charges to provide low cost direct distance dialing (DDD) at rates sufficiently low to permit free and easy use of the toll system. The cost of such service, including toll ticketing and operators for toll assistance, causes expenses for the area-wide service which would not be necessary if toll-free extended area service were installed.

The present method for determining the additional charge for toll-free extended area service provides for balancing the saving from elimination of operators and toll-billing procedures against the loss of toll revenue from the toll-free service and the expenses of additional equipment from the resulting increase in volume of calls from toll-free service, and charging any difference to all customers in the exchanges benefiting from the service by increasing the monthly station rate charges. The existing method thus will result in ever increasing monthly charges to the customers for toll-free service, to the extent that the general increase in use of toll service will produce increasing toll revenues. If toll revenue is required to be replaced by station charges, the monthly rate surcharge for toll-free service will increase each year the service is put off, as toll revenues increase from the growth of the Research Triangle area. The Commission considers that the Research Triangle area is so unique in nature that some adjustment must be made to prevent the increasing toll revenues between Raleigh and Chapel Hill and Raleigh and Durham from causing such prospective increases in the monthly rate for toll-free extended area service. The Commission stands ready to reevaluate the yardsticks heretofore applied in the general method used in the State, and shall be available to consider a special formula for the Research Triangle region.

Business and civic leaders in Raleigh, Durham and Chapel Hill have evidenced support for such service, and the Commission is advertent and alert to the desirability of continuing the interest in such toll-free service. When the actual toll usage and general customer usage increases sufficiently to warrant the additional expenses, the Commission stands ready in this docket to reexamine the full extended area service requested in the Petition in this proceeding.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the public convenience and necessity requires toll-free extended area service (EAS) between Durham and Chapel Hill, and the defendants General Telephone Company of the Southeast and Chapel Hill Telephone Company are hereby ordered to provide toll-free extended area telephone service between Durham and Chapel Hill at the earliest practical and feasible time, and to file a schedule for approval of the Commission in this docket setting forth the time required for planning and engineering of said service, the time for ordering and receiving delivery of necessary equipment for such service, and the date for placing said service into operation, including a report of the estimated cost of such additional equipment and service, and the saving in expenses anticipated from elimination of operator service, billing service and other costs of providing the present toll service between Durham and Chapel Hill, and to file such schedule and report with the Commission on or before June 30, 1971.

2. That the Petition of Triangle Telecasters, Inc., for toll-free extended area service between Raleigh and Durham and between Raleigh and Chapel Hill is hereby deferred at the present time, without prejudice to a continuing interest in such extended area service and a further review upon the Commission's own motion or upon motion of any interested party when the toll usage by general customers in said exchanges indicates a sufficiently high percentage of use to justify full cost studies for polling the customers in said exchanges to determine the willingness of customers to pay the added cost of such service; and in considering such costs, the Commission will consider any new or additional cost factors not heretofore considered in such toll-free extended area service studies which are deemed just and reasonable, including consideration of the difficulties inherent in attempting to reimburse the defendants for increasing tolls lost from use of said service in connection with said service between Raleigh and Durham and Raleigh and Chapel Hill. The Commission will, in addition to toll-free extended area service, consider modified versions of foreign exchange service and reductions in direct distance dialing toll charges to meet the needs of customers in a developing economic area in the Research Triangle region.

3. That the defendant General Telephone Company of the Southeast is directed to report to the Commission the schedule upon which it could install toll-free extended area service between Durham and Hillsborough, including the time required to complete engineering plans for such service, the time for ordering and receiving delivery of necessary equipment for such service, and the time required for installation of such equipment and placing such service into operation, together with estimates of the cost of such installation and the savings in operator costs, toll billing and other expenses in operation of such service under the present toll service, and General Telephone Company of the

Southeast is hereby directed to show cause in such report, if there be such cause, why it should not begin to place such project into operation at the earliest time consistent with such time schedule, and to file such report with the Commission on or before June 30, 1971.

4. That this docket shall remain open for the receipt of the schedules and reports required herein as to toll-free extended area service between Durham and Chapel Hill and between Durham and Hillsborough, and for continued consideration by the staff, the defendants, the complainants, and intervenors as to the need of and the feasibility of toll-free service between Durham and Raleigh and Chapel Hill and Raleigh, and to receive such further reports or motions as to proposed revisions in the method for computing the additional monthly rate required for such toll-free extended area service, including equitable treatment of the increased toll revenue from toll service in the area in recent years, so that the present formula requiring that such toll revenue be replaced by additional monthly station rates shall reflect a fair and equitable means of adjusting such increased toll revenues in the growing Research Triangle service area, so that such increased toll revenues do not present a bar to toll-free extended area service through constantly increasing monthly station charges to offset such constantly increasing toll revenue.

ISSUED BY ORDER OF THE COMMISSION.

This 21st day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-89, SUB 2

WELLS, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART: The majority order includes findings and conclusions which will help to improve telephone service between the Research Triangle communities of Raleigh, Durham and Chapel Hill, and between Durham and Hillsborough, directing General Telephone Company and the Chapel Hill Telephone Company to proceed forthwith with the planning and installation of extended area service between Durham and Chapel Hill and directing General Telephone Company to proceed with planning and installation of extended area service between Durham and Hillsborough.

I do not feel that the majority order has gone far enough in solving the problem, and it is my opinion that the time has arrived when the Commission should proceed to institute reduced toll rates between Raleigh and Durham and Raleigh and Chapel Hill. The record indicates that the volume of toll calls between these communities is growing at a very rapid pace. The testimony of Mr. Chase would indicate that

the elimination of tolls between these communities would even more sharply accelerate the volume of these calls. This indicates to me that although the time may not now be right for toll-free calling between Raleigh-Durham and Raleigh-Chapel Hill, the companies could well afford to sharply reduce the present toll rates and still, principally by increased volume of toll calling, not lose any money, and at the same time provide a greatly improved service.

The present basic toll rates between Raleigh and Chapel Hill are: (1) Station calls - $.35. (2) Person calls - $.65.

The present basic rates between Raleigh and Durham are: (1) Station calls - $.30. (2) Person calls - $.60.

The above stated rates are for three (3) minute calls, whether or not the calls are directly dialed or are operator assisted. There are no Direct Distance Dialing rates applicable to calls between Raleigh-Chapel Hill or Raleigh-Durham. In my opinion, the record indicates that the reducing of the basic station call rate between Raleigh and Chapel Hill and between Raleigh and Durham should be reduced to 15¢ for DDD calls (without operator assistance) and to 25¢ for operator-assisted calls. Such rates would enable and encourage persons who have need of telephone communications between these communities to use this type of communication (and the related facilities) frequently, and would go far in the direction of solving the problem so carefully and effectively pointed out by the complainant in this proceeding.

It is my hope that the Commission will, in fact, pursue this docket to the end that, pending extended area toll-free service between all of the Triangle communities, sharply reduced toll rates can be utilized to accomplish the purpose of better telephone communications and the overall economic development of these communities and the surrounding area.

Hugh A. Wells, Commissioner

DOCKET NO. W-303
DOCKET NO. W-303, Sub 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Associated Utilities, Inc., 1530 South College Road, Wilmington, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service in Monterey Heights Subdivision, New Hanover County, North Carolina, and to Provide Water and Sewer Utility Service in Walnut Hills Subdivision, New Hanover County, North Carolina, and for Approval of Rates	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on June 17, 1971

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

APPEARANCES:

For the Applicant:

James H. Ferguson
Attorney at Law
Post Office Box 504, Wilmington, 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 April 9, 1971, Associated Utilities, Inc., hereinafter referred to as "Applicant", 1530 South College Road, Wilmington, North Carolina, filed with the Commission an application for a Certificate of Public Convenience and Necessity to provide water service in Monterey Heights Subdivision, New Hanover County, North Carolina, and to provide water and sewer service in Walnut Hills Subdivision, New Hanover County, North Carolina, and for approval of rates.

The Commission, being of the opinion that the application affects the interest of the consuming public in the areas 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 June 17, 1971, and required that notice of hearing be published by the Applicant. The hearing was held at the time and place specified in the Commission's Order of

May 4, 1971. No one appeared at the hearing to protest the application and no protests were filed.

The evidence offered by the Applicant indicates that it is a duly organized and existing corporation under the laws of the State of North Carolina, having been incorporated on January 28, 1971, and is authorized under its corporate charter to engage in the construction and operation of water and sewer systems; and that the Applicant proposes to provide water service in Monterey Heights Subdivision and water and sewer service in Walnut Hills Subdivision.

With respect to Monterey Heights Subdivision, Applicant's evidence indicates that as of the date of the hearing six (6) residential customers were being provided water service at no charge; that said subdivision contains approximately 354 lots which ultimately may be developed within an approximate seven year period but that immediate development plans for said subdivision anticipate the development of approximately 90 lots with 47 houses presently under construction. Monterey Heights Subdivision is approximately 10 miles south of the municipal limits of Wilmington, North Carolina, and the nearest public utility water system to said subdivision is approximately 5 miles. Applicant's evidence was presented principally through Mr. R. C. Fowler, President of Associated Utilities, Inc., who testified that Applicant's total investment in the Monterey Heights Subdivision is approximately $35,162.84 and that projected expenses for the operation of the water system for the 12-month period ending June 30, 1972, amount to $11,623. Mr. Fowler further indicated that he is President of R. C. Fowler Properties, Inc., a North Carolina corporation which is developing both Monterey Heights and Walnut Hills Subdivision.

Applicant's evidence further indicates that the well sites and the water distribution system with respect to both subdivisions have been approved by the State Board of Health, and the sewer system in Walnut Hills Subdivision has been approved by the Department of Water and Air Resources.

With respect to the Walnut Hills Subdivision, Applicant's evidence indicates that said subdivision is located 5 miles northwest of Wilmington, North Carolina, and that the total investment in said water system is $40,874.98 and the investment in sewer system is $133,575.70. Applicant's exhibits projected its expenses for the 12-months period ending June 30, 1972, for both the water and sewer systems in Walnut Hills Subdivision as amounting to approximately $26,448. The Applicant has employed Mr. Jerry Fox to provide maintenance service on a continuing basis to both subdivisions involved in this application.

Both of the proposed water systems and the sewer system herein as indicated on Applicant's exhibits were designed by E. J. Matzke, Professional Engineer. Applicant proposed to charge the following rates for water and sewer services:

MONTEREY HEIGHTS SUBDIVISION
WATER RATE SCHEDULE

METERED RATE (Residential Service)

First 3000 gallons per month	-	$3.50 (Minimum)
Next 5000 gallons per month	-	.60 per 1000 gallons
All over 8000 gallons per month	-	.40 per 1000 gallons

CONNECTION CHARGES - $250 per 3/4 inch house connection.

RECONNECTION CHARGES - NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE 10 Days after date rendered.

PENALTY of 10% may be added after due date.

WALNUT HILLS SUBDIVISION
WATER AND SEWER RATE SCHEDULE

METERED RATE (Residential Service)

First 3000 gallons per month	-	$7.00 (Minimum)
Next 5000 gallons per month	-	1.20 per 1000 gallons
All over 8000 gallons per month	-	.80 per 1000 gallons

CONNECTION CHARGES - $250 per 3/4 inch house connection (water)
$550 per 4 inch house connection (sewer)

RECONNECTION CHARGES - NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE 10 Days after date rendered.

PENALTY of 10% may be added after due date.

It was stipulated at the hearing by counsel for the Applicant and the Commission Staff and upon motion by the Applicant, that the originally filed tariff schedules for both subdivisions be amended in two particulars: (1) the provision in both tariffs stating that "penalty of 10% may be added after due date" would be stricken from said tariff schedules, (2) inasmuch as Mr. Fowler testified that meters have not been installed in either of the two subdivisions, it was stipulated that Applicant's tariff be amended to insert a provision that the minimum rates shown in each schedule would be charged until such time as all residential users in a particular subdivision involved would have installed and functioning on their premises a water meter. Thereafter, if the application herein were to be approved by the Commission, the tariff as otherwise filed relating to metered rate for water and sewer services respectively in the two subdivisions would be charged.

Based upon the evidence adduced at the hearing, the application and exhibits filed by the Applicant and entered

into the record of this proceeding, the Commission, with respect to each subdivision stated separately, makes the following

FINDINGS OF FACT

MONTEREY HEIGHTS

(1) That the Applicant, Associated Utilities, Inc., is a duly organized and existing corporation under the laws of the State of North Carolina, with its registered office at 1530 South College Road, New Hanover County, North Carolina.

(2) That the area for which the Applicant proposes to provide water service is for Monterey Heights Subdivision, New Hanover County, North Carolina.

(3) That the Applicant is presently serving 6 residential water customers at no charge in said subdivision.

(4) That the Applicant proposes to provide water service to approximately 354 customers for compensation upon completion of the subdivision's development.

(5) That the plans for the well site and the proposed water distribution system have been approved by the State Board of Health.

(6) That the Applicant's investment in water system in Monterey Heights Subdivision is $35,162.84 and its projected expenses for the 12-months period ending June 30, 1972, amount to approximately $11,623.

(7) That the rates for water service proposed by the Applicant to be charged in said subdivision are just and reasonable except that portion of Applicant's proposed tariff which relates to penalty of 10% which may be added after due date, said provision upon stipulation by counsel having been deleted from Applicant's originally filed tariff.

(8) That Applicant's originally filed tariff should be further amended as hereinafter ordered to reflect charges by the Applicant on an unmetered basis as being authorized by this Order inasmuch as meters have not been installed in said subdivision, said charges being authorized herein until such time as all residential users are provided with water meters, after which time Applicant should be authorized to charge the rates as set forth in the originally filed tariff as related to "metered rates". Until such time as meters are installed and made functional, the Commission finds that the Applicant should be authorized to charge only a flat rate as hereinafter provided.

(9) That the water system for Monterey Heights Subdivision was designed by E. J. Matzke, Professional Engineer.

(10) That the Applicant is financially willing, ready and able to provide the service it proposes on a continuing basis.

(11) That public convenience and necessity requires or may require water service by the Applicant in Monterey Heights Subdivision.

WALNUT HILLS SUBDIVISION

(1) That the Applicant, Associated Utilities, Inc., is a duly organized and existing corporation under the laws of the State of North Carolina, with its registered office at 1530 South College Road, New Hanover County, North Carolina.

(2) That the area for which the Applicant proposes to provide water and sewer service is Walnut Hills Subdivision, New Hanover County, North Carolina.

(3) That the Applicant proposes to ultimately provide water and sewer service to approximately 288 customers for compensation upon completion of the subdivision's development.

(4) That Applicant's plans for the well site and design of the proposed water distribution system have been approved by the State Board of Health.

(5) That Applicant's plans for the proposed sewer system have been approved by the Department of Water and Air Resources.

(6) That Applicant's investment in its water system for said subdivision is $40,874.98.

(7) That Applicant's investment in its sewer system for said subdivision is $133,575.70.

(8) That Applicant's projected expenses for the 12-month period ending June 30, 1972, for both water and sewer services amount to approximately $26,448.

(9) That the rates for water and sewer services proposed by the Applicant to be charged in said subdivision are just and reasonable except that portion of Applicant's proposed tariff which relates to penalty of 10% which may be added after due date, said provision upon stipulation by counsel having been deleted from Applicant's originally filed tariff.

(10) That Applicant's originally filed tariff should be further amended as hereinafter ordered to reflect charges by the Applicant on an unmetered basis as being authorized by this Order, inasmuch as meters have not been installed in said subdivision, said charges being authorized herein until such time as all residential users are provided with water meters, after which time Applicant should be authorized to

charge the rates as set forth in the originally filed tariff as relates to "metered rates". Until such time as meters are installed and made operational, the Commission finds that the Applicant should be authorized to charge only a flat rate as hereinafter provided.

(11) That both the water system and sewer system were designed for Walnut Hills by E. J. Matzke, Professional Engineer.

(12) That the Applicant is financially willing, ready and able to provide the service it proposes on a continuing basis.

(13) That public convenience and necessity requires or may require water and sewer service by the Applicant in Walnut Hills Subdivision.

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

CONCLUSIONS

The Commission concludes that public convenience and necessity requires or may require water service by the Applicant in Monterey Heights Subdivision and water and sewer service in Walnut Hills Subdivision, both being located in New Hanover County, North Carolina. The Commission further concludes that the Applicant is willing, ready and able to provide water and sewer service to the areas described in its application on a continuing basis and that a Certificate of Public Convenience and Necessity should be issued to the Applicant in order that it might provide the above mentioned services to said subdivisions and concludes that the schedule of rates proposed by the Applicant as hereinafter modified and set forth in Appendix A attached hereto, is just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED as follows:

(1) That Associated Utilities, Inc., be, and the same hereby is, granted a Certificate of Public Convenience and Necessity to provide water service to Monterey Heights Subdivision and water and sewer service to Walnut Hills Subdivision, both subdivisions being located in New Hanover 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 systems of accounts established by the Commission for water and sewer utilities.

(4) That the schedule of rates attached hereto as Appendix A are hereby deemed to be a tariff filed pursuant

to G.S. 62-138, which said tariff schedules are hereby authorized to become effective on one day's notice.

(5) That the Applicant file a verified written report with the Commission fifteen (15) days prior to charging metered rates as set forth in Appendix A in either subdivision involved in this docket, clearly indicating that meters have been installed for all residential users and have been made operational and setting forth the date which Applicant proposes to begin charging rates on a metered basis.

ISSUED BY ORDER OF THE COMMISSION.

This 25th day of June, 1971.

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

"APPENDIX A"
DOCKET NO. W-303
DOCKET NO. W-303, SUB 1
ASSOCIATED UTILITIES, INC.
MONTEREY HEIGHTS SUBDIVISION

WATER RATE SCHEDULE

*UNMETERED RATE (Residential Service)
First 3000 gallons per month - $3.50 (flat rate)

METERED RATE (Residential Service)
First 3000 gallons per month - $3.50 (Minimum)
Next 5000 gallons per month - .60 per 1000 gallons
All over 8000 gallons per month - .40 per 1000 gallons

CONNECTION CHARGES: $250 per 3/4 inch house connection.

RECONNECTION CHARGES: NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE: 10 days after date rendered

WALNUT HILLS SUBDIVISION
WATER AND SEWER RATE SCHEDULE

*UNMETERED RATE (Residential Service)
First 3000 gallons per month - $7.00 (Flat rate)

METERED RATE (Residential Service)
First 3000 gallons per month - $7.00 (Minimum)
Next 5000 gallons per month - 1.20 per 1000 gallons
All over 8000 gallons per month - .80 per 1000 gallons

CONNECTION CHARGES: $250 per 3/4 inch house connection (water)
$550 per 4-inch house connection (sewer)

RECONNECTION CHARGES: NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

BILLS DUE: 10 days after date rendered

* Associated Utilities, Inc. is authorized to charge this unmetered rate until such time as meters are installed and made functional on the premises of all customers; thereafter, Associated Utilities, Inc. is authorized to charge the rates on a metered basis as set forth above. Meters must be installed and functioning in a subdivision for all residential customers before Associated Utilities, Inc. may charge rates on a metered basis to any customer.

DOCKET NO. W-300
DOCKET NO. W-300, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Applications by Beech Mountain Utility Company, Beech Mountain, Watauga County, North Carolina, for a Certificate of Public Convenience and Necessity, to Provide Water Utility Service in the Beech Mountain Development, Avery and Watauga Counties, North Carolina, and the Linville Land Harbor Development, Avery County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, AND APPROVING RATES IN PART

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 14, 1971

BEFORE: Hearing Examiner William Anderson

APPEARANCES:

For the Applicant:

Mr. Glen B. Hardymon
Kennedy, Covington, Lobdell & Hickman
1210 N.C. National Bank Building
Charlotte, North Carolina

For the Protestants:

Mr. Charles W. Blanks, Jr.
Blanks Construction Co., Inc.
P. O. Box 350, Henderson, North Carolina
(For Himself and as Spokesman for
Beech Mountain Home Owners' Association)

For the Commission Staff:

Mr. Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building, Raleigh, North Carolina

ANDERSON, HEARING EXAMINER: These two proceedings are before the Commission pursuant to Applications in which the Beech Mountain Utility Company, Beech Mountain, Watauga County, North Carolina, for Certificate of Public Convenience and Necessity, to provide public utility water service to Beech Mountain Development in Avery and Watauga Counties, North Carolina, and to Linville Land Harbor Development, Avery County, North Carolina, and for approval of rates.

The Commission's Staff reviewed the Applications and the Commission, being of the opinion that the Applications affect the interest of the consuming public and that the public should have an opportunity to intervene or protest the Applications, set the matters for hearing and required that public notice be given. The matters came on for hearing at the scheduled hour in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, at which time they were consolidated for hearing, by stipulation of counsel.

The Affidavit of Publication and Certificate of Service were duly filed indicating that the requisite public notice was given in The Watauga Democrat and The Avery Journal.

At the hearing the Applicant was represented by Mr. Glen B. Hardymon and offered as witnesses Mr. James R. Hunter, III, Treasurer of the Applicant, Mr. Leonard F. Bloxam of the consulting firm Freeman and Associates, and Mr. Kenneth E. Winebarger who supervises maintenance and operation of the systems. Mr. Charles W. Blanks, Jr., President of Beech Mountain Home Owners' Association appeared to voice the protests of his Association.

Mr. Hunter testified generally as to matters in the verified Application and particularly described the corporate structure and the nature of the operations. Beech Mountain Utility Company was chartered as a North Carolina corporation in 1969. A subsidiary of Carolina Caribbean, the utility plant was transferred to Beech Mountain Utility Company in March, 1971, at original cost. He testified that the capitalized costs of Carolina Caribbean Corporation and the contributions in aid of construction were transferred to Beech Mountain Utility Company. He testified that the Applicant did not anticipate that profitable operations could take place until after approximately 9 years, and that operating losses will be reported on a consolidated return with Carolina Caribbean Corporation. Future expansion of the utility systems will be constructed by the Carolina Caribbean Corporation's utility construction crew and the

capitalization will subsequently be transferred to the utility.

Mr. Hunter explained that the home owners originally contributed to the development of the utilities by a capital contribution in the form of a contractual assessment. Mr. Hunter testified that in November of 1970, Carolina Caribbean Corporation instituted an annual assessment of $60.00 which was billed for one quarter. He explained that Beech Mountain Utility Company would not continue such a policy and proposed to apply the amount obtained in that fashion against future billing, or to return it to the customers in the form of a direct refund if such is requested. He testified that Beech Mountain Utility Company also proposes to discontinue the assessment for initial development of the utility, but rather that the cost of development of roads, water and sewer plant will in the future be built into the sale price of a particular lot.

Mr. Kenneth Winebarger, who supervises maintenance and operation of the Beech Mountain Utility, testified generally as to the utility operations. He testified further that Beech Mountain Utility Company at the date of the hearing provided service for five or six customers beyond the number indicated on the Application and that billing permits had been issued for an additional 38 new residences since January 1.

Mr. Leonard F. Bloxam of the consulting firm Freeman and Associates testified that his firm was called in to redesign and rebuild the system after it had been begun. He explained that the Beech Mountain Utility System was expensive to build because of the difficulty of laying distribution lines in a strata which was 100% rock. He testified that the distribution system as it is now constructed is adequate to serve the entire anticipated population at full development of 15,000 people. Mr. Bloxam testified that the utility is not feasible today, but that the proposed rates would make it feasible at 75% development.

Mr. Tom Dixon of the Commission Engineering Staff, Gas and Water Division, testified that he had made a personal inspection of the system and that in his judgment it appeared to be designed and constructed in such a manner as to provide adequate service.

Mr. Charles W. Blanks, Jr., President of the Beech Mountain Home Owners' Association, appeared to protest the proposed rate schedule. Mr. Blanks testified as to the assessments previously paid by the home owners as contributions to capital; he testified that in addition to the initial development assessment the owners have paid an additional flat fee of $225 for water and sewer service laterals. Mr. Blanks opposed the rates as being too high in themselves, and also as being higher than rates charged by various municipalities for water service. He was instructed

by the Examiner that the latter was not a relevant consideration.

Based upon evidence adduced at the public hearing and evidence submitted in the verified Applications, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant, Beech Mountain Utility Company, a North Carolina corporation, incorporated on 8 January 1969, is a subsidiary of Carolina Caribbean Corporation and is currently providing public utility water service to approximately 290 residential customers and 5 commercial customers in Beech Mountain Development and 125 residential customers in Linville Land Harbor Development.

2. The Applicant's office is located at Beech Mountain, Watauga County, North Carolina; it began providing public utility water service on 17 March 1971.

3. Beech Mountain Development in Avery and Watauga Counties is located approximately 4 miles from the City of Banner Elk, adjacent to Highway #1330 and Linville Land Harbor Development in Avery County, North Carolina, is located approximately 4 miles adjacent to Highway #221.

4. The water system has been adequately designed and constructed so as to provide adequate water service for residential and commercial consumption and for fire protection in Beech Mountain Development, and to provide adequate residential water service in Linville Land Harbor Development.

5. The Applicant proposes to provide public utility water service in Beech Mountain Development at the following rates for Residential Service:

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

Metered Rate

First	3,000 gallons at	$.20 per 100 gallons	- $6.00 minimum
Next	1,000 gallons at	.19 per 100 gallons	
Next	2,000 gallons at	.18 per 100 gallons	
Next	2,000 gallons at	.17 per 100 gallons	
Next	2,000 gallons at	.16 per 100 gallons	
Next	2,000 gallons at	.15 per 100 gallons	
All over	12,000 gallons at	.14 per 100 gallons	

Connection Charges

A flat connection fee for all residences in the amount $175.00 covers hook-up, installation of meter and pressure reducing valve if required.

6. The Applicant proposes to provide public utility water service for Linville Land Harbor Development according to the following residential service rate schedule:

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

Flat Rate

Recreational Vehicle Sites - $4.00 per month
Homesites - $6.00 per month

Connection Charges

A connection charge will be charged all purchasers. This connection fee will be computed on a cost of connection plus ten per cent (10%) basis. The maximum charge will be $150.00.

7. As is indicated in the Amended Exhibit F in Docket No. W-300, the Applicant anticipates that the annual revenue at the proposed rates from the current 282 residential consumers would amount to $20,304; this figure reflects an assumption that the average customer will pay only the minimum monthly rate (282 X $6.00 X 12 = $20,304).

8. The only consumer witness present, Mr. Charles Blanks, Jr., President of the Beech Mountain Home Owners' Association, anticipates that his monthly water consumption will be 6,000 gallons per month for 9 months and 7,000 gallons per month for 3 months, which would result in a monthly bill of $11.50 for nine months and $13.20 for the remaining 3 months. If this individual's anticipated water consumption is representative of the other consumers, then it would appear that the anticipated annual revenue from 282 residential customers would be $44,668.80 rather than the $20,304 as anticipated by the Applicant.

9. The depreciation expense figure in the Applicant's Amended Exhibit F, Docket No. W-300, Pro Forma Income Statement, 12 Months Ended March 31, 1972, is $33,000, which was derived by depreciating the original cost of the entire utility plant.

10. The Applicant's Amended Exhibit D commingles the water and sewer assessments in the Contributions in Aid of Construction account so that it is impossible to determine what amount should be deducted from water utility plant rate base, and what amount should be deducted from the allowable depreciation.

11. The proposed rate schedule for providing public utility water service to Linville Land Harbor Development, as same is supported by the Amended Exhibit F in Docket No. W-300, Sub 1, and other exhibits attached thereto, is just and reasonable.

Whereupon the Hearing Examiner reaches the following

CONCLUSIONS

The North Carolina Public Utilities Act requires that the water service which the Applicant provides Beech Mountain Development and in Linville Land Harbor Development be provided by a duly certificated public utility. The water systems were developed pursuant to a public need for subdivision water supplies in the two locations. The Applicant has demonstrated overwhelmingly its fitness, willingness and ability to provide public utility water service in Beech Mountain Development and in Linville Land Harbor Development and to do so in accordance with the mandates of law and Commission rules. A Certificate of Public Convenience and Necessity should therefore issue immediately for the Applicant to provide said water service in both locations.

The rates proposed to be charged in Linville Land Harbor Development are just and reasonable and are supported by the data submitted in the verified Application and adduced at the public hearing.

The Beech Mountain Development Application, Docket No. W-300, presents the situation of a million dollar system serving less than 300 customers, thereby raising some questions as to excessive margin. It also presents the question of whether the anticipated water consumption and, therefore, anticipated annual revenue, is substantially understated while the depreciation expense may well be overstated because of the possible inclusion of depreciation expense amounts attributable to that excessive margin. The rates which the Applicant proposes to charge in Beech Mountain Development may, in fact, be ultimately demonstrated to be just and reasonable, but the Hearing Examiner is of the opinion that the record in this docket does not adequately answer the above-stated questions and, therefore, does not establish those rates to be just and reasonable.

The Hearing Examiner concludes that the anticipated annual operating revenues derived from metered sale of water to residential customers should not, without further corroboration, be accepted as being $20,304 (which reflects an average monthly consumption at the minimum rate only, in contrast to the water consumption described by the only public witness who testified that his consumption would be twice the minimum, at least). The Hearing Examiner concludes that the Applicant should submit a study indicating the actual metered water consumption of its customers, in order that the Applicant may thereby corroborate its anticipated revenue figure, if in fact such a study does corroborate the figure.

The Hearing Examiner further concludes, in view of the testimony of the Applicant's consulting engineer that the

current investment in water utility plant includes a distribution system sufficient to serve 15,000 persons, that the entire value of the water utility plant to date, $892,694.24, should not be included in rate base or be reflected in the depreciation expense; the Hearing Examiner concludes, however, that the record does not establish with certainty what amount of the gross investment should be considered to be excessive plant margin. The Examiner concludes, therefore, that the Applicant should submit evidence from which the Commission may conclude what portion of the water utility plant is actually "used and useful in providing the service to the public." [G.S. 62-133(b)(1)]. The Applicant should further break down its Contributions in Aid of Construction figure so as to indicate what portion of that figure is properly attributable to the water system alone.

For the reasons stated above, the Hearing Examiner concludes (1) that the Applicant should be issued a Certificate of Public Convenience and Necessity to provide public utility water service in the two service areas set out in the Applications; (2) that approval of the rates to be charged in Linville Land Harbor Development should be granted immediately; (3) that approval of the proposed rates to be charged in Beech Mountain Development should be withheld until the record is supplemented so as to establish the justness and reasonableness of the proposed rates; and (4) that as an interim measure the Applicant should be allowed to charge the minimum $6.00 per month (which according to the Amended Exhibit F in Docket No. W-300, is all the revenue that Applicant anticipates receiving anyway) until such time as the late exhibits have been filed and further Order of the Commission has been issued.

In view of the evidence in the record to the effect that the Applicant is also providing public utility sewerage service, the Hearing Examiner further concludes that the Applicant should, at the earliest possible date, file its Application for a Certificate of Public Convenience and Necessity to provide such service.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Beech Mountain Utility Company, a duly chartered North Carolina corporation, is hereby issued a Certificate of Public Convenience and Necessity to provide public utility water service in Beech Mountain Development and in Linville Land Harbor Development.

2. That this Order, shall in itself, constitute said Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates for Linville Land Harbor Development attached hereto and made a part hereof is hereby approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That the Applicant should file with this Commission the information described in the Conclusion above, i.e., (1) an actual study indicating the monthly water consumption in Beech Mountain Development for a reasonable time period; (2) an exhibit indicating what portion of the water utility plant is currently used and useful in providing water service; and (3) an exhibit indicating the Contributions in Aid of Construction applicable to the water system.

5. That Applicant should file with this Commission, as an amendment to its Water Rate Schedule, a water rate for Commercial Service if the rate for Commercial Service is as it appears to be, different from the rate for Residential Service.

6. That the Applicant may, at its next regular billing period, charge the $6.00 monthly minimum to its customers for water utility service rendered, and may continue to do so on an interim basis until further Order of the Commission.

7. That the Applicant shall keep its books and accounts in accordance with the Uniform System of Accounts and in accordance with such reasonable guidelines as the Commission's Accounting Staff may describe.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-300, SUB 1
BEECH MOUNTAIN UTILITY COMPANY
LINVILLE LAND HARBOR DEVELOPMENT

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

Flat Rate
Recreational Vehicle Sites - $4.00 per month
Homesites - $6.00 per month

Connection Charges
A Connection charge will be charged all purchasers. This connection fee will be computed on a cost of connection plus ten per cent (10%) basis. The maximum charge will be $150.00.

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-188, SUB 1
DOCKET NO. W-274, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Docket No. W-188, Sub 1 Application of Camelot Development, Inc. for Authority to Purchase the Water System Owned by Camelot Homes, Inc., Camelot Subdivision, Wake County, North Carolina, and for Approval of Metered Rates and Docket No. W-274, Sub 4 Application of Heater Utilities, Inc., for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Camelot Subdivision, Wake County, North Carolina, and for Approval of Increased Rates	) ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, LEAVING DOCKET NO. W-274, SUB 4 OPEN FOR FURTHER ORDER ON RATES

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on August 5, 1971

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

APPEARANCES:

For the Applicants:

Mr. Robert T. Hedrick
Attorney at Law
3311 North Boulevard
Raleigh, North Carolina
For: Camelot Development, Inc.

Mr. Henry H. Sink
Parker, Sink & Powers
P. O. Box 1471, Raleigh, North Carolina
For: Heater Utilities, Inc.

For the Intervenors:

Mr. William A. Mann
Herman Wolff, Jr.
Attorneys at Law
401 Oberlin Road, Raleigh, North Carolina
For: Intervening Residents of Camelot

For the Commission Staff:

Mr. William Anderson
Assistant Commission Attorney

North Carolina Utilities Commission
Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: After a series of delays and continuances, Docket No. W-274, Sub 4, in the matter of Heater Utilities, Inc., for a franchise and approval of increased rates, and Docket No. W-188, Sub 1, in the matter of Application of Camelot Development, Inc., to purchase the water system owned by Camelot Homes, Inc., were consolidated for hearing by Order issued 8 July 1971.

On 26 July 1971, Dennis B. Carr, and other property owners in Camelot Subdivision, Wake County, North Carolina, through their attorney, William A. Mann, filed a Petition to Intervene in Docket No. W-274, Sub 4. The Commission allowed the intervention by Order issued 28 July 1971.

The matters came on for hearing at the designated time and place. The Affidavit of Publication as filed indicates that the requisite public notice was given in The Raleigh Times, Raleigh, North Carolina.

Heater Utilities, Inc., and Camelot Development, Inc., were represented by counsel. Heater Utilities, Inc., offered the testimony of Mr. Robert B. Heater, President and Camelot Development, Inc., offered the testimony of Mr. D. Warren Smith, President of Camelot Development, Inc.

Mr. Smith testified that Camelot Homes, Inc., was a different corporation from Camelot Development, Inc., being the predecessor in title, owning the property subsequently developed as Camelot Subdivision and owning the initial part of the water system that was installed when the tract was purchased by Camelot Development, Inc., in September 1964.

Mr. Robert B. Heater testified that Heater Utilities, Inc., would be able to provide the people in the subdivision "better service than they have had in the past." Mr. Heater characterized the present deficiencies in the system as "primarily lack of adequate supervision and low pressure" and testified that these problems could be alleviated by proper supervision. Mr. Heater explained that the rates which are requested in the Application are based on a study of the estimated cost of operating the system, plus depreciation, and to conform to the rate heretofore approved by the Commission for other systems operated by Heater Utilities, Inc. He testified that the estimated costs were derived from other water utility operations and that the costs charged to the system in the books of Camelot Development, Inc., failed to record all costs properly attributable to water operations.

Mr. Heater testified that the gross revenue requested is based on an estimated average use of 6,000 gallons per month per customer. On cross examination by the Commission's Staff attorney, Mr. Heater explained that all residences in the subdivision have meters installed and ready for use at

the present time and that there would be no tap fee charged to any existing customer, but that the $135.00 proposed tap fee would be charged to any builder or home owner who subsequently ordered service from the utility.

On cross examination by Mr. Mann, attorney for the intervening home owners, Mr. Heater testified as to the purchase price of the water system, consumption figures and proposed operations. Mr. Heater further explained that if any residence does not have a meter, there will be a meter installation without any connection fee.

On cross examination by Mr. Mann, Mr. Smith testified as to the original cost of the realty, the development costs, current FHA and VA appraisals and generally as to the details of the proposed transfer. Mr. Smith testified that neither himself nor any agents of his, nor real estate agents who offered lots for sale in his behalf, have ever made representations that the water supply would be provided by Camelot Development Company for a perpetual rate of $3.50 per month.

The Commission Staff offered into evidence the audit report of Mr. William Carter of the Accounting Department and the testimony of Mr. Ralph Griffin, Staff Engineer with the Gas and Water Division of the Commission Engineering Department. Mr. Griffin described his study, which is an original cost study using various land costs, system original costs and depreciation. Mr. Griffin determined the original investment in water utility plant to be $81,737.85, as of December 1970. He further made an adjustment for idle plant of 15%, stating an investment in utility plant in service figure of $69,477.17. Mr. Griffin testified that the pro forma operation and maintenance expenses admitted by Mr. Heater appear reasonable in comparison with a study recently conducted by the Commission's Staff of representative water companies' operation and maintenance expense on a per customer basis for this class of water company. Mr. Griffin's exhibit included rate of return calculations in which several different rates of return were computed based on different figures resulting from including or excluding various possible adjustments. Mr. Griffin's testimony indicated that, based on present rates, a negative net operating income is obtained and that based on proposed rates, as applied to an original cost net investment, the proposed rate would result in a rate of return of 4.79% before applying 15% idle plant adjustment and 5.97% after such an adjustment.

Appearing as public witnesses were Messrs. Dennis Carr, Nicholas Bailey, and Donald Strickland. The various public witnesses testified that due to representations, "implication," or "innuendo," there was an impression that rates were to remain constant, or that future increases would be insubstantial. These witnesses also testified regarding service problems including the chemical content of the water.

Based upon the verified Application and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That Camelot Homes, Inc., previously certificated as a public water utility in Camelot Subdivision has abandoned its franchise in said subdivision.

2. That Camelot Development, Inc., has provided public utility water service in Camelot Subdivision since September 1964 without ever having obtained a franchise to provide such service.

3. That Camelot Development, Inc., has entered into an agreement to transfer its right title and interest in the water system in Camelot Subdivision to Heater Utilities, Inc., subject to the approval of this Commission.

4. Heater Utilities, Inc., is presently certificated as a residential community water public utility in other subdivisions in North Carolina, and is fit, willing, solvent and otherwise able to provide such service in Camelot Subdivision on a continuing basis.

5. That certain service problems now exist in the water supply system in Camelot Subdivision, and Heater Utilities, Inc., proposes to take action to alleviate those problems.

6. That Heater Utilities, Inc., proposes to provide metered service without additional connection charge to customers currently served.

Whereupon the Commission reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant, which has adequately provided such service in other subdivisions. The facilities and source of supply which the Applicant proposes to operate and improve, and to so improve in accordance with the requirements of the Commission, will be adequate to supply the reasonable demand of the customers for water service.

The North Carolina Public Utilities Act requires that the proposed service be provided by a duly certificated public utility subject to the jurisdiction of this Commission. Accordingly, the Commission concludes that the proposed transfer of the system should be effectuated immediately.

Heater Utilities, Inc., through its President, Mr. Robert B. Heater, indicated in his testimony an awareness of certain problems in the water system which existed at the time of the hearing. In addition, there was testimony by public witnesses which indicated there may well be problems

with the chlorine content or with other chemicals in the water. Accordingly, steps should be taken immediately to determine the nature of this problem and to correct it.

The Commission further concludes that action on the requested rate increase must await the expiration or modification of the current Executive wage-price freeze order. This matter is, therefore, to that extent left open for further action at a later date.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity should be, and hereby is granted, authorizing Applicant to operate as a public utility providing water service in Camelot Subdivision.

2. That this Order will of itself constitute the Certificate of Public Convenience and Necessity.

3. That Docket No. W-188, Sub 1 is hereby closed.

4. 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, with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Accounting Department may recommend.

5. That the Applicant is hereby directed to review all service problems currently existing, including low pressure and chemical content, and to file a report thirty (30) days from the date of this Order, indicating steps taken to alleviate those problems.

6. That the matter will be left open for a further Order regarding rates, such Order to be issued after the expiration or modification of the President's wage-price freeze; parties will be allowed, after such expiration of modification, to file any motions or exhibits as may be appropriate in view of then-existing conditions or circumstances.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of September, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-232, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Cape Fear Water Company, P. O. Box 3646, Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Southgate Subdivision, Cumberland County, North Carolina, and for Approval of Rates	) ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on March 31, 1971, at 2:00 p.m.

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

APPEARANCES:

For the Applicants:

Herb Thorp
Rose, Thorp & Rand
Attorneys at Law
P. O. Box 1239, Fayetteville, North Carolina
For: Cape Fear Water Company

L. Stacy Weaver, Jr.
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
P. O. Box 1688, Fayetteville, North Carolina
For: Brookwood Water Corporation

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building, Raleigh, North Carolina

No Protestants

BY THE COMMISSION: On January 18, 1971, Cape Fear Water Company (hereinafter Applicant Cape Fear), P. O. Box 3646, Fayetteville, North Carolina, filed an application with this 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 provide water service for compensation for customers in Southgate Subdivision, Cumberland County, North Carolina, and for approval of rates.

On February 4, 1971, 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

Applicant Cape Fear 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 March 31, 1971, and required that notice of said hearing be published by the Applicant, Cape Fear, and Affidavit of Publication be filed with the Commission. The hearing was held at the time and place specified in the Commission's Order of February 4, 1971. No one appeared at the hearing to protest the application and no protests were filed.

The Commission's Order of February 4, 1971, further provided that Brookwood Water Corporation (hereinafter Applicant Brookwood), which said public water utility joined in the application of Applicant Cape Fear for the limited purpose of indicating its willingness for that portion of geographical territory described in Exhibit A attached to the application to be transferred to Applicant Cape Fear, be required to appear before the Commission at the hearing in the instant proceeding to explain why Applicant Brookwood should not be required to provide water utility service in the area proposed to be served by Applicant Cape Fear.

Upon the commencement of the hearing, counsel for Applicant Cape Fear, through an opening statement, brought to the Commission's attention the fact that the Commission's Order of June 30, 1969, in Docket No. W-177, Sub 4, relating to Applicant Brookwood's franchise application, inadvertently included in Exhibit A attached to that Order a portion of geographical territory which was, in effect, ordered stricken by the Commission's Order of May 6, 1968, allowing Applicant Brookwood's Motion for Leave to Amend its Application, which said Motion deleted certain geographical territory described in the exhibits attached to said Motion. The Commission's Order of June 30, 1969, concluded that public convenience and necessity required that the application be granted "as shown in the amended application". By Order of April 6, 1971, the Commission treated the statement of joint applicants' counsel in this proceeding as a Motion in the Cause in the prior proceeding, W-177, Sub 4, for the purpose of correcting the inadvertence in the prior order of the Commission.

In view of the statement of joint applicants' counsel at the hearing in connection with the incorrect portion of a prior order of the Commission as hereinabove described and taking judicial notice of the Commission's record in Docket No. W-177, Sub 4, the Commission, having required in its Order of February 4, 1971, that Applicant Brookwood appear at the hearing to offer testimony to explain why it should not be required to provide water utility service to the area proposed to be served by Applicant Cape Fear, allowed Applicant Brookwood to withdraw from the application in Docket No. W-232, Sub 1.

The evidence offered by the principal applicant in this proceeding, Cape Fear Water Company, tendered through John Collie, Consulting Engineer, and William L. Oden,

Comptroller of King Model Homes, 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 April 7, 1967, and that the area proposed to be served is Southgate Subdivision, Cumberland County, North Carolina.

Applicant proposes to ultimately serve 190 residential lots in Southgate Subdivision, but as of the date of the hearing was providing water utility service to only one residence.

Applicant's Exhibit D contains a map of the subdivision proposed to be served and also contains engineering plans of the applicant's water system in such subdivision.

Applicant's evidence further indicates that its investment in the water system which is the subject of this proceeding amounts to approximately $71,000.00 and that the Southgate Subdivision is substantially a comparable and similar system to Hollywood Heights in connection with expenses of the respective systems, Hollywood Heights being another subdivision served by applicant.

Counsel for applicant and for the Commission's Staff, following certain questions by the Commission directed to Raymond J. Nery, Chief Engineer, Gas and Water Division, stipulated that the water system in Southgate Subdivision is adequate to provide water service to 100 or less customers. After the level of 100 customers is obtained applicant will be faced with compliance with Rule R7-7 relating to approved storage capacity.

Based on the evidence adduced at the hearing and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Cape Fear Water Company, is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office at P. O. Box 3646, Fayetteville, North Carolina.

2. The area for which the applicant proposes to provide water service is Southgate Subdivision, Cumberland County, North Carolina.

3. Applicant is presently serving one residential customer in Southgate Subdivision.

4. Applicant proposes ultimately to provide water service to approximately 190 residential customers for compensation upon completion of the subdivision's development.

5. The plans for applicant's proposed water system have been approved by the North Carolina State Board of Health.

6. Applicant's investment in the proposed water system is approximately $71,000.00.

7. The rates which applicant proposes to charge for water service are just and reasonable and should be allowed.

8. Applicant's water system in Southgate Subdivision is substantially comparable to its water system in Hollywood Heights, another subdivision in Cumberland County.

9. Applicant is financially willing, ready and able to provide the water service it proposes on a continuing basis.

10. Public convenience and necessity requires or may require the water service proposed by the applicant herein.

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

CONCLUSIONS

The Commission is of the opinion and concludes that there is a public need and demand for water service in Southgate Subdivision, Cumberland County, North Carolina, and that the applicant stands ready, willing and able to provide water service to the area described in its application. The Commission is further of the opinion that a Certificate of Public Convenience and Necessity should be issued to the applicant in order that the applicant may provide water service to Southgate 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, Cape Fear Water Company, be, and the same hereby is, granted a Certificate of Public Convenience and Necessity in order to provide water service in Southgate Subdivision, Cumberland 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 7th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-232, SUB 1
CAPE FEAR WATER COMPANY

WATER RATE SCHEDULE

Metered Rate (residential service)
First 3000 gallons per month - $3.00 (minimum)
Next 5000 gallons per month - .55 per 1000 gallons
Next 2000 gallons per month - .50 per 1000 gallons
All over 10,000 gallons per month - .50 per 1000 gallons (October 1 thru April 30)
All over 10,000 gallons per month - .25 per 1000 gallons (May 1 thru September 30)

Connection Charges - $100.00 per lot

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-260, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application by Billy Gene Watson and C. A. Houk, a Partnership, t/a Fairway Acres Water System, 203 Fairway Acres, Lenoir, North Carolina, and by Kenneth Henry Frye, t/a Fairway Acres Water System, 206 N. Fairview Drive, Lenoir, North Carolina, for Authority to Transfer the Water Utility Franchise in Fairway Acres Subdivision, Caldwell County, North Carolina, and for Approval of Rates	ORDER GRANTING FRANCHISE AND APPROVING RATES

BY THE COMMISSION: On June 7, 1971, the Applicants, Billy Gene Watson and C. A. Houk, a Partnership, t/a Fairway Acres Water System, and Kenneth Henry Frye, t/a Fairway Acres Water System, filed a joint application with the North Carolina Utilities Commission whereby Billy Gene Watson and C. A. Houk, a Partnership, seek authority to sell their water system serving Fairway Acres Subdivision to Kenneth Henry Frye.

The Applicants further seek authority for Billy Gene Watson and C. A. Houk, a Partnership, to transfer their Certificate of Public Convenience and Necessity to provide

water utility service in Fairway Acres Subdivision to Kenneth Henry Frye, and for Kenneth Henry Frye to charge the same rates as those presently authorized for water utility service in Fairway Acres Subdivision.

By Order issued June 15, 1971, the Commission scheduled the application for public hearing and required that the public notice of the hearing be given by the Applicants.

Public notice was given as specified in the Commission's Order, setting forth the time and place of the hearing, describing the service to be provided, advising that anyone desiring to intervene or to protest the application was required to file their Petition to Intervene or their protest with the Commission by the date set in the Notice, and advising that unless written protest or interventions were received on or before July 16, 1971, the application would be determined by the Commission without public hearing on the basis of the information contained in the application and in the public record of the Commission.

As of July 27, 1971, no objections, protests or interventions were filed with the Commission.

Based on the information contained in the records of the Commission in the proceeding, including the evidence obtained from the application, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Kenneth Henry Frye, is an individual proposing to engage in the operation of a public water utility.

2. The copy of the sales contract filed with the application indicates that the proposed transferee is to be granted the wells and all easements connected with the two wells on the premises and also certain water system equipment and related items, including well equipment, water lines, tank, valves and fixtures.

3. The Applicants have filed the requisite Affidavit of Publication which indicates that the Notice to the Public was published on two successive weeks beginning June 29, 1971, in the _Lenoir News-Topic_, Lenoir, North Carolina.

4. The rates proposed by the Applicant Kenneth Henry Frye are the same as those now authorized for water service in the proposed service area in Docket No. W-260.

5. Based on the Application submitted, the Applicant is ready, willing, and able to provide water utility service in the proposed service area.

Based on the foregoing Findings of Fact, the Commission now makes the following

CONCLUSIONS

The Commission concludes that the proposed transfer is justified by the public convenience and necessity. The rates approved by the Commission for water utility service in Fairway Acres Subdivision should be the same as those approved for said Subdivision in Docket No. W-260.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Kenneth Henry Frye, be, and is, hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Fairway Acres Subdivision, as described herein.

2. That the sales contract between Kenneth Henry Frye, Billy Gene Watson, and C. A. Houk, a Partnership, be, and is, hereby approved and that the Certificate of Public Convenience and Necessity issued to Billy Gene Watson and C.A. Houk, a Partnership, be, and is, hereby canceled and terminated.

3. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity for Kenneth Henry Frye.

4. That the Schedule of Rates heretofore approved by the Commission in Docket No. W-260, be, and the same is, hereby authorized for service in said area said to be filed with the Commission effective on one day's notice.

5. That the Applicant shall comply with the Rules and Regulations of the Utilities Commission and the Uniform System of Accounts, copies of which are attached to the order sent to the Applicant.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of August, 1971.

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

DOCKET NO. W-290, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by 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 Utility Service in Country Hills Estates Subdivision, Johnston County, North Carolina, and for Approval of Rates) RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on July 2, 1971, at 9:00 A. M.

BEFORE: Hearing Commissioner Marvin R. Wooten

APPEARANCES:

For the Applicant:

Richard O. Gamble
Johnson & Gamble
Attorneys at Law
P. O. Box 1777, Raleigh, North Carolina 27602

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: On May 25, 1971, the Applicant, William J. Timberlake, t/a Hasty Pump Sales and Service, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Country Hills Estates Subdivision, Johnston County, North Carolina, and for approval of rates.

By Order issued on June 10, 1971, the Commission scheduled the application for public hearing, and required that public notice of the hearing be given by the Applicant. Public notice was given as specified in the Commission's Order, setting forth the time and place of the hearing, describing the service to be provided, listing the proposed rates, and advising that anyone desiring to intervene or to protest the application was required to file their petition to intervene or their protest with the Commission by the date set in the notice. The public hearing was held at the time and place specified in the Commission's Order. No one appeared at the hearing to protest the application. The Applicant appeared at the hearing and presented testimony in support of the application. The Commission Staff presented testimony at the hearing concerning its evaluation of the Applicant's plans for the water utility operations.

Based on the information contained in the record of this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, William J. Timberlake, t/a Hasty Pump Sales and Service, is an individual engaged in the operation of a public water utility, as defined in G.S. 62-3.

2. The Applicant presently holds a franchise to provide water utility service in Bentley Woods Subdivision, Wake

County, North Carolina. The Applicant does not now have a franchise to provide water utility service in Country Hills Estates Subdivision.

3. The Applicant has obtained ownership or control of the well sites and water system serving Country Hills Estates Subdivision. The Applicant has entered into an agreement with Sunset Floorers & Decorators, Inc., the developer of Country Hills Estates, whereby it will furnish water to each lot for a tap fee as specified in the agreement.

4. Country Hills Estates is a residential subdivision consisting of 8 streets and approximately 115 lots. The subdivision is bounded by County Road 1546 and by State Road 42 in Johnston County. There is a prospect for growth in demand for water utility service in the subdivision.

5. The Applicant is ready, willing and able to provide water utility service in the proposed service area.

6. The quality of water from the well supplying the proposed service area meets the United States Public Health Drinking Water Standards 1962.

7. The well site and water system plans proposed by the Applicant are approved by the North Carolina State Board of Health.

8. The Applicant's proposed rates are the same as those as approved by the Commission for water utility service in Bentley Woods Subdivision.

9. The provision in the Applicant's proposed rates specifying "bills due within 10 days from date rendered" does not provide a reasonable time within which customers might pay their bills, and such a provision specifying "bills due within twenty days from date rendered" would be reasonable.

10. The projected revenue for the year ending May 20, 1972, under the Applicant's proposed rates is approximately $810, the projected operating expenses, including depreciation and taxes, are approximately $1963, and the projected net loss is approximately $1153.

Based on the foregoing Findings of Fact, the Commission now makes the following

CONCLUSIONS

There is a demand and need for water utility service in Country Hills Estates Subdivision, Johnston County, North Carolina, which can best be met by the Applicant.

The proposed rates are deemed just and reasonable for the proposed service, and they should be approved. The

facilities and source of supply which the Applicant proposes to place into service in conformance with the requirements of the Commission will be adequate to supply the reasonable demands of the customers for water utility service in the proposed service area.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, William J. Timberlake, t/a Hasty Pump Sales and Service, is hereby granted an amendment to his Certificate of Public Convenience and Necessity in order to provide water utility service in Country Hills Estates Subdivision, as described herein and more particularly as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the amendment to the Certificate of Public Convenience and Necessity.

3. That the schedule of rates attached hereto and made a part hereof is hereby approved, and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138, in that said schedule of rates is hereby authorized to become effective on one day's written notice to the customers.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-290, SUB 1

WATER RATE SCHEDULE

METERED RATES (Residential Service):
Up to first 400 cubic feet per month - $4.50 minimum
All over 400 cubic feet per month - .65 per 130 cubic feet

CONNECTION CHARGES: $2.00 plus security deposit of $10.00

RECONNECTION CHARGES:
N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Twenty days after date rendered.

DOCKET NO. W-290, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by 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 Utility Service in Ridge Haven Subdivision, Wake County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, 11 August 1971, at 9:30 a.m.

BEFORE: Hearing Examiner William E. Anderson

APPEARANCES:

For the Applicant:

David R. Shearon, Esq.
Johnson and Gamble
Attorneys at Law
P. O. Box 1777, Raleigh, North Carolina 27609

For the Commission Staff:

Maurice W. Horne, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building, Raleigh, North Carolina 27602

ANDERSON, HEARING EXAMINER: By Application filed with the North Carolina Utilities Commission on 18 June 1971, William J. Timberlake, t/a Hasty Pump Sales and Service, seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Ridge Haven Subdivision, Wake County, North Carolina, and for approval of rates.

By Order issued 2 July 1971, the Commission scheduled the matter for public hearing, required that the Applicant submit additional information pertaining to the Application and required that notice of the public hearing be given by the Applicant. The requisite public notice was given in the The Raleigh Times. No one petitioned to intervene in the matter or protested the Application.

The public hearing was held on 11 August 1971, in the Commission Hearing Room, at 9:30 a.m. No one appeared at the hearing to protest the Application. The Applicant was represented by counsel and testified in support of the Application. The Commission staff attorney cross-examined

the witness concerning the information submitted by the Applicant and the Applicant's water utility operations, and offered testimony of Mr. Ralph Griffin, of the Engineering Department, as to his engineering study of the system.

Based upon the information contained in the verified Application in the files of the Commission in this docket and the evidence adduced at the public hearing, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, William J. Timberlake, t/a Hasty Pump Sales and Service, is currently providing water service to 15 residential customers in Ridge Haven Subdivision, and proposes ultimately to serve approximately 100 residences.

2. That the Applicant's business address is Route 5, Highway 64 East, Raleigh, North Carolina; this business enterprise is engaged in the construction of private and public residential water systems, and the operation of two previously certificated public utility water systems.

3. That Ridge Haven Subdivision is a residential subdivision currently under development located on S.R. 1003, 10 miles from the City of Wendell, North Carolina.

4. That a growth in the demand for water service in the proposed service area is anticipated as demonstrated by the current development of the subdivision to an anticipated level of approximately 100 residences. Such water service is not now proposed for said area by any other public utility, municipality or membership association.

5. That the requisite filings have been made with the State Board of Health and the approval of that agency has been obtained.

6. That there have been no complaints regarding water service in the proposed service area.

7. That the gross annual revenue in 1972 under the proposed rates, at monthly consumption per customer averaging 6,000 gallons, will be approximately $1,620.

8. That the gross investment in utility plant in the subdivision is approximately $40,000, with contributions in aid of construction of $325 per tap.

9. That the revenues for 1972 from 15 customers will not have caught up with the anticipated expenses, so there will be no net revenue for a rate of return.

10. That demand growth to the level of 30 customers will likely generate revenues of approximately $3,240, with expenses leveling off at current figures, to produce a net

annual income of approximately $2,000; net utility plant at such time (after deductions for contributions to capital and accrued depreciation) would be approximately $27,000 for a rate of return of 7.00%.

CONCLUSIONS

There is a demand and need for public utility water service in the proposed service area by the Applicant, which has adequately provided the existing service. The proposed rates are just and reasonable and the facilities and source of supply which the Applicant proposes to operate and improve as the demand grows, and to so improve in accordance with the requirements of the Commission, should be adequate to supply the reasonable demand of the customers for domestic water service in the proposed service area.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity should be, and hereby is granted, authorizing Applicant to operate as a public utility providing water service in Ridge Haven Subdivision, Wake County, North Carolina.

2. That the schedule of rates attached hereto as "Appendix A" be, and hereby is approved, and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and will become effective on one day's notice to the customers.

3. That this Order will of itself constitute the Certificate of Public Convenience and Necessity.

4. 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, with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Accounting Department may recommend, the Applicant being hereby directed to arrange a conference with a staff member of that Department to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of August, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-290, SUB 2
WILLIAM J. TIMBERLAKE, T/A
HASTY PUMP SALES AND SERVICE
RIDGE HAVEN SUBDIVISION

WATER RATE SCHEDULE

Metered Rate - Residential Service
Up to first 400 cu. feet per month - $4.50 minimum
All over 400 cu. feet per month - $ .65 per 130 cu. feet

Connection Charges
$2.00 plus security deposit (to be required and computed only in accordance with Chapter 12 of the Rules and Regulations of the North Carolina Utilities Commission).

Reconnection Charges
N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

Bills Due: Twenty days after date rendered.

DOCKET NO. W-218, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Hydraulics, Limited, P. O. Box 11327, Greensboro, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Pine Knolls Subdivision, Forsyth County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, July 2, 1971, at 2:00 p.m.

BEFORE: Hearing Examiner William E. Anderson

APPEARANCES:

For the Applicant:

Mr. Douglas P. Dettor
Dettor, Egerton & Fowler
222 Commerce Place
Greensboro, North Carolina 27402

For the Commission Staff:

Mr. Maurice W. Horne
Assistant Commission Attorney

North Carolina Utilities Commission
Ruffin Building, Raleigh, North Carolina

ANDERSON, HEARING EXAMINER: By Application filed with the North Carolina Utilities Commission on 27 May 1971, Hydraulics, Limited, seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Pine Knolls Subdivision, Forsyth County, North Carolina, and for approval of the rates currently charged for the Applicant's two other certificated subdivision water systems.

By Order issued 10 June 1971, the Commission scheduled the matter for public hearing, required that the Applicant submit additional information pertaining to the Application and required that notice of the public hearing be given by the Applicant. The requisite public notice was given in the Winston-Salem Journal. No one petitioned to intervene in the matter or protested the Application.

The public hearing was held on 2 July 1971, in the Commission Hearing Room, at 2:00 p.m. No one appeared at the hearing to protest the Application. The Applicant was represented by counsel and tendered two witnesses in support of the Application, Mr. Robert C. Troy, President, and Mr. Manuel Perkins, Manager-Treasurer. The Commission Staff cross-examined the witnesses concerning the information submitted by the Applicant and the Applicant's water utility operations.

Based upon the information contained in the verified Application in the files of the Commission in this docket and the evidence adduced at the public hearing, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, Hydraulics, Limited, a North Carolina corporation, is currently providing water service to 38 residential customers in Pine Knolls Subdivision, and proposes to serve 229 residences.

2. That the Applicant's business address is P. O. Box 11327, Greensboro, North Carolina; this business enterprise is engaged solely in the building and operating of residential water systems and operations incidental thereto, and currently holds franchises for two systems.

3. That Pine Knolls Subdivision is a residential subdivision currently under development located on S.R. 1969, 7 miles from the City of Kernersville, North Carolina.

4. That a growth in the demand for water service in the proposed service area is anticipated as demonstrated by the current development of the subdivision. Such water service is not now proposed for said area by any other public utility, municipality or membership association.

5. That the requisite filings have been made with the State Board of Health and the approval of that agency has been obtained.

6. That there have been no complaints regarding water service in the proposed service area.

7. That the gross annual revenue in 1971 under the proposed rates, at monthly consumption per customer averaging 6,000 gallons, will be approximately $3,648.

8. That the gross investment in utility plant in the subdivision is approximately $23,370; with contributions in aid of construction of approximately $10,880, the net investment is approximately $12,490.

9. That annual revenue for 1971, with projected expenses of approximately $2,318 (based on a statistical average expense per customer of $61, of which the Examiner takes judicial notice), would produce a rate of return on the net investment of approximately 10%.

CONCLUSIONS

There is a demand and need for public utility water service in the proposed service area by the Applicant, which has adequately provided the existing service. The proposed rates are just and reasonable and the facilities and source of supply which the Applicant proposes to operate and improve as the demand grows, and to so improve in accordance with the requirements of the Commission, will be adequate to supply the reasonable demand of the customers for water service in the proposed service area.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity should be, and hereby is granted, authorizing Applicant to operate as a public utility providing water service in Pine Knolls Subdivision.

2. That the schedule of rates attached hereto as "Appendix A" be, and hereby is approved, and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and will become effective on one day's notice to the customers.

3. That this Order will of itself constitute the Certificate of Public Convenience and Necessity.

4. 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, with the Rules and Regulations of the North Carolina Utilities

Commission, and according to such reasonable guidelines as the Accounting Department may recommend.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-218, SUB 4
HYDRAULICS, LIMITED
PINE KNOLLS SUBDIVISION
FORSYTH COUNTY, NORTH CAROLINA

WATER RATE SCHEDULE
RESIDENTIAL SERVICE

Metered Rate

Up to first 4,000 gallons per month - $4.00 minimum
All over 4,000 gallons per month - .75 per 1,000 gallons

Connection Charges

Up to first 138 lots	-	$ 55.00 per lot
Next 91 lots	-	340.00 per lot
All over 229 lots	-	270.00 per lot

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-200, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by LaGrange Water Works Corporation, 271 Reilly Road, Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Murray Fork Subdivision, Cumberland County, North Carolina, and for Approval of Rates	) ORDER) GRANTING) CERTIFICATE) OF PUBLIC) CONVENIENCE) AND) NECESSITY

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 17, 1971, at 2:00 p.m.

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

APPEARANCES:

For the Applicant:

George B. Herndon, Jr.
Nance, Collier, Singleton, Kirkman & Herndon
Attorneys at Law
First Union National Bank Building
Fayetteville, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: On January 11, 1971, the Applicant, LaGrange Water Works Corporation, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Murray Fork Subdivision, Cumberland County, North Carolina, and for approval of rates.

The Commission being of the opinion that the application affected the interest of the consuming public, and that the public should have an opportunity to intervene or to protest the application if it so desired, set the matter for public hearing on February 17, 1971, and required that direct notice be given to any customer being provided water service of said hearing and further required applicant to publish notice of said hearing in a newspaper having general coverage in the area.

Hearing was held at the time and place specified in the Commission's order of February 3, 1971. No one appeared to protest the application. The evidence offered by the Applicant, LaGrange Water Works Corporation, indicates that the applicant is a duly organized and existing corporation under the laws of the State of North Carolina; that the area proposed to be served is Murray Fork Subdivision, Cumberland County, North Carolina; that said subdivision contains approximately 124 lots suitable for residential dwellings, but that the applicant as of the date of the hearing, is providing water service to only one residence with three other unoccupied residences having been constructed; that the plans and design of the water system were prepared by Mr. John Collie, Consulting Engineer, of Fayetteville; that said plans and design for such water system have been approved by the State Board of Health; and Exhibit B-1 contains detailed information with respect to well pump and storage tank data and indicates the existence of one well with a yield of 50 gallons per minute and a 4500 gallon

hydropneumatic storage tank in addition to other water distribution equipment.

Mr. William Elliot, Real Estate Developer of Murray Fork Subdivision, testified on behalf of the applicant as one owner of the Brookwood Water Corporation, which said company installed the well and a part of the system initially, and thereafter entered into a bilateral contract with D. P. Bruton, President of LaGrange Water Works, under the terms of which said contract Mr. Bruton agrees to provide water service to the residents in Murray Fork Subdivision and which said agreement, identified as applicant's Exhibit E, was modified by stipulation at the hearing to provide that Mr. William Elliot will provide other necessary well sites as the development of the subdivision progresses. Mr. Bruton testified that after the completion of 20 residences it was his opinion that an additional well would be required. Mr. Bruton further testified that LaGrange Water Works Corporation has been in existence for approximately 8 years as a public utility and serves approximately 765 persons in 5 subdivisions in or near Cumberland County, and that Graham Brothers Well Company will provide maintenance service as needed for the water system under contractual agreements with Mr. Bruton. Applicant's evidence indicates further that the cost of the water system in question has been projected by a firm of certified public accountants to amount to a total cost of $15,135 instead of $13,715 indicated on Exhibit F. Both Mr. Elliot and Mr. Bruton indicated at the hearing that a total connection charge of $250 per residence would be paid pursuant to a bilateral contract by Mr. Elliot to Mr. Bruton. Consequently, the provision in the originally filed tariff regarding connection charges was amended by stipulation of counsel at the hearing and at the instance of the Commission to read "CONNECTION CHARGE: to be paid by developer per bilateral contract." The applicant's vicinity map and other evidence indicates that public convenience and necessity requires or may require the proposed water service 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 in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, LaGrange Water Works Corporation, is a duly organized and existing corporation under the laws of the State of North Carolina with its principal office at 271 Reilly Road, Fayetteville, North Carolina.

2. That the area for which the applicant proposes to provide water service is Murray Fork Subdivision, Cumberland County, North Carolina.

3. That the applicant is presently providing water service to one residence in Murray Fork Subdivision.

4. That the applicant proposes to ultimately provide water service to 124 residents for compensation upon completion of the subdivision development.

5. That the plans and design of the proposed water system have been approved by the State Board of Health.

6. That applicant's total investment in the water system which is the subject in this proceeding is approximately $15,135.

7. That the provision in applicant's filed tariff which stated "CONNECTION CHARGE: $250.00 per service installed" should be deleted and in lieu thereof the tariff provision should read "CONNECTION CHARGE: to be paid by developer per bilateral contract".

8. That public convenience and necessity requires or may require the water service proposed by the applicant in Murray Fork Subdivision.

9. That the applicant is financially willing, ready and able to provide the service it proposes on a continuing basis.

Based upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

The Commission is of the opinion and concludes that there is a public need and demand for water service in Murray Fork Subdivision, Cumberland County, North Carolina, and that the applicant stands ready, willing and able to provide water service in 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 Murray Fork Subdivision and concludes that the schedule of rates proposed by the applicant, except as to the provision relating to connection charges, as set forth in Appendix A attached hereto is just and reasonable and should be approved.

Upon stipulation by counsel, the tariff provision originally filed by applicant relating to $250.00 for connection charges will be deleted and in lieu thereof the Commission hereby approves amendment to the original tariff to read "CONNECTION CHARGE: to be paid by developer per bilateral contract" for the reason that Mr. William Elliot, Real Estate Developer of Murray Fork Subdivision, is under contract to pay $250.00 connection charges to applicant.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, LaGrange Water Works Corporation, be, and the same hereby is, granted a Certificate of Public

Convenience and Necessity in order to provide water service in Murray Fork Subdivision, Cumberland 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 19th day of February, 1971.

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

APPENDIX A
DOCKET NO. W-200, SUB 4
LaGRANGE WATER WORKS CORPORATION

WATER RATE SCHEDULE

METERED RATE: (Residential Service)

First 3000 gallons per month - $4.00 (minimum)
All over 3000 gallons per month - $ .50 per 1000 gallons

CONNECTION CHARGES: To Be Paid By Developer Per Bilateral Contract

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 rendered.

DOCKET NO. W-262, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Construction and Water Company, Statesville, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Service In Westside Hills, Section II, Catawba County, North Carolina, and for Approval of Rates	) ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Thursday, January 14, 1970 at 2:00 p.m.

BEFORE: Commissioners Miles H. Rhyne, Presiding, Hugh A. Wells, and Marvin R. Wooten

APPEARANCES:

For the Applicant:

Mr. B. B. McCormick
P. O. Box 6, Stony Point, North Carolina
Appearing for Himself

For the Commission Staff:

Mr. William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

RHYNE, COMMISSIONER: By application filed with the North Carolina Utilities Commission on November 4, 1970, B. B. McCormick, Jr. t/a Piedmont Construction and Water Company, P. O. Box 6, Stony Point, North Carolina 28678, seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Westside Hills, Section II, Catawba County, North Carolina, and for approval of rates.

By order issued December 18, 1970, the Commission scheduled the matter for public hearing, required that the applicant submit additional information pertaining to the application and required that notice of the public hearing be given by the applicant. The requisite public notice was given in the Mecklenburg Gazette. No one petitioned to intervene in the matter or protested the application.

The public hearing was held on January 14, 1971, in the Commission Hearing Room at 2:00 p.m. No one appeared at the hearing to protest the application. The applicant, B. B. McCormick, appeared and presented testimony in support of the application. The Commission Engineering Staff, through Mr. David S. Creasy, presented testimony at the hearing concerning its evaluation of the information submitted by the applicant and its investigation of the applicant's water utility operations.

Based upon the information contained in the files of the Commission in this docket and evidence adduced at the public hearing in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That the applicant, B. B. McCormick, t/a Piedmont Construction and Water Company, is currently providing water

service to seven customers, and proposes to serve 59 residences, in Westside Hills.

2. That the applicant is presently providing water utility service under Certificates of Public Convenience and Necessity granted by this Commission in three other subdivisions.

3. That the applicant's office is located on US 21, one mile north of Statesville, North Carolina and this business enterprise is engaged solely in the building and operating of residential water systems.

4. That the applicant has entered into agreements with Westside Land Company, the developer of Westside Hills, Section II, whereby the applicant will install and operate a water system to serve said subdivision, and whereby the applicant has secured control of the well sites and right-of-ways necessary to operate the water systems.

5. That Westside Hills is a residential subdivision currently under development located on County Road 1149 in Catawba County approximately four miles from the City of Newton, North Carolina.

6. That the adjacent subdivision, Westside Hills, Section I, is currently supplied water by Triangle Realty Company of Newton, North Carolina which has indicated by letter included in this file that their water system is small and "was provided by us only as a matter of convenience for a builder. We have no desire to increase what we now have." Said water system is not operating under a Certificate and has made no filing for a Certificate to serve either Westside Hills, Section I, or Westside Hills, Section II.

7. That a growth in the demand for water service in the proposed service area is anticipated as demonstrated by the current construction of 21 additional residences in the Subdivision. Such water service is not now proposed for said area by any other public utility, municipality or membership association.

8. That the requisite filings have been made with the State Board of Health and the approvals are on file with this Commission.

9. That the tariff filed with this application reflects a monthly flat rate of $5.00 per month and a connection charge of $200.00.

10. That there have been no complaints regarding water service in the proposed service area. The applicant proposes to complete construction of a pump house with a heater and to install a second well and storage tank prior to serving the 13th customer in said area.

11. That the applicant's job and technical experience includes his having been gereral manager of Iredell Water Corporation for two years, his holding a Class C Water Filteration Certificate from N.C. State University, and his current public utility water operations.

12. That the applicant has a net worth in excess of $40,000; the gross annual revenue in 1971 under the proposed rates will be $710.00 with annual operating expenses in 1971, including depreciation and taxes, at $1,349.30, resulting in a net loss for 1971 of $639.20; the gross annual revenue at full development under the proposed rates be approximately $3,500.00 with annual operating expenses approximately $2,500.00. The applicant, additionally, will receive contributions in aid of construction in the form of tap fees of $200.00 per house.

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

CONCLUSIONS

There is a demand and need for public utility water service in Westside Hills, Section II, Catawba County, North Carolina, by B. B. McCormick, t/a Piedmont Construction and Water Company, who has demonstrated his ability and desire to provide the proposed service and who has adequately provided the existing service. The proposed rates are just and reasonable and the facilities and source of supply which the applicant proposes to operate and improve as the demand grows and to so improve in accordance with the requirements of the Commission will be adequate to supply the reasonable demand of the customers for water service in the proposed service area.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity should be and hereby is granted authorizing applicant to operate as a public utility providing water service in Westside Hills, Section II.

2. That the schedule of rates attached hereto and made a part hereof be, and hereby is, approved and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and will become effective on one day's notice to the customers.

3. That this Order will of itself constitute the Certificate of Public Convenience and Necessity.

4. 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, and with

the Rules and Regulation of the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

APPENDIX "A"
PIEDMONT CONSTRUCTION AND WATER CO.
STATESVILLE, NORTH CAROLINA

WATER RATE SCHEDULE
Residential Service

RATE - $5.00 per month flat rate

CONNECTION CHARGES - $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-262, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Piedmont Construction and Water Company, Inc., P. O. Box 6, Stony Point, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Homestead Estates and Kings Acres Subdivision, Iredell County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on Friday, October 29, 1971, at 2:00 p.m.

BEFORE: Hearing Examiner, William E. Anderson

APPEARANCES:

For the Applicant:

W. E. Crosswhite, Esquire
Sowers, Avery and Crosswhite
Attorneys at Law

Drawer 1226
Statesville, North Carolina 28677

For the Commission Staff:

Maurice W. Horne, Esquire
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina

ANDERSON, HEARING EXAMINER: By application filed with the North Carolina Utilities Commission on August 26, 1971, Piedmont Construction and Water Company, Inc., seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Homestead Estates and Kings Acres Subdivision, Iredell County, North Carolina, and approval of rates.

By order issued September 13, 1971, the Commission scheduled the matter for public hearing and required that notice of the public hearing be given by the applicant. The requisite public notice was given in the Statesville Record and Landmark, Statesville, North Carolina. No one petitioned to intervene in the matter or protested the application.

The public hearing was held at the time and place designated by prior order. No one appeared at the hearing to protest the application. The applicant, Piedmont Construction and Water Company, Inc., presented its President, Mr. B. B. McCormick, in support of the application. The Commission Engineering Staff, through Mr. David F. Creasy, presented testimony at the hearing concerning its evaluation of the information submitted by the applicant and its investigation of the applicant's water utility operations.

Based upon the information contained in the files of the Commission in this docket and evidence adduced at the public hearing in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant, Piedmont Construction and Water Company, Inc., is a duly organized and existing corporation under the laws of the State of North Carolina with its registered office at Route 1, Rimmer Road, Stony Point, Iredell County, North Carolina.

2. That the applicant is currently providing water service to one customer, while proposing to serve 22 customers, in Homestead Estates, and is serving 5 customers, while proposing to serve 26, in Kings Acres Subdivision.

3. That the applicant is presently providing water utility service elsewhere under Certificates of Public

Convenience and Necessity granted by this Commission for other subdivisions.

4. That the applicant has entered into agreements with Lakeview Enterprises, Inc., and Moor Lanes, Inc., the developers of the subdivisions, whereby the applicant will install and operate a water system to serve each subdivision, and whereby the applicant has contracted for conveyances of the well sites and right-of-ways necessary to operate the water systems.

5. That Homestead Estates is a residential subdivision currently under development located in Iredell County approximately 3 miles from the Town of Troutman, North Carolina.

6. That Kings Acres Subdivision is a residential subdivision currently under development located in Iredell County, approximately 7 miles from the Town of Mooresville, North Carolina.

7. That a growth in the demand for water service in the proposed service area is anticipated as demonstrated by the current construction of additional residences in the subdivisions. Such water service is not now proposed for said areas by any other public utility, municipality or membership association.

8. That the requisite filings have been made with the State Board of Health and the approvals are on file with this Commission.

9. That the residential service tariff filed with this application proposes the following rates and tap fees:

METERED RATES
Up to first 3000 gallons per month - $5.00 minimum
All over 3000 gallons per month - $1.00 per 1000 gallons

FLAT RATE
Minimum rate under metered rates until such time as meters are installed for all customers.

CONNECTION CHARGES: $200.00

10. That there have been no complaints regarding water service heretofore provided in the proposed service areas.

11. That the applicant's job and technical experience includes his having been general manager of Iredell Water Corporation for two years, his holding a Class C Water Filteration Certificate from N.C. State University, and his current certificated public utility water operations.

12. That public convenience and necessity requires the water service proposed by the Applicant.

13. That the Applicant is financially willing, ready and able to provide the service it proposes on a continuing basis.

14. That the rates for the water service as proposed by Applicant, as set forth hereinabove, are found to be just and reasonable.

Based upon the foregoing Findings of Fact, the Hearing Examiner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in Homestead Estates and Kings Acres Subdivision, Iredell County, North Carolina, by Piedmont Construction and Water Company, Inc., which has demonstrated its ability and desire to provide the proposed service and who has adequately provided the existing service. The proposed rates are just and reasonable and the facilities and source of supply which the applicant proposes to operate and improve as the demand grows and to so improve in accordance with the requirements of the Commission will be adequate to supply the reasonable demand of the customers for water service in the proposed service area.

The schedule of rates approved by this Order and attached hereto should be authorized to become effective on one (1) day's notice. This action is not inconsistent with the President's Executive Order on wages and prices inasmuch as Applicant is proposing to provide a new service to newly established residential customers and the rates approved by this Order are consistent with the rates presently being charged by other public utilities of comparable size to the Applicant and in reasonable proximity to the area proposed to be served by the Applicant.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity should be and hereby is granted authorizing applicant to operate as a public utility providing water service in Homestead Estates and Kings Acres Subdivision.

2. That this Order will of itself constitute the Certificate of Public Convenience and Necessity.

3. That the schedule of rates attached hereto and made a part hereof as Appendix "A" be, and hereby is, approved and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and will become effective on one day's notice to the customers.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-262, SUB 4
PIEDMONT CONSTRUCTION AND WATER CO., INC.
HOMESTEAD ESTATES
KINGS ACRES

WATER RATE SCHEDULE
(Residential Service)

METERED RATE
Up to first 3000 gallons per month - $5.00 minimum
All over 3000 gallons per month - $1.00 per 1000 gallons

FLAT RATE
Minimum rate under metered rates until such time as meters are installed for all customers.

CONNECTION CHARGES
$200.00 per house service, payable by developer.

RECONNECTION CHARGES
N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Twenty days after date rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-262, Sub 4.

DOCKET NO. W-61, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Southeastern Water and	)	
Utilities Company, 705 Baugh Building,	)	ORDER GRANTING
Charlotte, North Carolina, for Approval of	)	CERTIFICATE
Increased Rates for Water Utility Service	)	AND APPROVING
In High Meadows Estates Subdivision,	)	RATES
Alleghany County, North Carolina	)	

HEARD IN: The Hearing Room of the Commission, One West Morgan Street, Raleigh, North Carolina, on Wednesday, April 21, 1971 at 10:00 a.m.

BEFORE: Commissioners Miles H. Rhyne, Presiding, Hugh A. Wells, and Marvin R. Wooten

APPEARANCES:

For the Applicant:

F. Kent Burns
Boyce, Mitchell, Burns and Smith
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina 27602

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
N.C. Utilities Commission
Ruffin Building, Raleigh, North Carolina

BY THE COMMISSION: On January 15, 1971, Southeastern Water and Utilities Company filed an Application with the Commission for approval of increased rates for water utility service in High Meadows Estates Subdivision, Alleghany County, North Carolina.

The Commission, being of the opinion that the Application affects the interest of the consuming public, set the matter for investigation and public hearing.

The matter came on for hearing at the time and place set. The Applicant gave the requisite public notice in _The Alleghany News_, Sparta, North Carolina, as indicated by the Affidavit of Publication, and served notice on customers as is indicated by the Certificate of Service.

The Applicant's President, Leslie B. Cohen, testified generally as to the Application for a rate increase proposing a change in rates from $48.00 per year to $60.00 per year, (an increase of $1.00 per month per customer) and an increase in the connection charge from $360.00 to $500.00 per service, to be paid by the developer. Mr. Cohen introduced into evidence a number of exhibits purporting to establish such matters as operating expenses, revenues, the effect of the proposed rate increase, and an analysis of present and proposed programs and tap fees.

The evidence introduced by the Commission's Staff included the testimony and exhibits of Mr. Michael C. Warren, Staff Accountant, consisting of his audit report, setting forth the results of his examination covering the 12 months' period ending December 31, 1970, a statement of rate of return after adjustment for idle plant and a statement of data relative to the requested increase in tap fees. Mr. David Creasy of the Engineering Staff offered testimony to explain the Staff projection of expenses involved in making future service connections and the justification for the adjustment of idle plant. In that portion of his testimony, he explained that while the system is at the present time developed to the point at which there are services installed for 160 of the proposed 200 customers, the subdivision is

only 25% developed, that there is a substantial amount of utility plant installed at points beyond the areas developed at the end of the test period, that there is some utility plant not being used, (specifically, one well out of service and the distribution lines associated with that well) and that there are distribution lines to a lodge which is not at the present time connected to the system. For these reasons, Mr. Creasy concluded that only 40% of the utility plant should be allowed as used and useful in providing utility service, including a reasonable growth margin.

Mr. Warren's audit involved an analysis of all expenses on a monthly basis, and certain accounting adjustments to those expenses, to reflect the best estimate of utility share of total company operation and maintenance expenses. The gross revenues, after those adjustments, reflect a test period gross revenue of $2,691.65, with total deductions from operating revenues, amounting to $5,361.21. This figure includes an adjustment downward in the amount of $2,340.79 to decrease Applicant's proposed depreciation to conform with engineering guidelines. These figures produced a net operating loss in the amount of $2,669.56.

From the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Southeastern Water and Utilities Company supplies water to High Meadows Estates Subdivision with 49 residential customers and one commercial customer under a Certificate of Public Convenience and Necessity constituting Southeastern Water and Utilities Company, a water public utility.

2. The operations for the test year show a net loss in excess of $2,500.00. The proposed rate adjustment, in the amount of $588.00 (before taxes), would result in a test year net operating loss (after taxes other than income) of approximately $2,000.00.

3. The expenses for providing water service at High Meadows Estates amount to $109.40 per customer compared to the average expense per customer of other representative water companies in the amount of $61.39.

4. The cost of providing services to the remaining 40 residences would be approximately $2,000.00; the Applicant's estimated requirements for serving the subdivision at full development include the installation of two additional well pumps, pump houses, auxiliary tanks and one large upright tank. The estimated cost of these additions is $24,500.00. With future investments of this magnitude, the net utility plant at complete development, computed on the basis of the proposed increased tap fee, would be approximately $12,000.00.

Whereupon the Commission reaches the following

CONCLUSIONS

The evidence offered by both the Applicant and the Staff establishes clearly that the water service at High Meadows Estates, during the test year, was a loss proposition due primarily to two reasons: (1) low rates and (2) high operating and maintenance expenses. We conclude that the proposed rate increase will establish just and reasonable rates, and will establish such rates as will enable the utility to obtain a reasonable rate of return, particularly in view of the imminent growth in the number of customers and in view of the apparent opportunity of the Applicant to effectuate some economies in operation. We further conclude that the proposed increase in the tap fee is just and reasonable in view of the anticipated future requirements for providing utility service to the total subdivision.

IT IS THEREFORE ORDERED:

1. Southeastern Water and Utilities Company is hereby authorized to establish the following rates for its water service at High Meadows Estates: $60.00 per year.

2. Southeastern Water and Utilities Company is hereby authorized to charge a tap fee for service connections in High Meadows Estates as follows: $500.00.

3. That the revised tariff is established in the attachment marked "Appendix A", which is hereby deemed to be the requisite statutory filing of rates.

4. Southeastern Water and Utilities Company is hereby authorized to apply the revised rates as herein approved on all bills rendered for service provided after May 1, 1971.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of May, 1971.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Anne L. Olive, Deputy Clerk

APPENDIX "A"
SOUTHEASTERN WATER & UTILITIES COMPANY
DOCKET NO. W-61, SUB 9

APPROVED WATER RATE SCHEDULE FOR HIGH MEADOWS ESTATES

RATE
Residential - Unlimited service - $60.00 per annum, payable in advance.

Commercial - $.50 per 1,000 gallons per month - $10.00 minimum.

CONNECTION CHARGE: $500.00 per service.

RECONNECTION CHARGES

N.C.U.C. Rule R7-20(e) $4.00 payable in advance for restoring cut-off service.

N.C.U.C. Rule R7-20(f) $2.00 for restoring service turned off at customer's request.

DOCKET NO. W-314, SUB 1
DOCKET NO. W-314, SUB 2
DOCKET NO. W-314, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matters of

Docket No. W-314, Sub 1 Application by Surry Water Company, Inc., 157 North Main Street, Mount Airy, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Sheffield Park Subdivision, Davie County, North Carolina, and for Approval of Rates and Docket No. W-314, Sub 2 Application by Surry Water Company, Inc., 157 North Main Street, Mount Airy, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Snow Hill Subdivision, and Pine Lakes Subdivision, Surry County, North Carolina, and for Approval of Rates and Docket No. W-314, Sub 3 Application by Surry Water Company, Inc., 157 North Main Street, Mount Airy, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Reeves Woods Subdivision, Surry County, North Carolina, and for Approval of Rates	RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVING RATES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on October 28, 1971

BEFORE: William E. Anderson, Hearing Examiner

APPEARANCES:

For the Applicant:

Fred Folger, Jr., Esq.
Attorney at Law
P. O. Box 428, Mount Airy, North Carolina

For the Commission Staff:

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

No Protestants

ANDERSON, HEARING EXAMINER: By Application filed September 10, 1971, the Applicant seeks a Certificate of Public Convenience and Necessity to provide water utility service in Sheffield Park Subdivision, Davie County, North Carolina, and for approval of rates. This Application was designated as Docket No. W-314, Sub 1.

By Application filed on September 10, 1971, the Applicant seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Snow Hill and Pine Lakes Subdivisions, Surry County, North Carolina, and approval of rates proposed to be charged therein. This matter was designated Docket No. W-314, Sub 2.

By Application filed on September 10, 1971, the Applicant seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Reeves Woods Subdivision, Surry County, North Carolina, and approval of rates to be charged therein. This matter was designated Docket No. W-314, Sub 3.

By Orders issued in each docket on September 30, 1971, the Commission scheduled the matter for public hearing, requiring that the Applicant give notice of the public hearing.

All three dockets came on for hearing on October 28, 1971, and were consolidated for hearing. The Affidavits of Publication identified as Applicant's Exhibit X, consisting of three affidavits, indicate that public notice regarding Sheffield Park Subdivision was given in the Davie County Enterprise Record; that notice regarding Snow Hill and Pine Lakes Subdivisions, Surry County, was given in the Mount Airy Times and that notice regarding the Reeves Woods Subdivision, Surry County, was given in the Mount Airy Times.

No one petitioned to intervene in the matter or protested the Applications in writing or by appearance at the hearing. The Applicant was represented by counsel and offered Mr. Robert J. Lovill, III, its President, as its witness in support of the Application. The Commission Staff offered the testimony of Mr. Ralph Griffin, Utilities Engineer, Gas and Water Division, North Carolina Utilities Commission.

Mr. Lovill testified primarily as to the nature of the subdivision development public utility operations. He testified that he envisioned serving approximately 160 customers in the four subdivisions. In his testimony, he

orally modified the rate schedule consistent with the rates heretofore granted in a prior Application regarding McBride Heights Subdivision (Docket No. W-314). He estimates that all of the four subdivisions in the instant applications, except Snow Hill Subdivision, will be completely full and revenue producing within two years.

Mr. Ralph Griffin testified, regarding Sheffield Park, that he had conducted an on-site inspection of the system, the results of which indicate that there are sufficient pump and well capacities for the total development of 34 customers, but there is some doubt whether the 3,000 gallon pressure tank will provide sufficient storage for the subdivision at total development and that this will depend on the manner in which the tank is operated, i.e., whether or not sufficient air is maintained in the tank to prevent waterlogging. Mr. Griffin noted that problems of insufficient storage may occur when 15 to 20 customers are served.

Regarding the Application for Pine Lakes Subdivision (Sections 4, 5 and 6), Mr. Griffin testified that an on-site inspection was made with results indicating that the well and pump capacity are sufficient for the present number of customers, but that the present well capacity appears adequate for approximately only 45 to 50 customers. The total development has been estimated to be approximately 52, while the present number of customers is approximately 10. Mr. Griffin noted that the system is a gravity system and that there is insufficient difference in elevation between several of the building lots and the ground storage tank to provide adequate pressure at houses being built there. He testified that adequate pressure could be provided either through individual pumps and tanks for each house, or that a small hydropneumatic tank could serve three or four adjacent lots.

From the evidence, it appears that there are three or four building lots in close proximity to the ground storage tank which may be anticipated to have insufficient pressure; there may also be other building lots within the subdivision where the elevation is such that the gravity system will not provide adequate pressure. Mr. Lovill testified that he originally anticipated that the developer would install individual hydropneumatic tanks for each house where pressure problems might exist and that the customers themselves would acquire this apparatus as part of the house purchase price and would be responsible for the maintenance, such that any customer being served in that manner would not look to the water company for resolution of his pressure problems.

Regarding Snow Hill, Mr. Griffin testified that an on-site inspection was made, and that there are presently no customers, but total development is anticipated to reach 60 customers. He testified that presently there is sufficient storage to provide for only approximately 20 customers. He

noted that there were exposed water lines and inadequately protected blow-off valves which should be corrected. No chemical analysis has been submitted.

Regarding the water system proposed for Reeves Woods Subdivision, Mr. Griffin testified that an on-site inspection had been made there also, and that there are approximately 3 customers with total development estimated to be 12. He testified that the system is adequate now but can serve 12 customers only if the pump is properly maintained to prevent waterlogging.

In his testimony Mr. Lovill orally modified the tariff originally proposed. He stated that Surry Water Company would provide water service in the subdivisions included in these three applications in accordance with the metered water rate schedule allowed in Docket No. W-314. That schedule is as follows:

0 - 4,000 Gallons	$4.50 Minimum
4,000 - 7,000 Gallons	$1.00 Per 1,000 Gallons
Over - 7,000 Gallons	$ .70 Per 1,000 Gallons

Based upon the information submitted in the verified Applications, the testimony given, the exhibits introduced at the public hearing, and as late exhibits, and a letter dated October 27, 1971, from the State Board of Health to Mr. Lovill, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant, Surry Water Company, Inc., is a duly organized and existing corporation under the laws of North Carolina, with its registered office at 157 North Main Street, Mount Airy, North Carolina.

2. That the Applicant has heretofore been issued a Certificate of Public Convenience and Necessity to provide public utility water service to customers in McBride Heights Subdivision in Surry County, North Carolina.

3. That by these Applications the Applicant proposes to provide public utility water service in Sheffield Park Subdivision, Davie County, North Carolina, Pine Lakes Subdivision (Sections 4, 5 and 6), Snow Hill Subdivision and Reeves Woods Subdivision, all in Surry County, North Carolina.

4. That the Applicant is presently serving approximately a dozen residential customers in the four subdivisions at no charge.

5. That the well sites and water system plans have been approved by the State Board of Health.

6. That the gross investment in the four water systems contemplated in these applications amounts to approximately $45,700.

7. That the proposed rate schedule, as set forth herein above, is deemed just and reasonable inasmuch as said proposed rate structure will afford a reasonable opportunity to obtain a reasonable return from the public utility plant when said plant becomes used and useful in providing utility service.

8. That the Applicant submitted, as late exhibits, evidence of Board of Health approval regarding the Sheffield Park well site, and chemical analysis data regarding the Pine Lakes Subdivision water supply.

9. That various system improvements still need to be made, in accordance with the Board of Health recommendations transmitted to Mr. Lovill by letter dated October 27, 1971.

10. That no municipality, co-op or public utility proposes to provide water service in the four subdivision service areas contemplated herein.

11. That the public convenience and necessity requires the water service proposed by the Applicants.

Whereupon the Hearing Examiner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the Sheffield Park, Snow Hill, Pine Lakes, and Reeves Woods Subdivisions, the service area proposed by the Applicant, which has adequately provided the existing service. The proposed rates are just and reasonable and the facilities and source of supply which the Applicant proposes to operate and improve as the demand grows, and to so improve in accordance with the requirements of the Commission, will be adequate to supply the reasonable demand of the customers for domestic water service in that subdivision.

Although Surry Water Company, Inc., is a new public utility and its President, Mr. Robert J. Lovill, III, has only limited experience in the operation and maintenance of public utility water systems, the Applicant appears to be fit, willing and able to provide adequate and efficient water service to its customers. Mr. Lovill testified that he is in the process of working out service agreements with various persons. The Hearing Examiner is of the opinion that when these agreements are consummated, the Commission should be notified in writing as to the details of such agreements.

Regarding the Applicant's proposal to have certain customers in Pine Lakes Subdivision maintain and operate

their own equipment for providing adequate water pressure, this Hearing Examiner concludes that such an arrangement can only create confusion, misunderstanding, and service complaints, by initial homeowners and by their successors. Such an arrangement would be inadequate, insufficient, and unreasonably discriminatory under G.S. 62-42 and G.S. 62-140 and should not be encouraged or approved. Rather, it is the obligation of Surry Water Company, Inc., to provide adequate public utility water service, including adequate pressure.

The Hearing Examiner concludes that the Certificate of Public Convenience and Necessity should be granted and that the water rate schedule attached hereto as Appendix A should be approved. The water rate schedule approved should be authorized to become effective on one day's notice to customers. This action is not inconsistent with the President's Executive Order on wages and prices, inasmuch as the Applicant is proposing to provide a new service and the rates approved by this Order are consistent with rates presently being charged by the public utilities of comparable size and in reasonable proximity to the area proposed to be served.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity should be, and hereby is granted, authorizing Applicant to operate as a public utility providing water service in Sheffield Park Subdivision, Davie County, North Carolina, and Snow Hill, Pine Lakes (Sections 4, 5 and 6), and Beeves Woods Subdivisions, Surry County, North Carolina.

2. That this Order will of itself constitute the Certificate of Public Convenience and Necessity.

3. That the schedule of rates attached hereto as Appendix A be, and hereby is approved, and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and will become effective on one day's notice to the customers.

4. That the identity and qualifications of the water system operation and maintenance personnel and contractors should be submitted in writing within sixty (60) days of the date of this Order.

5. That the Applicant be and hereby is, directed to make any and all system plans such as are necessary to insure that all customers will receive adequate utility service, including adequate water pressure, and submit such plans within sixty (60) days of the date of this Order.

6. That the Applicant be, and hereby is, directed to submit, within sixty (60) days of the date of this Order, a progress report indicating, in detail, which of the improvements recommended by the State Board of Health by

letter dated October 27, 1971, have been made as of that date.

7. That the Applicant be, and hereby is, directed to take care of any exposed water lines and unprotected blowoff valves as may currently be improperly covered or protected, and to report on any such improvements as a part of the report requested in Paragraph 6 above.

8. 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, with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Accounting Department may recommend, the Applicant being hereby directed to arrange a conference with a staff member of that Department to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of November, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-314, SUB 1
DOCKET NO. W-314, SUB 2
DOCKET NO. W-314, SUB 3
SURRY WATER COMPANY, INC.
SHEFFIELD PARK
SNOW HILL
PINE LAKES (SECTIONS 4, 5 and 6)
REEVES WOODS

WATER RATE SCHEDULE
(Residential Service)

METERED RATE

0 - 4,000 Gallons	$4.50 Minimum
4,000 - 7,000 Gallons	$1.00 Per 1,000 Gallons
Over - 7,000 Gallons	$ .70 Per 1,000 Gallons

FLAT RATE
Where meters are not yet installed, the $4.50 minimum applies as a flat rate.

CONNECTION CHARGES
$300 for each home service, to be paid by the developer.

RECONNECTION CHARGES
N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE
Twenty days after date rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-314, Subs 1, 2 and 3.

DOCKET NO. W-27, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Forest Hills Water Works,) ORDER GRANTING
Route 3, Monroe, North Carolina, for Approv-) APPROVAL TO
al of Rate Schedule to Increase Water Rates) INCREASE RATES

BY THE COMMISSION: On January 4, 1971, an application was filed with the North Carolina Utilities Commission by Forest Hills Water Works in which the applicant asked that the Commission approve an increase in water rates to its customers in the Forest Hills Subdivision, Union County, North Carolina. The applicant presently holds a Certificate of Public Convenience and Necessity for the operation of a water system in the above subdivision.

The Commission was of the opinion that the application affected the interest of the using and consuming public in the franchised area served by Forest Hills Water Works and that the public should have an opportunity to intervene or protest the application if it so desired. It was also the opinion of the Commission that the tariff schedule filed by the applicant should be investigated to determine if such rates are just and reasonable. The Commission declared this proceeding a general rate case pursuant to G.S. 62-133.

The application was set for hearing on Thursday, April 1, 1971, at 2:00 p.m. in the Commission Hearing Room, Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, and an investigation was instituted into the justness and reasonableness of the proposed rates and charges.

On March 8, 1971, the Commission received a petition signed by all 42 customers of the Forest Hills Water Works stating that each had received a copy of the Notice To The Public containing a statement of the proposed water rates and asked that the Commission waive further hearing and investigation of the rate increase application by the applicant and further petitioned the Commission to issue an order allowing said rates to become effective upon the first day of the month next following the connection of the Forest Hills Water Works to the Water Works of the City of Monroe, North Carolina.

The Commission in due consideration of the petitioners and after receipt of affidavit signed and notarized by customers that obtained the names of all 42 customers on the petition hereby orders the following:

1. That the schedule of rates attached hereto and made a part hereof as Appendix "A" should be, and hereby is, approved and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138, and will become effective on the first day of the month next following the connection of the Forest Hills Water Works to the Water Works of the City of Monroe, North Carolina.

2. That this order itself constitutes the order granting approval of the rate increase.

3. That the books and records of the applicant must be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of April, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-27, SUB 3
FOREST HILLS WATER WORKS
FOREST HILLS SUBDIVISION
MONROE, N. C.

WATER RATE SCHEDULE

Metered Rate

First 2000 gallons @ $4.00 per month - minimum
Next 8000 gallons @ $1.00 per 1000 gallons
All over 10,000 gallons @ $.70 per 1000 gallons

Connection Charge

3/4 inch tapping charge, including meter - $85.00
1 inch tapping charge, including meter - $100.00

Plus actual cost of replacing all paving or surfacing necessary.

Reconnection Charge

NCUC Rule R7-20(f) - $4.00
NCUC Rule R7-20(g) - $2.00

Bills Due: Ten days after date rendered.

DOCKET NO. W-223, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Havelock Development Corporation, Havelock, North Carolina, for Approval of Rate Schedule to Increase Water Rates in Westbrooke Subdivision, Havelock, North Carolina) ORDER APPROVING INCREASED RATES

HEARD IN: The Hearing Room of the Commission, One West Morgan Street, Raleigh, North Carolina, on Wednesday, July 14, 1971 at 2:00 p.m.

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

APPEARANCES:

For the Applicant:

Gene A. Jackson
Havelock Development Corporation
P. O. Box 292, Havelock, North Carolina

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
N. C. Utilities Commission
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: On November 12, 1970, Havelock Development Corporation filed an application with the Commission for approval of increased rates for water utility service in Westbrooke Subdivision, Craven County, Havelock, North Carolina.

The Commission, being of the opinion that the Application affects the interest of the consuming public, set the matter for investigation and public hearing.

The matter was continued and reassigned for hearing on July 14, 1971. Hearing was held at that time with no one present to protest the application. The applicant gave the requisite public notice in _The Havelock Progress_, Havelock, North Carolina, as indicated by the Affidavit of Publication, and served notice on customers as is indicated by the Certificate of Service.

The Applicant's President, Gene A. Jackson, testified generally as to the application. He testified that the purpose of the application was to recover the rental cost of an iron removal filter for the system.

The application proposes that the minimum monthly charge be increased from $4.00 to $5.00, this amount covering the first 3,000 gallons of water used. Each customers' bill will be increased by $1.00 per month since there is no charge in the remainder of the rate schedule.

The evidence introduced by the Commission's Staff included the/testimony and exhibits of Mr. Michael C. Warren, Staff Accountant, consisting of the Staff audit report, setting forth the results of his examination covering the 12 months' period ending December 31, 1970.

Mr. Warren's audit involved an analysis of all expenses on a monthly basis, and certain accounting adjustments to those expenses. The figures shown after accounting adjustments reflects the best estimate of utility share of total company operation and maintenance expenses. Gross revenues after accounting adjustments were $3,260.75 with operating expenses including taxes being $3,458.91. These calculations will produce a net operating loss of $210.55.

From the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That Applicant, Havelock Development Corporation, is a corporation duly organized under the laws of N. C. which supplies water to Westbrooke Subdivision with 34 residential customers at the end of the test period. It holds a Certificate of Public Convenience and Necessity constituting Havelock Development Corporation, a water public utility.

2. The operations for the test year after accounting adjustments produce a net loss of $210.55. The proposed rate adjustment of $382.00 (before taxes) would result in a test year net operating income of $130.39 (after taxes).

3. The expenses for providing water service at Westbrooke Subdivision during the test period were $3,458.91 or $100.59 per customer.

4. That Applicant's net investment in water utility plant was $8,323.78 after accounting adjustments.

5. A rate of return of 1.57 percent on net plant investment is not an unjust and an unreasonable rate of return for Havelock Development Corporation's water utility operations.

Whereupon the Commission reached the following

CONCLUSIONS

The Commission concludes that the rates requested herein are not unjust and unreasonable and should be approved. The

Commission concludes from evidence presented that the test period resulted in a loss of $210.55.

The Commission concludes, finally, that the proposed rate increase will furnish this utility operation with a rate of return which is not unjust and unreasonable.

IT IS, THEREFORE, ORDERED:

1. Havelock Development Corporation is hereby authorized to increase its minimum monthly charge for the first 3,000 gallons of water from $4.00 to $5.00.

2. That the revised tariff is established in the attachment marked "Appendix A", which is hereby deemed to be the requisite statutory tariff filing.

3. Havelock Development Corporation is hereby authorized to apply the revised rates as herein approved on all bills rendered for service provided after one day's notice to customers.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of July, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
HAVELOCK DEVELOPMENT CORPORATION
DOCKET NO. W-223, SUB 1

APPROVED WATER RATE SCHEDULE FOR WESTBROOKE SUBDIVISION

RATE

Residential -

First 3,000 gallons per month	$5.00 (minimum)
3,000 gallons to 5,000 gallons	1.00 per thousand
5,000 gallons to 7,000 gallons	.90 per thousand
7,000 gallons to 10,000 gallons	.75 per thousand
over 10,000 gallons	.60 per thousand

CONNECTION CHARGE: $325.00 per lot

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-274, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Heater Utilities, Inc., for a	)
Certificate of Public Convenience and Necessity	) ORDER
to Provide Water Utility Service in Camelot	) APPROVING
Subdivision, Wake County, North Carolina, and	) INCREASED
for Approval of Increased Rates	) RATES

HEARD IN: The Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina, on August 5, 1971

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

APPEARANCES:

For the Applicants:

Mr. Robert T. Hedrick
Attorney at Law
3311 North Boulevard
Raleigh, North Carolina
For: Camelot Development, Inc.

Mr. Henry H. Sink
Parker, Sink & Powers
P. O. Box 1471, Raleigh, North Carolina
For: Heater Utilities, Inc.

For the Intervenors:

Mr. William A. Mann
Herman Wolff, Jr.
Attorneys at Law
401 Oberlin Road
Raleigh, North Carolina
For: Intervening Residents of Camelot

For the Commission Staff:

Mr. William Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION: By Order issued on September 21, 1971, the Commission granted a Certificate of Public Convenience and Necessity authorizing Heater Utilities, Inc., to operate as a public utility providing water service in Camelot Subdivision. The Commission concluded, at that time, that action on the requested rate increase must await the

expiration or modification of the current Executive Wage-Price Freeze Order.

On September 22, 1971, Heater Utilities, Inc., filed a Motion seeking approval of the proposed increased rates effective immediately upon expiration or upon modification of the President's Wage-Price Freeze. In response to said Motion, the Commission, on October 7, 1971, issued an Order deferring action on said motion, until after expiration or modification of the President's Wage-Price Freeze.

The Commission takes judicial notice of the President's Executive Order No. 11627, entered on October 15, 1971, establishing Phase 2 of wage and price controls under the Economic Stabilization Act of 1970 beyond the original 90-day period ending November 13, 1971, and the establishment of the Price Commission pursuant to said Order, and the rules and regulations of the Price Commission published in Volume 36, No. 220, Federal Register, November 13, 1971, §300.016, <u>Regulated Utilities</u>, at p. 21,793, as amended in Volume 36, No. 222, Federal Register, November 17, 1971, at p. 21,953. This Commission therefore considers that the wage-price freeze and Economic Stabilization Program no longer require that the issuance of a rate order in this docket be deferred.

SUMMARY OF TESTIMONY REGARDING RATE APPLICATION

Mr. Robert B. Heater, President of Heater Utilities, Inc., explained that the rates which are requested in the Application are based on a study of the estimated cost of operating the system, plus depreciation, and to conform to the rate heretofore approved by the Commission for other systems operated by Heater Utilities, Inc. He testified that the estimated costs were derived from other water utility operations and that the costs charged to the system in the books of Camelot Development, Inc., failed to record all costs properly attributable to water operations.

Mr. Heater testified that the gross revenue requested is based on an estimated average use of 6,000 gallons per month per customer. On cross examination by the Commission's staff attorney, Mr. Heater explained that all residences in the subdivision have meters installed and ready for use at the present time and that there would be no tap fee charged to any existing customer, but that the $135.00 proposed tap fee would be charged to any builder or home owner who subsequently ordered service from the utility.

On cross examination by Mr. Mann, attorney for the intervening home owners, Mr. Heater testified as to the purchase price of the water system, consumption figures and proposed operations. Mr. Heater further explained that if any residence does not have a meter, there will be a meter installation without any connection fee.

On cross examination by Mr. Mann, Mr. Smith testified as to the original cost of the realty, the development costs, current FHA and VA appraisals and generally as to the details of the proposed transfer. Mr. Smith testified that neither himself nor any agents of his, nor real estate agents who offered lots for sale in his behalf, have ever made representations that the water supply would be provided by Camelot Development Company for a perpetual rate of $3.50 per month.

The Commission Staff offered into evidence the audit report of Mr. William Carter of the Accounting Department and the testimony of Mr. Ralph Griffin, Staff Engineer with the Gas and Water Division of the Commission Engineering Department.

Mr. Griffin described his study, which is an original cost study using various land costs, system original costs and depreciation. Mr. Griffin testified that in his opinion the original cost of developed land devoted to public utility purposes is $6,022.92, as against the figures of $17,400 presented by Camelot and $27,500 presented by Heater. Mr. Griffin's computations included a 15% adjustment for idle plant, that is, for plant constructed to serve residences not yet connected. Mr. Griffin determined the original cost of total utility plant less the idle plant adjustment to be $69,477.17, and less idle plant and less depreciation reserve to be $63,461.18.

Mr. Griffin testified that the pro forma operation and maintenance expenses admitted by Mr. Heater appear reasonable in comparison with a study recently conducted by the Commission's Staff of representative water companies' operation and maintenance expense on a per customer basis for this class of water company. Mr. Griffin's exhibit included rate of return calculations in which several different rates of return were computed based on different figures resulting from including or excluding various possible adjustments.

Mr. Griffin's testimony indicated that, based on present rates, a negative net operating income is obtained and that proposed rates, as applied to an original cost net investment using Camelot's land cost of $17,400, would result in a rate of return of 4.79% before applying 15% idle plant adjustment and 5.97% after such an adjustment, and that proposed rates, as applied to his original cost figure, would result in a rate of return on said original cost of 6.87% which, in his opinion, is a just and reasonable rate of return on said original cost. He then compared this 6.87% with calculations which he had made showing the rate of return of a statistical average hypothetical water utility with 160 customers. The rate of return on an original cost of $69,477.17 for said hypothetical company would be 6.42%, from which he concluded that Heater's anticipated _pro forma_ expenses are reasonable, and that

Heater's anticipated rate of return under the proposed rates is reasonable.

Counsel for the Intervenors, Mr. Mann, cross examined Mr. Griffin regarding Intervenor's Exhibit No. 1 which showed various rate of return calculations based on the current contractual purchase price, and offered the exhibit into evidence. The intervenors offered the testimony of public witnesses, as set out in the prior order in this docket.

Based upon the evidence of record, the Commission makes the following

FINDINGS OF FACT

1. That gross operating revenues derived from the rates heretofore prevailing, as applied to the test-year number of customers, are $6,720.00.

2. That the reasonable operating and maintenance expenses for test-year operations are $5,730.08; that the reasonable total operating revenue deductions, $8,863.58, are not covered by the present rate levels, leaving a net operating deficit of $2,148.58.

3. That the proposed rates would produce gross operating revenues of $13,056.00 on a test-year basis, and with reasonable operating revenue deductions of $8,978.73 would produce a net operating income for return of $4,158.51.

4. That the proposed downward 15% adjustment to remove idle plant not used and useful in providing utility service from the rate base is just and reasonable.

5. That the original cost of developed land devoted to public utility use is $6,022.92; that the original cost of total plant at the time said plant was devoted to public utility uses, less the idle plant adjustment, is $69,477.17, and less that portion previously consumed by depreciation, is $63,461.18.

6. That taking judicial notice of trending by Engineering News Record cost indexes, the trended cost of the total utility plant is $97,750.39, and after adjusting for depreciation reserve and idle plant, the trended value of net utility plant in service is $89,285.21, and trended original plant plus allowance for working capital is $89,974.47.

7. That the fair value of the applicant's property devoted to public utility service, considering the original cost less depreciation, plus allowance for working capital, $64,177.44, and considering replacement cost by trending original cost to current cost levels, with allowance for working capital, $89,258.21, is no less than $64,177.44 and no more than $89,974.47, and that the proposed water rates will produce a rate of return in the range of 6.87% to

5.00%, which said rate of return range is just and reasonable.

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

CONCLUSIONS

The members of the using and consuming public who intervened in this case are, quite understandably, opposed to a proposed rate increase which would have the effect of nearly doubling their monthly rates. The Commission is forced to conclude, however, that this is a case in which the customers have been paying rates which are much too low to provide sufficient revenues to insure adequate and efficient service, and in fact the service heretofore provided has been unsatisfactory to many of the customers.

In determining whether the utility's proposed rates are just and reasonable, the Commission has considered whether the net operating income for return produces a return on fair value which is excessive, for if it does, then the proposed water rates would be unfair to the rate-paying consumers.

The Intervenors contend that the Commission should find the fair value to be in the range of $45,397.82 to $45,716.26, being Heater's purchase price plus allowance for working capital. However, it is the long-standing policy of this and other Commissions that purchased operating utility plant should be recorded on the books of the transferee on the basis of original cost, to be determined as of the time said utility plant was first devoted to public utility use. Further, the North Carolina Supreme Court has ruled that "fair value" does not refer to "the exchange or sales price it would command, as used as second-hand property, in the market." State v. State, 239 NC 333, 80 S. E. (2d) 133 (1954).

There was testimony in this case that various customers had the impression, through representations, implication, or innuendo, that rates were to remain constant, or that future increases would remain insubstantial. Even if it were established beyond a doubt that such representations were made, or even if contracts to that effect had been entered into, the Commission by law has the duty to fix rates, and individual agreements or contracts setting higher or lower rates cannot contravene the statutory rate-making procedure. This Commission is not the proper forum for action regarding either misrepresentations or violated contractual obligations; such actions must be brought in the civil courts.

Taking the evidence of land and plant value according to their proper weight and in the light most favorable to the ratepayers, the Commission is forced to conclude that the rate of return determined herein to be produced by the

proposed increased rates is within a just and reasonable range and is not a rate of return which would produce excessive profits to the utility and thereby be unfair to the ratepaying customers.

This Commission is advertent to public statements of guidelines and policies of the Price Commission urging adherence to stated guidelines for price increases, and concludes that the North Carolina rate procedure, the facts found in this proceeding, and the consideration thereof by the Commission, fixes the fares in this proceeding on the basis that they will provide no more than the minimum revenues necessary to assure continued and adequate service. The deficit return actually earned from the rates in effect immediately prior to the price freeze on August 15, 1971 (which have been in effect since 1963), if continued without the fare increase approved here, would not be adequate to assure continued and adequate service, and this Commission finds and so certifies that the increases are consistent with the criteria established by the Price Commission and the documentation for such findings is set out fully in the Findings of Fact and Conclusions herein, based on evidence of record.

IT IS, THEREFORE, ORDERED:

That the schedule of rates attached hereto as "Appendix A" be, and is hereby, approved, and that said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and will become effective upon one day's notice to the customers, for application in the next regular billing.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-274, SUB 4
Heater Utilities, Inc.
Camelot Subdivision

WATER RATE SCHEDULE
(Residential Service)

METERED RATE

$5.00 minimum, for first 3,000 gallons, per month.
$.60 per 1,000 gallons for all over 3,000 gallons per month.

FLAT RATE: None

CONNECTION CHARGES

$135.00 tap fee for 3/4 x 5/8 meter. Cost + 20% for any larger meter. Not payable by customers already connected at time Heater Utilities, Inc. begins operations.

RECONNECTION CHARGES

N.C.U.C. Rule R7-20(f) - $4.00
N.C.U.C. Rule R7-20(g) - $2.00

BILLS DUE: Twenty Days After Date Rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 4.

DOCKET NO. W-227, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Robin Hood, Inc., Cedar Mountain, North Carolina, for Approval of Rate Schedule to Increase Water Rates) ORDER APPROVING RATE INCREASE

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on March 25, 1971

BEFORE: Commissioners Miles H. Rhyne, Presiding, Hugh A. Wells and Marvin R. Wooten

APPEARANCES:

For the Applicant:

Arthur Dehon, Jr. (For Himself)
Vice President
Robin Hood, Inc.
Sherwood Forest
Cedar Mountain, N. C. 28718

For the Commission's Staff:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, N. C. 27602

BY THE COMMISSION: By Application filed with the North Carolina Utilities Commission on 28 December 1970, Robin Hood, Inc. in this matter seeks approval of an increased rate schedule affecting its water customers in Sherwood Forest, Transylvania County, North Carolina. The Commission, being of the opinion that the Application affects the interests of the using and consuming public in the franchised area served by Robin Hood, Inc., and that the

public should have an opportunity to intervene or protest the Application, set the matter for public hearing in Raleigh, North Carolina, on 25 March 1971 and instituted an investigation into the justness and reasonableness of the proposed rates.

During the several weeks following the publication and service of public notice of the hearing, the Commission received a number of informal protests to the proposed rate increase including various requests that the matter be continued until summer and heard in Transylvania County or in Asheville, North Carolina, rather than in Raleigh. In its consideration of the request the Commission determined that the Accounting and Engineering field investigations previously instituted would adequately protect the rights of the consumers even though the matter would be heard in Raleigh.

When the matter came on for hearing at the time and place set, the Applicant offered as witnesses Mr. Arthur M. Dehon, Jr., Vice President and Assistant Manager, and Mr. George Pettit, Assistant Manager. Mr. Dehon testified generally as to the proposed rate increase as submitted in the Application, and Mr. Pettit testified as to caretaking and management of operations which comprise the Applicant's major expense items, explaining particularly that Applicant has experienced a serious problem with loss of equipment to lightning during the summer electrical storms, and testified as to the efforts made in conjunction with Duke Power Company to alleviate that problem.

On cross examination, Mr. Dehon explained that there are 4 separate physical plants serving the various areas within the total development, but that they are considered to be, and are operated as, one water system under the same rate structure. He testified that the golf course is not watered from the system but watered directly from the Little River. He testified that the growth rate is such that at the time of the hearing there were 50 paying residential customers as opposed to the 45 in the test period financial examination, and that Robin Hood, Inc., at no charge, also supplies water to 9 Robin Hood structures, including 4 rental cottages, 2 officers' homes, the office-pro shop, a maintenance building, Robin Hood's barn, and that in addition to these 9, there is a rest room facility on the golf course.

Mr. Dehon further testified that Robin Hood, Inc., in accordance with instructions from the Commission Staff, now makes book entries reflecting a contribution to capital from the sale of lots in the form of the tap fee or "connection charge" of $200 per residential service but that prior to the time at which Robin Hood began providing public utility water service under the jurisdiction of this Commission, no such accounting entries were made, that the sale of a lot was based on what the market would bear, but that generally Robin Hood, Inc., is aware of the development costs and attempts to recover those plus a profit from the sale of

lots. He testified that there has been no accounting entry by which Robin Hood, Inc., "distributed the cost of the water system to the lots," rather that the "lot sales" account has been kept separate from the water system capital investment accounts, but that "over the years I would assume that we have or hope we had" recovered the water system costs and that "any capital investment you put into something I think you hope to get it back sooner or later."

The Commission Staff offered the testimony and exhibits of Mr. William E. Carter, Staff Accountant, and Mr. David F. Creasy, Staff Engineer, Gas and Water Division. Mr. Carter testified as to his examination of the operations of the Robin Hood, Inc., water system during the test year ended July 31, 1970, and that no rate of return could be computed because of a loss from operations. Mr. Creasy testified in support of the idle plant adjustment reflected in Carter's Exhibit 2, removing the idle plant and associated depreciated reserve from the rate base.

From the evidence adduced at the hearing, the Commission reaches the following

FINDINGS OF FACT

1. Robin Hood, Inc. is a duly certificated public utility engaged in providing water service to 45 paying residential customers during the test year, as well as 10 nonpaying customers, both residential and otherwise.

2. The actual operating revenues for the test year period were $2,160, resulting in a net operating loss of $2,661.60. No rate of return can be computed for the test year due to a loss from operations.

3. If the 10 other facilities and residences receiving water service are treated as customers and this treatment is reflected as an upward adjustment to gross operating revenues, there would be a net operating loss of $2,200.80, from which again, no rate of return can be computed, because of a loss from operations.

4. The test year gross investment in utility plant was $39,000. The design of the system is such that it is now capable of serving approximately 140 customers. The excessive extension of the system and the presence of excessive and duplicated distribution lines requires an adjustment for idle plant of 65% or $25,350, in addition to the usual deductions for depreciation reserve and contributions in aid of construction, before arriving at the fair value of utility plant used and useful in providing service, in the amount of $11,607.46, including allowance for working capital.

5. The Robin Hood, Inc. tariff makes the flat water rate, which is payable on an annual basis, equally applicable to seasonal residents because the system as a

whole must be maintained and constructed so as to be available and operational throughout the year.

6. The gross operating revenues based on the test year experience would, after the proposed rate increase, be $4,320, which would result in a net operating loss of $588; if gross revenues are increased to reflect the 10 facilities which have heretofore been nonpaying customers, the books would show a net operating income of $352.80 which would produce a rate of return of 3% before income taxes.

Whereupon the Commission reaches the following

CONCLUSIONS

The test year financial examination and the testimony of the Applicant's witnesses established a test year loss from operations, both under the present rate structure and under the proposed rate structure. The Applicant's gross operating revenues, however, should be adjusted upward to reflect treatment of heretofore nonpaying water users as paying customers. This adjustment in the Applicant's bookkeeping procedures would result in a small net operating income being derived from operations.

The Commission concludes that while the operating and maintenance expenses submitted by the Applicant appear to be approximately $1,000 higher than those of a hypothetical statistical average public utility water system, the evidence concerning the frequency of damage to property during electrical storms, and the maintenance expenses incident thereto, support the reasonableness and validity of the Applicant's expenses.

The deduction, from the fair value rate base, of amounts received from customers as contributions to capital is a standard practice in utility rate proceedings. The company books erroneously reflected as income an amount so received. Witness Carter made an accounting adjustment to reflect this amount properly as "contributions in aid of construction." The figure reflects contributions in aid of construction from only the most recent customers, as Robin Hood, Inc. at an earlier time did not follow the utility practice of making the appropriate bookkeeping entry. The Applicant has now been instructed to do so.

The failure of Robin Hood, Inc. to make such an entry in the past has raised the question of whether the Commission should conclude that the evidence adduced at the hearing justifies a further adjustment which would write-up contributions in aid of construction so as to reflect an amount which the Applicant may have recovered from customers (as lot purchasers) even though the Applicant's own books do not reflect such contributions. The Commission concludes that it need not rule on this question because the net operating income (even after the proposed rate change and even after writing up the number of customers to reflect

heretofore nonpaying water users) renders the question moot, for even if the contributions in aid of construction were adjusted upward to treat the matter as though the Applicant received and recorded the $200 connection fee provided in its tariff filing from all 45 customers, the anticipated $352.80 net income after the proposed rate change would, as applied to the then greatly reduced fair value rate base, $3,907.46, then produce a rate of return of approximately 9% before income taxes, which would not be deemed excessive in view of the entire record. Thus even if the matter were to be viewed in this light, the net income to be derived is not such as would be considered to produce an unjust or unreasonable rate of return.

The Commission concludes that the Applicant has borne the burden of proof in establishing that the present rates are unjust and unreasonable, in that they are too low to be fair to the utility and to enable it to have the resources necessary to serve customers on an adequate and continuing basis, and that the proposed rates are just and reasonable; the proposed rates will allow the Applicant an opportunity to derive a just and reasonable rate of return as the customer load increases, if the anticipated growth in the number of customers can be effectuated without a corresponding increase in the operation and maintenance expenses.

The proposed rates should, therefore, be allowed to become effective in accordance with the terms of this Order. In view of such a rate increase, however, the public convenience would appear to require that Robin Hood, Inc. should allow its advance payments to be made on a quarterly or semiannual basis as well as on an annual basis.

IT IS, THEREFORE, ORDERED:

1. That the Applicant's proposed rates as set out in Appendix "A" attached hereto, are hereby approved.

2. That the Applicant is hereby authorized to place such rates into effect at the time of its next regular billing date, but such rates shall not be applied retroactively.

3. That henceforth the Applicant is hereby required to allow payment on a quarterly, semiannual, or annual basis, according to the convenience of a particular customer.

4. That the rate schedule attached hereto as Appendix "A" is hereby deemed to be the requisite statutory filing of rates in accordance with G.S. 62-138(a).

5. That the Applicant is hereby ordered further to take such steps as may be necessary to alleviate any current service problems including any sand which may happen to be present in the system.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-227, SUB 1
ROBIN HOOD, INC.
SHERWOOD FOREST
WATER RATE SCHEDULE

RESIDENTIAL AND COMMERCIAL

Flat Rate
$96.00 per year, or $24.00 per quarter, payable in advance

Connection Charges: $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

Annual payments may be broken down to, but not less than, quarterly payments. Not more than one-half year can pass without payment. Prepayments for year is acceptable.

DOCKET NO. W-54, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by the General Waterworks Corporation for Authority to Issue and Sell $10,080,000 Principal Amount in Exchange Bonds (Series C Bonds) and Approximately $27,000,000 in New Bonds (Series D Bonds)
) ORDER AUTHORIZING GENERAL WATERWORKS CORPORATION TO ISSUE AND SELL BONDS

This proceeding is before the Commission upon application of General Waterworks Corporation (hereinafter called the "Company") filed June 3, 1971, wherein approval of the Commission is sought to enter into an arrangement for the issuance and sale of $10,080,000 principal amount in exchange bonds (Series C Bonds) and approximately $27,000,000 in new bonds (Series D Bonds).

Based upon 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. General Waterworks Corporation (hereinafter sometimes called "the Company") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 3219 Philadelphia Pike, Claymont, Delaware.

2. Carolina Water Company (hereinafter sometimes called "Carolina") is a North Carolina corporation with its principal office and place of business in Beaufort, North Carolina. Pursuant to the authority of the North Carolina Utilities Commission, Carolina is engaged in distributing and selling water to the public in the Town of Beaufort, North Carolina.

3. Pursuant to order of this Commission, dated August 28, 1970, General Waterworks, a holding company, which owns approximately 90 water, sewer and steam heating utility companies, including Carolina, transferred its stock in its utility Companies, including Carolina, to the GWC Waterworks Corporation (GWC), a wholly owned subsidiary, in an effort to effect greater efficiency and benefits in securing additional financing and this Commission found as a conclusion of law that such transfer to secure additional financing was justified by public convenience and necessity and approved the transfer.

4. General Waterworks now seeks to obtain the financing referred to in the prior proceeding, by issuance and sale of approximately $10,080,000 in exchange bonds (Series C Bonds), and the issuance and sale of approximately $27,000,000 in new bonds (Series D Bonds).

5. As security for this Indenture, General Waterworks will pledge its property and will pledge the stock held by its subsidiary GWC, including the stock of Carolina. This proposed issuance of bonds by General Waterworks and the pledging of stock owned by GWC, including that of Carolina, to Provident under the Trust Indenture would in no way affect the existing management of Carolina. In addition, there would be no change in the operation of the water company at Beaufort by Carolina, and there will be no change in the service presently being rendered by Carolina to its customers. None of the assets or liabilities of Carolina are pledged by this transfer, the only matter affecting Carolina being the pledge of its stock presently owned by GWC. Ownership of the stock of Carolina will remain the same subject to this pledge.

6. By this issuance of bonds under the Indenture, the Company will obtain additional resources which can be made available to pay off bank borrowings and to finance capital expenditures. The purpose for which funds are obtained to be used by the Company is to repay all outstanding bank borrowings and to finance capital expenditures necessary in its utility operations and the utility operations of its

subsidiaries, including Carolina, to meet the requirements of new construction and other financial requirements of its subsidiaries, and to improve its ability to perform the utility services to the public.

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 Company;

(b) Compatible with the public interest;

(c) Necessary and appropriate for and consistent with the proper performance by the Company and its subsidiaries 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 General Waterworks Corporation be, and it is hereby authorized, empowered and permitted under the terms and conditions set forth in the application:

1. To issue and sell $10,080,000 principal amount in exchange bonds (Series C Bonds) and approximately $27,000,000 in new bonds (Series D Bonds);

2. To use and apply the net proceeds from the issuance and sale of the bonds to the purposes set forth in the application; and

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

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of June, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. W-6, SUB 4
DOCKET NO. E-16, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Petition of Pinehurst, Incorporated, for	) ORDER
Approval of Change in Control Through	) APPROVING
Stock Transfers	) PETITION

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on January 7, 1971, at 2:00 p.m.

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

APPEARANCES:

For Pinehurst, Incorporated:

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Kennedy, Covington, Lobdell & Hickman
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For Pinehead, Incorporated:

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Charlotte, North Carolina

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Charlotte, North Carolina

No Protestants

For the Commission Staff:

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

WESTCOTT, CHAIRMAN: By petition filed with the North Carolina Utilities Commission on December 18, 1970, Pinehurst, Incorporated, owner and operator of various utility operations in and near the Village of Pinehurst, Moore County, North Carolina, seeks approval for a change in the control of said utility operations under the

jurisdiction of this Commission through the sale by shareholders of Pinehurst, Incorporated, of their shares of Class A and Class B Common Stock, and of the shares of Preferred Stock of Pinehurst, Incorporated, to Pinehead, Inc. Hearing was scheduled on the petition as shown in the caption. Notice to the public was given in newspapers having general circulation in the area affected. (Petitioner's Exhibits A and B.) No protest was filed within the time provided, and no protestants appeared at the hearing of the cause.

Petitioner's attorneys introduced oral and documentary evidence by witnesses James E. Harrington, Jr., President of Pinehurst, Incorporated, and William H. Maurer, President of Diamondhead Corporation which owns its subsidiary Pinehead, Inc. Offered and received in evidence, among other things, were the petition and exhibits attached thereto, the Certificate of Incorporation of Pinehead, Inc., the Contract of Sale between Pinehurst, Incorporated, and Pinehead, Inc., and the financial statement of Diamondhead Corporation.

From the documentary and oral evidence introduced, the Commission makes the following

FINDINGS OF FACT

1. Petitioner, Pinehurst, Incorporated, is a North Carolina corporation, organized and existing under and by virtue of the North Carolina corporate law.

2. Petitioner, Pinehurst, Incorporated, has installed and operates a water distribution system, together with sewage collection and disposal system, and an electric distribution system, all of which facilities and operations are subject to the jurisdiction of this Commission.

3. Petitioner, Pinehurst, Incorporated, presently serves a total of approximately 480 water and sewer customers and a total of approximately 585 electric customers in and near the Village of Pinehurst, Moore County, North Carolina.

4. Petitioner, Pinehurst, Incorporated, owns substantial assets in addition to its utility operating assets and carries on various other businesses in addition to its utility operations, in and near the Village of Pinehurst, North Carolina; the utility operations of the Petitioner, Pinehurst, Incorporated, comprise a minor portion of its total assets and operations.

5. That certain shareholders of the Petitioner, Pinehurst, Incorporated, have agreed, in principle, to sell, for cash, all of their shares of capital stock of said Petitioner to Pinehead, Inc., a North Carolina corporation which is a wholly owned subsidiary of Diamondhead Corporation; and upon and after the effective date of the proposed sale, the Petitioner will become a subsidiary of Pinehead, Inc., and at least 80% of the outstanding shares

of Class A Voting Common Stock, Class B Non-Voting Common Stock, and Preferred Stock of Petitioner, Pinehurst, Incorporated, will be owned by Pinehead, Inc., which is a wholly owned subsidiary of Diamondhead Corporation.

6. That no changes will be made in the present rates and charges now applicable for utility service as set by existing tariffs on file with this Commission.

7. That after the effective date of the proposed sale, the existing management of the Petitioner, Pinehurst, Incorporated, will continue to manage Pinehead, Inc.'s utility operations, and the principal place of business will continue to be Pinehurst, Moore County, North Carolina, and all of the respective books and records of Pinehead, Inc., will remain in Pinehurst, North Carolina.

8. That the consummation of the proposed sale of the control of Petitioner, Pinehurst, Incorporated, to Pinehead, Inc., as described herein, will neither adversely affect the operation of the utility business nor the quality of service provided to its customers.

9. That public convenience and necessity will not be adversely affected and may well be better served due to the increased financial and management resources which will be available through Diamondhead Corporation and its wholly owned subsidiary Pinehead, Inc.; and further, that the increased financial resources will facilitate the expansion of Petitioner's utility service to serve additional customers if and when required.

CONCLUSIONS

The provisions of the statute relating to the sale of stock of the kind involved here, which is in effect, and which will result in a change of control of the company, G.S. 62-111(a), read as follows:

> "(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."

Applying the facts found, as above set out, to the applicable provisions of the law, the Commission concludes that the transfer of stock hereinbefore described of Pinehurst, Incorporated, to Pinehead, Inc., a wholly owned

subsidiary of Diamondhead Corporation, is justified by public convenience and necessity, and that the legal owner of said stock should be authorized to sell said stock to Pinehead, Inc., in accordance with the terms of the Agreement hereinbefore referred to and of record in this proceeding as Petitioner's Exhibit E, and that the petition therefor in the matter should be approved.

IT IS, THEREFORE, ORDERED:

1. That the proposed sale of a majority of the Class A Voting Common Stock, Class B Non-Voting Common Stock, and Preferred Stock of Petitioner, Pinehurst, Incorporated, to Pinehead, Inc., as hereinbefore described, be, and the same is hereby, approved.

2. That the books and records of the utility operations of Pinehead, Inc., shall be kept in accordance with the Uniform System of Accounts applicable to electric utilities and the Uniform System of Accounts applicable to water and sewer utilities, and that the books and records of the utility operation of Pinehead, Inc., shall be maintained in the Village of Pinehurst, North Carolina, unless transfer thereof is approved by this Commission.

3. That upon the consummation of the sale and transfer of stock from Pinehurst, Incorporated, to Pinehead, Inc., the same shall be reported to this Commission in a report showing the date on which transfer was made and actual control of utility operations assumed by transferee.

4. That a copy of this order be transmitted to each of the attorneys of record and to Pinehurst, Incorporated, and Pinehead, Inc., at their respective addresses in Pinehurst, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of January, 1971.

NORTH CAROLINA UTILITIES COMMISSION
Mary Laurens Richardson, Chief Clerk

(SEAL)

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1. Carolina Telephone & Telegraph Company - Order Denying Tariff Filing to Increase Rates for Wide Area Telephone Service	P-7, Sub 544	12-13-71
2. Carolina Telephone & Telegraph Company - Order Approving Tariff Filing of Change in Fayetteville Base Rate Area With Less Than Statutory Notice	P-7, Sub 545	12-28-71
3. Eastern Rowan Telephone Company Order Disapproving Tariff Filing for a Revision of Key Telephone System & Equipment Tariff & Dismissing Proceeding	P-62, Sub 34	2-17-71
4. General Telephone Company of the Southeast - Order Approving Contract With the General Telephone Directory Company	P-19, Sub 123	3-29-71
5. General Telephone Company of the Southeast - Order Denying Tariff Filing to Increase Rates for Wide Area Telephone Services	P-19, Sub 137	12-22-71

6. Old Town Telephone Systems, Inc. - Order Allowing Tariffs for a Revision & Addition to General Exchange Tariff to Become Effective & to Dismiss Proceedings	P-44, Sub 58	2-17-71
7. Southern Bell Telephone & Telegraph Company - Order Granting Extension of Service of Charlotte Exchange to City Limits of Pineville, North Carolina	P-55, Sub 663	?
8. Westco Telephone Company Tariffs Denied & Setting Revised Rate Groupings	P-78, Sub 24	8-4-71
9. Western Carolina, Westco Telephone Company, Continental Telephone Corporation - Zone Rates Approved for the Marshall & Mars Hill Exchange	P-58, Sub 61	3-12-71
10. Western Carolina Telephone Company - Tariffs Denied & Setting Revised Groupings	P-58, Sub 82	8-4-71
11. Western Carolina Telephone Company - Correcting Rate Schedule & Setting Revised Groupings	P-58, Sub 82	8-6-71

VIII. WATER AND SEWER

A. Authority Granted

1. Arthur Utilities, Inc. Windsor Manor and Regalwoods Subdivisions	W-198, Sub 4	3-29-71
2. Aycock, Ben F., Water Service Quail Hollow Park Subdivision	W-8, Sub 7	6-2-71
3. Bridges Community Water System, S. G. Bridges Farm Subdivision	W-304	6-24-71
4. Brookwood Water Corporation Rosewood Terrace Subdivision	W-177, Sub 9	11-30-71
5. Buffalo Meadows Utility Company Buffalo Meadows Subdivision	W-312	12-10-71
6. Cash, C. B., Jr., & Gene L. Webber, Broad Acres Subdivision	W-306	7-28-71

7.	Chapel Hills Utility Company, Taylor & Lyons, Inc., t/a Chapel Hills Subdivision	W-310	12-10-71
8.	Community Water Works, Inc. River Hill Heights & Lincoln Estates Subdivision	W-316	12-3-71
9.	Cox & Short, Bynum M. Cox & Dwight W. Short, t/a Twin Meadow Acres	W-311	10-21-71
10.	Cregg Bess, Incorporated Beverly Acres, Ridgeview Circle & Cedar Oak Park Subdivisions	W-281	8-3-71
11.	Essential Utilities, Inc. Hillside Subdivision	W-297	3-10-71
12.	Falls, Ralph L., Starrland Park, Fleetwood Acres & West Palm Acres Subdivisions	W-268, Sub 1	1-28-71
13.	H. & H. Development Corp. Hedgefield Subdivision	W-315	10-8-71
14.	H. & H. Water Service Hollywood Acres (Sub 5)	W-89, Sub 4 W-89, Sub 5	5-27-71
15.	Jessup, James Vernon, & Wife, Donnie B., Rosewood Subdivision	W-305	6-25-71
16.	Killian Brothers Water System Crestmont Subdivision	W-298	7-7-71
17.	Lewis Water Company, Ralph Lewis & Ray Lewis, t/a Crestwood Subdivision	W-288, Sub 1	2-22-71
18.	Payne, Fred L., Cedarwood Acres, Charleston Park, Green Road, Hovis Road, Starbrook Park, Westerly Hills, & Winningfield Subdivisions	W-110, Sub 2	3-11-71
19.	Paysour's Water Works, Paysour, Lawrence, Ralph W., & Paul, t/a Ashebrook Park & Southgate Subdivisions	W-278	1-15-71
20.	Paysour's Water Works, Paysour, Lawrence, Ralph W., & Paul, t/a (Supplemental Order)	W-278	3-18-71
21.	Quality Water Supplies, Inc. Bradley Park Subdivision	W-225, Sub 11	3-10-71

22. Rolling Springs Water Company Rolling Springs Subdivision & Happy Acres Subdivision	W-313	3-26-71
23. Skyview Water Systems, Inc. Skyview Park Subdivision	W-293	3-26-71
24. Southern Terrace, Inc. Southern Terrace Subdivision	W-292	10-13-71
25. Stoney Brook Estates, J. W. Bizzell, Jr., t/a Stoney Brook Estates Subdivision	W-295	1-25-71
26. Surry Water Company, Incorporated, McBride Heights Subdivision	W-314	9-27-71
27. Urban Water Company, Inc. Oxford Park Subdivision	W-256, Sub 2	1-12-71
28. Wagstaff, Donald L., McCullers Pines Subdivision Sections 2 & 3	W-308	1-12-71

B. Exemptions from Regulations

1. East Central Water, Inc. (Davidson County)	W-186, Sub 91	6-8-71
2. East Powellsville Water Corporation (Bertie County)	W-186, Sub 90	5-11-71
3. Eastside Water Association, Inc. (Northampton County)	W-186, Sub 87	4-5-71
4. Inter-County Water Association (Perquimans County)	W-186, Sub 85	1-11-71
5. Mattamuskeet Water Association, Inc. (Hyde County)	W-186, Sub 86	3-16-71
6. Northwest Onslow Water Association (Onslow County)	W-186, Sub 88	4-28-71
7. Third Century Water (Robeson County)	W-186, Sub 89	5-4-71
8. Wallburg Water, Inc., & Merriweather Estates Development Corporation (Forsyth County) - Amending Exemption Certificate of Wallburg Water, Inc., & Dismissing Application of Merriweather Estates Development Corporation	W-186, Sub 62 W-275	6-1-71

C. Mergers

1. Investment Land Sales, Inc., from A. & B. Realty, Inc., A F & F Company, Inc., A, M & H Company, Inc., Hambright McCoy, Inc., & Westside Development Company, Inc.	W-299	4-5-71
2. Pinehurst, Inc., from Pinehead, Inc.	W-6, Sub 5 E-16, Sub 7	12-22-71

D. Rates

1. Forest Hills Water Works Order Granting Approval to Increase Rates	W-27, Sub 3	4-13-71
2. Havelock Development Corporation - Order Approving Increased Rates	W-223, Sub 1	7-30-71
3. Southeastern Water & Utilities Company - Interim Rate Request Denied	W-61, Sub 10	6-30-71
4. Southern Terrace, Inc. Increase Approved	W-292	12-6-71

E. Miscellaneous

1. Burkett, Harold L. - Order Granting Franchise & Approving Rates in Transfer of Paysour's Water Works, Dallas, N.C., to Harold L. Burkett, Greenhaven Lane, Gastonia, N.C.	W-307	7-2-71
2. Cleveland Water Systems, Inc. Recommended Order Approving Transfer of System & Certificate from Choyce Builders, Inc., Shelby, N.C., to Cleveland Water Systems, Inc., Shelby, N.C.	W-301	5-20-71
3. Cliffdale Water Company Complaint Dismissed	W-203, Sub 2	3-3-71
4. Duke Power Company & Broyhill Community Water Association, Inc. - Contract Approved	W-94, Sub 5	3-31-71
5. Manufacturers Associates of the South, Inc. - Recommended	W-153, Sub 2	10-11-71

Order Denying Application for Transfer & Abandonment		
6. Manufacturers Associates of the South, Inc. - Order Requiring Service Report & Improvements	W-153, Sub 2	10-11-71
7. Touch & Flow Water Systems - Order Requiring Improvements	W-201, Sub 6	?
8. Touch & Flow Water Systems Order Directing Refunds & Requiring Report	W-201, Sub 7	10-7-71