SIXTY-THIRD REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1973 THROUGH DECEMBER 31, 1973

SIXTY-THIRD REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1973, through December 31, 1973

Marvin R. Wooten, Chairman

John W. McDevitt,* Commissioner

Hugh A. Wells, Commissioner

Ben E. Roney, Commissioner

Tenney I. Deane, Jr.,** 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.

*John W. McDevitt - term expired June 30, 1973.

**Tenney I. Deane, Jr., appointed November 13, 1973.

LETTER OF TRANSMITTAL

December 31, 1973

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, 1973, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1973, and ending December 31, 1973.

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

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Marvin R. Wooten, Chairman

Hugh A. Wells, Commissioner

Ben E. Roney, Commissioner

Tenney I. Deane, Jr., Commissioner

Katherine M. Peele, Chief Clerk

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of the

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DOCKET NO. M-100, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: It having been brought to the attention of the Commission that certain clerical errors exist in Exhibit A attached to and made a part of the Commission's Orders in Docket No. M-100, Sub 31, dated January 14, 1971, and August 8, 1972, and also reflected in Rule R2-37 - Commodity Description, said errors being (1) the word "Dodecylbenzene" is listed twice on said exhibit, (2) the word "or" should be shown between the words "Drain Oil" and "Drip Oil" or either these should be listed separately, and (3) a comma should be placed between the words "Fuel Jet", and the Commission being of the opinion that said errors should be corrected,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

That Exhibit A attached to and made a part of the Orders in this Docket dated January 14, 1971, and August 8, 1972, and that Rule R2-37 - Commodity Description, of the Commission's Rules and Regulations, be, and the same are hereby, amended as set forth in Exhibit A attached hereto and made a part hereof.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, 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
- #4| Commercial
- #74| 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 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Adoption of the 1972 Amendments to the Rules and Regulations for Safety of the U. S. Department of Transportation Pursuant to Rule R2-46 of the Commission's Motor Carrier Regulations as Granted Under G. S. 62-261 (3) and G. S. 62-281.	ORDER

The North Carolina Utilities Commission, acting under its power and authority delegated to it by law, hereby adopts the 1972 amendments to the Motor Carrier Safety Regulations of the United States Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397) and it is hereby

ORDERED, That said amendments shall be effective from the dates as prescribed in each amendment.

IT IS FURTHER ORDERED, That all future amendments to said regulations shall be adopted by this Commission and shall be effective on the same date as prescribed by the United States Department of Transportation, except those amendments that may be in conflict with the North Carolina General Statues or those that may be specifically excluded from adoption by further order of this Commission.

BY ORDER OF THE COMMISSION.

This the 1st day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 39

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-Making Proceeding to Investigate and Promulgate Rules to Prohibit Discrimination in Billing Practices and to Establish Uniform Tariff Provisions for Filing of Customers of Electric, Telephone, Gas, Water and Sewer Utilities.	)	ORDER CLOSING DOCKET

BY THE COMMISSION. Upon consideration of the Judgment and Opinion issued by the North Carolina Court of Appeals certified to this Commission on August 6, 1973, and upon consideration of an Order of the North Carolina Supreme Court, dated October 4, 1973, denying Petition for Writ of Certiorari to the Court of Appeals, the matter is now before the Commission for further consideration and closing of the docket. Upon further review of the Rule R12-9 it appears to the Commission that paragraph (c) of said Rule contains language which might be interpreted as requiring that the 1% charge would be applicable to only a portion of the billing period, to wit: "and the date from which interest shall be computed in the event the utility applies an interest, finance or service charge". The Commission concludes that the quoted language was inadvertently retained after the daily computation system proposed in the interim draft Rule was abandoned. As such, the language at the present time has no effect and its continued retention may create interpretation problems. Accordingly, the language in question should be deleted. Such deletion will not affect any procedural or substantive right of any person.

IT IS, THEREFORE, ORDERED:

1. That the phrase "and the date from which interest shall be computed in the event the utility applies an interest, finance or service charge" be, and hereby is, deleted from paragraph (c) of Rule R12-9, such that said paragraph shall read as follows:

> "(c) Past due or delinquent bills. The past due or delinquent date is the first date upon which the utility may initiate disconnect proceedings under N.C.U.C. Rule R12-8. The past due or delinquent date shall be disclosed on the bill and shall be not less than fifteen (15) days after the billing date. In the event the utility fails to place the bill in the

mail [or deliver it as in paragraph (b) above] prior to or on said billing date, the consumer shall have the right to require that the utility adjust the billing date by the number of days by which the postmark [or delivery as in paragraph (b) above] exceeds the original billing date."

2. That the proceeding be, and hereby is, terminated and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

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 Control of the State of North Carolina	)	ORDER CLOSING DOCKET UPON RE-ENACTMENT OF EXEMPTION OF TRANS- PORTATION FOR THE STATE

Upon consideration of the record herein and the action of the General Assembly of North Carolina in Chapter 175 of the Session Laws of 1973, ratified on April 11, 1973, re-enacting the exemption of transportation for the State of North Carolina and its political subdivisions in G.S. 62-260(a)(1), a copy of said Chapter 175 of the Session Laws of 1973 being attached hereto as Appendix A, and it appearing to the Commission that the transportation for the State of North Carolina and its political subdivisions and agencies is now exempt from regulation, and further, that the Commission has been restrained from regulating transportation for and under control of the Federal Government pursuant to an Opinion and Order of the U. S. District Court for the Eastern District of North Carolina entered on December 20, 1972 in United States of America v. North Carolina Utilities Commission, et al, Docket No. 3061, and that the issues in this docket are moot and the docket should be closed and all parties hereto notified that the service proposed to be regulated hereunder is now exempt from regulation,

IT IS, THEREFORE, ORDERED AS FCLLOWS:

1. That the rule-making proceeding is discontinued and the docket closed for the reasons above stated, based upon the statutory exemption of transportation for the State of North Carolina and its political subdivisions and agencies, and the Order restraining regulation of transportation for the U. S. Government.

2. That the parties to this docket are hereby notified that the temporary common carrier authority issued herein by Order of September 9, 1971, to then exempt carriers for transportation of passengers for and under control of the State of North Carolina and its political subdivisions and agencies are hereby terminated, and that such transportation may now be rendered as exempt transportation, and that the Exemption Certificates heretofore issued to said carriers are reinstated and that any other motor carrier seeking to perform such service who has not heretofore applied for and received Exemption Certificates for transportation for and under control of the U. S. 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.

ISSUED BY ORDER OF THE COMMISSION.

This 15th day of May, 1973.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
CHAPTER 175
HOUSE BILL 773

AN ACT TO AMEND G.S. 62-260, MOTOR CARRIER EXEMPTIONS, BY ADDING THE STATE OF NORTH CAROLINA TO THE LIST OF EXEMPTIONS.

The General Assembly of North Carolina enacts:

Section 1. G. S. 62-260(a) is amended by adding a new subdivision to be designated "(1)" and to read as follows:

"(1) Transportation of passengers or property for or under the control of 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."

Sec. 2. This act shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 11th day of April, 1973.

James B. Hunt, Jr.
President of the Senate

James E. Ramsey
Speaker of the House of Representatives

DOCKET NO. M-100, SUB 49

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Amendment to Chapter 3 by Adding Rule R3-8 - Railroad Station Buildings Involved in Railroad Mobile Agency Concept	)	ORDER

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby amends Chapter 3 of its Rules and Regulations by adding a new rule identified as Rule R3-8, reading as follows:

Rule R3-8. Railroad station buildings involved in railroad mobile agency concept.

(1) Each railroad company filing an application with the Commission for authority to implement a mobile agency concept in North Carolina may also submit along therewith a proposal indicating the appearance, physical condition and proposed disposition of each station building involved in said mobile agency concept, or, if said application is assigned for hearing, the railroad company shall file with the Commission ten (10) days prior to the date of hearing information as to the appearance, physical condition and proposed disposition of each of the station buildings involved in the mobile agency concept.

(2) The railroad company shall be responsible for keeping and maintaining each of its station buildings which it owns and which is involved in a mobile agency concept in a reasonable state of repair or arranging for such proper maintenance, until authorized by the North Carolina Utilities Commission to dismantle and remove or otherwise dispose of said building.

(3) The railroad company shall submit a report within forty-five (45) days after December 31, each year to the Commission on any and all remaining station buildings it owns involved in mobile agency concepts as to their characteristics such as present appearance, physical condition and utilization thereof.

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

BY ORDER OF THIS COMMISSION.

This the 7th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Research and Development Adjustment on the Rates of Electric Utilities	) ORDER CLOSING DOCKET) UPON WITHDRAWAL OF) PROPOSED SURCHARGE

On December 21, 1972, Duke Power Company, Carolina Power and Light Company, and Virginia Electric and Power Company each filed a withdrawal in writing of the Petition herein, and Carolina Power and Light Company and Virginia Power and Light Company filed a withdrawal in writing of the tariffs under investigation herein, which propose a surcharge of varying portions of a cent per kilowatt hour on all customers of said utilities in North Carolina for special research and development expenditures. It appearing under the Rules of Procedure that parties having filed an application for rate increase may withdraw said application, and that said surcharge proposals are no longer before the Commission,

IT IS, THEREFORE, ORDERED that based on the withdrawal and cancellation of the Petition and the tariffs under investigation herein filed in writing by Duke Power Company, Carolina Power and Light Company and Virginia Electric and Power Company on December 21, 1972, that this docket is hereby closed.

ISSUED BY ORDER OF THE COMMISSION.

This 5th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Establish a Procedure for Electric Power Plant Siting in North Carolina	)	ORDER ESTABLISHING NORTH CAROLINA UTILITIES COMMISSION RULES R8-42 and R8-43

BY THE COMMISSION. On January 18, 1973, the Commission issued its Order Instituting Rulemaking Proceeding, advising that it had under consideration the promulgation of proposed rules regarding the planning, siting, and construction of electric generating facilities in the State of North Carolina and procedures to be employed by electric utilities for reporting forecasts of loads and resources. Notice was given in the Order that the proposed Rules as set out therein would be promulgated and adopted to become effective on March 1, 1973, unless formal objections and requests for public hearing were received on or before February 15, 1973.

Proposed Rule R8-42, "Preliminary Plans for Siting and Construction of Electric Generation Facilities", is generally concerned with filing of site information, the procedures involved in filing for a Certificate of Public Convenience and Necessity, and information regarding the need, cost and scheduling of a new generation facility.

Proposed Rule R8-43, "Annual Reports", provides for yearly reporting by electric utilities in North Carolina on probable future electric generation sites, and generation and transmission facilities planned for future operations.

Pursuant to motions filed by Carolina Power & Light Company ("CP&L"), Duke Power Company ("Duke"), and Virginia Electric and Power Company ("VEPCO"), during February and March 1973, which are of record and which are recited in detail in the Commission Order issued on April 27, 1973, the Commission allowed requests for extensions of time within which to file comments, objections, and requests for public hearing, or to otherwise respond to the proposed Rules. Comments, objections, requests for clarification, and requests for public hearing were filed by CP&L, Duke and VEPCO on April 16, 1973, as were requests for a Prehearing Conference to discuss the procedure to be followed at the public hearing. By Order issued on April 27, 1973, the Commission scheduled a Prehearing Conference for May 10, 1973, and scheduled the matter for public hearing on June 28, 1973.

The Prehearing Conference of parties of record was convened as scheduled, with counsel for CP&L, Duke and VEPCO, and the Commission Staff participating. Also present and participating in the initial portion of the Conference were Mr. Taylor of VEPCO; Miss Sandra Linton for the

Conservation Council of North Carolina; Dr. David Martin and Mrs. Gail Waller (interested citizens).

Pursuant to the discussions, stipulations, and agreements reached at the Conference, the Staff has filed a memorandum setting forth proposed clarifications of and revisions to the proposed Rules. Based upon the clarifications of or revisions to the proposed Rules as submitted by the Staff, CP&L, Duke and VEPCO (on May 29, 1973) filed written statements of intent to withdraw their requests for public hearing.

Considering the matters stipulated and agreed upon as reflected cumulatively by all written submissions subsequent to the calling of the Prehearing Conference on May 10, 1973, including those in the Prehearing transcript and those in the letters of intent filed on May 29, 1973, and considering the proposed Rules as revised and as set forth hereinabove, the Commission makes the following

FINDINGS OF FACT

1. The proposed N.C.U.C. Rules R8-42 and R8-43 as set forth below are in the public interest and are reasonable and necessary to the effective administration and enforcement of 62-110.1, 62-82, and other pertinent parts of Chapter 62 of the North Carolina General Statutes:

ARTICLE 8 - ELECTRIC ENERGY SUPPLY PLANNING

Rule R8-42 - Preliminary Plans for Siting and Construction of Electric Generation and Related Transmission Facilities in North Carolina

(a) No commitments and contracts made for the purchase of a steam supply system, turbine, generator or other major component of the generation system shall be noncancelable until such time as the Certificate of Public Convenience and Necessity has been issued.

(b) Information to be filed 120 days or more before the filing of the Application for a Certificate of Public Convenience and Necessity for generating facilities with capacity of 300 MW or more shall include the following:

(1) Available site information (including maps and description), preliminary estimates of initial and ultimate development, justification for the adoption of the site selected, and general information describing the other locations considered.

(2) As appropriate, preliminary information concerning geological, aesthetic, ecological, meterological, seismic, water supply,

population and general load center data to the extent known.

(3) A statement of the need for the facility including information on loads and generating capability.

(4) A description of investigations completed, in progress, or proposed involving the subject site.

(5) A statement of existing or proposed plans known to Applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site.

(6) A statement of existing or proposed environmental evaluation program to meet the applicable air and water quality standards.

(7) A brief general description of practicable transmission line routes emanating from the site.

(8) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals.

(9) A statement of estimated cost information, including plant and related transmission capital cost (initial core costs for nuclear units); all operating expenses by categories, including fuel costs and total generating costs per net KWH at plant; and information concerning capacity factor, heat rate, and plant service life. Furnish comparative cost including related transmission costs of other final alternatives considered.

(10) A schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(c) Procedures for obtaining the Certificate of Public Convenience and Necessity shall be as stated in the General Statutes.

Rule R8-43 - Annual Reports

(a) Every electrical public utility shall, annually, on or before April 1 furnish the Commission with a report containing a ten-year forecast of loads and generating capability. The report shall describe all generating facilities and known transmission facilities with operating voltage of 200 KV or more

which, in the judgment of the utility, will be required to supply system demands during the forecast period. The report shall cover the ten-year period next succeeding the date of said reports and shall include the following:

(1) A tabulation of peak loads, generating capability, and reserve margins for each year.

(2) A list of the existing plants in service with capacity, location, and any technological innovations to be backfitted to improve environmental quality to the extent known.

(3) A list of generating units under construction or planned at plant locations for which property has been acquired, for which certificates have been received, or for which applications have been filed with location, capacity, plant type, and proposed date of operation included.

(4) A list of proposed generating units at locations not known with general location, capacity, plant type, and date of operation included to the extent known.

(5) A list of units to be retired from service with location, capacity and expected date of retirement from the system.

(6) A list of transmission lines and other associated facilities (200 KV or over) which are under construction or proposed including the capacity and voltage levels, location, schedules for completion and operation.

(7) A list of any generation and associated transmission facilities under construction which have delays of over six months in the previously reported in-service dates and the major causes of such delays. Upon request from the Commission Staff, the reporting utility shall supply a statement of the economic impact of such delays.

(8) A list of future probable sites giving general location and description, major advantages, and whether the site is wholly owned, partially owned or not owned by the utility.

(b) Every electrical public utility shall, biennially, include in the report a twenty-year forecast of loads, generating capability, and reserve margins.

2. The proposed Rules provide reasonable and orderly procedures for providing timely notice of plans to construct

electric generating facilities, to allow increased opportunity for public participation in the certification process, and to aid in avoiding untimely delays in the construction and operating schedules of required generating facilities.

3. The proposed Rules, as set forth above, are appropriate in the exercise of this Commission's rulemaking power in accordance with the Environmental Policy Act, as declared in G. S. 113(a)(3) and 113(4).

Whereupon the Commission reaches the following

CONCLUSIONS

As a result of the Prehearing Conferences in which all parties of record have participated, it appears from the pleadings, stipulations, and admissions of record that there are presently no controverted matters or genuine issues of fact or law remaining for hearing at this time and that the need for a hearing has been alleviated. Accordingly, the proposed N.C.U.C. Rules R8-42 and R8-43 as set forth above should be promulgated and adopted without further delay and the hearing should be cancelled. The Commission recognizes, however, that persons not presently formal parties of record may wish to offer further comments or proposals for consideration by the Commission regarding revisions or application of the new Rules or adoption of other related Rules, and for that reason the Rules will be adopted subject to such further orders of the Commission as may be required. The matter will be kept open until July 1, 1973, to receive any such comments or proposals as any interested person may wish to file.

IT IS, THEREFORE, ORDERED as follows:

1. That the public hearing heretofore scheduled for June 28, and June 29, 1973, be, and hereby is, cancelled. The parties are hereby relieved from the requirement in the Order of May 23, 1973, that notice of said hearing be published.

2. That Rules R8-42 and R8-43 as set forth above be, and hereby are, promulgated and adopted, effective on and after July 1, 1973, subject to further orders of the Commission pursuant to Ordering Paragraph 3 below.

3. That this docket shall remain open until July 1, 1973, in order that any interested person may file comments or proposals for consideration by the Commission, and for such further orders as may be appropriate herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Establish a Procedure for Electric Power Plant Siting in North Carolina	)	ORDER CLOSING DOCKET

BY THE COMMISSION. On June 7, 1973, the Commission issued its Order establishing N.C.U.C. Rules R8-42 and R8-43 effective on and after July 1, 1973, subject to the following provision:

> "3. That this docket shall remain open until July 1, 1973, in order that any interested person may file comments or proposals for consideration by the Commission, and for such further orders as may be appropriate herein."

No comments or proposals requesting rule changes or hearings having been filed in accordance with Paragraph 3 recited above,

IT IS, THEREFORE, ORDERED that this proceeding be, and hereby is, terminated and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of July, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of Rule R8-25 - Rate Schedules; Rules and Regulations	)	ORDER REVISING RULE R8-25

BY THE COMMISSION. The Commission, in its January 22, 1973 Executive Conference has, on its own motion, considered the following:

1) Part (c) of Rule R8-25 - Rate Schedule; Rules and Regulations now reads as follows:

"(c) Consumers desiring service in excess of 25 HP will be required to enter into term contracts..." (emphasis added)

2) It is considered that the addition of loads in excess of 25 HP on some systems may have an adverse effect upon the service supplied to existing customers, and upon the rate structure of that utility, if that utility is not protected by term contract. However, other larger utilities find that such load additions do not materially affect either quality of service or the rate structure, but that somewhat larger loads may cause such adverse effects. It appears, therefore, to be an undue burden upon the larger utilities and the consumers to require that all consumers desiring service in excess of 25 HP enter into a term contract.

The Commission considers it to be in the public interest, and in the interest of promoting adequate, economical and efficient electric service that

1) Consumers desiring service large enough to require additional facilities or other special consideration from the electric utility should be required to enter into an appropriate contract to protect the service and rate structure of the existing ratepayers of the utility, but that

2) Where services desired are not large enough to require such additional facilities or other special consideration, or where costs of contract administration would negate the benefit of such contract, the consumers and the utilities should not be required to enter into such contract.

Accordingly, the Commission considers that revision of Rule R8-25 is in order.

IT IS, THEREFORE, ORDERED

That paragraph (c) of Rule R8-25 - Rate Schedules, Rules and Regulations, which now reads "(c) Consumers desiring service in excess of 25 HP will be required to enter into term contracts...", shall be revised and changed to be "(c) Consumers desiring service in excess of 25 HP may be required to enter into term contracts..." (word change underlined).

BY ORDER OF THE COMMISSION.

This the 9th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-Making Proceeding for Curtailment of Gas Service Due to Gas Supply Shortage	)	ORDER GRANTING SECOND LIMITED EXEMPTION TO CERTAIN INDUSTRIAL CUSTOMERS OF PUBLIC SERVICE CO. OF N. C., INC., TO CURTAILMENT PRIORITY PLAN

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on January 12, 1973, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners John W. McDevitt, Hugh A. Wells, and Ben Roney

APPEARANCES:

For the Petitioner:

James G. Kennedy
Vice President & General Counsel
Laurens Glass Company
P. O. Drawer 9, Laurens, South Carolina
Appearing for: Laurens Glass Company
Division of Indian Head, Inc.

For the Intervenors:

J. M. Baley, Jr.
McGuire, Baley & Wood
First Union National Bank Building
P. O. Box 748, Asheville, N. C. 28802
Appearing for: The Ball Corporation

J. M. Broughton, Jr.
Broughton, Broughton, McConnell & Boxley
Box 2387, Raleigh, N. C. 27602
Appearing for: Uniglass Industries of
Statesville, N. C.

Daniel W. Fouts
Adams, Kleemeier, Hagan, Hannah & Fouts
P. O. Box 3463, Greensboro, N. C.
Appearing for: Pomona Pipe Products, a
Division of Pomona Corporation

James T. Williams, Jr.
McLendon, Brim, Brocks, Pierce & Daniels
P. O. Drawer U, Greensboro, N. C.
Appearing for: Piedmont Natural Gas Company, Inc.

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, N. C.
Appearing for: United Cities Gas Company

For the Respondent:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Box 1406, Raleigh, N. C. 27602
Appearing for: Public Service Company of N. C., Inc.

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, N. C. 27602

On April 1, 1971, the Commission established curtailment priorities for the interruption of gas service to firm customers in the event natural gas supplies are limited, curtailed or otherwise interrupted. The following are the classes of customers in the order in which they are to be curtailed as set forth in that order.

(a) All Interruptible Service
(b) Large Industrial Firm Customers
(c) Small Industrial Firm Customers
(d) Large Commercial Customers
(e) Small Commercial Customers [see (f) below]
(f) Public Schools and Hospitals
(g) Residential Customers.

In its order issued on July 27, 1971, in this docket, the Commission implemented the above priorities requirement as follows:

(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."

Pursuant to the above orders, certain industrial customers of Public Service Company of North Carolina, Inc. (Public Service) requested relief from the priorities established by

the Commission as provided for in ordering clause (6) listed above.

By order issued February 23, 1972, the Commission granted limited exemption to the following companies.

Ball Corporation - Asheville, North Carolina
Laurens Glass - Henderson, North Carolina
Sanford Brick and Tile Company - Sanford, North Carolina
Pomona Pipe Products - Gulf, North Carolina
Uniglass Industries of Statesville, North Carolina
Hillsborough Dyeing & Finishing Corporation - Hillsborough, N. C.

By letter dated May 31, 1972, Laurens Glass, who operates a plant at Henderson, North Carolina, petitioned the Commission for an extension of the Order Granting Limited Exemption to certain industrials to the curtailment priority plan for an additional six months to May 1, 1973. The Commission requested certain information from Public Service concerning its ability to continue the limited exemption as sought by Laurens Glass. Public Service Company furnished the information requested on August 14, 1972. The Commission on September 1, 1972, requested that if Laurens Glass desired to be heard in this matter to please advise the Commission. By letter dated September 26, 1972, the Commission was advised by Laurens Glass that it requested to be heard in this matter.

On November 22, 1972, Pomona Pipe Products, who operates a plant at Gulf, North Carolina, filed a Petition to Intervene and Motion to Amend.

On December 6, 1972, Ball Corporation who operates a plant located at 1856 Hendersonville Highway, Asheville, North Carolina, Buncombe County, petitioned the Commission to intervene and filed a Motion to Amend.

By order issued December 12, 1972, the Commission allowed Pomona Pipe Products and Ball Corporation to intervene in this proceeding.

On December 19, 1972, Ball Corporation filed a Petition for interlocutory relief requesting an extension of the limited exemption from curtailment heretofore granted to Ball Corporation until the matter could be heard by the Commission.

By order issued December 22, 1972, the Commission denied the request for interlocutory relief requested by Ball Corporation.

The matter was heard on January 12, 1972, in the Commission Hearing Room as set forth above.

FINDINGS OF FACT

Ball Corporation

1) Ball Corporation operates a glass container plant at Asheville, North Carolina, which requires a substantial volume of natural gas in its glass manufacturing process. (Its contract with Public Service calls for 1400 MCF a day of firm gas.)

2) Ball Corporation, since the Commission's order of February 23, 1972, has installed a standby fuel oil system to provide alternate heating capacity to its furnace. In addition, Ball Corporation has purchased and installed an electric lehr for one of its two glass lines and has on order a second electric lehr scheduled for installation during the first quarter of 1973.

3) Ball Corporation has received a commitment from an Asheville fuel oil dealer for its furnace oil needs.

4) Ball Corporation requires 500 MCF a day at this time to operate its feeder and its refining equipment.

Laurens Glass

1) Laurens Glass operates a glass manufacturing plant in Henderson, North Carolina. The plant has five separate furnaces which it uses to melt the raw materials into molten glass. At present two of these five furnaces can use either natural gas or No. 2 fuel oil. A third furnace is in the process of being rebuilt and when the furnace is rebuilt, it will be able to utilize both natural gas and No. 2 fuel oil. Laurens Glass proposes to install an oil standby system in 1974 in the furnace designated as furnace A. It proposes further to convert furnace E in the year 1975 so that it can use another fuel other than natural gas on a standby basis.

2) Laurens Glass' present contract with Public Service is for 4500 MCF per day of firm gas, the minimum amount of gas which Laurens Glass requires to protect its facilities, but with no production, is 3600 MCF per day of firm gas.

Pomona Pipe Products

1) Pomona Pipe Products operates a pipe plant at Gulf, North Carolina.

2) Its contract with Public Service is for 1350 MCF per day of firm gas.

3) Pomona can reduce gas volumes by 61 percent or requires 500 MCF a day to maintain the thermal balance in its kiln. At this level no ware will be produced. Pomona proposes to install by next fall a propane plant for standby service.

Public Service Company of N. C., Inc.

1) Public Service is a public utility supplying natural gas to various communities in North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission.

2) That pursuant to authority of the Federal Power Commission, Transcontinental Gas Pipe Line Corporation (Transco) is curtailing all of its customers below contract volumes (at January 2, 1973). Transco has estimated that its systemwide curtailment percentage to its customers including Public Service for the year 1973 is as follows:

	ESTIMATED - 1973						
	Jan.	Feb.	Mar.	Apr.	May	June	July
Estimated Systemwide Curtailment Percentage	9%	9%	9%	14%	13%	13%	14%

Aug.	Sept.	Oct.	Nov.	Dec.
15%	15%	12%	17%	19%

Public Service can, under designed conditions (average minimum temperature of 15°) and providing that it receives an exemption from Transco as provided for in the settlement agreement approved by the Federal Power Commission in Docket No. RP72-99, meet its firm customer commitments.

CONCLUSIONS

Public Service is not receiving from Transco its full contractual gas supply. Transco has advised Public Service that its estimated systemwide curtailment would continue throughout 1973 and range from 9 percent to 19 percent. A curtailment priority plan for North Carolina is required in order to protect residential, commercial, hospitals, schools and other human need requirements from being interrupted. The orders previously issued by this Commission in this Docket have been issued to protect the human need requirements of Public Service's firm customers. Ball Corporation, Pomona Pipe Products, and Laurens Glass have requested that they be granted an exemption from the orders of the Commission for the reason that substantial damage to product or equipment would occur if gas is curtailed to them below the volumes listed below and that these volumes of gas are required to protect their plant from substantial plant and product damage and at these gas levels no production will take place.

Ball Corporation - 500 MCF/day
Pomona Pipe Products - 500 MCF/day
Laurens Glass - 3500 MCF/day

The Commission concludes that an exemption from the curtailment priority plan should be granted to these companies for the period ending May 1, 1973, after which

Public Service shall revert to the present curtailment plan as authorized by this Commission.

The Ccmmission is further of the opinion that Laurens Glass can and should immediately install alternate standby fuel systems in the remaining glass furnaces which do not have alternate fuel capabilities. This can be accomplished without any interruption in production.

IT IS, THEREFORE, ORDERED AS FCLLOWS:

1) That Ball Corporation, Laurens Glass and Pomona Pipe Products, if required due to gas shortages, shall first be curtailed by Public Service Company of North Carolina, Inc., as provided for in the Commission's Order dated April 1, 1971, to the point that no production of product takes place but shall be supplied sufficient gas to maintain sufficient heat in their gas burning equipment so that damage to its plant or equipment is prevented.

2) That Public Service Company of North Carolina, Inc., shall restore full gas service to the above customers as soon as gas supply conditions permit.

3) That after the action as listed above in ordering clause (1) is taken that each of the corporations - Ball Corporation, Laurens Glass and Pomona Pipe Products - shall be placed on the schedule of firm industrial customers to be interrupted after the first 100 customers listed on the report entitled, "Public Service Company of North Carolina, Inc., Class 04 Customers by Consumption" dated December 12, 1972. A copy of this report is in the official records of the Commission and is open for inspection.

4) That on May 1, 1973, Public Service Company of North Carolina, Inc., be, and is hereby, directed to revert to the curtailment priority plan authorized by the Commission in its Order dated April 1, 1971, and the exemptions to that order as provided for herein shall terminate on May 1, 1973.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Notice of Proposed Rule-Making and Investigating Service Charges by Gas Utilities in North Carolina	) ORDER CANCELLING PROPOSED) RULE-MAKING ON UNIFORM) PROCEDURES FOR SERVICE) CHARGES BY GAS UTILITIES

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on January 18, 1973 at 10 a.m.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners John W. McDevitt and Ben Roney.

APPEARANCES:

For the Respondents:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Box 1496, Raleigh, N. C. 27602
Appearing for:
Public Service Company of North Carolina, Inc.

James T. Williams, Jr.
McLendon, Brim, Brooks, Pierce & Daniels
P. O. Drawer U, Greensboro, N. C. 27402
Appearing for: Pennsylvania & Southern Gas Company
United Cities Gas Company

Jerry W. Amos
McLendon, Brim, Brooks, Pierce & Daniels
P. O. Drawer U, Greensboro, N. C. 27402
Appearing for: Piedmont Natural Gas Company, Inc.

For the Commission Staff:

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

BY THE COMMISSION. The Commission taking notice that various reports from gas utilities in North Carolina concerning jobbing and service charges for various types of services indicated a substantial variance of charges and policies for these services by gas utilities. The Commission on February 22, 1972 instituted an investigation and noted that it was considering the establishment of a uniform state-wide policy on each of the services offered by gas utilities listed below:

1) Light, clean, and adjust pilots after working hours
2) Relocate gas meter at customer request
3) Clean and adjust gas lights and replace mantles

4) Turning heating equipment on in the fall of the year
5) Install appliance parts when working a service call
6) Turn on and relight appliance for nonpay.

The Commission in the order required each gas utility to submit its current policy and charges for each of the services noted above along with the cost of providing these services and the revenues received where charges are made. Each of the gas utilities in North Carolina submitted the information as required. This information was analyzed and reviewed by the Commission and its Staff which resulted in the Commission issuing an order on June 15, 1972 which order proposed the establishment of a uniform procedure rule as follows:

"Rule R6-19 (c) - Customer service calls made by a gas utility involving the lighting of pilots and adjusting of gas operating equipment for proper combustion shall be made at all times without charge with the following exception:

In the event a gas utility has been called for service on an appliance and it is found that the trouble involves faulty or damaged equipment, the utility shall notify the customer in writing of its findings with the statement that in the event another service call is received and the appliance has not been repaired that a nominal charge will be made for the second service call."

The Commission further in its interim order took note that certain charges for jobbing, which can be performed by the gas utility or other service organizations, had not been regulated in the past and the cost of this service has not been included in the rates for utility service; consequently, the Commission determined that the investigation of this type of service should be eliminated from this proceeding. For these services the customer is free to select any service organization who can provide this service at a minimum cost.

As a result of the Commission's Order noted above, various objections and protests were received from the North Carolina gas utilities. As a result thereof, the Commission on August 25, 1972 scheduled the matter for hearing. The matter was heard on January 18, 1973. The following is a summary of the evidence adduced at the hearing:

EVIDENCE

United Cities Gas Company

Mr. L. E. Jirikovec, Vice President, United Cities Gas Company testified that United Cities provided free "flame burner adjustment" and pursued a policy of encouraging customers to light their own pilots. The Company charged for all service work other than the "flame burner adjustment". He further testified that the proposed rule

would require United Cities' personnel to make free service calls at any time of the day and night including holidays and weekends without any charge and that such a policy would result in an increase in after-hours calls and would increase the operating expense of United Cities. The serviceman taking a call after hours is paid for one hour for each call-up. The proposed policy would result in higher rates to the consumer as a result of the increased expenses, with no substantial benefits to United Cities' customers.

North Carolina Natural Gas Corporation

Mr. W. G. Hill, Vice President of North Carolina Natural Gas Corporation testified that his company provides free air and flame adjustment service during normal working hours or at any other time where safety is involved. After normal working hours a charge of $5 is made. A service charge is further made for replacement of parts on equipment not subject to warranty at $5 per hour. He further stated that the large majority of service calls for air and flame adjustment occurred most frequently with a small percentage of customers who do not keep their equipment in good operating condition and it would be unfair to spread this cost among the other customers. That the Commission's proposal of notifying a customer that had been charged for service charges involving faulty or damaged equipment, after such determination has been made by one free service call, will result in an unwieldy time consuming process, increasing bookkeeping and other expenses. That North Carolina Natural Gas Corporation had very few complaints from customers who had been charged $5 for after-hours service and air flame adjustments.

Pennsylvania & Southern Gas Company

Mr. Earl Connolly, Vice President of Pennsylvania & Southern Gas Company, testified that North Carolina Gas Service renders free service for lighting pilots or adjusting gas operating equipment for proper combustion except where a customer voluntarily turns off the appliance for personal reasons such as treating the house for termites, cleaning carpets or having new carpet installed, or just to save gas during a period of warm weather or when the customer plans to be gone from the premises for several months. Under these conditions a $5 charge is made. North Carolina Gas Service also makes a $5 charge for work done on a water heater and ovens after working hours; however, heating calls are serviced free of charge. The cost of free service for the 12 months ending September 30, 1972 was $37,097. He further testified that the proposed rule would require North Carolina Gas Service to make free service calls at all times without charge and that it was his opinion that the rule would result in a large increase in service calls rendered after normal working hours. He further stated that his experience indicates that a relatively small number of customers demand a large portion

of after-hours service and that the charging of a nominal service charge for after-hours service for lighting water heaters, grills, gas lights and ovens will generally persuade the customer to wait until normal working hours to have this service performed. That the proposed rule-making policy would require, in his judgment, at least three additional servicemen.

Piedmont Natural Gas Company, Inc.

Mr. Wilton L. Parr, Vice President for Piedmont Natural Gas Company, Inc., testified that until March 15, 1970, Piedmont made no charge for service calls for lighting pilots or adjusting gas operating equipment for proper combustion; however, since March 15, 1970, Piedmont has been authorized to charge $5 per man-hour with a minimum of $5 when the service indicated above was performed after normal working hours. Piedmont reviewed its customer evaluation records based on an inquiry concerning the $5 after hours service charge. Only one complaint was received out of 2,000 responses.

Piedmont attempted to analyze three areas to determine the frequency of free service calls. The three areas analyzed were a new residential area, an old residential area and a commercial area. A sample of 100 customers was used. The results of the survey of the new residential area customers indicate that 5 percent of the customers analyzed received 44 percent of all service, that 10 percent of Piedmont's customers received 58.5 percent of all service, that 69.7 percent of the customers analyzed received no free service at all. The result of the survey of the old residential area indicated that 33.9 percent of the customers received free service and conversely, 66.1 percent received no service at all. The study further indicated that 13 percent of the customers received 63.9 percent of all free service. It also indicated that of the commercial customers surveyed 34.8 percent received free service, 65.2 percent received no service at all and that 15.8 percent of the commercial customers received 75.1 percent of all free service. The testimony further indicated that the service charge was a deterrent to a customer demanding unreasonable service. An analysis in the Salisbury District conducted in the month of January 1970 and 1972 indicated that after hours service calls were reduced from 94 to 41, a reduction of 56.4 percent. The Charlotte study for the same period indicates that a reduction in after hours service calls of 1,354 to 683 or a reduction of 49.6 percent. The results were similar in the Greensboro District. At the same time that this decrease was occurring, the total service calls on Piedmont's system increased from 114,698 to 124,358. The reduction in service calls after working hours was attributed to the $5 service charge. Mr. Parr further testified that the expenses for after-hours services are charged to Account No. 416.23 which is not included in the operation and maintenance expenses for rate making purposes and therefore does not affect the rates for service. The

revenues are charged to Account No. 442.|2 and thereby the revenues are not included in the overall cost of service.

Public Service Company of North Carolina, Inc.

Mr. C. E. Zeigler, Executive Vice President of Public Service Company of North Carolina, Inc., testified that Public Service Company at this time does not make a charge for lighting pilots and adjusting of gas operating equipment at any time but that the Company does attempt to discourage after hours service calls because of the additional overtime labor charge involved and that these costs are ultimately passed on to and become part of the rates charged to all customers and not just those requiring the service. Public Service's policy has generally been to think of after-hours calls as emergency work rather than standard service calls which could be made during daylight hours.

FINDINGS OF FACT

1) That United Cities Gas Company, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., and Public Service Company of North Carolina, Inc., are public utilities and subject to the jurisdiction of the North Carolina Utilities Commission.

2) That all gas utilities in this State furnish free flame and air service during normal working hours.

3) That the proposed uniform procedure for service charges at no cost at all times will result in increased operating expense to all customers while only a small percentage receive the benefit of this service.

Based on the foregoing findings of fact and the testimony adduced at the hearing, the Commission arrives at the following

CONCLUSIONS

That the gas utilities in North Carolina have consistently rendered free air and flame adjustment service to customers during normal working hours but recently because of the increased cost of labor and because of the fact that a small percentage of the customers demand most of the free service, have tended to discourage after normal working hours free service for air and flame adjustment by establishing a nominal charge. The adoption of the proposed rule herein would make it mandatory that free air and flame adjustment service be offered at any time to all customers. The Commission is of the opinion that the proposed policy will result in additional increases in expense which would have to be borne by all rate payers and that a flexible policy should be maintained in order to adjust for the different geological areas supplied with gas service and in order to

discourage after hours service calls except for emergency purposes.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1) That the interim proposed rule-making establishing a uniform policy for certain service calls as defined in the Commission's order in this docket issued on June 15, 1972 be, and is, hereby cancelled and dismissed.

2) That the present procedures for charging for service as submitted by the gas utilities in North Carolina and approved by the Commission shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rulemaking Proceeding for	) INTERIM ORDER ESTABLISHING
Curtailment of Gas Service	) EMERGENCY PROCEDURE FOR
Due to Gas Supply Shortage	) ALLOCATION OF NATURAL GAS

PLACE: Commission Hearing Room, Raleigh, N.C.

DATE: November 20, 1973

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane

BY THE COMMISSION: This proceeding was instituted by Order issued November 6, 1973 scheduling a hearing on Rulemaking Proceeding for Curtailment of Gas Service Due to Gas Supply Shortage. The proceeding was heard on November 20, 1973, as scheduled. Attached as Appendix "A" is a list of the parties of record which made appearance and participated in the public hearing.

The Commission received into the record the affidavits and comments filed by the parties, as shown in Appendix "B" attached hereto.

In addition to the affidavits and comments prefiled and received into the record, the Commission heard testimony or public statements from the five natural gas utilities

serving North Carolina in intrastate service, reporting the history and the circumstances leading to the shortage of natural gas in North Carolina and the curtailment of natural gas by the sole gas transmission pipeline supplying North Carolina, to wit, Transcontinental Gas Pipe Line Corporation (Transco).

The Commission requested the parties which were present to group themselves for presentation of similar testimony through group spokesmen and received testimony or statements from parties in the following categories:

(1) Public Health and Welfare

(a) Includes schools, hospitals, nursing homes, orphanages, children's homes, prisons and day care centers.

(2) Construction Industry

(a) Includes brick, glass, masonry units, concrete and asphalt manufacturing.

(3) Textiles

(a) Includes fibers, dyeing, knitting, manufacturing and finishing, and hosiery.

(4) Foods and Farming

(a) Includes tobacco, dairies, food processing, rendering, greenhouses, farmer's co-operatives and flour.

(5) Chemicals and Drugs

(6) Municipal and County Governments and Chambers of Commerce

(7) Other Manufacturing and Commercial

Twenty-one witnesses or counsel for the above customer groups in North Carolina presented statements of their need for natural gas to continue operations and prevent unemployment in North Carolina.

Based upon the affidavits and comments received into the record, as shown in Appendix "B" and the additional statements and testimony received in the public hearing, as shown by the transcript in this proceeding, and the affidavits received since the hearing, as shown in Appendix "C", and public knowledge of the existing energy crisis in the United States, and the Commission's records regarding distribution of natural gas in North Carolina, the Commission makes the following

FINDINGS OF FACT

1. That natural gas is supplied to North Carolina by Transco which is the only source of natural gas in North Carolina.

2. That natural gas received in North Carolina from Transco is distributed in North Carolina by five natural gas distribution utility companies holding franchises issued by the North Carolina Utilities Commission. The natural gas distributed by these public utility companies is subject to regulation of the Utilities Commission and is sold and delivered under Rules and Regulations, tariffs, and rates approved and fixed by the North Carolina Utilities Commission.

3. That Transco does not have sufficient gas supplies to furnish all of its contract volumes to customers on its pipeline which extends from Texas and Louisiana through the Eastern Seaboard States to the New York area. Transco has for the last three years been curtailing its distribution customers on a pro rata basis under interim curtailment plans approved by the Federal Power Commission (FPC). During the heating period 1972-73, the pro rata curtailment averaged approximately 7.08%.

4. That under Orders of the FPC, Transco filed a new permanent curtailment plan to comply with a priority of curtailment established by the FPC which would have curtailed the gas supply to North Carolina's retail utility distribution companies as follows: Piedmont Natural Gas Company, Inc., 27.85%; Public Service Company of North Carolina, Inc., 23.80%; North Carolina Natural Gas Corporation, 20.68%; United Cities Gas Company, 28.00%; and North Carolina Gas Service, 27.83%. The State of North Carolina and the Utilities Commission appealed the Order of the FPC.

5. That on November 9, 1973, the United States Court of Appeals for the District of Columbia granted a "Motion to Stay" the FPC Order which would have imposed said permanent curtailment plan on North Carolina. The Stay preserves the status quo pending hearing on the appeal. Under the status quo, Transco will continue to operate under the interim curtailment plan. Under the interim plan, the curtailment to all Transco customers is presently 16% on a day to day basis, subject to an exemption and additional reallocation to protect firm customers in the Northern states during the colder periods of the heating season. Such reallocation will result in less gas being available to North Carolina industrial interruptible customers for part of the winter months.

6. That during 1972-73 and prior years the interruptible industrial customers and the schools, hospitals, and commercial customers on interruptible schedules were able to obtain alternate fuel supplies, i.e., oil, propane, and

coal, during any periods when the supply of natural gas was interrupted. Such alternate fuels, particularly oil and propane, are now in critically short supply and are subject to Federal allocation. Some of the industrial customers and hospitals and schools on interruptible schedules do not have sufficient alternate fuel supplies to maintain heat and other energy needs for the 1973-1974 heating season.

7. That many North Carolina gas customers have the capability to use an alternate fuel and are classified as interruptible customers. However, in the past their dependence upon alternate fuels has been only for short periods of time in order to allow gas to be used to meet the demands of firm customers that do not have alternate fuel capabilities during periods of extreme weather or other emergency conditions. Consequently, their storage capabilities and alternate fuel buying histories are limited and are inadequate to allow them to obtain enough alternate fuel to sustain a prolonged interruption. In addition, other customers are new and do not have any history of purchasing alternate fuels.

8. That the shortage of natural gas and the shortage of alternate fuels have created an emergency fuel situation in North Carolina. The possible deleterious effects of this emergency situation on the health, safety and welfare of the people and the economy of North Carolina are of such magnitude that they require the Commission to adopt an emergency procedure for allocation of natural gas in North Carolina during the period from December 16, 1973, through April 15, 1974.

9. That the present curtailment Rules adopted by the North Carolina Utilities Commission on April 1, 1971, in Docket No. G-100, Sub 12, as published in NCUC Rule R6-19.2 are inadequate to meet the present emergency shortage of natural gas and alternate fuels, and the Commission finds that the Rules for curtailment priorities must be modified as hereinafter adopted.

10. That priorities for energy must be established to recognize the human needs of the using and consuming public, not only in North Carolina, but in the entire United States of America. Said human needs include gas for hospitals, homes, production and processing of food, plant protection, process gas, feedstock gas, public schools, prisons, nursing homes, day care centers, children's homes, orphanages, rendering plants, sewer plants and gas to prevent unemployment from factory and industry shut-downs due to lack of fuel. It must be recognized that the effect of energy allocation upon the income to North Carolina's families must be a consideration in the design of any energy plans.

CONCLUSIONS

1. The Commission has general rulemaking authority to promulgate Rules and Regulations for operation of public utilities in North Carolina, including the promulgation of necessary Rules for allocating natural gas in North Carolina. North Carolina is faced with a real and substantial emergency due to the shortage of natural gas and the lack of alternate fuels during the present heating season through April 15, 1974.

2. The present Rule R6-19.2 for priorities of curtailment of natural gas service provides that all interruptible service shall first be curtailed and then establishes subsequent priorities for curtailment of firm service, beginning with large industrial firm customers and extending through residential customers, as follows:

(1) All interruptible service
(2) Large industrial firm customers
(3) Small industrial firm customers
(4) Large commercial customers
(5) Small commercial customers
(6) Public schools and hospitals
(7) Residential customers

3. Most of the industrial customers, schools, hospitals, and large commercial customers in North Carolina are served under interruptible schedules. Prolonged curtailment of service to all interruptible customers would have a substantial effect on many industries, hospitals, and schools in North Carolina. All such customers unable to obtain supplies of alternate fuels, i.e., fuel oil, propane and coal would be forced to close down operations during the heating season and the entire economy of North Carolina would be disrupted and a substantial number of citizens of North Carolina would be unemployed.

4. There are gas customers within the State of North Carolina having the capability of using alternate fuels who are technically classed as interruptible customers, many of which have limited storage and limited or no alternate fuel buying history and therefore are unable to sustain prolonged interruptions in gas supplies and, unless gas is made available to these customers, they will be forced to suspend operations. Such suspension would result in unemployment of citizens of this State and hardship upon them and their families.

5. The Commission finds and concludes that it must establish emergency procedures for allocation of natural gas in North Carolina to meet human needs during the coming heating season.

6. The permanent curtailment plan ordered by the FPC but Stayed by the U. S. Court of Appeals for the District of Columbia is based primarily on curtailing the largest volume

users first. This plan does not take into account the hardships that would result from unemployment caused by such curtailments. The Utilities Commission finds and concludes that employment is a human need and must be recognized and protected to the fullest extent possible.

7. The Commission therefore concludes that a new emergency procedure for allocation of natural gas supplies must be adopted as hereinafter set forth in the Ordering Paragraphs and Appendix "D" following.

8. Certain interruptible customers such as hospitals, schools, nursery homes, orphanages, prisons, etc., who are "essential human needs" customers and have relied upon and received gas for the major portion of their energy requirements in past years, should be entitled to essentially firm gas service. However, these customers have alternate fuel capabilities and can supply their energy requirements for short periods of time with these alternate fuels. The Commission therefore concludes that these customers should be served on a temperature sensitive firm rate schedule, so that they receive firm gas during the majority of the year but will be interrupted during times of extreme temperature.

9. In order to protect low supplies of alternate fuels and limit or prevent unemployment due to fuel shortage, the Commission concludes that an immediate, across-the-board 15 percent reduction in the use of natural gas, based upon the December 16, 1972 - April 15, 1973 heating season adjusted for weather, is required of all natural gas customers. It is necessary to impose a penalty on any use above 85 percent of the adjusted test period. If this reduction is achieved, up to 15 percent more gas will be available for use to prevent or limit plant closings.

10. The Commission places all parties on notice that its action of requiring firm customers to reduce use should result in more gas becoming available for the North Carolina interruptible use, and that the State of North Carolina does and will continue to claim this gas for the benefit of the people of the State of North Carolina. In these periods of crisis it is incumbent upon all parties to ensure that hardship is not inflicted on any party due to the lack of cooperation of all parties. Accordingly, this Commission is now in the process of considering similar usage and penalty restrictions upon electric usage in this State. The Commission concludes that it would be in the national interest for each regulatory agency, which has not already done so, to immediately implement measures designed to reduce energy consumption for the purpose of limiting unemployment.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Rule R6-19.2 Establishing Priorities for the Curtailment of Service as heretofore approved on April 1, 1971, by the North Carolina Utilities Commission be and is hereby cancelled and rescinded and that the new Rule R6-19.2 entitled "Emergency Procedures for Allocation of Natural Gas" attached as Appendix "D" be and the same hereby is ordered to become effective upon issuance of this Order.

2. That all provisions of this Order and Rule R6-19.2 "Emergency Procedures for Allocation of Natural Gas" shall be subject to complaint and hearing of any party aggrieved by said provisions or Rule, and said provisions and Rule shall remain in effect during the pendency of said complaint and hearing, unless Stayed by further Order of the Commission.

3. That each gas utility shall design and submit to the Commission a temperature sensitive firm rate schedule applicable to all "essential human needs" customers, as defined in Conclusion Paragraph (8), which would be supplied firm gas service until such time as the temperature falls below a certain predetermined point, at which time these customers would be required to use their alternate fuels. These customers should receive gas for 330 to 350 days annually. These schedules should be filed with the Commission within 10 days of the date of this order.

4. That, during the heating season from December 16, 1973 through April 15, 1974, all customers receiving gas shall reduce their usage by 15 percent below that used in the comparable period of December 16, 1972 through April 15, 1973. Temperature sensitive sales shall be adjusted for differences in weather. Sales to municipalities for resale for firm customers shall be adjusted for growth. The charges for any usage above 85 percent of the adjusted test period shall be the normal rate plus 1) a 100 percent penalty for any usage above 85 percent but below 90 percent of the adjusted test period usage, and 2) a 500 percent penalty for any usage over 90 percent of the adjusted test period usage. The above reduction requirements shall apply to all gas use except plant protection and except that, for residential non-heating use, the reduction requirements shall apply only to gas volumes used in excess of a Base Monthly Usage of 4 MCF.

5. That the gas shifted up in numerical priority as a result of restrictions in use by lower numbered priorities shall be assumed to be used by the last served priority, and the rate charged for such gas shall be $1.25 per MCF plus any penalty incurred under ordering paragraph (4) above.

6. That, in the event gas supplies are sufficient to supply the 85 percent usage in all Priority Classes, gas shall be made available to industrial customers on a priority basis up to 100 percent of the adjusted test period

usage. No gas shall be sold to electric utilities for the purpose of generation of electric power except by prior specific approval of the Commission. Gas sold under the provisions of this paragraph shall be exempt from the penalty provisions of this Order, but shall be subject to a price of $1.25 per MCF.

7. That, because of the peculiar relationship between Farmer's Chemical Company and North Carolina Natural Gas Corporation, the nature of the existing contract, and the potential impact on the agricultural economy of North Carolina, a special meeting is hereby called for Wednesday, December 12, 1973 at 2:00 p.m. in the Commission Hearing Room between the Commission, its Staff, representatives of North Carolina Natural Gas Corporation and Farmer's Chemical for the purpose of resolving the necessary allocation of gas to be made to Farmer's Chemical.

8. In the event that a customer in priority Category 1.1 or 1.2 has good reason to believe that, without relief from the reduction requirements hereinabove provided, such customer will suffer extreme and unreasonable hardship, involving health or safety, such customer may, at any time during the December 16 - April 15 heating season, apply to its gas supplier for relief from such provisions. Relief granted under this section by any gas utility shall be reported weekly by such utility to the Commission.

9. That any revenues received from penalties and excess charges under Ordering Paragraphs (4), (5) and (6) shall be entered into the Alternate Fuel Price Equalization Account.

10. That, for the purposes of daily reporting to Transcontinental Gas Pipe Line Corporation concerning the requirements for the next day's firm demands, each gas utility shall report 100 percent of firm requirements, as though the 15 percent reductions instituted by this Order were not in force.

11. That each gas utility in North Carolina shall publish a copy of the Notice attached hereto as Appendix "E" in a newspaper or newspapers of general circulation in the service area of said gas utility by publication of not less than one-third (1/3) of a page, to be published within seven (7) days of the date of this Order. Further, each gas utility shall mail a copy of the Notice to all customers on its system in North Carolina. The Notice shall be mailed within fourteen (14) days of the date of this Order.

12. That this docket shall remain open for such further orders of the North Carolina Utilities Commission as may be necessary due to changes that may be required as a result of changing condition.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 18

WELLS, COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART. I concur with the efforts of the Commission to equitably allocate the use of natural gas in North Carolina during the current winter-heating season. I feel very strongly, however, that the Commission should have recognized the special needs of food processors in North Carolina by giving such uses a higher priority. Recognizing the critical nature of the food processing chain commands us to take every possible precaution that these facilities be kept operable. I cannot agree that the manufacturer of non-perishable goods should take precedence over food products, and I therefore dissent to the Commission's failure to recognize and properly deal with this aspect of the allocation of natural gas supplies.

Hugh A. Wells, Commissioner

APPENDIX "A"
DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding for Curtailment)
of Gas Service Due to Gas Supply Shortage)

HEARD: Commission Hearing Room, Raleigh, N. C.

DATE: November 20, 1973

APPEARANCES:

For the Distributing Natural Gas Companies:

F. Kent Burns
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Box 1406, Raleigh, N. C. 27602
Appearing for:
Public Service Company of North Carolina, Inc.

Jerry W. Amos
McLendon, Brim, Brooks, Pierce & Daniels
P. O. Drawer U, Greensboro, N. C.
Appearing for: Piedmont Natural Gas Company

James T. Williams, Jr.
McLendon, Brim, Brooks, Pierce & Daniels
P. O. Drawer U, Greensboro, N. C.

Appearing for: Penn & Southern Natural Gas Company
United Cities Gas Company

Donald W. McCoy
McCoy, Weaver, Wiggins, Cleveland & Raper
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Appearing for: North Carolina Natural Gas Corp.

For Natural Gas Consumers:

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Honorable Charles R. Jonas
Jonas & Jonas
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Ovarum Knitting Mills, Inc., and Dynatex, Inc.

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Fibers Division, Moncure Plant.

Alfred S. Bryant
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(As Chairman, Utilities Committee, Not as counsel)

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PaHon, Starnes & Thompson
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Corporation, Southern Devices, Inc.

Ruth Greenspan Bell
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Appearing for: Duke University &
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Corporation, Kenville, Inc., and
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A. G. McDougald, Jr.
Lee Dyeing Company of N. Car., Inc.
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University of North Carolina

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General Plant Manager
International Paper Company
Container Division,
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Howard Rollins
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Charles P. Roberts, Jr.
Dover Textiles
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J. L. Parks, Jr.
President
Minette Mills, Inc.
P. O. Box N, Grover, N. C.
Minette Mills, Inc.
Grover Industries, Inc.
Har-Ray Yarn Mills

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W. E. Rabon
Federal Paper Board Company, Inc.
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Ted Bailey
New Bern Oil and Fertilizer Company
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Senior Vice President
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(Company represented by Counsel)

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J. H. Tomlinson
Olin Corporation
P. O. Box 200, Pisgah Forest, N. C.

J. W. Berry
Southeastern Wire Mfg. Corporation
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Wen Smith, Director
N. C. Association of Launderers & Cleaners
Cary, N. C.

Donald E. Gillespie
Beaunit Corporation
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Research Triangle Park, N. C. 27709

For the Attorney General of North Carolina:

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APPENDIX "B"
DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding for Curtail-) NOVEMBER 20, 1973
ment of Gas Service Due to Gas Supply) HEARING EXHIBIT A

AFFIDAVITS AND COMMENTS FILED

Allied Chemical Corporation
Aluminum Company of America
American Tobacco Company
Anson County Hospital
Ball Corporation
Bandag Incorporated
Biltmore Dairy Farms
Brick Association of North Carolina
Brighthampton Greenhouses
Burke County Chamber of Commerce
Burroughs Wellcome Company
Burlington Industries, Inc.
Cannon Mills Company
Carolina Asphalt Pavement Assn., Inc.
Carolina By-Products Company, Inc.
Carolina Solite Corporation
Central Carolina Farmers, Inc.
Cindy, Inc.
Concrete Products Company
Cone Mills Corporation
Copland, Incorporated
Crown Converting Company
Deep River Dyeing Company, Inc.
Dover Textiles
Duke University & Duke University Medical Center
A. M. Ellis Hosiery Company
Evans Products Company
Fieldcrest Mills, Inc.
General Electric Company
Gilliam Furniture Company
Golden Belt Manufacturing Company
Great Lakes Carbon Corporation
Hanes Dye & Finishing Company

Hatley's Laundry, Inc.
Highlander, Ltd.
Hunt Manufacturing Company
Laurens Glass
Lenoir Memorial Hospital, Inc.
Leslie Fay, Inc.
Lincolnton, City of
Maiden Knitting Mills, Inc.
Mary Elizabeth Hospital
Mayview Convalescent Home
Memorial Hospital of Alamance County
Methodist Home for Children
Minette Mills, Inc.
Mochican Mills, Inc.
North Carolina Gas Service
North Carolina Spinning Mills, Inc.
North Carolina State University
North Carolina Textile Manufacturers Association, Inc.
North Carolina Utilities Commission
North State Prophyllite Co., Inc.
Owens-Illinois, Inc.
Perkinson, Leon B.
Person County Memorial Hospital
Piedmont Natural Gas Co., Inc.
Pine Hall Brick & Pipe Co., Inc.
Pomona Corporation
Public Service Co. of N. C., Inc.
Reichhold Chemicals, Inc.
Roanoke-Chowan Hospital
Rowan Memorial Hospital, Inc.
Salem Academy & College
Sandhills Community College
Schlitz, Jos., Brewing Company
Southeastern Industries, Inc.
Sperry Rand Corporation
Statesville Chamber of Commerce
Statesville Flour Mills
John L. Stickley & Company
Stimpson Hosiery Mills
Stokes-Reynolds Memorial Hospital
Superba Print Works
Superior Dairies, Inc.
Swift and Company
Talon Division of Textron
Textiles, Incorporated
Thonet Industries, Inc.
Tipper Tie Division of Rheem Manufacturing Company
Uniglass Industries
United Cities Gas Company
University of North Carolina - Chapel Hill
Wake County Hospital Systems, Inc.
West Knitting Corporation
Westinghouse Electric Corporation
Whittaker Knitting Mills' Dyeing and Finishing Plant
Wiscassett Mills Company
Wix Corporation

APPENDIX "C"
DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding for Curtailment)
of Gas Service Due to Gas Supply Shortage)

FILINGS RECEIVED AFTER HEARING OF NOVEMBER 20, 1973

Aluminum Company of America
American Tobacco Company
Ball Corporation
Baxter-Kelly & Faust, Inc.
Beaufort County Hospital
Beaunit Corporation
Brick Association of North Carolina
Burroughs Wellcome Company
Chicopee Manufacturing Company
Carnation Company
Carolina Mills, Inc.
Catawba Memorial Hospital
China Grove Cotton Mills
Concrete Products Company of Asheville
Consolidated Laundry & Cleaners of America, LTD
Corrugated Container Manufacturers Group
Crompton-Pilot Mills, Inc.
Crown Converting Company
Dover Textiles
Dynatex, Inc. of Asheville
Federal Paper Board Company, Inc.
Federal Spinning Corporation
General Electric Company
Gordon Food Company
Golden Belt Manufacturing Co.
Hunt Manufacturing Company
Hunter Jersey Farms, Inc.
Huyck Corporation
Jefferies Southern Processors, Inc.
Kenville, Inc.
Lee Dyeing Co. of N. C., Inc.
Leslie Fay, Inc.
Mid-State Farms Cooperative Co.
Minette Mills, Inc.
Mohican Mills, Inc.
N. C. Baptist Hospitals, Inc.
N. C. Hospital Association
N. C. Natural Gas Company
N. C. Poultry Federation, Incorporated
N. C. Spinning Mills
Owens-Illinois, Inc.
Piedmont Natural Gas Company
Pine Hall Brick and Pipe Co., Inc.
Pine State Creamery Company
Pitt County Memorial Hospital, Inc.
Pomona Corporation

Public Service Co. of N. C., Inc.
Quorum Knitting Mills, Inc.
Rheem Manufacturing Company
Roanoke-Chowan Hospital
Sayles Biltmore Bleacheries, Inc.
St. Joseph's Hospital
The Sherwin-Williams Company
Sou-Tex Chemical
Spring Mills, Inc.
Statesville Flour Mills Company
Superba Print Works of Mooresville, Inc.
The Watts Hospital
University of N. C., Chapel Hill
United Cities Gas Company
United Dairies
Wansona Manufacturing Corporation
Wix Corporation

APPENDIX "D"

Rule R6-19.2. EMERGENCY PROCEDURES FOR ALLOCATION OF NATURAL GAS

In the event that the volumes of natural gas available to any North Carolina gas distribution company on any given day are insufficient to supply the demands of all of the customers of that company, that company shall curtail gas service to individual customers in the following order of priorities:

Priority	Class	Description
Curtailed First	9.	Interruptible requirements of more than 10,000 MCF per day where alternate fuel capabilities can meet such requirements
	8.	Interruptible requirements of more than 3,000 MCF per day, but less than 10,000 MCF per day where alternate fuel capabilities can meet such requirements
	7.	Interruptible requirements of intermediate volumes (from 1500 MCF per day through 3,000 MCF per day) where alternate fuel capabilities can meet such requirements
	6.	Interruptible requirements of more than 300 MCF per day, but less than 1500 MCF per day where alternate fuel capabilities can meet such requirements
O R D E R	5.	Firm industrial requirements for large volume (3,000 MCF or more per day) boiler fuel use where alternate fuel capabilities can meet such requirements
	4.	Firm industrial requirements for boiler

O F		fuel use at less than 3,000 MCF per day, but more than 1,500 MCF per day where alternate fuel capabilities can meet such requirements
C U R T A I L M E N T	3.5	Interruptible requirements up to 300 MCF per day
	3.4	Interruptible requirements where propane is the only alternate fuel for that portion of interruptible requirements where propane is necessary for process
	3.3	Firm industrial boiler fuel requirements over 1,500 MCF per day where alternate fuel capabilities cannot meet requirements
	3.2	Firm industrial boiler fuel requirements from 300 MCF per day through 1,500 MCF per day
	3.1	Firm industrial non-boiler fuel requirements not in Priority 2.
	2.4	Firm industrial small volume requirements up to 300 MCF per day
	2.3	Large commercial (more than 50 MCF on peak day) other than essential human needs requirements
	2.2	Firm industrial for feedstock or process
	2.1	Firm industrial for plant protection
	1.2	Essential human requirements (i.e. hospitals, schools, nursing homes, orphanges, prisons, etc.) which have alternate fuel
Curtailed last	1.1	Residential, essential human needs without alternate fuel, and small commercial (less than 50 MCF on peak day)

a. Gas shall not be considered available for any interruptible Priority Class until requirements for current demands of numerically lower Priority Classes and necessary storage for protection of firm service and system integrity are met.

b. All customers within a Priority Class must be interrupted completely prior to the interruption of any customer in numerically lower Priority Class.

c. In the event that it is not necessary to completely interrupt all customers in a Priority Class, each

customer in that class shall be curtailed on a pro rata basis for the season (Heating -- November 16-April 15) (Summer -- April 16-November 15).

d. Where there is a partial supply of gas available to an interruptible Priority Class, and a customer within that class certifies in writing that it has exhausted all alternate fuel supplies, and that it cannot operate without a supply of natural gas, then that customer shall have first priority for use of any gas available to that Priority Class. If gas is sold under these conditions, the utility shall inform the Commission, on a daily basis, of the name of each customer involved, its usage volumes, its major product line, its Standard Industrial Classification Code number, the number of employees affected, and when alternative fuel supplies are expected. If the gas available to a Priority Class is insufficient to supply all customers in that class which have exhausted their alternate fuel supplies, all such customers shall share the available gas on a pro rata basis for the season (heating or summer), but on any given day one or more of such customers may be interrupted.

e. Gas sold under section "d" above, to customers which have exhausted alternate fuel supplies shall be priced at a rate equal to the current market price of the alternate fuel plus fifteen (15) percent. This market price shall be established daily. Any revenues obtained from gas sold under this paragraph in excess of the revenue which would have been obtained under the applicable published rate schedules shall be placed in a special account labeled "Alternate Fuel Price Equalization Account" and shall be applied to first meet extraordinary costs of administering these emergency procedures and then to offset any tracking increases of Transcontinental Gas Pipe Line Corporation due to curtailment of gas supplies.

APPENDIX "E"
DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding for	)	NOTICE OF EMERGENCY
Curtailment of Gas Service	)	PROCEDURE FOR ALLOCATION
Due to Gas Supply Shortage	)	OF NATURAL GAS

NOTICE TO THE PUBLIC. North Carolina's five natural gas distributing companies, of which your supplier is one, purchase all of their gas from Transcontinental Gas Pipe Line Corporation (Transco). Transco is the only source of natural gas in North Carolina. Transco is subject to the

regulation and control of the Federal Power Commission (FPC); your supplier is subject to the regulation and control of the North Carolina Utilities Commission (NCUC).

For several years Transco has not had sufficient gas supplies to furnish 100% of all daily contract volumes along its entire pipeline, which extends from Texas to the Eastern Seaboard States, including North Carolina, up to New York. As a result, Transco has, for the last three years, been reducing its daily deliveries of gas to all its distribution companies. The impact of such reduction is most severe during the peak winter heating season from November 15 through April 15. Such reduction has been on an equal pro rata basis under interim plans heretofore approved by FPC. For the winter heating season last year this reduction was approximately 7.08%.

This year, even under the interim reduction plan, the amount of reduced sales by Transco to North Carolina distributors, including your supplier, would average approximately 16% or almost 10% more than last year. The FPC, earlier this year, ordered into effect a plan which would have further reduced the supply of natural gas flowing into North Carolina. This FPC plan is presently being delayed for an indefinite time by Court order. Such plan, however, might go into effect before the end of the winter heating season.

The previous years' curtailment by Transco caused no major disruptions in North Carolina because (1) the curtailment was only 7%, and (2) the natural gas customers who lost their supplies of gas had alternate energy sources such as propane and fuel oil available for use. This year the curtailment will be, at least, approximately 16% and the major alternate fuels are also in scarce supply. The effect of a prolonged cutoff of natural gas to those customers who have some alternate fuel capability, chiefly large industrial customers, would mean that, when their alternate supplies were exhausted, such customers would have to close their plants and factories, resulting in massive unemployment. The consequences to North Carolina's economy would be catastrophic.

For these reasons, NCUC has held hearings and has revised its former categories of priorities during periods of reduced gas availability. These new categories are shown below in the section entitled "Rule R6-19.2. Emergency Procedures for Allocation of Natural Gas." In addition, the emergency plans enacted by NCUC Order will have the following effects on citizens of North Carolina:

1. Every natural gas user in the State of North Carolina must immediately reduce consumption of gas by 15% based on last year's usage as adjusted for weather conditions. Heavy penalities through increased rates are provided for those who use more than 85% of last year's winter season consumption as adjusted.

2. Such penalty rates shall be the following:

a. For usage more than 85% but not exceeding 90% of last year's usage as adjusted for weather conditions, the rate shall be the normal rate plus a 100% penalty for all usage in excess of 85%.

b. For usage more than 90% of last year's usage adjusted for weather conditions, the rate shall be the normal rate plus a 500% penalty for all usage in excess of 90%.

3. The savings of gas thus generated shall be redistributed to industrial customers based on usage and need so that the burdens of this shortage can be fairly and evenly distributed and unemployment minimized.

4. The highest priority is reserved for essential human needs such as residences, hospitals, nursing homes and food processing. To the extent such customers have alternate fuel supplies available, they will be required, during periods of extreme cold, to use them.

5. Those customers who benefit by having additional gas made available to them will have to pay a much higher rate for such gas than their present rate. Any excess revenues from penalties imposed will be placed in special accounts for the benefit of all customers.

6. Special relief and emergency provisions are provided for those upon whom this plan would place an excessive burden which threatens their health or safety.

This unprecedented step has become necessary to ensure that every gas consumer in North Carolina will bear some of the burden of discomfort during the shortage and that the fewest possible consumers will experience a severe or disastrous hardship. For further information regarding these emergency plans, contact your natural gas supplier.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding for)
Curtailment of Gas Service) ORDER OF
Due to Gas Supply Shortage) CORRECTION

BY THE COMMISSION: It appearing to the Commission that Henry E. Poole, Counsel for Burroughs Wellcome Co., 3030 Cornwallis Drive, Research Triangle Park, North Carolina, entered an appearance in this matter as counsel for said company, and it further appearing that the appearances set forth in the Commission's Interim Order of December 5, 1973 inadvertently entered said company's appearance as "consumer company not represented by counsel". The Commission is of the opinion that such appearance should be clarified by the issuance of this Order of Correction.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Commission's Interim Order of December 5, 1973, be corrected to properly reflect the appearance of Burroughs Wellcome Co., through its counsel as follows:

Henry E. Poole, Esq.
3030 Cornwallis Drive
Research Triangle Park, North Carolina
Appearing for: Burroughs Wellcome Co.

2. That the Chief Clerk is herewith directed to maintain a copy of this Order as a part of the Commission's Interim Order of December 5, 1973.

ISSUED BY ORDER OF THE COMMISSION.

This 7th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding for) FURTHER INTERIM ORDER
Curtailment of Gas Service) ESTABLISHING EMERGENCY
Due to Gas Supply Shortage) PROCEDURE FOR ALLOCATION
) OF NATURAL GAS

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Hugh A. Wells, Ben E. Roney, and Tenney I. Deane, Jr.

BY THE COMMISSION: This proceeding was instituted by Order issued November 6, 1973 scheduling a hearing on Rulemaking Proceeding for Curtailment of Gas Service Due to Gas Supply Shortage. The proceeding was heard on November 20, 1973, as scheduled.

Based upon the affidavits and comments received into the record the additional statements and testimony received in the public hearing, the public knowledge of the existing energy crisis in the United States, and the Commission's records regarding distribution of natural gas in North Carolina, the Commission, on December 5, 1973, issued its Order requiring reductions in gas use. Paragraph 4 of that Order is as follows:

> "That, during the heating season from December 16, 1973 through April 15, 1974, all customers receiving gas shall reduce their usage by 15 percent below that used in the comparable period of December 16, 1972 through April 15, 1973. Temperature sensitive sales shall be adjusted for differences in weather. Sales to municipalities for resale for firm customers shall be adjusted for growth. The charges for any usage above 85 percent of the adjusted test period shall be the normal rate plus 1) a 100 percent penalty for any usage above 85 percent but below 90 percent of the adjusted test period usage, and 2) a 500 percent penalty for any usage over 90 percent of the adjusted test period usage. The above reduction requirements shall apply to all gas use except plant protection and except that, for residential non-heating use, the reduction requirements shall apply only to gas volumes used in excess of a Base Monthly Usage of 4 MCF."

Since the issuance of the December 5, 1973 Order, the Commission Staff has been in almost continuous session, attempting to devise the most effective and equitable methods of implementing the desired objective of substantially reducing gas use by all parties in order to make gas available for the purpose of preventing unemployment due to fuel shortages. The penalty procedure previously ordered by the Commission can be expected to produce the greatest reductions in gas use of all the procedures considered. However, the penalty procedure is costly to implement and is not applicable to new customers. The penalty provisions of that procedure can be extended to new customers at considerable expense. The penalty procedure does have an extremely favorable characteristic in that those customers who do reduce their gas use by the required amounts do not experience an increase in rates. All other plans or procedures considered would be less costly to implement, and would be applicable to all customers, but would cause an increase in rates to those who

had cut back as well as to those who had not reduced their consumption.

The Commission is receiving reports on a daily basis showing the reductions in gas use which are now being experienced by the various gas distribution systems serving North Carolina. The Commission notes that the desired reductions in gas use for which its procedures had been designed are presently being accomplished. Because of the great expense necessary for the administration of the penalty procedure, it would appear to be overly burdensome upon the people of North Carolina to require the implementation of the penalty procedure at a time in which the desired reductions in gas use are being achieved.

The Commission concludes that it is in the best interest of the people of North Carolina that the date of implementation of any such procedures be postponed temporarily subject to weekly review by the Commission for the remainder of the heating season.

Because the rates for interruptible gas service are less than the rates for firm service, the present shift in sales from firm customers to interruptible customers is resulting in a loss of revenues to the gas distribution companies. The Commission is of the opinion that those customers which curtail their gas use, in order to make gas available for prevention of unemployment, should not have to bear the burden of these losses in revenues, and that an across-the-board surcharge should be placed on rates charged to all interruptible customers with the exception of primary and secondary schools. This surcharge should be placed into effect for gas use from the effective tariff date through April 30, 1974. The revenues collected should be subject to refund pending thorough documentation and investigation of the actual shifts in gas consumption during the applicable period.

IT IS, THEREFORE, ORDERED:

1. That the Commission reaffirms the Findings of Fact and Conclusions from its Order entered herein on December 5, 1973, except as modified herein, and reaffirms the imperative need for a 15% curtailment in use of natural gas in North Carolina in order to prevent unemployment in industries relying upon natural gas for continued operation, and the Commission to that end calls upon all natural gas customers in North Carolina to curtail their use of natural gas by 15% below normal use of natural gas, and calls upon all residential, commercial and industrial customers using natural gas for space heating to reduce the temperature controls and thermostats by six degrees, or equivalent, below normal heating temperature for the respective customer involved, as the same reduction as applicable to oil heat customers. The Commission temporarily postpones the publication of penalty provisions for enforcement of such 15% curtailment through said reduced temperature controls,

so long as the total reduction in natural gas use by residential, commercial and industrial customers attains said 15% curtailment on a voluntary or customer regulated conservation curtailment of natural gas use. The penalty provisions contained in paragraph 4 and all related paragraphs of the Commission's Order of December 5, 1973, are postponed pending said application of curtailments on an individual customer basis through said customer application of temperature reductions. During said period of suspension of said penalties, all petitions and motions for alternative methods of providing incentive or penalties for enforcement of said 15% penalty may be filed by parties of interest in this proceeding.

2. That each gas distribution company under the jurisdiction of this Commission shall weekly submit reports showing the extent of customer reduction in usage for review by the Commission.

3. That each gas distribution company under the jurisdiction of this Commission shall compute the amount of revenues expected to be lost, during the period from the date of this Order through April 30, 1974, as a result of the shifting of gas from firm sales to interruptible sales. Each company shall design and file with the Commission a surcharge, with Undertaking for refund, to be applied to all interruptible sales, exclusive of those to primary and secondary schools, which will recover revenues equal to the expected loss due to shifted sales. Such surcharge shall be applicable to all gas sold from the effective date of the surcharge through April 30, 1974. The surcharge shall become effective upon one day's notice. Revenues derived from this surcharge shall be subject to refund pending review by this Commission at the end of the heating season.

4. That each gas utility in North Carolina shall publish a copy of the Notice attached hereto as Appendix "A" in a newspaper or newspapers of general circulation in the service area of said gas utility by publication of not less than one-third (1/3) of a page, to be published within seven (7) days of the date of this Order. Further, each gas utility shall mail a copy of the Notice to all customers on its system in North Carolina. The Notice shall be mailed within fourteen (14) days of the date of this Order.

5. That all provisions of this Order shall be subject to complaint and hearing of any party aggrieved by said provisions, and said provisions shall remain in effect during the pendency of said complaint and hearing, unless stayed by further Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rulemaking Proceeding for Curtailment of Natural Gas Service Due to Supply Shortage	) FURTHER NOTICE OF EMERGENCY) PROCEDURE FOR ALLOCATION) OF NATURAL GAS

NOTICE TO THE PUBLIC. North Carolina's five (5) natural gas distributing companies purchase all of their gas from Transcontinental Gas Pipe Line Corporation (Transco). Transco is the only source of natural gas in North Carolina. Transco is subject to the regulation and control of the Federal Power Commission (FPC); North Carolina suppliers are subject to the regulation and control of the North Carolina Utilities Commission (NCUC).

For several years Transco has not had sufficient gas supplies to furnish 100% of all daily contract volumes along its entire pipeline, which extends from Texas to the Eastern Seaboard States, including North Carolina, up to New York. As a result, Transco has, for the last three years, been reducing its daily deliveries of gas to all its distribution companies. The impact of such reduction is most severe during the peak winter heating season from November 15 through April 15. Such reduction has been on an equal pro rata basis under interim plans heretofore approved by FPC. For the winter heating season last year this reduction was approximately 7.08%.

This year, even under the interim reduction plan, the amount of reduced sales by Transco to North Carolina distributors, including your supplier, would average approximately 16% or almost 10% more than last year. The FPC, earlier this year, ordered into effect a plan which would have further reduced the supply of natural gas flowing into North Carolina. This FPC plan is presently being delayed for an indefinite time by Court order. Such plan, however, might go into effect before the end of the winter heating season.

The previous years' curtailment by Transco caused no major disruptions in North Carolina because (1) the curtailment was only 7%, and (2) the natural gas customers who lost their supplies of gas had alternate energy sources such as propane and fuel oil available for use. This year the curtailment will be, at least, approximately 16% and the major alternate fuels are also in scarce supply. The effect

of a prolonged cutoff of natural gas to those customers who have some alternate fuel capability, chiefly large industrial customers, would mean that, when their alternate supplies were exhausted, such customers would have to close their plants and factories, resulting in massive unemployment. The consequences to North Carolina's economy would be catastrophic.

For these reasons, NCUC has held hearings and has received numerous affidavits from industries and gas distributing companies regarding the extent and effects of the natural gas shortage. In order to reduce or avoid the possibility of massive unemployment, NCUC has passed an Emergency Order which will have the following effects on citizens of North Carolina:

1. Every natural gas user in the State of North Carolina is asked to reduce consumption of gas by 15% based on last year's usage as adjusted for weather conditions. To accomplish these reductions, each residential, commercial and industrial natural gas heating user should reduce his thermostat by six degrees (6°). Additional measures for the conservation of energy include closing off unnecessary or little-used rooms or portions of buildings, improving the insulation of the building involved wherever possible and keeping drapes or blinds closed in those rooms into which the sun is not directly shining. Users of natural gas for non-heating purposes, should take such measures as are necessary to conserve energy use.

2. The savings of gas thus generated shall be redistributed to industrial customers based on usage and need so that the burdens of this shortage can be fairly and evenly distributed and unemployment minimized.

3. Those customers who benefit by having additional gas made available to them will have to pay a higher rate for such gas than their present rate. Any excess revenues from the higher rates will be subject to refund pending an audit and investigation of revenues of the gas companies at the conclusion of the heating season.

4. The Commission Order regarding emergency natural gas curtailment which was dated December 5, 1973, required heavy penalties on use of natural gas in excess of 85% of last year's use as adjusted for weather conditions. The Commission is receiving reports on a daily basis showing the reductions in natural gas use which are now being experienced by the various gas distribution systems serving North Carolina. The Commission notes that the desired reductions in gas use for which its December 5, 1973, penalty procedures had been designed are presently being accomplished. Because of the expense necessary for the administration of the previously ordered penalty procedure, it would appear to be overly burdensome upon the people of North Carolina to require the implementation of the penalty

procedure at a time in which the desired reductions in natural gas use are being achieved.

For these reasons, the Commission has postponed the penalty provisions of its Order of December 5, 1973, and will review the natural gas use in North Carolina each week for the remainder of the heating season. In the event that the present level of reduction does not continue, the Commission must again consider the immediate implementation of substantial penalties or other such measures as may be deemed appropriate to cause the necessary reductions in natural gas use.

The Commission requests the continuance of conservation of energy by all energy users in our State in order that we might prevent or reduce unemployment caused by fuel shortages.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 19

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 AMENDMENTS TO THE MINIMUM FEDERAL SAFETY STANDARDS

BY THE COMMISSION. The Office of Pipeline Safety of the United States Department of Transportation promulgated Minimum Federal Safety Standards for pipeline facilities and the transportation of gas in 49 CFR 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.

On November 15, 1971, the North Carolina Utilities Commission issued an order under Docket No. G-100, Sub 15 adopting miscellaneous amendments to the Minimum Federal Safety Standards and Corrosion Control Standards.

On December 20, 1972 the North Carolina Utilities Commission issued an order under Docket No. G-100, Sub 17

adopting miscellaneous amendments to the Minimum Federal Safety Standards.

Under the provisions of G.S. 62-50, the North Carolina Utilities Commission has jurisdiction over portions of interstate natural gas pipelines within North Carolina and has authority over intrastate natural gas companies to the extent therein stated and intrastate natural gas utilities and minicipal gas facilities. Since December 31, 1972, the Department of Transportation has issued the following amendments to the Minimum Federal Safety Standards 49 CFR Part 192.

(1) 49 CFR Part 192 - Amendment to Section 192.55(a) (2) and (b) (2), Qualifications for Pipe; Amendment to Section 192.65, Transportation of Pipe; Amendment to Section 1 of Appendix A revising paragraph D to correct address change, Amendment to Section 2 of Appendix A revising subparagraphs A.1, 2, 3 and 5, Documents incorporated by reference; Amendment to Section 1 of Appendix B, Listed Pipe Specifications; Amendment to Appendix B adding new Section III, Steel Pipe Manufactured before November 12, 1970 to Early Additions of the Listed Specifications. Issued February 22, 1973, Federal Register, Volume 38, No. 35.

(2) 49 CFR Part 192 - Amendment to Section 192.3, Service Line Definition. Issued April 10, 1973, Federal Register, Vol. 38, No. 68.

(3) 49 CFR Part 192 - Amendment to Section 192.65 (g) (1), Odorization of Gas. Issued June 7, 1973, Federal Register, Vol. 38, No. 109.

The Commission is of the opinion that in many instances the safety standards and the 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 review of this specific legislative mandate under the provisions of G.S. 62-2 and G.S. 62-50 that the above stated amendments and new additions as adopted by the Department of Transportation in 49 CFR Part 192 should be adopted and made applicable to such pipeline facilities and facilities of natural gas under the jurisdiction of this Commission. Accordingly, under authority of G.S. 62-31,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the following miscellaneous amendments and additions as listed to the Minimum Federal Safety Standards pertaining to gas pipeline safety and the transportation of natural gas as adopted in 49 CFR Part 192 as are in effect as of the date of this order be, and the same hereby are, adopted by the Commission to be applicable to all natural gas facilities under its jurisdiction 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.

(1) 49 CFR Part 192 - Amendment to Section 192.55(a) (2) and (b) (2), Qualifications for Pipe; Amendment to Section 192.65, Transportation of Pipe; Amendment to Section 1 of Appendix A revising paragraph D to correct address change, Amendment to Section 2 of Appendix A revising subparagraphs A.1, 2, 3 and 5, Documents incorporated by reference; Amendment to Section 1 of Appendix B, Listed Pipe Specifications; Amendment to Appendix B adding new Section III, Steel Pipe Manufactured before November 12, 1970 to Early Additions of the Listed Specifications. Issued February 22, 1973, Federal Register, Volume 38, No. 35.

(2) 49 CFR Part 192 - Amendment to Section 192.3, Service Line Definition. Issued April 10, 1973, Federal Register, Vol. 38, No. 68.

(3) 49 CFR Part 192 - Amendment to Section 192.65 (g) (1), Odorization of Gas. Issued June 7, 1973, Federal Register, Vol. 38, No. 109.

2. That a copy of the amendments attached hereto as Appendix A be mailed to all natural gas utilities and municipalities under the jurisdiction of the North Carolina Utilities Commission.

3. That a copy of this order be mailed to all natural gas utilities and municipalities under the jurisdiction of the North Carolina Utilities Commission.

4. That a copy of this order be transmitted to the Department of Transportation, Washington, D. C.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A

§ 192.3 Definitions

* * * * * * * * * * * *

"Service line" means a distribution line that transports gas from a common source of supply to (1) a customer meter or the connection to a customer's piping, whichever is farther downstream, or (2) the connection to a customer's piping if there is no customer meter. A customer meter is

the meter that measures the transfer of gas from an operator to a consumer.

* * * * * * * * * * * *

(Sec. 3, Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1692, § 1.58(d), regulations of the Office of the Secretary of Transportation, 49 CFR 1.58(d); redelegation of authority to the Director, Office of Pipeline Safety, set forth in appendix A of part 1 of the regulations of the Office of the Secretary of Transportation, 49 CFR Part 1)

Issued in Washington, D.C. on April 5, 1973.

Joseph C. Caldwell,
Director,
Office of Pipeline Safety.

[FR Doc. 73-6842 Filed 4-9-73; 8:45 am]

§ 192.55 Steel pipe.

(a) * * *
(2) It meets the requirements of--
(i) Section II of Appendix B to this part; or
(ii) If it was manufactured before November 12, 1970, either section II or III of Appendix B to this part; or

* * * * * * * * * * * *

(b) * * *
(2) It meets the requirements of--
(i) Section II of Appendix B to this part; or
(ii) If it was manufactured before November 12, 1970, either section II or III of Appendix B to this part;

* * * * * * * * * * * *

2. Section 192.65 is revised to read as follows:

§ 192.65 Transportation of pipe.

In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, no operator may use pipe having an outer diameter to wall thickness ratio of 70 to 1 or more, that is transported by railroad unless--

(a) The transportation was performed in accordance with API RP5L1; or

(b) In the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Subpart J of this part to at least 1.25 times the maximum allowable operating pressure if it is to be installed in a class 1 location and to at least 1.5 times the maximum allowable

operating pressure if it is to be installed in a class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, the test pressure must be maintained for at least 8 hours.

3. Section I of Appendix A is amended by revising paragraph B to read as follows:

* * * * *

B. American Petroleum Institute (API), 1801 K Street NW., Washington, DC 20006, or 300 Corrigan Tower Building, Dallas, Tex. 75201.

4. Section II of Appendix A is amended by revising subparagraphs A.1, 2, 3, and 5 to read as follows:

II. Documents incorporated by reference.
A. American Petroleum Institute:
1. API Standard 5L "API Specification for Line Pipe" (1967, 1970, 1971 editions, 1971 edition plus Supplement 1).
2. API Standard 5LS "API Specification for Spiral-Weld Line Pipe"(1967, 1970, 1971 editions, 1971 edition plus Supplement 1).
3. API Standard 5LX "API Specification for High-Test Line Pipe" (1967, 1970, 1971 editions, 1971 edition plus Supplement 1).
5. API Standard 5A "API Specification for Casing, Tubing, and Drill Pipe" (1968, 1971 editions).

* * * * *

5. Section I of Appendix B is amended by revising the first three items to read as follows:

I. Listed pipe specifications. Numbers in parentheses indicate applicable editions.
API 5L--Steel and iron pipe (1967, 1970, 1971, 1971 plus Supplement 1).
API 5LS--Steel pipe (1967, 1970, 1971, 1971 plus Supplement 1).
API 5LX--Steel pipe (1967, 1970, 1971, 1971 plus Supplement 1).

* * * * *

6. Appendix B is amended by adding a new section III at the end thereof, to read as follows:

APPENDIX B--QUALIFICATION OF PIPE

* * * * *

III. Steel pipe manufactured before November 12, 1970, to earlier editions of listed specifications. Steel pipe manufactured before November 12, 1970, in accordance with a specification of which a later edition is listed in section

I of this appendix, is qualified for use under this part if the following requirements are met:

A. Inspection. The pipe must be clean enough to permit adequate inspection. It must be visually inspected to ensure that it is reasonably round and straight and that there are no defects which might impair the strength or tightness of the pipe.

B. Similarity of specification requirements. The edition of the listed specification under which the pipe was manufactured must have substantially the same requirements with respect to the following properties as a later edition of that specification listed in section I of this appendix:

(1) Physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and yield to tensile ratio, and testing requirements to verify those properties.

(2) Chemical properties of pipe and testing requirements to verify those properties.

C. Inspection or test of welded pipe. On pipe with welded seams, one of the following requirements must be met:

(1) The edition of the listed specification to which the pipe was manufactured must have substantially the same requirements with respect to nondestructive inspection of welded seams and the standards for acceptance or rejection and repair as a later edition of the specification listed in section I of this appendix.

(2) The pipe must be tested in accordance with Subpart J of this part to at least 1.25 times the maximum allowable operating pressure if it is to be installed in a class 1 location and to at least 1.5 times the maximum allowable operating pressure if it is to be installed in a class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Subpart J of this part, the test pressure must be maintained for at least 8 hours.

(Sec. 3, Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1672; § 1.58(d), regulations of the Office of the Secretary of Transportation, 49 CFR 1.58(d); the redelegation of authority to the Director, Office of Pipeline Safety, set forth in Appendix A to Part 1 of the regulations of the Office of the Secretary of Transportation, 49 CFR Part 1)

Issued in Washington, D. C., on February 14, 1973.

Joseph C. Caldwell,
Director, Office of
Pipeline Safety.

[FR Doc. 73-3322 Filed 2-21-73; 8:45 am]

§ |92.625 Odorization of gas.

* * * * *

(g) * * *
(|) January |, |974; or

* * * * *

This amendment is issued under the authority of section 3 of the Natural Gas Pipeline Safety Act of |968 (49 U.S.C. |672), § |.58(d) of the regulations of the Office of the Secretary of Transportation (49 CFR |.58(d), and the redelegation of authority to the Director, Office of Pipeline Safety set forth in appendix A of part | of the regulations of the Office of the Secretary of Transportation (49 CFR, pt. |).

Issued in Washington, D.C. on May 3|, |973.

Joseph C. Caldwell,
Director,
Office of Pipeline Safety.

[FR Doc. 73-||359 Filed 6-6-73; 8:45 am]

DOCKET NO. P-|00, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Establishment of Rule R9-4 as a New Addition to Chapter 9 of the Commission's Rules and Regulations Pertaining to Telephone and Telegraph Companies Pursuant to G. S. 62-3|.	)) ORDER TO) ESTABLISH) RULE

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law, hereby gives notice of its intention to establish Rule R9-4 as a new addition to Chapter 9 of the Commission's Rules and Regulations pertaining to telephone and telegraph companies pursuant to G. S. 62-3|, the rule to be as follows:

Rule R9-4. Filing of Telephone and Telegraph tariffs and maps.

(a) Definition. The term "tariff" as used herein means a publication containing rates, charges, rules and regulations of the telephone or telegraph public utility. The term "map" as used herein means a map which is used to define service and rate areas.

(b) Requirements as to size, form, identification, and filing of tariffs.

(1) All tariffs except maps shall be in loose leaf form of size eight and one-half inches by eleven inches and shall be plainly printed or reproduced on paper of good quality.

(2) Each regulated telephone utility in North Carolina shall have on file with the North Carolina Utilities Commission, for each exchange it serves a map of scale one inch equals one mile showing exchange service area, base rate area, and if any exist, rural zones. Said maps, when originally drawn, shall be made from current North Carolina State Highway Maintenance maps.

(3) A margin of not less than three-fourths inch without any printing thereon shall be allowed at the binding edge of each tariff sheet.

(4) Tariff sheets are to be numbered consecutively by section, sheet, and revision number. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the company and the name of the tariff and title of the section in a consistent manner.

(5) When it is desired to make changes in the rates, rules, maps, or other provisions of the tariff, an official tariff filing shall be made to the North Carolina Utilities Commission addressed as follows: North Carolina Utilities Commission Telephone Rate Section, P. O. Box 991, Raleigh, North Carolina 27602.

(c) Transmittal Letters. Each tariff filing shall include a letter of transmittal (five copies). All explanations shall be made in such form as to be readily understood by persons not fully familiar with technical language. Each transmittal letter shall include:

(1) A list of sheets filed by section, sheet and revision.

(2) A paragraph describing the type of filing (new service, change of regulation, rate increase, rate reduction, etc.).

(3) A paragraph or more explaining the reasons necessary and a full explanation of each change, new offering, new regulation, etc., and details of operations of each new service.

(4) A paragraph giving a full explanation of the impact of each proposed change on existing subscribers.

(5) A paragraph giving the estimated gross revenue and net revenue that a new service will produce annually over a three year period, explaining how the estimate was obtained.

[NOTE] Each tariff revision of wording, rearrangement, other changes, additions or deletions shall be explained in consecutive order in the transmittal letter in the sequence in which they appear.

Each tariff filing shall be treated as original in that all required information shall be submitted with each filing regardless if similar or identical information such as cost study data or technical data has been submitted with previous filings.

Unrelated new service offerings shall not be included in the same tariff filing. Neither shall unrelated tariff changes be included in the same tariff filing.

One copy of technical explanation, marketing data or other information necessary to describe the proposed additions or changes shall be included as a part of the tariff filing.

(d) Cost Study Data. Full cost data (2 copies) shall be submitted for each new or changed rate by any telephone utility with total stations in service in excess of 4,000. If full cost data is not available, explanation should be given including the available data, the reason full data is not available and on what information the proposed rates are based.

Any telephone utility with less than 4,000 total stations in service shall submit cost data or file a rate already on file by some other company in North Carolina. Should the latter choice be made, explanation shall be included as to the name of the company from whom the rates were copied and the tariff section, sheet and item number of the other company's tariff.

Supporting data and/or explanations of how dollar amounts appearing on cost studies were obtained shall be included.

(e) Notice of Change; Special Permission; Symbols. Each tariff filing shall include new or revised tariff sheets (five copies) with notations in the right hand margin indicating each change made on these sheets. Notations to be used are (c) to signify change in

regulation, (D) to signify discontinued rate or regulation, (I) to signify a rate increase, (N) to signify a new rate or regulation, (R) to signify a rate reduction, (T) to signify a change in text, but no change in rate or regulation. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the next number of revision from the existing sheet and should cancel the existing sheet.

Any tariff filings to make changes of existing maps shall include three (3) copies of said map plus a location map so marked with the proposed changes indicated in red pencil in lieu of the right hand margin notation specified in the preceding paragraph.

All tariff filings shall be received at the Commission offices at least 30 days before the date upon which they are to become effective, except as provided in G. S. 62-134, and except those tariff filings made in response to a Commission Order.

(f) Commission Order Tariff Filings. Tariff filings made in response to an Order issued by the North Carolina Utilities Commission shall include a transmittal letter stating that the tariffs attached are in compliance with the Order, giving the docket number, date of the Order, a list of tariff sheets filed and any other information necessary. The transmittal letter shall be exempt from all other requirements of Section (c) above. Said tariff sheets shall comply with all rules in this Chapter and shall include all changes ordered and absolutely no others. The effective date and/or wording of said tariffs shall comply with the ordering provisions of the Order being complied with.

(g) Availability of Tariffs. Each telephone and telegraph utility shall make available to the public at each of its business offices within North Carolina all of its tariffs currently on file with the North Carolina Utilities Commission and its employees shall lend assistance to seekers of information therefrom and afford inquirers an opportunity to examine any of such tariffs without requiring the inquirer to assign any reason for such desire. Utilities shall not be required to furnish copies without charge.

(h) Effective date of this Chapter. The rules of this Chapter shall be applicable to all tariff filings and maps filed on and after a date ten days subsequent to the adoption of this Chapter as a part of the Commission's Rules and Regulations. All maps on file shall be in compliance with Rule R9-4(b)(2) by April 1, 1974. Western Union Telegraph Company is exempt from the map requirements of this Chapter.

(i) Compliance. Any tariff filings filed with the Commission and found to be non-compliant with this Chapter shall be so marked and one copy shall be returned to the filing utility with a brief explanation advising in what way the tariff does not comply and advise that the Commission does not consider said tariff as having been filed. Record of any tariff filings returned for non-compliance with this Chapter shall be made in the Commission files. Full compliance with this rule shall not guarantee Commission approval or preclude requests for additional information or clarification.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That if no written requests for hearing are filed within thirty (30) days from the date of this order relating to the foregoing rule, the rule shall become effective at the expiration of said thirty (30) days.

(2) That a copy of this Order be sent to each telephone company under the jurisdiction of the Commission and to Western Union Telegraph Company.

ISSUED BY ORDER OF THE COMMISSION.

This 15th day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Establishment of Rule R9-4 as a New Addition to)
Chapter 9 of the Commission's Rules and Regulations) FINAL
pertaining to Telephone and Telegraph Companies) ORDER
pursuant to G.S. 62-31.)

The North Carolina Utilities Commission, acting under the power and authority delegated to it by law gave notice on January 15, 1973, of its intentions to establish Rule R9-4 as a new addition to Chapter 9 of the Commission's Rules and Regulations pertaining to telephone and telegraph companies pursuant to G.S. 62-31, notifying the companies that if no written request for a hearing were filed within 30 days from the date of the order, relating to the foregoing rule, that the rule would become effective at the expiration of said 30 days.

There being no written request for a hearing received within the 30 days of the date of the order, this order is

issued as a final order so that the record may show that the rule is now in effect.

IT IS, THEREFORE, ORDERED that this order shall serve as a final order of record that Rule R9-4, Chapter 9, of the Commission's Rules and Regulations pertaining to telephone and telegraph companies pursuant to G.S. 62-31, is now effective and is to be complied with by all telephone and telegraph companies under the Commission's jurisdiction, and that a copy of this order shall be sent to each telephone company under the jurisdiction of the Commission and to Western Union Telephone and Telegraph Company.

ISSUED BY ORDER OF THE COMMISSION.

This 26th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-30, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Domestic Electric	)	ORDER APPROVING
Service, Inc., Filing of Revised	)	INCREASE IN
Schedules Stating New Rates.	)	RATES AND CHARGES

BY THE COMMISSION. On March 9, 1973, Domestic Electric Service, Inc., hereinafter referred to as "Domestic", filed an Application with the Commission seeking authority to increase electric rates and charges to residential, commercial and industrial customers in its service area encompassing parts of Nash, Edgecombe and Wilson Counties 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 $17,568.14 (based upon the 12 months ending December 31, 1972) from the City of Rocky Mount, its supplier, which in turn will receive the same increase from Carolina Power & Light Company, its supplier, in accordance with a settlement agreement filed with the Federal Power Commission (Docket No. E-7918, which increase is effective March 1, 1973, following the final decision of the Federal Power Commission).

Based upon the Application as filed and the records of the Commission in this docket, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Domestic Electric Service, 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 will experience an increase in wholesale cost of energy purchased from its supplier, the City of Rocky Mount, which applies the rate schedule of Carolina Power & Light Company applicable to itself for billing Domestic. The Federal Power Commission has allowed the new wholesale rate schedule in F.P.C. Docket No. E-7918 to become effective March 1, 1973.

3. The test period utilized by the Commission in this proceeding was the 12 months' period ending December 31, 1972.

4. Domestic Electric Service, Inc. filed tariffs adjusted upward, across-the-board by 4.88% to recover this increase in the cost of purchased power plus related gross receipts taxes to become effective on all energy sold on or after March 13, 1973.

5. The net original cost of Applicant's investment in electric utility plant in service on December 31, 1972, was $302,169.86 and including allowances for working capital of $12,043.07 results in a total cost of $314,212.93.

6. 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 7.81%. After giving consideration to the proposed rate adjustments and increased cost of power, Applicant would have a net original cost investment of approximately $302,169.86, plus working capital allowance of $11,812.39, resulting in a total investment of $313,982.25.

7. 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 $302,169.86 plus allowances for working capital of $11,812.39, for a total fair value of $313,982.25. The proposed rates would effect a rate of return on said fair value of approximately 7.87%.

8. That after deducting fixed charges from income available for fixed charges, there remains a net income for equity of $24,126.80; that the common equity investment at the end of the test period was $217,227.44, producing a rate of return on common equity under the present rates at the end of the test period of 11.02%.

9. That the rates of return as approved by the Commission in Docket No. E-30, Sub 9, issued on January 28, 1972, for the test period ending January 13, 1971, and those determined by the Commission in this docket are listed below:

	APPROVED IN DOCKET NO. E-30, SUB 9 JANUARY 28, 1972	AFTER PROPOSED INCREASE
On fair value	6.69%	7.87%
On equity	12.45%	11.11%

The rate of return on common equity after the adjustments for the proposed increases as applied for herein has decreased from that found just and reasonable by the Commission in the last rate of return filing approved by this Commission, and the rate of return on fair value has increased.

10. To require the Applicant to absorb the increases in wholesale energy cost imposed upon it by its supplier, the City of Rocky Mount, which bills Domestic, with the same rate schedule approved by the Federal Power Commission resulting from a settlement agreement in F.P.C. Docket No. E-7918, would result in the Applicant's being required to operate at a rate of return on common equity that would be less than just or reasonable or sufficient for the Applicant's utility operations.

Whereupon the Commission reaches the following

CONCLUSIONS

The Commission concludes that to require Domestic to absorb the increase in wholesale energy cost imposed upon it by its supplier, the City of Rocky Mount, following an increase in its rate from Carolina Power & Light Company as a result of a settlement of an Application by Carolina Power & Light Company to the Federal Power Commission in F.P.C. Docket No. E-7918 would result in requiring the company to operate at a rate of return on common equity 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.

The Commission further concludes that after review and analysis of the data filed by Domestic Electric Service,

Inc., in this docket that the filing will not result in an increase in the company's rate of return on common equity over that approved by the Commission in the most recent rate of return case (Docket No. E-30, Sub 9, dated January 28, 1972), and that the pass-on of the wholesale increased cost of purchased power should therefore be allowed.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by Domestic Electric Service, Inc., that seeks solely to recover increases in the cost of purchased power to it from its supplier as allowed by the Federal Power Commission should be permitted to become effective without hearing.

Based upon the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That effective upon bills rendered on and after the date of this Order, the Applicant, Domestic Electric Service, Inc. is authorized and permitted to put into effect an across-the-board increase of 4.88% on its rates and charges previously approved by the Commission in accordance with the tariffs filed herein. Such increase in rates shall produce no more than total annualized additional revenues as of the end of the test period of $18,689.51, being the dollar amount of increased purchased power expense plus an allowance for increased gross receipts taxes.

2. If a reduction in wholesale energy costs occurs as a result of future action taken by the Federal Power Commission in F.P.C. Docket No. E-7918 relating to Carolina Power & Light Company's wholesale rates and the City of Rocky Mount's subsequently reducing its charges to Domestic for wholesale energy, the flat 4.88% increase on rates and charges granted in this Order affecting residential, commercial and industrial rates of the company will be reduced by a percentage that is the difference resulting from a recomputation of percentage increase in revenues from the final wholesale energy cost and 4.88%. Any changes of this nature shall be immediately reported to the Commission and decreases in rates and charges shall be placed on all bills within thirty (30) days from the effective wholesale energy cost reduction.

3. That the attached Notice, Appendix "A", be mailed to all customers advising them of the actions taken herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
NOTICE

Upon Application of Domestic Electric Service, Inc. the North Carolina Utilities Commission approved a rate increase of 4.88% on all electric bills rendered on or after April 10, 1973. This increase allows Domestic Electric Service, Inc. to recover only the increase in cost of purchased power to it (plus related gross receipts taxes) from its supplier, the City of Rocky Mount, which in turn received an increase from its supplier, Carolina Power & Light Company through a Settlement Agreement in Federal Power Commission Docket No. E-7918.

DOCKET NO. E-7, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authority to Increase its Electric Rates and Charges	)	ORDER

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

DATE: November 8-10, 14-17; December 5-8, 12-15 18-20, 1972

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

APPEARANCES:

For the Applicant:

William H. Grigg
General Counsel
Duke Power Company
P. O. Box 2178, Charlotte, N. C.

Steve C. Griffith, Jr.
Duke Power Company
P. O. Box 2178, Charlotte, N. C.

Clarence W. Walker
Kennedy, Covington, Lobdell & Hickman
1200 North Carolina National Bank Building
Charlotte, N. C.
Appearing for: Duke Power Company

For the Protestants:

Thomas R. Eller, Jr.
Cansler, Lockhart & Eller, P. A.

1010 North Carolina National Bank Building
Charlotte, N. C.
Appearing for:
N. C. Textile Manufacturers Association, Inc.

Claude V. Jones
City Attorney
Central Carolina Bank Building
Durham, N. C.
Appearing for: The City of Durham

James C. Little and
David H. Permar
Hatch, Little, Bunn, Jones & Few
327 Hillsborough Street
Raleigh, N. C.
Appearing for: N. C. Oil Jobbers Association,
Joseph L. Berry and Robert Arey

Robert B. Byrd
Byrd, Byrd, Ervin & Blanton
Box 832, Morganton, N. C.
Appearing for: Great Lakes Carbon Corporation
Morganton, N. C.

E. K. Powe
Powe, Porter & Alphin, P. A.
P. O. Box 3843, Durham, N. C.
Appearing for: Duke University

Houston V. Blair
3403 Ogburn Court
Durham, N. C. 27705
Appearing for Himself.

Thomas J. Rucker
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Legal Aid Society of Forsyth County
300 Government Center
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For the Using and Consuming Public:

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INTRODUCTION

CHRONOLOGY OF EVENTS

BY THE COMMISSION. This proceeding was instituted on May 31, 1972, with the filing by Duke Power Company (hereinafter called "Duke") of an Application for Authority to Increase its Electric Rates and Charges for retail customers in North Carolina. The proposed rates would increase the bills for Residential Service from about 4% for low consumptions to about 10% for high consumptions, and bills for General Service would be increased in about the same range. Bills for Industrial Service would be increased from about 5% for low consumptions to about 17% for high consumption.

Duke alleges that said increases would result in additional revenue on an annual basis from its North

Carolina retail customers of $28,371,000; the Application contends that the proposed rate increase is necessary for Duke to earn a fair rate of return on its investment, said return having deteriorated as a result of increased investment for environmental protection and research, and increases in embedded plant costs and interest rates for the capital needed in Duke's construction program.

By Order of June 27, 1972, the Commission, inter alia, declared the Application to be a general rate case, suspended the proposed rate increase applied for, and set the matter for investigation and hearing, requiring Duke to give notice of its Application. In the Order of June 27, 1972, the Commission revised the test period from the twelve month period ending February 29, 1972, to the twelve month period ending December 31, 1971.

Motion for Modification of Order of Suspension and Investigation was filed with the Commission by Duke on July 7, 1972, to change the test period from the twelve months ending December 31, 1971, to the twelve months' period ending June 30, 1972. Order amending the test period to June 30, 1972, was issued by the Commission on July 20, 1972.

Amendment No. 1 to Duke's Application, based on the revised test period, was filed with the Commission on August 8, 1972. The amended application seeks to produce additional revenue of $29,376,000 on North Carolina retail operations.

Amendment No. 2 to the Application, projected data for the calendar year 1973, and a Study of the Changed Economic Climate on the Earnings and Pricing Policy of All Electric Utilities were filed with the Commission on September 1, 1972.

Notice of Intervention was filed by Robert Morgan, Attorney General for the State of North Carolina, for and on behalf of the using and consuming public. The Notice of Intervention was recognized by Commission Order on September 5, 1972.

Applications for Leave to Intervene and Protest were filed by the City of Durham; Robert J. Arey of Shelby; North Carolina Oil Jobbers Association, (sometimes hereinafter referred to as "Oil Jobbers"); Joe L. Berry of Greensboro; the North Carolina Textile Manufacturers Association (sometimes hereinafter referred to as "Manufacturers"); Houston V. Blair, Durham; and Great Lakes Carbon Corporation, Morganton; all of which interventions were allowed by the Commission. The Commission, in Executive Session on November 8, 1972, recognized the Intervention of the City of Mount Airy.

Motion of the North Carolina Textile Manufacturers Association, Inc., seeking a separate hearing on the issues

of rate classifications and rate design was filed with the Commission on September 8, 1972. Answer was filed by Duke and reply filed by Manufacturers. Order was issued by the Commission setting Oral Argument on the Motion.

Oral argument on the Motion seeking a separate hearing on the issues of rate classification and rate design was heard by the Commission on October 5, 1972. Order Denying the Motion was issued by the Commission on October 18, 1972. Said Order also ordered Duke to offer into evidence cost-of-service studies.

Public hearing was held in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, in two parts. The first section of the hearing began on November 8, 1972, and extended through seven hearing days. The second part of the hearing began on December 5, 1972, and extended through eleven hearing days, ending on December 20, 1972. Counsel for all parties appeared as shown above.

On December 6, 1972, Duke filed with the Commission an Undertaking to place the suspended rate increases into effect on service rendered on and after January 1, 1973, pursuant to the provisions of G. S. 62-135. By Order of December 13, 1972, the Commission approved said Undertaking and required, inter alia that notice of the increase be published in general circulation newspapers in the affected service area and be posted and available by mail on request, and issued in a general news release.

At the close of all the evidence, the protestant, Great Lakes, entered motions to dismiss the Application; that the testimony of Professor Spann be considered only as to whether or not the rates proposed by Duke are just and reasonable; and that the Commission consider the Application without attempting to impose a rate design of its own. The motions were taken under advisement.

Also at the close of the hearing, Duke University moved to dismiss from the proceeding all matters except the rate schedules proposed by Duke. The motion was taken under advisement.

The City of Durham moved to dismiss the proceeding. The motion was taken under advisement.

The Textile Manufacturers moved for involuntary dismissal of the proceeding. The motion was taken under advisement.

The parties requested and were granted leave to file briefs 30 days after the mailing of the last volume of the transcript.

WITNESSES

Duke offered testimony and exhibits of witnesses as follows: Carl Horn, Jr., President of Duke, on the

financial and other operations of Duke; Robert L. Noddin, Union Service Corporation, New York City, as to the earnings required of Duke by investors in its securities; William G. Stott, William Stott Associates, as to the present financial condition and future prospects of Duke, and rate of return; Robert E. Frazer, Vice President of Duke for Finance, as to Duke's financing of construction through sales of securities and the coverage requirements of Duke's securities; William R. Stimart, Treasurer of Duke, as to Duke accounting methods; John B. Gillett, Whitman, Requardt & Associates, Baltimore, as to the trending of original cost of electric utility property; C. E. Poovey, Manager of Forecasting and Budgets of Duke, as to methods of forecasting sales among various classes of customers; Austin C. Thies, Senior Vice President, Production and Transmission for Duke, as to Duke's budgeting methods and increased production costs; Douglas W. Booth, Senior Vice President, Retail Operations for Duke, as to Duke's budget, load factor, and the rate of return between various customer classes; Edwin Vennard, Consultant, as to changing economic conditions and their effect on rising incremental costs, and factors to be considered in rate design; Glen A. Coan, Vice President - Rates for Duke, as to rate structure and the design of rates; George S. Fuller, Independent Consultant, as to electric utility operations and cost of service.

The Attorney General offered testimony and exhibits of witnesses as follows: David F. Crotts, Research Analyst for the Anti-Trust and Utilities Division of the North Carolina Attorney General's Office, as to the relationship of Mrs. Betty Majett's electric usage to the average usage of all customers under the same schedule; Paul Fahey, Procurement Consultant, as to Duke's coal buying practices and coal costs; Dr. Charles E. Olson, Associate Professor in Public Utilities and Transportation, University of Maryland, as to the fair rate of return required by Duke and the rate structure proposed.

Public witnesses appeared and testified as follows: Mrs. Dan Drummond of Winston-Salem, a residential customer of Duke, presented a statement protesting the rate increase; Jeff Guller, City Attorney of Bessemer City, testified as to the effect of the proposed rate increase on the town, and on the effect of the removal of certain of the town's water treatment facilities from "closed" schedules; Robert E. Leak, of the Board of Industrial and Tourist and Community Resources, N. C. Department of Natural and Economic Resources, presented a statement as to the effects of the proposed increase on the competitive status of North Carolina in attracting business and industry; William Kirby, Durham, North Carolina, presented a statement in protest to the proposed rate increase; Dr. Joseph H. Wishon, Superintendent of the Board of Education of Hickory City Schools, presented a statement in protest to the proposed rate increase.

William E. Cage, Associate Professor of Economics, Wake Forest University, appeared for the protestant Betty Majett, and testified, inter alia, to Duke's alleged need for additional revenue, and the possible consequences of granting Duke higher rates.

The N. C. Textile Manufacturers Association presented witnesses as follows: Thomas N. Ingram, Executive Vice President and Treasurer, Textile Manufacturers Association, in protest to the increase in rates to textile mills; Jerry Roberts, Secretary, Textile Manufacturers Association, as to the effect of the proposed increase on member industries; Arther B. Capper, Collins & Aikman Corporation, as to the effect of the increase on his company; R. C. Reinhardt, Jr., Vice President, Beaunit Corporation, as to the effect of the increase on his company; J. L. Thompson, Jr., Secretary-Assistant Treasurer of Carolina Mills, Inc., Maiden, as to the effect of the increase on his company; Richard W. Lees, Manager of Manufacturing Operations, Ingerson-Rand Company, as to the effect of the increase on his company; Oliver R. Cross, Treasurer, Cross Cotton Mills, Marion, as to the effect of the increase on his company; Edmund R. Gant, Vice President, Glen Raven Mills, Inc., to the effect of the increase on his company; David R. LaFar, Vice President and General Manager, Harden Manufacturing Company, Gaston County, as to the effect of the increase on his company; W. A. Stevens, Manager of Costs, Cannon Mills, Kannapolis, as to the effect of the increase on his company; Harold P. Hornaday, Executive Vice President, Cannon Mills, as to the effect of the increase on his company; and R. C. Schoonmaker, Assistant Treasurer, Stowe Mills, Inc., and Pharr Yarns, Inc., McAdenville, as to the effect of the increase on his companies.

Commission Staff offered the testimony and exhibits of witnesses as follows: William E. Carter, Senior Staff Accountant, as to the Staff audit of Duke's books and the audit report and exhibits contained therein; Professor Robert M. Spann, Assistant Professor of Economics at Virginia Polytechnic Institute and State University, as to the application of economic theory to electrical rate making, his examination of Duke's proposed rates, and the justification of the Staff's rate design; Allen L. Clapp, Staff Engineer, as to the manner of execution of Duke's |97| Cost of Service Study and recommendations for changes; William J. Willis, Jr., Commission Staff Senior Electrical Engineer, on adjustments made to Duke's annualization study of revenues and operation and maintenance expenses; and George M. Duckwall, Staff Engineer, as to the jurisdictional allocation of Duke's electrical operations.

EVIDENCE

FAIR VALUE OF PLANT IN SERVICE

Background

G. S. 62-133 provides that the Commission shall ascertain the fair value of plant in service at the end of the test period, considering original cost, replacement costs, any other factors relevant to the present fair value of the property, and following the determination of fair value, fix a rate of return on the fair value as will enable the utility by sound management to produce a fair profit (to Duke's stockholders), considering changing economic conditions and other factors as they 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 reasonably fair to its customers and to existing investors.

Discussion

Before entering upon a discussion of the fair value of Duke's properties, it is incumbent upon the Commission to consider, inter alia, the replacement cost of Duke's property, inasmuch as the Company offered testimony regarding replacement cost. G. S. 62-133 (b) (1) provides, in part, that replacement cost may be determined by trending reasonable depreciated cost to current cost levels, or by any other reasonable method. The Commission interprets G. S. 62-133 (b) (1) to mean that "replacement cost" (or "reproduction cost new") envisions the reconstruction of utility plant in accordance with modern design and techniques and with the most up-to-date changes in the state of the art in power supply and distribution. On the other hand, "reproduction costs" (or trended original cost as presented by Duke Witness Gillett) is founded upon the premise that, if destroyed, the plant would be rebuilt with inefficiencies and outmoded obsolete design included. Consequently, replacement cost envisions a higher level of evidence than that of reproduction costs alone. Accordingly, if the "replacement cost" study of Duke in this proceeding is to be accepted, it must be based upon reasonable methodology in order to be compelling and sufficient evidence of replacement cost. Therefore, while the trending of plant on a "brick-for-brick" basis offers some evidence of replacement cost, the various major plant accounts must be considered individually in terms of advancements in the art and whether much more efficiently and economically designed plant would be constructed today instead of plant designed and installed up to 30 or more years earlier. The value of replacement cost is also influenced by the condition of the plant as judged from an adequacy of service standpoint. In this case, adequacy of service was not an issue and hence no deductions were made

in the findings of replacement costs for reasons of inadequate service.

(i) Original Cost

Evidence

The first factor prescribed by the Statute in determining fair value, original cost (less depreciation) of investment in plant is not substantially disputed. There is no substantial dispute as to the retail allocations of that portion of the plant devoted to North Carolina retail service. The original cost gross plant in service, as computed by the Staff, was found to be $1,223,445,451. The depreciation allowance was audited by the Commission Staff, and the depreciation rates used do not require adjustments. Depreciation reserve allocated to North Carolina retail business amounted to $352,253,499, contributions in aid of construction amounted to $6,185,827, resulting in a net electrical plant in service of $865,006,125 (not including an allowance for working capital of $62,416,389). (Carter Schedule I)

(ii) Replacement Cost

Evidence

Company Witness Gillett offered no evidence on the replacement value of the plant based on the utilization of modern designed, engineered, and constructed plant. Instead Mr. Gillett determined a trended original cost to the June 30, 1972 price level of Duke's total utility plant in service at June 30, 1972 of $2,756,200,000. Mr. Gillett estimated the accrued depreciation applicable to the trended original cost at $835,500,000, yielding a trended original cost, less depreciation, of electric plant in service at June 30, 1972, of $1,920,700,000.

OPERATING COSTS

(i) The Effect of the Oconee Nuclear Units on Duke's Operations

Background

In its Order in Docket No. E-7, Sub 128, in regard to the prospect of savings in generation costs resulting from operations of the Oconee Nuclear Station, the Commission concluded "that once the Nuclear Station is operating at full load factor (expected in late 1973), considerable savings in per unit generation costs should occur..." Accordingly, in a letter dated October 9, 1972, the Commission requested Duke to develop hypothetical financial models for 1973 assuming various specified operational details for the Oconee Nuclear Units. These hypothetical financial models were requested in order that the Commission might consider any possible savings in generation costs

resulting from the planned early operations of the Oconee Nuclear Units.

Evidence

Duke Witness Frazer testified that, based on Commission Staff postulated assumptions for determining the possible savings derivable from operations of the Oconee Nuclear Units, a hypothetical financial model was developed by Duke to show the effect of varying operations of Oconee Units I and II for the year 1973.

As shown in Staff Exhibit #2, the model demonstrated the percent return on common equity (N.C. Retail Rate Base) for different operations of the nuclear units as follows:

Assumptions	Before Proposed Increase	After Proposed Increase
Oconee not in service - 1973	6.26%	11.34%
Oconee in service 60% load factor - 1973	6.49%	10.81%
Oconee in service 90% load factor - 1973	7.36%	11.69%

Mr. Frazer stressed the point that the Oconee Plant is coming on line at a cost of $127 per KW compared to Duke's system average gross cost of $107 per KW (depreciated average net cost of $70 to $75 per KW). (Note: Duke's Belews Creek fossil plant scheduled for 1974-75 operation is estimated to cost $137 per KW.)

Duke Witness Thies testified substantially that the actual present plant operation schedule anticipates that Oconee Units I and II will be operational by June 1, 1973, and September 1, 1973, respectively. Units I and II are expected to operate at 841 megawatts for approximately 30 days after each goes commercial, and then increase to 886 megawatts on each unit. A load factor of about 60 percent is optimistically expected for the remainder of operating time in 1973, if the units perform well. No utility has yet been able to achieve a load factor this high during the initial operation of a nuclear unit; however, it is theoretically possible to do this well. The cost of Oconee has risen considerably since it was originally authorized by Duke. The combination of construction delays and higher original cost of the plant itself has offset much of the savings that were anticipated from lower fuel costs. If Duke had installed fossil instead of nuclear at Oconee, it would have experienced the same problems, but worse. If Duke had made a decision to put in a fossil plant instead of a nuclear plant, it would have resulted in a higher cost of electricity from the fossil plant because of the increasing original costs of fossil fuel plants plus the higher energy costs. Oconee Units I and II were originally scheduled to become operational in the spring of 1971 and 1972, respectively.

(ii) Fuel Prices

Background

The cost of fuel for electrical power generation was a major factor in the preceding Duke rate case (Docket E-7, Sub 128). In its Order in that Docket, the Commission found 45.67 cents per million BTU to be a reasonable burned fuel cost to Duke to be used in computing its probable future operating expenses, based on test year fuel costs, staff and company predictions, and then current cost trends.

Further, the Commission concluded that it would be in the public interest for Duke to pursue a course of action designed to investigate the effects of the use of various types of more competitive purchasing practices, and the requirement of performance bonds or other assurance of delivery or replacement. Accordingly, Duke was ordered to investigate the application of more competitive bidding to its fuel purchasing and the requirements of performance bonds or other assurance of delivery or replacement in its coal contracts, and to report the results of the investigation to the Commission. The Report on the Competitive Bidding Investigation was subsequently filed with the Commission by Duke on May 31, 1972.

Evidence

Mr. Paul Fahey, a coal procurement consultant for the Attorney General, testified substantially as follows: The costs of coal experienced by Duke in the past year are lower than the 48.87 cents per million BTU predicted by Duke and also lower than the 45.25 cents per million BTU predicted by Mr. Fahey. Currently, Duke is getting very good coal prices for its new purchases. This is due in part to the softness of the market and in part to the aggressiveness of Duke's coal procurement policies and practices.

Duke did not really try competitive bidding. Duke allowed different specifications on bids and then negotiated for contracts different than the ones used for invitations to bid. There is a doubt that competitive bidding would result in lower coal prices for Duke at the present time and under current conditions. Duke would have to reject all but the lowest bids and refrain from negotiating to convince the coal industry of its seriousness and to obtain favorable coal prices by competitive bidding. Duke's coal purchase agreement with its subsidiary, Eastover Mining Company, is more liberal in its terms than coal purchase agreements between Duke and other mining companies.

(iii) Capacity Reserves

Background

Capacity reserve is the generating capacity a system maintains in addition to the capacity required to meet the

projected electrical peak demand load. The system maintains this "excess" capacity to (1) meet electrical demand loads that may exceed the projected peak demand load for the system and (2) accommodate any malfunctions of generating facilities within the system. The reserve of a system is normally expressed as a percentage of operational capacity in excess of capacity required to meet the projected peak load for normal weather conditions. The Commission is conscious of the large variation in capacity reserve requirements purported to be necessary for adequate and reliable service by the three major electric suppliers within its jurisdiction. These variations in desired reserve levels are disturbing due to the close proximity and similarities of these three suppliers, and are pertinent to the matters considered herein because of the tremendous impact upon the ratepayer of any overbuilding or underbuilding of plant.

This Commission takes notice of evidence in other dockets indicating that Carolina Power and Light Company supports the reasonableness of an 18 to 20 percent reserve level, and that Virginia Electric and Power Company supports the reasonableness of a 15 to 18 percent reserve level.

Evidence

Duke President Carl Horn testified that Duke's capacity reserves reached abnormally low levels, partially as a result of the Company's decision to join the CARVA Pool (an attempt to reduce reserve requirements by sharing reserves with neighboring systems) and partially as a result of the unanticipated sudden increase of the peak demand growth rate. He added that the CARVA Pool has been dissolved and that Duke is in a program of building up to at least a 25 percent reserve level, the level that it deems most prudent. Duke Witness Thies supported Duke's desired reserve level by stating that an adequate reserve should be in the neighborhood of 25 percent or more. Mr. Thies explained that Duke now states its reserves as a percentage of a forecast of peak demand for the most probable or average weather instead of basing its reserve on a forecast of peak for the most adverse weather as it had done in the past. Mr. Thies stated that Duke changed its method of reporting reserves to match what is more commonly done by neighboring systems.

Duke Witness Frazer testified that Duke will be spending over $2.3 billion for plant facilities in the next five years (1973-1977), nearly doubling its present investment. Mr. Frazer added that this is the level of expenditures that Duke deems appropriate to meet customer needs based upon forecasts of customer usage.

(iv) Increasing Costs

Background

The fact that Duke has changed from a decreasing cost industry to an increasing cost industry was not at direct issue in this case. All witnesses who addressed this subject agreed that Duke now faced increasing costs of supplying new service, resulting in an attrition of earnings as service expanded. This has not always been the case. After World War II and prior to 1968 Duke Power Company experienced an era of decreasing costs, incremental demand cost, or cost per KW of new plant, decreasing because of technological advances and increased economies of scale. Increasing customer demand, spurred by promotional rates and advertising enabled Duke to add new lower cost generating capacity. As a result, the incremental cost of plant sank below the embedded or historical cost. During this period, Duke's financial position remained stable while the annual inflation rate averaged about 3%.

Evidence

Mr. Vennard stated that the reason for the stability prior to 1968 was that the incremental cost per kilowatt, i.e., the unit cost of new plants, was less than the average embedded cost. During the years 1968 and 1969 a change in the economic climate occurred, which caused an upward trend in incremental costs. This trend has continued until the present and is expected to continue well into the future. Incremental cost per kilowatt is now above the average embedded cost and will continue so through 1976. Unit investment cost will rise each year through 1976. This is the most important factor affecting costs, as some 60% of gross revenue is required to pay fixed charges on investment. This means earnings of the utility each year will probably be less than the previous year.

Mr. Horn testified that Duke's revenue attrition problem is a result of the increasing cost of new plants and equipment required to serve Duke's growing demand. The magnitude of the climb in incremental cost brought out in Mr. Horn's testimony was illustrated by the following:

"The Marshall Steam Station, completed in 1970 at a cost of $97.00 per kilowatt...set a national record for economy for that type of plant. The Belews Creek Station, scheduled for completion in 1975, is projected to cost $137.00 per kilowatt, although it has approximately the same electrical capacity in two units as the Marshall Station with its four units. The Oconee Nuclear Station is projected to cost $172.00 per kilowatt when it is completed in 1974. The McGuire Nuclear Station, scheduled for completion in 1977, with almost as much electrical capacity in its two units as the Oconee Station has in three units, is projected to cost $214.00 per kilowatt. The recently authorized Catawba Nuclear Station will be a

duplicate of the McGuire Station. It is scheduled for completion in 1980 at a projected cost of $273.00 per kilowatt."

FAIR RATE OF RETURN

Background

As provided by G.S. 62-133 (b) (4), the North Carolina Utilities Commission is charged by law to "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,...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." (emphasis added)

The expert witnesses testifying on accounting procedures, rate of return, and finances of Duke Power Company have expressed differences of opinion as to a fair rate of return necessary to provide a fair profit for stockholders under this requirements.

Evidence

Mr. William Stimart, Treasurer of Duke Power Company, offered testimony and exhibits concerning rates of return on plant and common equity for the test period and projected rates of return for 1973. His testimony was substantially as follows: For test period operations after pro forma adjustments and allocation to North Carolina jurisdictional operations, the original cost net investment is $930,852,000, which with a net operating income for return of $62,149,000, results in a rate of return of 6.68% under present rates. A return of 7.34% on book common equity was found at the end of the test period using present revenues. After allowing for the proposed increase, the return on original cost net investment rises to 8.14% while the return on book common equity becomes 12.05%. The rates of return on book common equity are based on the company's adjusted original cost net investment allocated in proportion to the company's total capitalization ratios as of June 30, 1972.

Mr. Stimart further testified as follows:

Projected 1973 North Carolina jurisdictional operations under present rates would produce a rate of return on original cost net investment of 6.62%, obtained by relating a projected net operating income for return of $74,513,000 to an original cost net investment of $1,125,537,000. Under the proposed rates the projected return on original cost net investment would increase to 8.04%. The original cost investments referred hereinabove include an allowance for working capital. (Transcript Vol. V, pp. 200-205). The rate of return on book common equity for the projected year 1973 would be 6.92% under present rates and under proposed rates would be 11.61%. These rates of return are based on a

projected average original cost net investment for 1973 allocated in proportion to the company's expected average capitalization ratio for 1973. The major components of the 1973 projections such as the income statement, electric plant, capitalization, deferred taxes, and inventories are the direct product of Duke's budget system. Certain items on the projected balance sheet such as other miscellaneous property, accounts receivable, prepayments, and current liabilities were separately estimated. Mr. Stimart in his filed testimony asserts that Duke's budgeted revenues and expenses have in the past generally approximated the actual results for such years. He further states in his filed testimony that the major difference in the methodology used in preparing the data used in the historic test period (Stimart Exhibit 1 and Stimart Exhibit 2) and the projected calendar year 1973 is that in the projected data an average rather than year-end rate base was used and that the net operating income had not been adjusted to reflect year-end conditions.

Staff Witness William Carter presented testimony on rates of return as follows:

After accounting and pro forma adjustments and allocation to North Carolina jurisdictional operations, the original cost investment is $927,422,514, which, with a net operating income for return of $62,305,581, results in a rate of return of 6.72% under present rates. A return of 7.54% on book common equity was found at the end of the test period using present revenues. After allowing for the proposed increase, the return on original cost investment rises to 8.20% while the return on book equity becomes 12.35%. Allowances for working capital are included in the original cost investment. (Transcript Vol. XVIII, pp. 102-104)

The minor differences in the rate of return figures as presented by Mr. Carter and Mr. Stimart were results of the following:

1) After analysis of Duke's annualization adjustment, Mr. William J. Willis of the Commission Staff increased the company's gross operating revenues by $1,838,000, energy related expenses by $1,015,000, and operation and maintenance expenses not related to energy by $192,000.

2) As a result of the adjustment to Duke's annualization adjustment by Mr. Willis, gross receipts taxes were increased by $110,000, State income taxes were increased by $31,000 and Federal income taxes were increased by $235,000.

3) Adjustment of $54,000 to wages, benefits, materials, etc., for donations and maintenance expenses, less $27,000 for Federal and State income taxes related to these items, was made by the Staff.

4) Different methods of jurisdictional allocation used by the company and the Staff in allocating operating revenue

deductions and plant investment resulted in the Staff's figures for operating revenue deductions being $18,000 more and plant investment being $635,000 more than Duke's comparable figures. An additional $159,000 difference resulted in the working capital allowance for material and supplies, cash and minimum bank balances by using the different jurisdictional allocation factors.

5) In determining the net operating income for return the Staff deducted interest on customer deposits in the amount of $106,612 while Duke did not deduct this item.

6) In determining the allowance for working capital, the Staff included average prepayments of $265,000 and average customer deposits of $1,792,000, neither of which Duke included.

7) For average tax accruals, the Staff used all taxes while Duke considered only Federal income taxes.

Mr. Frazer, offered testimony as follows concerning Duke's financial condition: Even though Duke received rate increases in 1970, 1971, and 1972, earnings per share of common stock have decreased from $2.05 in 1969 to $1.88 in June 1972. Correspondingly, the return on common equity has decreased from 12.6% to 9.5%. The embedded cost of bonds and preferred stock has increased from 5.26% to 6.46% and fixed charges coverage has decreased from 4.19 to 2.30 times during the same period. The market value of Duke's stock has decreased from $41.33 per share in 1967 to $21.70 in June 1972. The book value of the Company's stock at June 1972 was $19.75 per share. If Duke reaches a point where it must sell stock below book value, its ability to finance will be in serious jeopardy. William Stott, Principal of William Stott Associates, provided testimony for Duke as follows:

The electric industry had good years financially during the period 1945-1965 but since 1965 the demand for energy has caused plant expansion and expenditures to accelerate at a pace greater than earnings with the result that more and more of the funds to finance plant expansion have to come from external sources. Due to the squeeze on earnings since 1965, the electric utility industry has used more debt than equity financing. Interest rates have been rising, causing the embedded debt costs to rise, thereby decreasing the debt coverage ratios and lowering the return on equity. Duke's earnings per share would increase to $2.38 in 1973 if all rate increases Duke has requested from NCUC, the South Carolina Commission, and the FPC were granted. This level of earnings would be only 33¢ per share above the 1969 level or about 3-1/2% per year, which "will not excite the investment community in view of Duke's continuing need for funds." A rate of return on common equity of 13.0% to 14.0% is necessary to maintain an electric utility in financial health in the present environment. The capital structure does have a bearing on the fair rate of return and Duke's

thin or small equity ratio (approximately 33%) justifies a return on equity of 13.5% to 14% for an overall fair rate of return of 8.69% to 8.85%.

Duke Witness Noddin testified substantially as follows:

Union Service Corporation is interested in long-term investments - common stocks whose earnings per share will grow faster than the economy as a whole and where the common stocks will rise in price over a period of time. The 40 largest investment companies have reduced their utility stock holdings as a percent of their total stock holdings from 16.1% in 1962 to 7.5% at the end of 1971. This decline is attributed to investor's decision that the earnings growth of utility stocks was going to slow down.

Duke's financial condition as measured by earnings per share and price earnings ratios is not as good as Moody's 24 electric utilities or the ten electric utilities located in the South Atlantic and included in Moody's 24 electric utilities. Duke's ratio of year-end stock prices to book value has declined faster in 1970 and 1971 than the average of the 24 Moody's electrics. Duke's rate of growth in earnings per share should be 8% per year. An 8% growth rate for the period 1967-1971, assuming a dividend payment of 65%, would have produced equity earnings of 12.5% for 1971 rather than 9.6% as actually experienced. A 12.5% return on common equity is not adequate today - the spread between the interest rate on bonds and the return on common equity should be between 6 and 8 points. To maintain this spread today with bonds selling to yield 7-1/2%, the rate of return on common equity should be in the 13.5% to 15.5% range.

Dr. Olson, witness for the Attorney General, testified substantially as follows concerning rates of return:

The cost of common equity capital to Duke Power is between 10.4% and 11.4%. This is obtained by adding the dividend yield of 6.1%, the investor expectations as to growth of between 3% and 4%, the financing costs of .2% and the market to book equity ratio adjustment factor of 1.1%. The overall cost of capital to Duke Power Company is between 7.81% and 8.12%, based on the capital structure at June 30, 1972, with the embedded cost of long-term debt at 6.62%, the expected cost for 1973, the embedded cost of 7.18% for preferred stock at June 30, 1972, and a rate of return on equity of 10.4% to 11.4%. The fair rate of return to Duke lies between 7.80% and 8.15% on its capitalization at June 30, 1972. A rate of return in this range will be fair to Duke's customers and allow it to attract capital on reasonable terms. The proposed fair rate of return does not include any element for attrition. The rate of return must be earned if Duke is to continue to attract capital on reasonable terms. Duke will experience earnings attrition unless its rate structure is changed.

RATES

A major issue in this case is the matter of allocating the overall revenue requirements found to be necessary, fair, and reasonable to Duke's customers; or, in other words, how a rate design should be structured so as to be as fair and equitable as to Duke's existing and potential customers.

Background

These proceedings were called by the Commission under G.S. 62-133 as a general rate case. Since all of Duke's North Carolina jurisdictional rate schedules were under investigation, the Commission deemed it proper, according to G. S. 62-137, to consider the matter of rate design, in the same general rate case in which the overall increase in revenues was requested under G. S. 62-133, instead of having a separate complaint proceeding on the method of collecting any increase in revenues that might be granted. That it is within the province of the Commission to determine whether a matter is to be heard in the context of a general rate case or a complaint proceeding was determined by the N. C. Supreme Court in State v. Carolinas Committee for Industrial Power Rates, etc., 257 N.C. 560, 126 S.E. (2d) 325 (1962).

The fact that Duke has not sought, on its own motion, to change its basic rate structure appreciably in this proceeding does not relieve the Commission from the responsibility of examining or changing Duke's rate structure if deemed necessary. The Commission has both the authority and the duty to make such changes in rate structure as are necessary to correct or prevent undue discrimination or other debilitative conditions. This position is supported by G. S. 62-130 (d) which states that the Commission may revise rates previously fixed "...as often as circumstances may require..." The fact that Duke's rate designs have been previously approved by this Commission does not prohibit changing those rate designs and relationships in light of new and superior evidence. The N.C. Supreme Court decided that rates fixed by other of the Commission are to be considered just and reasonable "...unless and until they shall be charged (sic) or modified on appeal, or the further action of the Commission itself..." (emphasis added) (In re Petition for Increase of Street Car Fares in the City of Charlotte, the Southern Public Utilities Company 179 N.C. 151 (1919).

The scope of the Commission's authority to make its own decision in the setting of rates is further defined by the decision in Utilities Commission v. Lee Telephone Company, 263 N.C. 702, which states that "...upon a petition for increase in rates the Commission is not required to accept the proposed rates or to reject them all together." The provisions of G.S. 62-133 are that "the Commission shall fix such rates as shall be fair both to the public utility and to the consumer." As to what is fair to the public utility, paragraph 5 of subsection (b) states that the Commission

shall, "Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained in 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 standard of fairness to the consumer is set forth in G.S. 62-140. Paragraph (a) states that "No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of services. The Commission may determine any questions of fact arising under this section." With respect to the question of discrimination and undue discrimination, the courts and utility economists are in general agreement. Kahn defines rate discrimination as "charging different purchasers prices that differ by varying proportions from the respective marginal costs of serving them." (Alfred E. Kahn, The Economics of Regulation: Principles and Institutions, Vol. I, John Wiley & Sons, Inc., 1970, New York, p. 123)

Lake, in his book on utility discrimination states:

> "If a rate to a class of patrons is not sufficient to cover the separable costs of serving them, either the utility investor must absorb the loss or other patrons will have to pay a higher rate than they would pay if the favored group were not served at all, and the greater the volume of the favor traffic the greater is the loss. Either alternative, unless the amount if insignificant, is an injury to the other patrons, since a long continued, substantial reduction in the investor's income will result in poorer service. For this reason, it would be generally agreed that every expense which can be attributed entirely to the service of a single class of patrons should be borne by that class alone unless reasons of the most urgent nature for passing it on to others or to the investor are proved." (I. Beverly Lake, Discrimination by Railroads and Other Public Utilities, Edwards & Broughton, Raleigh, N.C., 1947, p. 174)

Bonbright concurred, and addressed the practice of rate discrimination:

> "As a wise, practical rule, rate differentials should not often be permitted unless they can be expected to result in lower rates even for those consumers who are discriminated against...will make some contribution to total revenue requirements over and above incremental cost....
>
> Permission to discriminate...should seldom be granted in the absence of good evidence that the favored

> rates will cover, not just those short-run incremental costs..., but rather those 'long-run' incremental costs (including incremental capital costs) which can be expected to persist for the indefinite future. Otherwise, there arises the danger...that the favored consumers will secure a kind of vested interest in the maintenance of their preferential rate relationships even after the economic excuse for this preference has ceased to be valid." (Bonbright, Principles of Public Utility Rates, Columbia University Press, New York, 1961, pages 383,384)

In addition to the criteria established in paragraph (b) of G.S. 62-133, paragraph (d) empowers the Commission "...consider all other material facts of record that will enable it to determine what are reasonable and just rates." Cost of service is a major factor in determining the reasonableness of rates and the existence of discrimination in rates. (See State Ex Rel Utilities Commission v. Nello L. Teer Company, 266 N.C. 366)

It is incumbent upon the Commission to consider changing economic climates and/or other factors which affect the economic well-being of a utility and its ratepayers, and indeed it is the duty of the Commission to seek evidence to support the validity of existing rates or the necessity for change. Having determined the revenues which are just, reasonable, and necessary, the Commission must then examine the rates which are to produce those revenues with respect to the ability of the rate structures to recover the necessary revenues, the relationship of the rates to the costs of service, discrimination, and other such factors as may be necessary to determine that the rates which are set in this proceeding are just and reasonable.

(i) Cost of Service

Background

Duke's Cost of Service Study has become of significant importance in the matter of setting just and reasonable rates. For this reason, a considerable amount of the Hearing was consumed in the discussion of the Cost of Service Study and its appropriateness for use in setting rates.

There are two types of cost of service studies under consideration in this case. The first is the allocation of rate base and expenses between wholesale and retail and State jurisdictions. This is referred to as the "Allocation Study." It is the allocation study which forms the basis for determining the overall revenues required from North Carolina Retail Service.

The Cost of Service Study is a collection of methods of allocating Duke's rate base and expenses to the individual

classes of service so that the costs of providing service to each class of service may be determined. Appropriate use may be made of this data in examination of the rate of return earned by the different classes of service and in the design of rates to ensure that revenues are recovered in an equitable manner.

North Carolina Utilities use the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts to record expense and rate base items. NARUC uniform accounts are customer related, demand related, or energy related. Customer accounts reflect customer related costs - that is, costs which are related to the number of customers and do not vary with the usage or the demand which a customer places on the system. These accounts are divided among the different classes of service on the basis of the number of customers receiving the class of service.

Other accounts, such as transmission, vary directly with demand and are allocated to the classes of service based upon the total demand impact which each class of service has on the system. Many of the accounts, such as distribution, vary with both demand and the number of customers. In order to properly allocate the customer related portion of the plant upon customer related factors, and the demand related portion of the plant upon demand factors, these portions of the plant are separated so that they might be properly allocated. Energy related accounts are allocated to the various classes of service on the basis of energy usage factors.

All of these accounts, when totaled, give the customer demand and energy related expenses a net plant investment for each class of service, and may be used as input into rate design. The sum of the customer, demand, and energy related costs gives the revenue deductions a plant investment and allowance for working capital which may be used with revenues to calculate the rate of return earned by each class of service.

The issue of the importance and necessity of the Cost of Service Study was first raised in Docket E-7, Sub 120, wherein Duke Power Company sought the approval of the Commission to raise its rates and charges by first adding .06 cents to the price of each kilowatt-hour and then adding an overall, across-the-board 12% increase. Various intervenors objected to both the increases and the form of the increases, and requests were made for denial and dismissal of the proposed rate changes unless the changes could be based upon known costs of service. Duke had not, at that time, ever made a fully distributed Cost of Service Study, but was preparing to do so. Petitions to Intervene and Protests were filed in Docket E-7, Sub 120, by the North Carolina Textile Manufacturers Association, Inc. and by the North Carolina Oil Jobbers Association, wherein Textile Manufacturers Association and Oil Jobbers contended that:

"Duke Power Company's present rates...as they now exist have not upon formal hearings, investigation, and order been established and approved as fair, just, and reasonable on an over-all basis; that said present rates, therefore, do not provide a just and reasonable base upon which to add a flat over-all percentage increase of any kind and the reasonableness and justness of Duke's present rates, as well as of the increases thereon proposed, should be established by the utility in these proceedings..." (Manufacturers Petition, page 3, Docket E-7, Sub 120) (An almost identical statement appears on page 3 of the Oil Jobbers Petition to Intervene and Protest)

Manufacturers and Oil Jobbers further pleaded that the cost of service should be the basis of rate design:

"Both the rates sought to be increased and the proposed increases themselves are further arbitrary, unjust, and unreasonable and unlawfully discriminatory in that the same are not based upon either the total cost of the utility service nor upon the cost of serving the various customer classifications to which they are separately applicable; nor do such rates, and the flat increases sought therein, bear proper and reasonable relationship to individual load characteristics, including demand factors, load factors, and volumes of use, and the conditions and costs under which the service is rendered among and within the various customer classifications." (Manufacturers Petition, page 3, Docket E-7, Sub 120) (Identical statement on page 4, Oil Jobbers Petition)

In its prayer, Manufacturers requested:

"That Duke Power Company be required to establish the justness and reasonableness of its present rates and customer classifications, together with the justness and reasonableness of the increases, and of the classifications to which the proposed rates would be applicable, in accordance with reasonable costs of service, both over-all and as among and within its customer classifications." (Manufacturers Petition, page 5, Docket E-7, Sub 120.)

(A similar request was made in the Oil Jobbers Petition, stressing that "all-electric" rates should be in accordance with reasonable costs of service.)

Upon consideration of the record and the pleadings in Docket No. E-7, Sub 120, including the Petitions of Textile Manufacturers, and Oil Jobbers, and the general scope of the investigation in that proceeding, and it appearing that the ultimate resolution of the issues and questions of differentials in charges would require accurate cost of service studies by Duke as to all differentials in rates for different classifications of customers and within such classifications of customers, the Commission entered its

Order For Report on Cost of Service Studies in Docket No. E-7, Sub 120, on September 28, 1970, requiring Duke to expedite the preparation of cost of service studies and file the underlying data and final studies with the Commission.

In Docket No. E-7, Sub 120, Duke had alleged that the price of fuel alone had risen enough to make it necessary to increase the fuel portion of the rate structure, and that other expense items had risen enough to make it necessary to apply the additional 2% across-the-board increase.

Considerable argument was forwarded in the Brief on Behalf of the North Carolina Textile Manufacturers Association, Inc., to the effect that the Commission should not alter differentials between rate structures unless cost of service studies were available and unless these studies indicated changes to be necessary. It was the Manufacturer's contention that Duke's combination fuel clause - flat percentage increase was inconsistent and discriminatory. The Manufacturers supported the necessity for cost of service studies.

The Brief of the North Carolina Oil Jobbers Association supported the necessity for the Cost of Service Study and the relationship of rates to the cost of service.

In its final Order the Commission considered the record in light of the questions raised and ordering paragraph 2 stated the following:

> "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." (Commission Order, Docket E-7, Sub 120, February 12, 1971)

The same provision was included in the Commission's Order in Docket E-7, Sub 128. Accordingly, Duke's rates and charges were intended to be reviewed in the light of Duke's Cost of Service Studies.

The Application in this present Docket E-7, Sub 145, was filed by Duke on May 31, 1972. On June 27, 1972, the Commission entered its Order of Suspension and Investigation in which it stated,

> "The Commission is further of the opinion that it should not be limited to considering only Duke's proposed rate structure which results in different rates and produced different rates of return among the various rate classifications, particularly since these rates may not be fully justifiable on a cost-to-serve basis... However, the Commission is of the opinion that while cost to serve may be only one factor to be considered in rate design, it

is a major factor and any proposed deviations from cost considerations should be fully explained and justified."

On September 7, 1972, Textile Manufacturers filed a motion to separate Hearings on rate structure from the Hearings on the rate increase application. Hearings on that motion were held October 6, 1972, and the Commission issued an Order denying that motion on October 18, 1972. As a result of those Hearings, the Commission also ordered Duke to offer the Cost of Service Study into evidence at the general rate case.

Duke filed both its 1970 and 1971 Cost of Service Studies, identified as Exhibit Fuller 1 and Exhibit Fuller 2, respectively, as a part of its evidence in this Docket. This is the first Docket in which Duke has presented clear evidence of the costs of serving its different classes of customers.

Evidence

These Cost of Service Studies were begun by Duke Power Company in 1968 under the general guidance of Mr. George S. Fuller, then of Commonwealth Services, Inc., and later independent consultant to Duke. The staff of Duke's Rate Department prepared both studies under Mr. Fuller's personal supervision and direction, with the full knowledge, guidance and supervision of Mr. Glen A. Coan, Vice President-Rates, of Duke. Mr. Fuller supported both the procedures and rationale used and data contained in the Cost of Service Study. The statistical sampling plan for choosing consumers and measuring demands of the different classes of service was developed for Duke by the Research Triangle Institute. Both Company and Staff witnesses testified as to the appropriateness and accuracy of these studies.

Mr. Fuller testified that the Cost of Service Study is an appropriate and accurate analysis of the cost to Duke of supplying electric service to its customers. Mr. Coan testified that no factors were left out of the Cost of Service Study that should have been included. Mr. Vennard testified that he had looked at the Cost of Service Study, that he did not find anything wrong with the procedures that were used in it, that there were no factors that were not considered which should have been considered, and that a better job could not have been done in preparing the Cost of Service Study.

The jurisdictional Allocation Study used the "peak responsibility" method of allocating generation plant and transmission plant between jurisdictions. Distribution plant was assigned to its respective State. The Cost of Service Study also used the peak responsibility method to allocate generation and transmission plant between classes of service, and used other demand factors, as appropriate, to allocate demand-related distribution plant. The Manufacturers questioned several witnesses about the use of

these methods of allocating demand related plant. All witnesses supported these demand allocations because they assign the cost responsibility according to the impact which each class of service has upon the demand related plant.

At various times during the Hearing, and again in the Brief, the propriety of using those studies as guides in setting rates in North Carolina Retail Service was questioned. All expert witnesses testifying as to the execution of these jurisdictional allocation and class cost of service studies before this Commission in this Docket have supported the validity of these studies, even though the witnesses differed on the degree that the cost of service studies should be utilized in the design of Duke's rates.

The Commission Staff made a full and complete investigation of the |97| Cost of Service Study. Staff Witness Clapp testified on the manner of execution of Duke's |97| Study and made recommendations for changes in future Studies. The use of the minimum-intercept method of calculating certain of the consumer components of distribution costs was recommended by the Staff in order to refine the accuracy of the study and produce more stable and comparable results over time. Mr. Clapp testified that the Duke Cost of Service Study followed some of the methods which are outlined in a forthcoming NARUC publication on the subject, that the Staff had examined the treatment of each account in the study as to the appropriateness of its use, that only two accounts required adjustment and that, overall, the Duke Study did not require adjustment.

Staff revised the |97| Cost of Service Study to reflect the use of statistical regression techniques and the minimum-intercept method in the allocation of poles (on the basis of average height, average year, and Class 7 size intercept) and transformers (a zero-load intercept). The recommendations made by the Staff, and the revision of that |97| Cost of Service Study to conform to the Staff recommendations were not challenged. The corrected rates of return by classes are given in Clapp Exhibit No. |A as:

DUKE POWER COMPANY - COST OF ELECTRIC SERVICE - 1971
SUMMARY AND RATE OF RETURN

	(5) ** % Rate of Return to Rate Base	(6) * % Deviation from Average Return of 6.42%	(7) * % Deviation from Industrial I Rate of Return
Residential			
R	7.34	+14.33	+ 40.9
RW	7.06	+ 9.96	+ 35.5
RA	6.33	- 1.40	
General			
G	7.21	+12.30	+ 38.4
GA	6.44	+ 0.30	+ 23.6
T	5.39	-16.04	+ 3.5
T-2	12.17	+89.50	+133.6
Other	4.78	-25.50	- 8.3
Industrial			
I	5.21	-18.80	0.0
IP	4.63	-27.90	-11.1
	6.42	0.00	+ 23.22

* These figures were computed by the Commission from the % rates or return shown in Column (5) and were not on the original Exhibit. The weighted system average of 6.42% was used as a base for column (6) and the 5.21% for I was used as a base for column (7).

**Columns renumbered from original Exhibit

Mr. Fuller testified that the industrial class of service did not pay the costs of providing the services which it received during the year 1971.

In reference to the high rate of return shown for T-2 Outdoor Lighting Service, Mr. Coan stated "Reversal of the downward trend in cost of equipment and installation and servicing is occurring presently, and the demand for the lights continues. The rate charged for the light in 1970 was the same as the rate which was introduced in 1958. With an increasing number of lights to service and maintain each year, at costs which are becoming higher each year, erosion of the rate of return shown in this analysis is expected.

"It is noteworthy that the customer can purchase and install a similar light himself, and operate it through the meter on his Residential rate, at lower cost than the company's rate on Schedule T-2. It is believed that the customer is willing to pay more for this light because the Company installs, owns, and maintains the light, and replaces burned-out lamps. The customer is thus relieved of the responsibility."

Mr. Coan testified that Duke's present rates, if they had been in effect all during 1971 would have given the rates of

return on the |97| net plant investment and allowance for working capital as shown below:

DUKE POWER COMPANY - COST OF ELECTRIC SERVICE
PRESENT RATES APPLIED TO |97| SALES

	% Rate** of Return	% Deviation* from Average Return of 7.4|%	% Deviation from Industrial I Rate of Return*
Residential			
R	9.|2	+23.08	+6|.|3
RW	8.45	+|4.04	+49.29
RA	7.37	- 0.54	+30.2|
General			
G	8.22	+|0.93	+45.23
GA	7.32	- |.2|	+29.33
T	5.8|	-2|.59	+ 2.65
T2	|5.57	+2|0.|2	+275.09
Other	5.37	-27.53	- 5.|2
Industrial			
I	5.66	-23.62	0.00
IP	4.79	-35.36	-|5.37
Total	7.4|	0.00	+|30,92

* from Transcript XI, page 209
** calculated by the Commission from the % rates of return

Mr. Coan testified that Duke's proposed rates would have given the rates of return on the |97| net plant investment and allowance for working capital as shown below:

DUKE POWER COMPANY - COST OF ELECTRIC SERVICE
PROPOSED RATES APPLIED TO |97| SALES

	% Rate * of Return	% Deviation from Average Return of 9.|%**	% Deviation from Industrial I Rate of Return**
Residential			
R	|0.09	+|0.88	+ 26.76
RW	9.75	+ 7.|4	+ 22.49
RA	8.79	- 3.40	+ |0.43
General			
G	9.78	+ 7.47	+ 22.86
GA	9.44	+ 3.74	+ |8.59
T	6.79	-25.38	- |4.70
T-2	|6.25	+78.57	+|04.|5
Other	7.|5	-2|.43	- |0.|8
Industrial			
I	7.96	-|2.53	0.0
IP	7.50	-|7.58	- 5.78
	9.|0	0.0	+ |4.32

* from Transcript XI, page 209
** calculated by the Commission from the % rates of return

Mr. Coan testified that, if any experienced rate man were designing rates starting from scratch, with only a cost of

service study as a guide, rates would be based upon cost of service unless there were some extraordinary reason for departure from it.

The issue of the benefit of high-load factor, high-use customers to the rest of Duke's system was raised at various points in the proceedings. Mr. Fuller testified that the Cost of Service Study takes into account all of the advantages of any volume purchases of a class, such as the industrial class. Duke supports the Cost of Service Study, but also contends that the all-electric rates benefit the system.

Mr. Coan testified that Duke had made a study of the effect of removing the RA heating revenues, and associated rate base and expenses, from the residential schedules so that the effect on the |97| Residential rate of return could be seen, and that the heating component of Schedule RA earned ||.70%. However, the overall rate of return for RA service in |97| was less than the average return of 6.42%.

(ii) Incremental Costs

Background

Incremental Costs are defined as the costs of increasing a system's capacity or output by one more unit. "Incremental customer costs are the additional costs the system incurs by adding one more customer to the system. Incremental demand costs are the cost of increasing system capacity by one KW. Incremental energy costs are the additional costs incurred by increasing generation one KWH at a fixed KW capacity." (Transcript Vol XVIII, page 98)

The electric industry's incremental costs are now greater than embedded costs, contributing to attrition in earnings.

Evidence

Customer costs vary among customer classes depending upon the amount of service required for each class. Embedded monthly customer costs were shown to range from $4 to $|| for some major rate classes (Clapp Exhibit No. 2, Sheet | of 3). There is no evidence in the record of incremental customer costs.

Embedded monthly demand costs were shown to range from approximately $|.20 to $2.20 per kilowatt for the major rate classes (Clapp Exhibit No. 2, Sheet 2 of 3). Incremental monthly demand costs are approximately the same for each major class and are estimated to be in the range of $2.30 to $2.85 per kilowatt for generation alone, exclusive of transmission and other demand costs. Average embedded energy costs range from less than .5¢ to more than .6¢ per kilowatt-hour. (Clapp Exhibit No. 2, Sheet 3 of 3) Incremental energy costs were estimated to be .458|¢ per kilowatt-hour.

There are seasonal differences in both energy and demand incremental costs. If a customer increases his KW demand during an off-peak period, no new capacity need be built to meet this increased KW demand since, by the definition of an off-peak period, the system is operating at less than capacity, and therefore, the incremental costs of that increased demand are zero. The story is somewhat different if a customer increases his KW demand during a peaking period because, by definition, the system is operating at or near capacity during a peaking period. In the long run, any permanent increase in KW demand during a peaking period requires additional capacity to be built to satisfy this increased demand. Incremental energy costs are the costs of generating on additional KWH at a given level of KW demand. These costs consist primarily of fuel costs and related maintenance and are slightly higher in the summer due to the fact that the system operates less efficiently at higher ambient air and water temperatures.

Professor Spann testified that Duke's proposed schedules fail to cover incremental costs and that: "If customers are charged less than the real costs of providing that electricity. Thus, electrical usage is encouraged by low prices but consumers are not paying the full costs of providing that electricity. An increase in the price of electricity to the full cost of providing additional service will eliminate this wasteful, below cost usage of energy."

The incremental demand and energy charges which are implicit in Duke's proposed rates are calculated to be at $.50 - $1.99 per KW for demand and .73¢ - 1.30¢ per KWH for energy. (Spann Exhibit Nos. 25 and 26).

The Staff's rates are intermediate between Duke's proposed rates and rates based completely on incremental costs. They fall short of recovering incremental demand costs and overshoot incremental energy costs, but they are in the direction of incremental costs.

Dr. Olson testified that Duke's proposed RA Schedule fails to cover incremental costs for peak periods of consumption in that: "according to Duke's [97] F.P.C. Form 1, several gas turbine and diesel peaking units were in operation during [97] with operating costs (For fuel and other production expenses) of about 1.0¢/KWH and probably have capital costs averaging about 0.5¢/KWH. Adding this to the operating costs yields a generating cost of about 1.5¢/KWH and yet the tail-block rate proposed for Residential Service Schedule RA is only 1.33¢/KWH, and the proposed Schedule R rate is 1.81¢/KWH."

(iii) Rate Design

Rate Schedules

Duke's historical and proposed rate structure is divided into the following major classifications and schedules:

Residential Service

Schedule R, Residential Service - Available to residential customers in residences, mobile homes, or individually metered apartments.

Schedule RW, Residential Service with Uncontrolled Water Heating - Available only to residential customers in residences, mobile homes, or individually metered apartments in which an electric water heater meeting certain specifications is installed and is used to supply the entire water heating requirement.

Schedule RA, Residential Service, All-Electric - Available only to residences, mobile homes, or individually metered apartments in which the energy required for all water heating, cooking, and environmental space conditioning is supplied electrically. [The residence shall be insulated so that total heat losses (as calculated by the Company's heating manual, the current edition of American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) Guide or National Electrical Manufacturers Association (NEMA) heating manual shall not exceed 0.184 watts (0.628 BTUC) per sq. ft. of net heated area per degree F. temperature differential. Duct or pipe losses shall be included in the computation of total heat losses.]

General Service

Schedule G, General Service - Service under this Schedule must be used solely by the contracting Customer in a single enterprise, located entirely on a single contiguous premises.

Schedule W, General Service Water Heating - Available only to Customers receiving service at 575 volts or less on Schedule G or Schedule I, provided that water heaters are of the insulated storage type, and that energy use is limited to the heating of water for purposes other than space heating. Residential water heating service for Customers connected after June 25, 1963 is available through the same meter as other residential service on Schedules R, RA or RW. Customers being served on Schedules R & W on June 25, 1963, have been automatically transferred to Schedule RW as soon as their total charges for the preceding 12 months under combined Schedules R & W became the same as, or greater than, they would have been under Schedule RW.

Schedule GA, General Service, All-Electric - Available only to establishments in which environmental space conditioning is required and all energy for all such conditioning is supplied electrically through the same meter as all other electric energy used in the establishment, provided however that if any such establishment contains residential housekeeping units all

energy for all water heating and cooking for such units is also supplied electrically. - Service under this Schedule must be used solely by the contracting customer in a single establishment located entirely on a single, contiguous premises, and all electric energy used in the establishment must be provided by the Company.

Schedule T2, Outdoor Lighting Service - Available to the individual Customer at locations on the Company's distribution system.

Schedule T, Street Lighting Service - Available to municipalities in which the Company owns and operates the electric distribution system.

Industrial Service

Schedule I, Industrial Service - Available only to establishments classified as "Manufacturing Industries" by the Standard Industrial Classification Manual, 1957 or later revision, published by the Bureau of the Budget, United States Government, and only where 85% or more of the total energy consumption of such establishment is used for its manufacturing processes. Service under this Schedule must be used solely by the contracting Customer in a single enterprise, located entirely on a single, contiguous premises.

Schedule IP, Industrial Service, Parallel Operation - Available only to establishments classified as "Manufacturing Industries" by the Standard Industrial Classification Manual, 1957 or later revision, published by The Bureau of the Budget, United States Government, and only where 85% or more of the total energy consumption of such establishment is used for its manufacturing processes. - Service under this Schedule must be used solely by the contracting Customer in a single enterprise, located entirely on a single, contiguous premises. - The Customers' power generating facilities may be operated in parallel with the Company's system, but the Customer must provide suitable control and protective devices on its equipment to assure no disturbance to other Customers of the Company and to protect the Customer's facilities from all loss or damage which could result from parallel operation with the Company's system.

Closed Schedules

(NOTE: These Schedules were not available for service to connections made on and after January 1, 1965, and they have remained in effect only for Customers who continue to receive service on it under agreements made prior to that time. Agreement to provide service under these closed schedules have been cancelled immediately on discontinuance of service, or at the first billing period in which the Customer's bill is lower when computed on another applicable schedule.)

Schedule L, General Service - Availability is the same as that for the G Schedule.

Schedule GA, General Service, All-Electric - This schedule was available to the individual Customer for lighting, cooking, heating, refrigeration, and other service supplied to the individual store, establishment, or industrial plant, who purchases all power requirements from the Company, who heats all space solely with electric energy, who uses electric energy for all cooling requirements, and for the majority of any cooking and water heating.

Schedule 1A, Industrial Service, Textile and Grain Mills - This schedule was available only to Textile and Grain Mills.

Schedule 2, Industrial Service - Energy use was permitted under this schedule only where it is for the manufacturing processes of the Customer and where not over 15% of the total consumption is used for other purposes. Electric ranges and heating apparatus could be connected to the service and billed on this schedule.

Schedule 2C, Industrial Service, High Load Factor, 30 KW and Over - and Schedule 2D, Industrial Service, Seasonal - Energy use was permitted under this schedule only where it is for the manufacturing processes of the Consumer and where not over 15% of the total consumption is used for other purposes.

Schedule 10G, Municipal Pumping Service - This schedule was only for service to municipalities for municipal pumping purposes.

Background

Duke Power Company generally adopted the view that the historical rate structure, outlined above, which had largely evolved down through the years (last significant change 1965), was the most appropriate rate structure to follow except that it should be revised to reflect the significant increase in fuel costs which have occurred since 1969. The Staff and Attorney General witnesses pointed out the alleged ineffective, inequitable, and discriminatory aspects of deviating substantially from a rate structure based on costs of service. The Staff designed rates that more nearly followed cost-of-service. Professor Spann testified that the Staff rates were designed (1) to return revenues that would more nearly equalize rates of return between classes, (2) to charge in all schedules so as to more nearly recover incremental costs, and (3) to obtain revenues from consumers that use electricity at peak times which more closely cover the costs of supplying that energy.

Customer, demand and energy related costs were discussed earlier under Cost of Service Study. Block rate schedules,

of the type generally used for Residential Service Schedules, are designed so that customer costs are returned gradually over the first few kilowatt-hour blocks, demand and energy costs being recovered in later blocks. Since idle or low-use customers do not repay their customer costs under the normal block-type rate schedule, a minimum charge which includes some amount of KWH is usually billed, whether or not this amount of KWH is actually used. In this manner some, but not all, of fixed customer costs are recovered by the utility, thus relieving the rest of the consumers from having to accept the burden of these costs. In its North Carolina operations, Virginia Electric and Power Company has a residential service minimum charge of $3.00; Carolina Power and Light Company has a $2.00 minimum charge. Duke's minimum charge has been $.80 for the first 10 KWH or less per month since 1932, until the recent across-the-board rate increases which raised it to $.96. In the present Docket, Duke proposes to increase the initial block of kilowatt-hours to $1.00, $1.10, and $1.20 for Schedules R, RW and RA, respectively, which would make the minimum charge be closer to, but still lower than, the actual cost. The balance of the cost is proposed to be collected in the succeeding blocks.

Textile Manufacturers introduced testimony and evidence proporting to show the effect of Duke's proposed rates, the effect of strict cost of service rates designed but not sponsored by Duke, and of rates designed by the Staff. Other intervenors argued either for or against the various rate designs for various reasons. All the rate designs were necessarily based on Duke's full request for additional revenues in order that Duke's customers could ascertain the maximum dollar impact of any proposed rate design on their individual usage. All rate designs were duly advertised and noticed to Duke's customers. In its prefiled testimony, the Staff made minor refinements to the rate design options noticed but they were for the purpose of arriving more precisely at the overall revenue Duke requested. These minor refinements did not result in any class rate schedule being increased above one which was included in the notice.

Evidence

Duke witness Coan testified substantially as follows:

Seven rate schedules, now in very limited use, have been removed from the proposed rate schedules. These schedules have been closed to new customers since January 1, 1965 and consist of three general service and four industrial rates. These schedules consist of some of the old rates which were merged into the present schedules in 1965. The 1965 schedules produced a decrease in rates for almost every customer. However, within a narrow range of usage and/or low-load factor, the 1965 rates resulted in higher bills for a few customers; therefore, Duke permitted these customers to remain on the old lower rate schedules (and while receiving the 10.38% and 8.93% across-the-board increases in

Dockets E-7, Sub 120 and E-7, Sub 128, their rates have still remained lower than other customers in their classification). The customers previously served on these schedules are proposed to be placed in their appropriate classifications. R customers with separate metering for water heating (old W Schedule) would be served on the RW schedule under Duke's proposal. The "Reconnect Fee" would be raised from $1 to $5.

There were no changes in the design or general format of the proposed rate schedules from the rate structure in effect prior to the Application and basically adopted in 1965. The main change in Duke's proposal is that the price per KWH in each block of each rate schedule has been changed by varying percentages.

Duke's proposed rate design was obtained by removing the original fuel costs, "variable component", of .251 cents per KWH from each pricing block of each schedule of the "Base Rates", (the 1965 rate structure). The costs that are left are "fixed costs", and it is felt by Duke that the distribution of fixed costs in the "Base Rates" is fair and equitable to all users. Next, the present day fuel costs of .425 cents per KWH are added back to all of the blocks of the schedules. The remaining additional revenue requirements are obtained by a 21.08% across-the-board increase on the fixed portion of the rate blocks.

1971 fuel cost was .437 cents per KWH; projected 1973 fuel cost of .425 cents per KWH was used for the new rates. The reduction in fuel cost projected for 1973 is due to the fact that Oconee was projected to become commercial to a certain amount in 1973. The delay in Oconee's operation will result in 1973 fuel costs above those used in the new rate schedules.

Further amplifying Duke's procedure, Mr. Coan divides costs into two groups, variable costs and fixed costs. Variable costs are almost entirely made up of fuel costs and vary with KWH consumption. Fixed costs are costs related with the operation, maintenance, and construction of facilities to generate the power and are constant whether large or small amounts of energy are generated. The price per KWH in each block of each rate schedule should consist partly of variable and partly of fixed costs. The cents-per-KWH increase in fuel costs should be added to the fuel costs built into the rate, and the cents per KWH increase in fixed cost should be added to the fixed costs already built into the rates. This is the theory that Duke used in changing its present rates to the proposed rates.

Mr. Coan testified that the 1965 rate schedules are used by Duke as "Base Rates" because the Company was convinced that they were equitable and had done a good job and that there has been general customer satisfaction with this design. However, at the time that they were designed, fuel costs were 22% of total costs with fixed cost being 78%.

These percentages have now shifted due to the rapid rise in fuel costs and fuel is now 30% of total costs, with fixed costs being 70%. This change in the relationship of variable to fixed costs has not been reflected in the across-the-board increases granted previously in Dockets E-7, Sub 120 and E-7, Sub 128. These increases were distributed evenly across all schedules without differentiation as to costs, whereas the change in the proportion of fuel cost to total costs should result in smaller increases in the initial blocks of a rate schedule, with larger increases in the following blocks. The resulting effect of a proper reflection of these changed costs is that larger customers would pay a larger percent increase (larger increase in variable costs) than smaller customers.

Mr. Coan indicated that, should the Commission allow a lesser increase than Duke's proposed rates would produce, the energy portion of the rates should remain as proposed, and the reduction should be made in the fixed cost portion of the rate structure.

Professor Spann testified that many factors were included in the design of the rate schedules designed by the Staff for the Commission's consideration, sometimes herein referred to as "Staff proposed rates" or "Staff rates" for easy reference, even though the Staff made it clear that: (1) they were not supporting any level of revenues sought by the Company, but had used the total amount requested in designing rates in order to ascertain the maximum effect such a proposal could have on Duke's individual customers and, (2) that they were offering rate designs into evidence under the theory that such rates would accomplish certain objectives, such as following costs of service more closely, but that it was for the Commission's judgement to determine whether these objectives were worthwhile and feasible. Professor Spann stated that the first of these factors was that total revenues collected from any class of customers should approximate the total costs of serving those customers. He further testified that another factor considered was that price should approximate incremental costs. He summarized several reasons for these restrictions:

1) Failure to follow costs of service in rate design means that some classes of customers will pay more than the costs of the electricity they use and thus are forced to subsidize other customers.

2) Failure to charge rates based on costs of service will alter future revenue requirements. Depending on the growth rates of the various customer classes, the rate of return may exceed or fall short of the required or fair rate of return.

3) Failure to follow costs of service in all rate classes means that some customers will pay less than

cost for the electricity they use. This leads to wasteful consumption of valuable energy resources.

4) The reasons given by Duke for failing to ask for equal rates of return on all rate classes are not borne out by the data. There is no reason not to earn equal rates of return on all rate classes.

5) Setting different price-cost margins for different classes (or different rates of return) is price discrimination.

Spann testified that Duke's rates do not meet these criteria. First, rates of return for each of the major rate classes under Duke's proposed rates vary from a high of 10.09% for R customers to a low of 7.96% for I customers. This variation is large and represents a deviation from the cost of service. Second, Duke's proposed rates are not in accord with incremental costs. For example, Duke charges the same rates at all times of the year, whereas incremental costs of electricity are not the same at all times of the year, and costs are higher in the summer than in the winter. If it is realized that costs are higher in the summer and rates are designed appropriately, there is no longer a need for a special electric heating rate.

Duke's RA Schedule is designed to attract winter heating loads needed to help balance the summer seasonal peak. Evidence produced by Spann indicates that the RA customers "...consume more power during all months of the year than do other residential customers," thereby contributing to the winter load but also adding to the summer peak load. Coan pointed out that the average RA customer contributes 2.7 times more to the winter demand peak than to the summer one, but Spann questioned whether or not Duke's RA Schedule is the most efficient method of promoting off-peak usage.

Spann's rates designed for the Commission's consideration proposed an RA rate with a summer-winter differential as a viable alternative to Duke's proposed RA Schedule. He demonstrated how such a rate would decrease the incremental peaking consumption of the RA class. Spann Exhibit No. 10 compared the peaking usage ("...difference between consumption...during the peak month, and base load consumption") of the RA and RW classes for the five years 1965 through 1970. This exhibit showed that "for all of the five comparisons except one, the increase in RA consumption is much greater than the increase in RW consumption."

Spann then proceeded to use the same information in Exhibit No. 11 to arrive at an estimate of -.49 to -1.077 for the price elasticity of demand for the RA and RW customers. Translated into layman's language, this means that, assuming the true value of price elasticity is -.5, "...a summer price increase of 10-20 percent will have the long-run effect of reducing summer consumption by 5-10 percent."

As further justification for the summer-winter differential, Spann cited that "many companies have used seasonal pricing as a means of promoting winter usage without simultaneously promoting summer usage." Several examples were given of companies with seasonal pricing whose average load factors improved almost as much or more than Duke's during a ten-year period. Spann stated that increased off-peak usage would improve system load factor and seasonal rates would induce all users to increase off-peak consumption rather than giving lower rates only to "all-electric" RA customers.

Spann testified that a study of class load factors at various levels of KWH for a particular month is important in designing rates. KW demand of different classes of customers at various KWH levels is needed to determine the appropriate rate differences between rate classes. The relationships between KWH consumption and demand at time of system peak, used to predict the average KW demand at various levels of KWH consumption for each rate class, were determined from data obtained during Duke's 1968-1969 load study. The demand predictions from these relationships for the R, RW, and RA classes show that

> "...at low levels of consumption, rate class R has the smallest KW demand at any given KWH level. At higher levels of consumption, rate class RW has the smallest KW demand at any given KWH level. At all levels of consumption, rate class RA has a higher KW demand than the other two residential rate classes." (Transcript Vol. XVIII, page 109)

These KW demands and KWH consumptions were used to calculate load factors for the various rate classes. The load factor comparisons show that

> "...except for very small and very large users, the load factors for customers on the R and RW schedules are almost identical. Customers on the RA schedule have poorer load factors than customers on other residential schedules at all levels of consumption." (Transcript Vol. XVIII, page 109)

Based on this data, Professor Spann stated that during the summer months RA customers' load factors are less than those for other customers and, therefore, at any level of KWH consumption, RA customers add more to the summer peak than do other rate classes. He stated that, if rates are based on load factors, it could be argued that RA customers should pay a higher rate during the summer than do other customers. Also, since during the summer months the load factor difference between R and RW customers is not very large, the rate difference between the R and RW schedule should be reduced.

Load patterns for water heaters were compared to system load patterns by Spann. He stated that while water heaters

appear to add some diversity to the load pattern, the diversity may not be very large. This indicates a need for a reduction in the differential between RW and R Schedules.

Spann introduced evidence which indicated that there were discrepancies between Duke's G, GA, and I rates and incremental costs in that the Company was charging too much for energy and too little for demand, thus indicating that Duke's rates provide incentive for low load factor usage and penalize high load factor users.

Spann testified that the Staff's proposed GA and I schedules are Hopkinson type rates and that this type of rate completely separates the customer's demand and energy for billing purposes. Each of these components is billed on a different declining block schedule. Staff's Hopkinson rate also raises demand charges and lowers energy charges in accord with costs as opposed to those of Duke's proposed rates. If there should occur a more rapid increase in demand cost than in energy cost, the Hopkinson rate would enable an easier adjustment, in the future, to this cost change. The "G" Schedule proposed by the Staff is a Wright type rate because very few customers on this schedule have demand meters. A "G" customer without a demand meter would be billed on the first block of the schedule.

The testimony of public witness Kirby indicated that, due to the minimum demand charge on the Staff's proposed GA Schedule, it is possible that there would be an enormous increase for certain small users now served on Duke's GA schedule. Mr. Kirby stated that he has a small utility building behind his home which is served through a separate meter. Since the building contains a 5 KW heater, it is served on the GA schedule. Mr. Kirby is now paying $4.39 per month which is the minimum charge on the GA rate and includes only 100 KWH. Under the Staff rates in the Notice, he calculates that he would pay a minimum charge of $28.38.

Professor Spann testified that the Staff rates were designed to eliminate part of the alleged deficiencies in Duke's proposed rates. He further testified that the Staff rates do not return equal rates of return for all classes but they move closer toward equal rates of return than Duke's rates. Spann stated that an effort was made to be conservative in trying to equalize rates of return so as to take into account factors other than cost (such as historical trends) and to limit the number and amount of the changes that customers would face at this time. The Staff rates incorporate a Hopkinson type rate for the I and GA schedule, removal of the RA rate, a lowering of the differential between R and RW rates, and the inclusion of summer-winter differential on all schedules.

Professor Spann stated that the Staff's rates are superior to Duke's proposal for the following reasons:

"1) The Staff Rate Design is more equitable than Duke's rate design;
2) The Staff Rate Design reflects costs of service more than Duke's proposed rates; and
3) The Staff Rate Design encourages off-peak usage without simultaneously encouraging peaking usage."

Duke's proposed minimum charges were based upon the "minimum readiness to serve costs", which include only the operating expenses associated with meter reading, customer accounts, and meter maintenance, etc., as opposed to customer costs which include all those as well as the maintenance and amortization of the minimum distribution plant built to serve the customer. The minimum readiness to serve costs were $1.25, $1.32, and $1.17 for Schedules R, RW, and RA, respectively. Staff witness Clapp introduced evidence showing the customer costs of the various rate classes. Similar cost figures were also supported by Duke on cross-examination. The Staff testified that the front-end residential customer, such as the owner of a vacant cabin would not be paying his full costs in the absence of an adequate minimum charge, and that it is the middle and high-use residential customer who subsidized low-use residential and industrial customers.

The Staff enumerated several options available to the Commission in setting minimum charges, including keeping the standard block system, but setting the minimum charge, and inclusive usage, at the point where the revenue derived from the rate schedule would equal the customer cost. This would assure that all customers would pay at least their customer costs, but, since it would include some usage, the low-end users would still be subsidized to some extent.

(iv) Special Requirements for Service

Background

At the present time, Duke requires that the building for which a consumer desires service under the RA "all-electric" schedule must meet rigid insulation requirements, as calculated by the American Society of Heating and Refrigeration and Air Conditioning Engineers or the National Electrical Manufacturers Association calculation methods. In addition, energy for all water heating, cooking and environmental space conditioning must be supplied electrically.

Evidence

Duke makes the following argument for its insulation requirements and the RA schedule:

"There are advantages to all of the Company's customers, and extra advantages to the Schedule RA customers, resulting from the Company's requirement that heat loss be limited to specified values.

"The demand on the Company's...system is less because of the heat-loss limitation in Schedule RA...this benefits all customers...heat-loss limitation reduces the maximum demand of an electrically heated house because it is not necessary...to install as much KW capacity in his heating system as would be required if the heat loss were not limited. For this reason, the generating capacity required to serve electric house heating is very much less than the capacity which would be required if inadequate insulation were permitted in electrically heated homes. It is not only less in winter, but also in summer to the extent that customers served on Schedule RA have air conditioning... it eliminates waste of natural resources because...generating stations use less fuel to provide the heating requirements of the house.

"...the typical home builder will not spend the extra cost of the heavy insulation simply on suggestion.

"The difference between Duke's Schedule RA and other schedules on which electric heating could be supplied is that instead of suggesting to the prospective customer that he install insulation sufficient to limit the heat loss, Duke requires it, but gives him an incentive to do it...

"The whole objective...is to promote sufficient winter load to offset the growing summer peak, thereby utilizing capacity which would otherwise be non-productive.

"The present saturation of customers served on Schedule RA is 15.5%. As a consequence the Company has been able to balance the summer and winter peaks which resulted in the Duke Power's high system load factor. This would not have been possible without the slightly lower rate which provides an incentive for the customer to try electric heating, and to spend some of his own money to insulate his house." (Transcript XI, pages 229-231)

(v) Industrial Attraction

Background

Of interest in this proceeding was the effect which proposed rates might have on the State's ability to attract industry, because the industry weighs business climate and cost factors before choosing sites.

Evidence

Mr. Robert E. Leak, Economic Development Director for the State of North Carolina, said that a rate revision should not be allowed which would "...weaken our ability to attract the type of industry which will solve our most pressing economic problems." (Transcript Vol. IX, page 78) Mr. Leak testified that industries considered electric rates as well as the rest of the local situation, water supply, schools,

churches, labor market, recreational facilities, and ad valorem taxes, among other things.

Professor Spann gave evidence in his testimony on the question of industrial rates and their effect on attraction of industry. Spann Exhibit No. 30, page 3, compares typical monthly bills issued under Duke's proposed rates, the Staff design summer and winter rates, and Duke's present rates. These comparisons are shown for a number of hypothetical customers. For each of these customers, the Staff's winter rates produce a bill which is less than or nearly equal to the bill under Duke's proposed rates. Summer revenues produced by the Staff's rates are greater than those produced by Duke's rates, with the larger users paying the larger percent increase.

Spann stated that electricity costs will only be an important consideration in locational decisions if such costs are a substantial fraction of total costs. Mr. Vennard stated in his testimony that the electric bill of the average manufacturing company is less than 1% of its gross expenditure. In Spann Exhibit No. 22, these percentages are shown for several industries of types which are located in North Carolina.

Average monthly industrial power bills, shown in Spann Exhibit No. 23, were from Typical Electric Bills - 1971, a publication of the Federal Power Commission. Duke's industrial rates compare very favorably with those of surrounding states and most of the remaining states. Spann's exhibits tend to show that a 20% increase in the average monthly bill would leave Duke's territory in a favorably competitive position. Spann Exhibit No. 24 further shows that Duke's cost of service rates are below the rates of companies in neighboring states. (Transcript Vol. XVIII, pages 113-114)

Based upon the evidence in the record and facts or information appropriately judicially noticed, the Commission makes the following

FINDINGS OF FACT

FAIR VALUE OF PLANT IN SERVICE

(i) Original Cost

1. That Duke Power Company is duly organized as a public utility company under the laws of North Carolina, holding a franchise 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. No sums expended or recorded on Duke's books for plant under construction or for plant held for future

use should be nor have been included in Duke's rate base.

3. That the actual investment currently consumed through reasonable actual depreciation during the test period was $38,418,138.

4. That the reasonable original cost depreciated of Duke's electrical plant in service at the end of the test period and subject to Commission jurisdiction is $865,006,125 (after deducting contributions in aid of construction but not including allowance for working capital.)

(ii) Replacement Cost

5. That the trended original costs, depreciated, of the electric plant in service, at the end of the test period and subject to Commission jurisdiction are found by applying the staff allocation factors to the total company trended original costs, depreciated, as calculated by Mr. Gillett; and that these are:

Production Plant	$513,757,571
Transmission Plant	224,244,787
Distribution Plant	425,194,611
General Plant	35,896,388
Total Electric Plant	$1,199,093,357

and that the Replacement Cost is $1,199,093,357.

(iii) Fair Value

6. That the working capital allowance found to be reasonable for Duke's North Carolina retail operations was determined by taking the working capital of $19,624,147 and adding to it materials and supplies, $39,477,335, minimum bank balances of $8,942,633, and average prepayments, $264,968. Average tax accruals in the amount of $4,100,147 and average customer deposits of $1,792,547 are offsets to the working capital allowance, resulting in a net working capital allowance in the amount of $62,416,389; and that a reasonable working capital allowance to be included in Duke's rate base is $62,416,389.

7. That considering the reasonable original cost of the property, less that portion of the cost which has been consumed by previous use and recovered by depreciation expense, and considering the replacement cost of said property, the condition of the property, and the outmoded design of some of the older plant, the Commission finds that the fair value of said plant should be derived from giving five-sevenths weighting to original cost (investment) and two-sevenths weighting to replacement cost (trended). By

this method, the Commission finds that the fair value of the said plant devoted to retail service in North Carolina is $960,459,620 or $1,022,876,009 including $62,416,389 allowance for working capital.

OPERATING COSTS

(i) Effect of Oconee Nuclear Units

8. That it is uncertain that Duke's cost of generation will decrease in any significant amount from that of the test year due to any expected benefits of the operation of the two (2) new nuclear units in the immediate future.

(ii) Fuel Prices

9. That the costs of fuel and purchased power experienced by Duke during the test year were reasonable.

10. That a total overall expenditure for fuel (including nuclear fuel) for 1973 of $185,280,000, or $106,629,000 when allocated to N.C.U.C. jurisdictional operations is not unreasonable; and that with these fuel expenditures, Purchased Power expenses should not exceed $21,625,000, or $12,500,000 when allocated to N.C.U.C. jurisdictional operations in 1973.

(iii) Capacity Reserves

11. That Duke Power Company's present level of reserves is approximately 10 percent; that this level is less than adequate to insure reliable service; and that the amount of investment in generation devoted to use as reserves is not an issue in this proceeding.

12. That in reference to the future needs for which Duke is presently constructing reserve capacity, the evidence before this Commission at this time is insufficient to determine the most reasonable level of reserves.

(iv) Increasing Costs

13. That Duke is experiencing increasing costs of supplying service and constructing new capacity and that incremental costs exceed embedded costs.

14. That expansion of service and replacement of plant under increasing cost conditions results in attrition of earnings.

(v) Research and Development

15. That reasonable expenditures for research and development are a legitimate operating expense.

FAIR RATE OF RETURN

16. That, after the Staff's accounting and pro forma adjustments and jurisdictional allocation factors, 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 $319,497,621; that the reasonable operating revenue deductions of Duke during the test period are $257,085,428; that the net operating income for return at the end of the test period, after a reduction of $106,612 representing interest on customers' deposits, after accounting and pro forma adjustments, was $62,305,581, giving a rate of return on depreciated original cost of plant of 6.72%; a return on original cost equity of 7.54%; and a return on the fair value of 6.09%. That such rates of return are insufficient to provide a fair profit to Duke's stockholders considering changing economic conditions, and 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.

17. That the rate of return necessary of the fair value of Duke's property to allow Duke, with sound management, to produce a fair profit for its stockholders, considering 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 7.05%, which rate of return will produce $21,150,000 of additional gross revenues on North Carolina retail electric service; and that the additional gross operating revenues of $21,150,000 will increase the net income available to the common stockholders from $21,508,774 to $31,309,147 for a rate of return on book value common equity of 11% and a rate of return on fair value common equity of 8.24%.

18. Duke's projected data and financial results for the 1973 (Stimart Exhibit 2, pages 1 through 9) are based on budgeted averages for the year rather than on data adjusted to a year-end estimated rate base. This methodology does not comply with the statutory requirements under which the Commission must set rates. G.S. 62-133 [how rates fixed - item (c)] requires that a fair value shall be determined as of the end of the test period used in the hearing and that the probable future revenues and expenses shall

be based on the plant and equipment in operation at that time. (emphasis supplied)

RATES

(i) Cost of Service

19. That the jurisdictional Allocation Study in evidence in this Docket, as revised by the Staff, is the best evidence of the costs to Duke Power Company of providing service to North Carolina Retail service, is based upon sound engineering economics principles and is reliable, and the results are useful to this Commission in setting rates.

20. That the 1971 Cost of Service Study in evidence in this Docket, including revisals by the Staff, is the best evidence of the costs to Duke Power Company of providing various classes of service, and the results are useful to this Commission in setting rates.

21. That the Cost of Service Study may be used to:

a) separate the customer, demand, and energy components of both revenue deductions and rate base by classes of service for use in structuring rates,

b) examine the rate of return earned by each class of service for use in determining the reasonableness of rate levels, and

c) examine the changes in costs over time.

22. That the use of the minimum-intercept method of calculating customer components of distribution plant produces more correct and more stable and comparable results over time than the minimum-size method.

23. That Duke's proposed rates move the rates of return earned by individual classes of service closer to the (North Carolina retail) average rate of return than the present rates, but these rates of return still vary from the average. The Staff's recommended corrections in the method of determining customer cost, if applied to a cost of service study using Duke's proposed rates on 1971 sales and conditions, would bring the rates of return closer together.

(ii) Incremental Costs

24. That the use of incremental pricing is based upon sound economic principles, promotes maximum efficiency, and inhibits attrition of earnings; that expansion of service which is priced below the total incremental cost of that expansion will lower the rate of return; and that the expansion of service

which is priced above the total incremental cost of that expansion will raise the rate of return.

25. That Duke's incremental demand cost is approximately $2.30 to $2.85 per kilowatt and its incremental energy cost is approximately .458¢ per kilowatt-hour.

(iii) Rate Design

26. That it is reasonable and necessary for Duke to make the following changes which it has proposed in its rate schedules:

a) Eliminate seven (7) schedules that have been closed to new customers since 1965 and serve the customers now on these schedules on the G and I schedule as applicable.

b) Serve R customers who now have separate metering for water heating on the RW schedule.

c) Increase the "Reconnect Fee" from $1 to $5.

27. That the rates of return earned by Duke's proposed rates should achieve a more uniform rate of return by classes, and that Duke's proposed procedure for increasing its rates and the resulting rate structure is reasonable and not unduly discriminatory.

28. That Duke's proposed rate design is basically a revision of its "Base 1965 rate structure and would incorporate the significant increases experienced in its fuel cost used in generation of energy along with increases in fixed costs.

29. That the staff's rates more nearly follow costs-of-service and more closely recover incremental costs than do Duke's proposed rates, but that Duke's proposed rates move substantially in these directions.

30. That the present and proposed minimum customer charges in the residential rate structure are unreasonably low and unduly discriminatory to other ratepayers.

(iv) Special Requirements for Service

31. That electric heating loads benefit Duke's system load factor, and proper insulation, as required by Duke's RA schedules, results in less heating/cooling losses and therefore conserves energy resources, while at the same time costing the owner/operator less for space conditioning.

Based upon the foregoing findings of fact, the Commission makes the following

CONCLUSIONS

FAIR VALUE OF PLANT IN SERVICE

The trended original cost study by Witness Gillett for the applicant has deficiencies which make it unacceptable as a complete and reasonable method for determining replacement cost. The witness, in computing the trended original cost of the properties and subtracting from the figure, thus derived, an allowance for no element of depreciation, save for physical wear and tear, has obviously left out the major factor of obsolescence. While Mr. Gillett did account for advances in the art of construction, he made no attempt to determine the value of the utility plant as if the entire plant were designed in accordance with the present state of the art for the design and operation of electric systems, including modern technologies and efficiencies. The Commission considers the replacement cost more than just a "brick-for-brick" reproduction cost, and the Commission therefore concludes that the trended original cost method employed by Duke to be insufficient as a complete and reasonable determination of replacement cost.

The Commission concludes that the replacement cost which was determined merely by trending and depreciating original costs without proper consideration for improvements in plant design and efficiency is excessive. The Commission is of the opinion that the trended original cost, depreciated, is the best estimate of the replacement cost that can be derived from the evidence on record, but the Commission concludes that this replacement cost estimate must be combined with the original cost to determine the appropriate Fair Value of the electric plant in service, and that proper weighting be applied to eliminate deficiencies in the replacement cost estimate.

The Commission concludes that the reasonable original cost of the property, less that portion of the cost which has been consumed by previous use and has been recovered by depreciation expense, and the replacement cost of said property are appropriate factors to be used in determining the fair value of said property if consideration is given to the condition of the property and the outmoded design of some of the older plant when weighting these factors. The Commission further concludes that the proper weighting, considering depreciated original cost, replacement cost, and the outmoded design of some of the older plant, is five-sevenths weighting for original cost and two-sevenths weighting for replacement cost. By this method, the Commission determines the fair value of the said plant devoted to retail service in North Carolina to be $960,459,620 or $1,022,876,009 including $62,416,389 allowance for working capital.

OPERATING COSTS

(i) Fuel Prices

The 1973 kilowatt-hour consumption projections by Duke are reasonable. The planned 1973 generation mix, based on plant efficiencies, average per plant fuel costs and projected consumption, gives as low a total overall fuel cost as is reasonably attainable. With fuel prices as anticipated and with the reasonable generation mix planned, a total overall fuel price for 1973 of $185 million is not unreasonable.

The Commission remains concerned regarding Duke's fuel procurement procedure and its relative efficiency compared to purchasing by competitive bidding, especially during times of low supply and high demand. Accordingly, the Commission is of the opinion that its staff should continue surveillance of Duke's fuel costs and purchasing practices.

(ii) Capacity Reserves

The forecasting methodology used by Duke is sound and forecasts of peak loads and customer usage have been accurate historically. Based on present information and data, the current forecasts of peak loads and customer usage should prove reasonably accurate. The projected construction program is not unreasonable based on a 25 percent reserve margin. However, this Commission is not convinced that a 25 percent reserve margin is necessary or prudent. Present reserve levels are well below the 25 percent range and Duke's planned construction program (which anticipates reaching the 25 percent reserve range) places a large financial burden on the Company and its ratepayers.

This Commission remains deeply concerned regarding the impact upon the ratepayer of any overbuilding or underbuilding of plant. There is apparent discrepancy of requirements among companies in close proximity to Duke, and we are not convinced that Duke and its sister companies in this area are sufficiently or satisfactorily coordinating their load growth studies and planning for future plant (especially generation and transmission) to achieve the most efficient level of investment.

Because of the tremendous impact such decisions will have upon electric rates and service, this Commission deems it necessary that a full and complete investigation be entered into regarding the capacity reserve levels which are most appropriate for the companies within its jurisdiction. Accordingly, the Commission will initiate such proceedings under a separate docket in the near future.

The Duke projected 1973 financial operational data was not professionally corroborated, verified, or critically analyzed by the staff or any other participating party in the proceeding.

(iii) Projected Operations Data and Results

Duke's projected 1973 data is an attempt to provide the Commission with operating results 12 months beyond the test period in an effort to predict the actual impact of its proposed rate increase. While there is a recognized time lag in the regulatory process, and in times of inflationary pressures as are present today, this lag may contribute to the difficulty many utilities have in actually earning the rates of return found reasonable by regulatory bodies, we cannot use a projected set of peaks to set rates. We have carefully considered and weighed all test year data, and we conclude this to be the only reliable basis upon which to find Duke's expected revenues and reasonable expenses.

FAIR RATE OF RETURN

The Application of Duke in this proceeding seeks an increase under the proposed rates to produce $29,376,000 of additional annual revenue, or an annualized basis, based on the customers connected at the end of the test period. The following tables, based on the Findings of Fact, show the derivation of the $21,150,000 of such increased revenue found to be reasonable:

DUKE POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RETURN

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Gross operating revenues	$ 319,497,621	$21,150,000	$ 340,647,621
Operating Revenue Deductions			
Fuel expense	98,114,446		98,114,446
Purchased power	13,650,141		13,650,141
Operation and maintenance expense (excluding fuel and purchased power)	58,878,725		58,878,725
Depreciation	38,418,138		38,418,138
Taxes-other than income	29,959,462	1,269,000	31,228,462
Taxes-state income	1,383,615	1,192,860	2,576,475
Taxes-Federal income	10,880,162	8,970,307	19,850,469
Taxes-Deferred income	5,992,394		5,992,394
Investment tax credit normalized	2,351,283		2,351,283
Amortization of investment tax credits	(2,542,938)		(2,542,938)
Total operating revenue deductions	257,085,428	11,432,167	268,517,595
Net operating income	62,412,193	9,717,833	72,130,026
Less: Interest on customer deposits	106,612		106,612
Net operating income for return	$ 62,305,581	$ 9,717,833	$ 72,023,414

Investment in Electric Plant			
Electric plant in service	$1,223,445,451		$1,223,445,451
Less: Accumulated depreciation	352,253,499		352,253,499
Contributions in aid of construction	6,185,827		6,185,827
Net investment in plant	865,006,125		865,006,125
Allowance for Working Capital			
Materials and supplies	39,477,335		39,477,335
Cash	19,624,147		19,624,147
Minimum bank balances	8,942,633		8,942,633
Prepayments	264,968		264,968
Less: Average tax accruals	4,100,147	1,876,343	5,976,490
Customer deposits	1,792,547		1,792,547
Total allowance for working capital	62,416,389	(1,876,343)	60,540,046
Net investment in electric plant in service plus working capital allowance	$ 927,422,514	$(1,876,343)	$ 925,546,171
Rate of return on original cost net investment	6.72%		7.78%
Fair value rate base	$1,022,876,009	$(1,876,343)	$1,020,999,666
Rate of return on fair value rate base	6.09%		7.05%

DUKE POWER COMPANY
DETERMINATION OF EMBEDDED COST OF DEBT AND PREFERRED DIVIDENDS
BASED ON TOTAL COMPANY CAPITALIZATION AT JUNE 30, 1972

Type of Capital	Amount Total Company	Ratio %	Interest And Dividend Requirements	Embedded cost of Debt and Preferred and Preference Stock %
Total debt	$1,161,350,000	52.95	$72,352,438	6.23
Preferred and preference stock	335,000,000	15.28	24,124,000	7.20
Interest free capital	22,355,000	1.02		
Common equity	674,290,531	30.75		
Total capitalization	$2,192,995,531	100.00		

RETURN ON COMMON EQUITY
NORTH CAROLINA RETAIL OPERATIONS

	Original Cost Net Investment or Fair Value Rate Base	Embedded Cost - %	Net Operating Income For Return
	Present Rates - Original Cost Net Investment		
Capitalization			
Total debt	$ 491,070,221	6.23	$30,593,675
Preferred and preference stock	141,710,160	7.20	10,203,132
Interest free capital	9,459,710		
Common equity	285,182,423	7.54	21,508,774
Total	$ 927,422,514		$62,305,581

Capitalization	Authorized Rates - Original Cost Net Investment		
Total debt	$ 490,076,698	6.23	$30,531,778
Preferred and preference stock	141,423,455	7.20	10,182,489
Interest free capital	9,440,571		
Common equity	284,605,447	11.00	31,309,147
Total	$ 925,546,171		$72,023,414

Capitalization	Authorized Rates - Fair Value Rate Base		
Total debt	$ 490,076,698	6.23	$30,531,778
Preferred and preference stock	141,423,455	7.20	10,182,489
Interest free capital	9,440,571		
Common equity	380,058,942	8.24	31,309,147
Total	$1,020,999,666		$72,023,414

In order for Duke to be able to provide adequate service in its service area and to construct needed plant to meet the increased demand for electric current, Duke must be allowed to earn, through sound management, a rate of return at a level so as to attract the capital necessary for such a program.

The earnings of Duke during the test period under the present rates are insufficient to provide adequate service and to compete in the market for additional capital for expansion of service, and to provide a fair return on the investment of its stockholder.

Changes in the interest charges coverage ratio has a direct influence on the rate of return to the common stockholder's equity due to the fact that the interest costs must be deducted from the net operating income before the rate of return to the common equity capital can be computed. In the instant situation the Commission concludes that it is necessary to provide additional revenues so that Duke's coverage ratio will be adequate. The interacting functions of the coverage ratio and the rate of return on common equity, two important earnings criteria recognized in the financial markets from which Duke must seek funds, have been carefully considered by the Commission.

Under Duke's bond indenture (Section 2.03) additional first and refunding mortgage bonds may not be issued unless the "original net earnings" (net earnings before income taxes for twelve consecutive calendar months within the fifteen calendar months immediately preceding the first calendar month in which delivery of additional bonds are made to the trustee which have been made) equal twice the amount of the interest charges on all of the interest bonds outstanding plus the additional bonds supposed to be issued. Based on the test year operations and after accounting pro forma adjustments, the fixed charges coverage ratio (which includes interest charges on all types of debt on an annualized basis) computed before income taxes was 2.63 times at the present level of rates and will be 3.28 times at the level of rates herein approved.

In our order in Docket E-7, Sub 128, we found Duke's reasonable common equity cost to be 12 percent, whereas here we find that cost to be 11 percent. During a period when its return has been substantially below 12 percent (7.54% for the test period) Duke has continued to attract very large amounts of capital and to pay out very substantial dividends to its equity investors, while increasing its retained earnings. Recent experience in the capital markets indicate that very few class A and B utilities are experiencing equity cost above 11 percent, and in the light of all these circumstances, we conclude that 11 percent is a reasonable estimate of Duke's foreseeable equity cost and that such a return will enable it to safely meet its indenture requirements and continue to attract its required equity funds.

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 $21,150,000.

The Commission concludes that an increase of $21,150,000, 72% of the $29,376,000 increase requested in the application, is necessary to maintain Duke's facilities and service in accordance with the reasonable requirements of its customers in North Carolina, and to provide a fair rate of return to Duke on the fair value of its properties used and useful on its property in North Carolina.

RATES

Throughout the post World War II period and up to the present time, the Commission has permitted the matter of rate design to reside almost solely in the hands of the management of the electric utilities that serve North Carolina. Relatively few public complaints arose through the years from this practice because the utilities were, and happily so for both them and their customers, smoothly sliding down their decreasing cost of production curves. The more power that could be generated, the less it would cost to produce each additional unit of power, resulting in more profits for the utilities and cheaper rates for their customers. Under such circumstances, and with the utilities themselves demonstrating interest in simplifying and improving their rate designs (including the introduction of the all-electric rate), it is not surprising that few public complaints were directed and little Commission attention was given to the complex matter of how revenues were collected. However, the present situation, in which the electric utility industry has become an increasing cost industry, has seen Duke filing almost annual applications for rate increases. The amount deemed to be the minimum necessary in this docket to allow Duke to attract capital for its building program and to allow it to earn a fair rate of return on its investment will result in a cumulative total average percentage increase of over 28% to Duke's customers in about a three year time period. Under these circumstances, inefficient and unduly discriminatory pricing policies which may result in or accentuate erosion in earnings and add to the amount of rate increases that might be requested, should not be permitted.

(i) Cost of Service

The evidence in the Docket indicates that the Cost of Service Study accurately portrays the relationship of the different classes of service to the costs of providing service to those classes, the revenues derived from such service, and the benefits to the system as a whole. There is no clear evidence that special allowances should be made for any of the major classes of service in the consideration of the rate of return to be earned by that class. The evidence in this Docket contains no studies, reports, or

other technical examination to indicate that the rate of return of any class of service, except outdoor lighting, should deviate from another when such deviation can be avoided by rate design, level, or structure.

There is no evidence in this Docket to the effect that there exists any non-homogeneity between the customers in Duke's service area merely because they are situated on one side or the other of a cross-country line separating the North Carolina governmental jurisdiction from the South Carolina jurisdiction. There is no evidence in this record to indicate that a total company Cost of Service Study of the individual customers' classes would produce results which could not be used by either or both the North Carolina Utilities Commission or the South Carolina Public Service Commission. The jurisdictional cost of service studies would have to and do take into account such differences that might result from different tax rates applicable to the individual jurisdictions. There is evidence that both the Allocation Study and Cost of Service Study are useful in setting rates.

It can be seen from the results of the 1971 Cost of Service Study that the GA class of service paid a rate of return slightly in excess of the overall rate of return and the R, RW, and G classes of service paid a rate of return 10 to 14 percent greater than the overall rate of return in 1971, while the RA, I, and IP classes paid up to 27.9 percent less than the average. It can also be seen that the R, RW, and G classes of service paid a rate of return 35 to 40 percent greater than the I class, and the RA and GA classes paid a rate or return over 20 percent higher than the I class. Both the Company's and the Staff's rates would greatly reduce these disparities in the rates of return between classes.

(ii) Rate Design

It is the conclusion of the Commission that the seven general and industrial schedules closed to new customers since 1965 and the application of the general service W schedule to residential service should be eliminated. In the early and mid-nineteen-sixties, Duke was still in a period of declining costs and was able to make a series of rate reductions. In making these reductions and establishing different rate structures a certain few of the customers would have been subjected to increases. Consequently, these customers were allowed to remain on the old schedules, but no new customers were eligible to be served on these schedules. Now, in a period of increasing costs and rate increases, the Commission agrees with Duke that it would be more equitable for these schedules to be cancelled and for the customers now served on them to be served on schedules appropriate to their classifications. It is further concluded that due to a rise in costs for reconnects, charge for reconnects should be increased to $5.00.

The Commission concludes that the rates and charges for any class of service should normally recover all the costs, including a reasonable return, of proving that service. If all classes of service earn revenues which exactly cover all costs of service, each class will earn the average rate of return, but the Commission concludes that some variation, within a reasonable range, in rates of return between classes, is acceptable and does not necessarily result in discrimination between classes of customers. The Commission further concludes that it is incumbent upon Duke to review its rate structure on a recurring basis in order to achieve a continuing minimum of disparity of rates of return between classes of customers.

With the above in mind, it is concluded that both Duke's rate design and the Staff's rate design are in the range of reasonableness with Duke's being near the lower bound in the sense that it follows less closely costs of service both within and between rate classes. However, the Commission concludes that consideration should be given to Duke's many years of expertise in rate design, to the large increases on certain customers and the shortness of time they would have to adjust to such increases if the Staff rates design were to be instituted, and to the fact that Duke's proposed rates will move in the direction of charging all classes of customers on the basis of the cost to serve them.

The Commission therefore concludes that Duke's proposed rate design should be followed.

The Staff of the Commission has rendered yeoman service in the structure and resolution of the question of rates in this case. Both by close and professional analysis of Duke's present rate design and cost of service studies and by innovative analysis and projections of their own, they have immensely contributed to our enlightenment in these areas and clearly established that the least that must be done is to adopt Duke's proposed rate design which moves toward cost of service rates. We commend them for their dedication and skill. The minimum customer cost is not covered under present rate schedules and will not be covered by the charge for 100 kilowatt-hours on any of the rate schedules under the consideration on this proceeding. It is the opinion of the Commission that an effort should be made to bring minimum charges more in line with the costs of service. However, the Commission recognizes the high percentage increase in low use charges which would be necessary at this time to make such charges cover costs. Therefore, the Commission concludes that it is both reasonable and necessary to raise the minimum monthly charges to the level of the charge for 80 KWH on the three residential schedules, such minimum charges to include 80 KWH. The minimum charges on non-residential service are already in line with these charges.

(iii) Special Requirements for Service

The Commission recognizes the benefits well-insulated buildings bring to our society. Not only do the owners and operators of homes and commercial and industrial establishments reap the benefits of lower heating and air conditioning costs, but the society as a whole benefits from the conservation of natural energy resources and the labor and capital expense necessary to harvest those resources.

The Commission must applaud efforts to effect a conservation of our energy resources, and does commend Duke for its forceful efforts in the past to ensure that its electric heating customers had insulated their structures satisfactorily. However, the Commission must also recognize the dilemma which the problems surrounding this matter pose.

The first lemma is as follows: If Duke is allowed to continue to keep a separate RA rate schedule in the winter for electric heating customers, and to require positive compliance with rigid insulation requirements before placing the customer on the lower RA schedule, the result would be (1) increased off-peak usage due to the lower rate, which would benefit the system if priced properly, (2) conservation of energy resources through the forced use of good insulation, and (3) possible discrimination against those customers whose structures are not heated solely with electricity or are not properly insulated.

The second lemma is as follows: Because of his greatly increased electric usage, the customer who really needs the benefit of a lower rate is the customer who does not have good insulation. This customer might benefit the system even more than one whose structure is insulated, assuming the rate is structured properly, because this customer would use more winter energy. The customer who places electric heat in a new addition to an existing non-electrically heated building would also benefit the system. If the insulation requirements were removed, the result would be (a) the elimination of the discrimination from Result 3 above, (b) increased off-peak usage due to more people being exposed to the lower rate, which would benefit the system if priced properly, (c) increased complaints from customers who installed electric heating without proper insulation and thus used one to two times more energy for heating purposes, and d) wasted energy resources by those customers who do not install adequate insulation.

The Commission recognizes the desirability of Results 1, 2, a, and b, and the undesirability of Results 3, c, and d.

These matters are of great interest to the people of North Carolina, but the national scope of the entire range of the energy problems gives even greater weight to decisions made regarding energy use and energy waste. The people of North Carolina, and indeed the nation, cannot afford to continue to waste our resources through existing wasteful enterprise,

nor can we afford new enterprise which, either through haste, poor design, or misinformation, will be wasteful of our resources and place a burdenscme future upon us.

The Commission is in a unique position among agencies of our State charged with protection of the public welfare. Through constant contact with energy related utilities, in rate cases and other investigations, and through its own activity and inquiry, the Commission is and has been regularly made acutely aware of the impact an energy crisis would have upon the citizens of North Carclina. The Commission concludes that the adoption of a statewide view of energy problems related to fuel shortages, delays in generation facilities, and concomitant price increases is necessary. It is the opinion of this Commission that we can no longer afford to limit our emphasis on the value of insulation to just electrically heated structures. We should make an effort to institute statewide building insulation requirements for all new structures, no matter what form of energy they use. Such requirements are not only desirable but are necessary for the continued welfare of the people of the State of North Carolina.

Accordingly, the Commission concludes that it should direct its Staff to work with the Building Code Council of North Carolina toward the implementation of minimum insulation requirements on all new buildings, through the inclusion of these requirements in the North Carolina Building Code. The Commission concludes that it should further direct the Staff to solicit assistance in this matter from all utilities under its jurisdiction.

While, under normal circumstances wherein the use of an insulation requirement as a basis for allowing access to a lower rate might be considered discriminatory, these are not normal times. The Commission must take notice of the effect of its actions upon the current energy crisis. To disallow Duke's requirements for insulation before those requirements have been made moot by statewide insulation requirements would be to contribute to worsening of energy problems. The Commission concludes that Duke's insulation requirements should remain in effect.

(iv) Industrial Attraction

The evidence in the record indicates that the Industrial customer class is being subsidized by other ratepayers. The evidence also tends to indicate that electricity costs are a relatively small portion of the total production costs in most industries.

IT IS, THEREFORE, ORDERED:

1) That effective on bills rendered on and after July 1, 1973, for service rendered after June 1, 1973, the Applicant, Duke Power Company, is authorized and permitted to put into effect increased rates and charges. Such

increases in rates shall produce no more total annualized additional revenue as of the end of the test period than $21,150,000 being 72% of the increased revenue sought under the proposed rates of $29,376,000.

2) That Duke will prepare rate schedules, in accord with its rate design procedures as testified to at the hearing, to produce not more than an increase of $21,150,000 in annual revenue.

3) That the minimum charge for the three residential schedules shall be the same as the charge for, and shall include, 80 KWH and that the increased revenues generated by these increased minimum charges are to be considered to be a part of, not an addition to, the $21,150,000 of increased revenues allowed above.

4) That said rate design shall be submitted by July 1, 1973 and that said rates are to be effective on bills rendered on and after July 1, 1973 for service rendered after June 1, 1973.

5) That the revenues and rates of return on net original plant investment, plus allowance for working capital based upon 1971 sales, be calculated for each rate schedule under the rate design proposed by Duke in obtaining the $21,150,000 increase with results furnished to the Commission no later than September 1, 1973.

6) That effective on said above date, bills to customers now served on the "closed schedules", L, CA, 1A, 2, 2C, 2D, 10G, will be rendered on the appropriate General or Industrial Service schedule. Bills to Residential water heating customers now being served on the W schedule will be rendered on the RW schedule on and after said date.

7) That effective on and after July 1, 1973, the "Reconnect Fee" will be five dollars.

8) That the rates approved under the Undertaking filed by Duke on December 6, 1972, are to be cancelled upon the effective date of the rates approved in this Order. All revenue received from customers from the rates allowed under the Undertaking over and above the revenue that would have been realized had the rates approved herein been in effect since December 6, 1972 shall be refunded, with interest of 6% per annum, to each customer.

9) That Duke shall complete and file with the Commission annually by each April 30, a Cost of Service Study detailing the rate of return earned by each class of service and the customer, demand and energy components of revenue deductions and net plant investment and allowance for working capital; that such studies shall be based upon each calendar year's operations; that demand data used shall have been taken within two years of the end of the period under study; that sizes of distribution plant used in computation of customer

components shall be the minimum sizes which will meet the requirements of the National Electrical Safety Code and other like restrictions, and costs for such sizes of equipment shall be actual costs, if available, or shall be computed using statistical regression techniques and the minimum-intercept method; that each study shall include an analysis of the changes in customer demands, rates of return, and expense and plant factors which have occurred since the 1971 Cost of Service Study, and that such studies shall continue to be made and filed with the Commission each year through 1984, and thereafter in like manner unless terminated by the Commission.

10) For any industrial customers having unusually low load factor brought about by sporadic and infrequent operation of heavy power usage equipment, Duke is hereby ordered to immediately begin the review of the possibility and justification for, if any, of establishing an off-peak seasonal night-time rate which might encourage the use of such equipment at off-peak times.

11) That Duke design and transmit to its customers at the time of their next monthly billing following July 1, 1973, a final notice advising its customers of the increase in rates and the revised rate schedules on which they are served.

12) That all motions in the matter, taken under advisement and still pending, which have not been made moot by the foregoing findings, conclusions, and ordering paragraphs are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.

This 21st day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 145
DUKE POWER COMPANY

McDEVITT, CONCURRING. While I concur in approval of additional revenues totaling $21,250,000, the manner in which Duke is being allowed to increase various classes of its customers does not fully eliminate discriminatory rate relationships favoring the Residential All-Electric and Industrial classes of customers, when viewed in light of the compelling cost-of-service evidence.

The cumulative record of evidence in Duke's three rate cases since 1970, which have resulted in rate increases totaling over $67,000,000, raises serious questions bearing upon the justness of this rate increase, an increase which may not have been required had Duke Power Company planned and constructed adequate generating facilities and

negotiated long-term fuel contracts while there was time and more favorable economic conditions. The near-tragic consequences of insufficient planning have required excessive expenditures under adverse economic conditions including such measures as (1) using gas turbines costing over $65,000,000, which have been called "monuments to poor planning" by knowledgeable power authorities, to provide normal load generating capability, and (2) the practice of making fuel purchases on the open market due to the absence of enforceable long-term fuel contracts to adequately meet its needs. Illustrative of this point is that Duke now contends that it must build and maintain 25% reserve margin, in contrast to its historical objective of 15% to 18% margin, and that had Duke planned well enough to maintain anywhere between 15% and 20% margin, it would not be caught in its present dilemma.

To compound its problems, Duke has engaged extensively and, in my opinion, excessively, through its various subsidiaries, in non-utility ventures including real estate and housing developments and coal mining, all of which constitute drains on managerial and company resources which should have been applied exclusively to its primary function as a public utility.

In my opinion, all of Duke's problems are not due to economic conditions and inflation. It is clear to me that economic, demographic, and business indicators have been present all along which would have enabled Duke to avert a substantial portion of the rate increases which it has been necessary to impose upon the ratepayers if greater emphasis had been placed by Duke upon planning and timely action with particular reference to generating facilities.

John W. McDevitt, Commissioner

DOCKET NO. E-7, SUB 145

WELLS, COMMISSIONER, CONCURRING. Having concluded the other pertinent portions of this Order, I would like to add a few observations and comments of my own.

Both Duke and this Commission have an awesome responsibility in these times to do all within our power to keep electric rates at the very minimum necessary to provide reliable service. I am not convinced that either party is satisfactorily meeting this responsibility.

The Commission is and has been woefully short of resources and manpower; consequently, our ability to review Duke's programs, activities, and expenses are compromised. Duke's problem may be that it has become accustomed to abundant resources and manpower; consequently, its ability to review objectively its own programs, activities, and expenses may be compromised.

I cite the example of Duke's paying its former President (now retired) William B. McGuire, a consultant's salary of $75,000 per year for only minimal services, while it is paying its senior engineering officer a salary of only $58,000 per year for services and talents absolutely vital to the successful operation of the enterprise. This circumstance indicates a curious order of priority; but more directly, it suggests that Duke's fiscal profile is not quite so conservative as these times demand. Duke's obvious generosity to Mr. McGuire may be non-typical, but in this vein, it is worthy of note that Duke's administrative expenses are rising more sharply than any other category of costs.

Proceeding to another area, there has been considerable discussion in this Docket of Duke's baptism into the nuclear faith, an event which is taking place at Oconee, South Carolina.

Devoutly as we trusted that, bathed in the waters of Keowee, armed with the miracle of the atom, Duke's rate of return would be redeemed, these things are not yet seen. Swift and clear though the waters be; profound and powerful though the atom be; the blessings of mother nature are overpowered by the vagaries of father time, to the end that Oconee is born a crippled giant, an ironic monument bearing the woeful inscription,

> "Of all sad words of tongue or pen, the saddest are these: it might have been".

The dream of cheap and abundant power, springing forth from the uranium atom, so long purveyed by the electric companies and their industrial sisters, has gone with the wind, stolen away by capital costs, that insidious intruder whose quick fingers deftly take away not only the gravy, but the bowl as well, leaving for the poor ratepayer only the bitter taste of a tarnished spoon out of which he has been fed one time too many.

Perhaps it is too soon to say that all the gold has been gleaned from Oconee; but if there is any left, Duke certainly seems reluctant to admit it. Pieces that do not fit, systems that do not work, plans re-planned, and last but certainly not least, government agencies which often impede rather than improve; all these have combined to produce a result far less promising than that envisioned when Oconee was conceived. There are many questions yet unanswered, but for now, it appears that for all the might of the utility industry, it seems almost helpless to get a job like Oconee done efficiently or economically. Perhaps there are some forces of industry and finance not entirely devoted to the proposition that the consumers of this State should continue to enjoy the blessings and benefits of abundant, low-cost energy. It is entirely possible, if not probable, that these selfsame giants of commerce and finance, having seen our appetite for energy sharpened by

their bait have sprung the trap, escape from which may involve a ransom we will suffer to pay.

Duke alone is not guilty; but neither is it guiltless. The simple business expedient of re-pricing is not the answer to our energy problems. The resources of this Country must assuredly be conserved and no longer wasted, but it would be a National disgrace, if not disaster, for those powerful few who find themselves now in the energy saddle to ride roughshod over all the rest. Energy stands at the threshold of our National economic life. Energy cannot--must not--become the monopoly tool of those whose avarice would deny the consumers of this Country a decent and comfortable standard of living. We--all of us-- in industry, in finance, in government, and in shop and home, should individually and collectively insist that abundant, low-cost energy be and continue to be a National Goal and commitment. It is already obvious that in order for us to attain this goal, we must immediately commit ourselves to a federally sponsored, nationally financed crash program of energy research and development. Coventional techniques, conservative efforts, disorganized competition, will not solve our energy problems. And solved they must be. The alternative is another way of life.

Hugh A. Wells, Commissioner

DOCKET NO. E-7, SUB 145

WOOTEN, CHAIRMAN, DISSENTING. The Majority Order in this case allows a rate of return on Duke's book equity of only 11 percent, and in this connection, I cannot concur and must dissent. It is noted that this Commission by Order dated February 12, 1971, in Docket No. E-7, Sub 120, and by Order dated January 31, 1972, in Docket No. E-7, Sub 128, unanimously approved for Duke a rate of return on book equity of 12 percent. Likewise, in Docket Nos. E-2, Sub 193 and E-2, Sub 201, the Commission on February 26, 1971, and on February 17, 1972, unanimously approved a 12 percent rate of return on book equity for the other major electric supplier in this State, Carolina Power and Light Company.

How this Commission can unanimously approve rates of return of 12 percent for its major electric utilities in 1971 and again in 1972, and then reduce the same in 1973 during a period of continued general inflation seems to me to be beyond logical comprehension, or explanation.

On previous occasions, I have termed certain rate actions by this Commission as "bare bones", and it appears in this case that such a classification is inappropriate for the reason that not only is the action of the Majority a "bare bones" decision, they have here even chipped away portions of the bone itself. It would appear most appropriate, if any change in the level of rate of return on book equity is in order, during a period of inflation, that that change

would be accommodated only by an increase in such rate of return and not as by the Majority provided, through a decrease. The actions by the Majority herein bring to mind such inconsistent thoughts as "starve yourself into fatness", "spend yourself into riches", and "work yourself into complete rest".

Duke's continued heavy investment and construction program, brought about by the demands of its customers, and its constant and ever increasing costs at all levels, would appear to produce results opposite from those which the Majority has provided.

The application of Duke in this proceeding seeks an increase under the proposed rates to produce $29,376,100 of additional annual revenues, based on the customers connected at the end of the test period on an annualized basis. This additional revenue would produce a rate of return on original cost of 8.2 percent and a rate of return on common equity of 12.35 percent. When viewed in this context, I conclude that 100 percent of this proposed rate increase is necessary to provide a fair rate of return to Duke on the fair value of its property. Duke has demonstrated that it is entitled to the full increase sought in this proceeding by filing with this Commission data showing the reports of Duke's projected 1973 financial results before and after the proposed increase. This data demonstrates that the rate of return fixed on the test year will erode substantially in 1973. It is also noted that since the Commission allowed a 12 percent rate of return in 1971 for both Duke and Carolina, neither company has earned the return so allowed. During an inflationary period, a utility cannot earn in a future period a rate of return allowed solely on the basis of past costs and revenue data. This is in accordance with the holding of the Supreme Court of North Carolina in State vs. Robert Morgan, 278 N.C. 235 (1971). This has also been recognized by the Federal Power Commission in its Order dated December 18, 1972, In Re Duke Power Company Docket No. E-7557. The Federal Power Commission stated, "It is evident that whatever rate of return we might find from the record in this proceeding to be just and reasonable cannot reasonably be expected to be earned by Duke under the tariffs as filed. We will not attempt to apply abstract theory in a vacuum in order to justify a reduction in Duke's proposed rates." The same rationale is equally applicable in this proceeding and this Commission should have approved the same. This Commission is obligated to weigh the affects of attrition in determining a fair rate of return. G. S. 62-133 (d) states, "The Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates." Duke's 1973 forecast data and the supporting testimony clearly show that Duke is taking advantage of all reasonably obtainable productivity gains and that the expected productivity gains will more than be offset by rising costs.

An adequate return - not only allowed, but actually earned - is essential if Duke is to continue to meet its obligation as an electric utility. By 1980, its generating capability will have to be more than doubled if it is to be able to meet its projected electric demands. The generating plant construction program alone amounts to more than $2.3 billion. Seventy-five (75) percent of Duke's capital requirements will have to be raised through the sale of securities to the public. These funds must be attracted, they cannot be coerced.

In 1970, Duke's senior securities were downgraded from AAA to AA. In June of 1972, Standard and Poor's dropped the rating on Duke's preferred stock from AA to A and in late 1972, the same agency reduced Duke's First Mortgage Bond rating from AA to A and its preferred stock rating to BAA. This rating decline indicates a deteriorating financial condition.

The test period (twelve months ending June 30, 1972) did not include research and development expenditures for an additional $1 million which Duke anticipates expending in 1973, and when these expenditures are made, Duke's rate of return will decrease. This Commissioner is still of the opinion that research and development expenditures should be increased, and, therefore, encourages Duke to participate in the fast breeder reactor development as outlined in the testimony of Mr. Horn. It is noted that the Majority agrees, but makes no provision therefor. I vote to allow an additional rate increase above that requested via a surcharge, to cover R and D expenditures.

I conclude from all of the evidence and all of the testimony and the entire record herein that the earnings of Duke have been reduced by increases in all expenses to such an extent that its ability to sell sufficient additional bonds and common and preferred stock to finance necessary construction of additional plant are placed in jeopardy under the present rates.

The ability of Duke to provide adequate service in its service area and to construct needed plant to meet the increasing demand for electric service requires that its earnings be maintained at a level so as to attract the capital necessary for such program. The increased costs are amply supported in the record.

Duke's capital structure, in the opinion of the writer, is within a reasonable ratio range.

While the rate of return on common equity and the coverage ratio of interest charges are related, each has independent significance as a criterion of a utility's financial stability. I conclude in the instant situation that the revenues required for a reasonable rate of return on common equity for Duke are also required in order to provide adequate coverage of its interest charges.

The absolute minimum which this Commission should grant in this case is a 12 percent return on book equity, which would produce $27,338,324 additional revenues. Even this figure is unrealistically low when viewed in the light of the facts and circumstances of this case and the inflationary state of this Nation's economy.

I predict that the failure of the North Carolina Utilities Commission to face up to the facts of life and move in the direction of granting book equity return for Duke in excess of 12 percent, under the circumstance of this case, will result in higher costs to the company, and in the long run, much higher rates for the ratepayer. A penny saved for the ratepayer today will cost him dearly, many times over, in the future in much higher rates.

Increases in rates for electricity is not now, and never has been popular, yet an appropriate return must be allowed if the public is to be protected from even higher rates in the future.

I find myself in general agreement with the comments, findings and conclusions of the Majority on the following subjects:

1. Original Cost
2. Replacement Cost
3. Fair Value
4. Operating Costs
5. Rate Design
6. Rates
7. Cost of Service
8. Incremental Costs
9. Rate Design and Schedules
10. Special Requirements for Service
11. Staff Competence and Contribution

Having concluded that Duke has carried the burden of proof in this case, justifying its application in full, I must lodge this my dissent to the granting of anything less, in the light of my view of the clear evidence and its greater weight. My personal likes and desires incline me to a lust to vote against any rate increases for any utility, yet I cannot abdicate my statutory responsibilities to vote appropriate increases where justified, as here, all in the public interest.

Marvin R. Wooten, Chairman

DOCKET E-7, SUB 161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authority to Adjust its Electric Rates and Charges	)	ORDER ALLOWING COAL COST ADJUSTMENT CLAUSE

BY THE COMMISSION: On November 30, 1973, Duke Power Company (hereinafter called "Duke") filed with the North Carolina Utilities Commission an application for authority to adjust its retail electric rates and charges by the addition of a coal cost adjustment clause to be rendered on monthly bills on and after January 1, 1974.

The requested coal cost adjustment clause is intended to charge (or credit) each kilowatt-hour sold with the proper share of the cost of coal which is above (or below) the established base cost. The base cost in the requested clause is 0.4745¢/KWH. The base cost was computed from the actual cost of coal burned by Duke in October, 1973 (50¢/MBTU) and the system average heat rate for coal generation for the twelve months ending October 31, 1973 (9489 BTU/KWH). The clause is a "KWH" or "100% efficiency" type clause which automatically adjusts for improvements in efficiency and for energy supplied by other sources.

Duke included in its application detailed explanations of conditions supporting its requested addition of a coal clause to its tariffs. A list of these conditions follows:

"1. The Commission has Authority to Approve a Coal Clause . . .

2. A Coal Clause is Essential to Protect Duke's Already Marginal Rate of Return . . .

3. A Coal Clause is Needed to Enable Duke to Compete in the Market for Capital . . .

4. A Coal Clause Would Reduce the Number of Costly Rate Cases . . .

5. A Coal Clause Would Contribute to the Conservation of Energy."

In addition, Duke provided the affidavit of Mr. B. B. Parker, its Executive Vice President and General Manager, offering further support to its request for a coal cost adjustment clause. Mr. Parker's affidavit describes the supply and pricing problems of the coal industry being experienced and expected in the near future by Duke.

From the verified application and the affidavit offered in this docket and the entire record in the matter, and subject

to further evidence as may be presented at a later date, the Commission makes the following

FINDINGS OF FACT

(1) That Duke is a public utility corporation organized and existing under the laws of the State of North Carolina, and subject to the jurisdiction of this Commission.

(2) That Duke is engaged in the business of developing, generating, transmitting, distributing and selling electric power and energy to the general public within the State of North Carolina, with its principal office and place of business in Charlotte, North Carolina.

(3) That in order to obtain the necessary capital to finance the generating capacity which Duke reasonably anticipates, it must issue and sell securities in large amounts which must come from outside financing, which comes at a time when interest rates and cost of labor, materials and equipment are at or near their all time high and at a time when the Company's common stock is selling below its book value for the first time in history.

(4) That the coal industry, particularly in Districts 7 and 8, is currently in an unstable condition, and is likely to remain unstable for some time, primarily because of rapidly increasing mining costs and competition for available supply from many companies re-converting to coal.

(5) That Duke's current coal inventories have fallen well below the desirable level of a 70 to 80 day supply.

(6) That Duke's financial condition is not sufficient to enable it to absorb rapid large increases in its coal costs without severe economic dislocations and impairment in Duke's ability to continue to provide adequate and reasonably priced electric service in the future.

(7) That a fuel cost adjustment clause is a viable means to enable Duke to help protect its financial integrity during a period of a rapidly fluctuating coal market.

(8) That the "KWH" or "100% efficiency" type clause, as filed by Duke, is the most appropriate form of fuel cost adjustment clause.

(9) That this coal clause is designed to return to Duke only increased expenditures for coal and will not result in any increase in rates of return previously approved by the Commission in Docket E-7, Sub 159.

(10) That the requested coal cost adjustment clause will not be operative unless and until coal costs increase above the October, 1973 level.

(11) That this Docket (E-7, Sub 161) can be appropriately consolidated with Duke's pending rate increase Docket (E-7, Sub 159) to provide opportunity for consideration of this matter concomitant with all of Duke's electric rates.

CONCLUSIONS

The current disturbances in the coal market, resulting in large part from the energy crisis, the increasing prices of all forms of energy and Duke's present financial condition lead this Commission to the conclusion that Duke has shown good cause in writing and through affidavit and exhibits, reduced to writing, which justifies the approval of the requested coal cost adjustment clause. The requested coal clause is the most appropriate form of automatic fuel adjustment clause because it is the "KWH" or "100% efficiency" type which automatically adjusts for improvements in generation efficiency and generation by alternate sources. Furthermore, a fuel clause can be consistent with proper rate designs as it applies the increased cost of energy directly to the consumer using that energy. This coal cost adjustment clause will only return to Duke increased expenditures for coal burned in the generation of electricity and should help stabilize but not increase the rates of return earned by Duke; therefore, the Commission is of the opinion that the coal clause should be approved. However, recognizing the fact that there has been no hearing and no opportunity for complaints, testimony or cross-examination, the Commission deems it appropriate to consolidate this Docket (E-7, Sub 161) with the pending rate increase Docket (E-7, Sub 159) to afford opportunity for further review and final disposition of a fuel cost clause as a part of the consideration of all rates of Duke.

IT IS, THEREFORE, ORDERED:

1. That effective on bills rendered on and after January 19, 1974 for service rendered on and after December 19, 1973 with respect to coal burned on and after November 1, 1973, the Applicant, Duke Power Company, is authorized and permitted to put into effect the coal cost adjustment clause attached to its application as Exhibit B.

2. That Duke Power Company will report to the Commission on a monthly basis the amount of the fuel cost adjustment and the factors and computations used in its derivation.

3. That Docket E-7, Sub 161 is hereby consolidated with Docket E-7, Sub 159 and all evidence heretofore presented in this matter is subject to cross-examination and further review before final disposition as a part of Docket E-7, Sub 159.

ISSUED BY ORDER OF THE COMMISSION.

This 19th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 161

WELLS, COMMISSIONER, DISSENTING IN PART AND CONCURRING IN PART. For the time being, I will concur that a coal cost adjustment clause is an appropriate interim means of achieving a reasonable degree of consistency in Duke Power Company's earnings so as to reasonably enable them to continue to finance their construction program. My difficulty with the coal adjustment clause approved in this Order is that it is a 100% recovery clause, which means that Duke will be recovering all of the additional cost of coal incurred by it while the clause is in effect, which would apparently eliminate any incentive for Duke to acquire its coal at the lowest possible cost or to maintain the most efficient generation mix. In addition, there is the question as to whether Duke's present rate design is such as to appropriately balance demand cost and energy cost. If such be the case, adopting a 100% efficiency coal adjustment clause will serve only to make bad matters worse vis-a-vis the relationship of demand to energy cost in the rate design. I therefore feel that the coal cost adjustment clause should contain an efficiency factor at something less than 100%. The Commission staff recommended an 85% efficiency factor, and based on their recommendation, it would be my finding and conclusion that this is the level at which it should be fixed.

Hugh A. Wells, Commissioner

DOCKET NO. E-22, SUB 141

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Virginia Electric and Power Company)
for Authority to Increase its Electric Rates and) ORDER
Charges)

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

DATE: January 23-26 and February 20-23, 1973

BEFORE: Commissioner Hugh A. Wells, Presiding; Commissioners John W. McDevitt and Ben E. Roney; Chairman Marvin R. Wooten

APPEARANCES:

For the Applicant:

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For the Intervenors:

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For: The Using and Consuming Public

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For: Northeastern Cotton Ginners Association

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Appearing for: Hertford County Board of Education

William T. Crisp
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Appearing for:
Municipalities of Roanoke Rapids, Ahoskie,
Plymouth, Rich Square, Roper and Weldon

W. W. Speight
James, Speight, Watson & Brewer
Greenville, North Carolina
Appearing for:
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The City of Roanoke Rapids, North Carolina

W. Lunsford Crew
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Appearing for: Halifax County Board of Education

For the Commission's Staff:

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

CHRONOLOGY OF EVENTS

This proceeding was instituted on July 27, 1972, with the filing by Virginia Electric and Power Company (hereinafter called VEPCO) for authority to increase its electric rates and charges for its retail customers in North Carolina. The proposed rates would increase revenues from Residential Sales by about 12%. The total increase for Small General Service would be about 12.7%, and the Large General Service revenue would increase by about 9%. These percentages would vary for each customer depending on his energy use. These proposed rates seek to preserve the general relationships between classes of customers as established in VEPCO's general rate case Docket No. E-22, Sub 118.

Included in the Application is a request by VEPCO for approval by this Commission of a fossil fuel adjustment clause that would increase or decrease charges for all metered service to reflect increases and decreases in the cost of fossil fuel per kilowatt hour generated.

VEPCO alleges and contends that the total increases applied for would produce $2,480,000 of additional revenue from North Carolina retail operations, based on operations during the test period ending December 31, 1971. The Application further alleges and contends that said $2,480,000 of additional revenue is sought by VEPCO on the grounds that said revenue is required to effect a fair return on investment due to increased investment on construction of adequate reserves. This additional revenue would give VEPCO a rate of return of 8.56% on the net original cost of its rate base components used in its North Carolina operations subject to this Commission's jurisdiction, said rate of return being that recently authorized by the State Corporation Commission of Virginia. To obtain this rate of return in North Carolina, VEPCO alleges that it can no longer ask for uniform rates in the

two states; and further that due to higher costs to serve North Carolina customers, the rates requested are necessarily higher than those granted in Virginia.

By Order of August 31, 1972, the Commission, inter alia, declared the Application to be a general rate case, suspended the proposed rates, revised the test period from the twelve month period ending December 31, 1971, to the twelve month period ending June 30, 1972, and set the matter for investigation and hearing, requiring VEPCO to give notice of its Application.

Errata Order, correcting discrepancies in Exhibit A of the Commission's August 31, 1972 Order, was issued by the Commission on September 6, 1972.

Order Requiring VEPCO to offer Cost of Service Studies was issued by the Commission on November 8, 1972.

Motion by Commission Staff for Extension of Time to File Testimony and for Separated Hearing was entered by the Commission on December 6, 1972, and allowed by Order of December 6, 1972.

Notice of Intervention by the Attorney General of North Carolina, for and on behalf of the using and consuming public of the State of North Carolina, and Motion of Attorney General for Separate Hearing and Extension of Time for filing expert Testimony were filed with the Commission on December 20, 1972, and Order Recognizing Intervention of the Attorney General, Allowing Motion to Participate in Separate Hearing and Extension of Time to File Testimony was issued by the Commission on December 21, 1972.

Notice of Procedure for Receiving Testimony was given by Order of the Commission dated January 2, 1973.

Petitions to Intervene were filed with the Commission on January 15, 1973, by the Hertford County Board of Education and the Northeastern Cotton Ginners Association and allowed by Orders of the Commission dated January 16, 1973.

Application on January 23, 1973 by the City of Roanoke Rapids for Leave to Intervene was allowed by the Commission.

Petition to Intervene by the Municipalities of Ahoskie, Plymouth, Rich Square, Roper, and Weldon, dated February 19, 1973, was allowed by the Commission.

Public hearing was held in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina. The first section of the hearing began on January 23, 1973, and extended through four hearing days. The second part of the hearing began on February 20 and extended through four hearing days. The hearing concluded on February 28, 1973. Counsel for all parties appeared as shown above.

On February 9, 1973, VEPCO filed with the Commission an Undertaking to place the suspended rate increases into effect on service rendered on and after March 1, 1973, pursuant to the provisions of G.S. 62-135. By Order of February 12, 1973, the Commission approved said Undertaking and required, inter alia, that notice of the increase be published in general circulation newspapers in the affected service area and be posted and available by mail on request, and issued in a general news release.

Oral argument on the motion and alternative motions by the municipalities of Roanoke Rapids, Ahoskie, Plymouth, Rich Square, Roper and Weldon and the Hertford County School Board to, inter alia, dismiss the application of VEPCO as it pertains to the movants, was heard by the Commission on February 26, 1973, and briefs were filed by respective parties. Order Denying the Principal Motion; Denying Alternative I at This Time, and Denying Alternative II was issued by the Commission on February 27, 1973.

At the close of all the evidence, the parties requested and were granted leave to file briefs 30 days after the mailing of the last volume of the transcript.

Witnesses

Virginia Electric and Power Company offered testimony and exhibits of witnesses as follows:

John M. McGurn, Chairman, Board of Directors and Chief Executive Officer of VEPCO, on the general operations of the company;

T. Justin Moore, President of VEPCO, on, inter alia, the financial conditions which necessitated VEPCO's filing for additional revenues;

Alvis M. Clement, Senior Assistant Treasurer and Assistant Secretary of VEPCO, on the adjusted financial and operating data of the total company and allocations to North Carolina operations;

Robert S. Gay, Manager of Rates and Contracts for VEPCO as to rate structure and the design of rates;

John J. Reilly, Ebasco Services, Inc., New York, as to the trending of original cost of electric utility property and fair value rate base;

William W. Carpenter, Ebasco Services, Inc., New York, as to, inter alia, the methods used in the jurisdictional allocation and cost of service studies, and the fuel clause;

Charles F. Phillips, Jr., Professor of Economics at Washington and Lee University, as to rate of return on common equity; and

Carl H. Seligson of Merrill Lynch, Pierce, Fenner and Smith, Inc., New York, as to rate of return.

Public Witnesses appeared and testified as follows:

Mr. Giles Hopkins, Executive Vice President, Roanoke Rapids Area Chamber of Commerce, presented a statement on the impact of the proposed increase on local governmental units and the necessity for keeping North Carolina rates competitive with rates in Virginia;

John M. Oliver, Executive Director of Halifax Industrial Development Commission, presented a statement to the effect of the proposed increase on the competitive status of Northeastern North Carolina in attracting industry;

Phillip Beaman, Superintendent of the Camden County Board of Education, presented a statement as to the effect of the proposed increase on the operating costs of the county schools;

L. P. Jackson, Minister of Rosemary United Methodist Church in Roanoke Rapids, presented a statement opposing the amount of the requested rate increase;

I. H. Hilliard, Weldon, N. C., presented a statement from the Halifax County Branch of the NAACP in opposition to the proposed rate increase;

Dr. Raleigh Dingham, Executive Secretary, North Carolina School Board Association, presented a statement opposing the rate increase;

Howard L. Bloom, operator of Howard Bloom Restaurant in Roanoke Rapids, presented a statement as to the effect of the proposed increase on his business;

S. D. O'Neal, Superintendent of Washington County Schools, presented a statement in opposition to the proposed rate increase; and

R. R. Manz, Power Superintendent, Albemarle Paper Company, Roanoke Rapids, and a member of the Roanoke Rapids School Board presented statements as to the effects of the proposed rate increase on Albemarle Paper Company and the schools of Roanoke Rapids.

Intervenors appeared and testified as follows:

W. Lunsford Crew, Attorney, presented a statement on behalf of the Halifax County Board of Education opposing the requested rate increase;

James L. Keeter, Assistant Superintendent, Pitt County Schools, testified on behalf of the intervenor, Pitt

County School Board, as to the effects of the proposed increase on the school system's budget;

S. W. Oakley, Mayor of the Town of Weldon, presented a statement as to the effects of the proposed increase on the town and in opposition to the increase;

Tom Hughes, City Manager of Roanoke Rapids, presented a statement as to the effects of the proposed increase on Roanoke Rapids, and in opposition to the increase;

K. P. Adams, Mayor of Roanoke Rapids, presented a statement on behalf of the City of Roanoke Rapids and VEPCO's residential customers in that city in opposition to the proposed rate increase;

R. P. Martin, Superintendent of Hertford County Schools, presented a statement as to the effects of the proposed increase on the county school system and opposing the amount of the requested rate increase;

Larry T. Ivey, Personnel Director and Superintendent-elect for the Bertie County Board of Education, presented a statement as to the effects of the proposed increase on the county school system;

Rex Carter, Northeastern Cotton Ginners Association, presented a statement in opposition to the proposed rate increase and the minimal demand charge of VEPCO;

J. R. Bradley, Superior Ginning Company, presented a statement in opposition to the minimal demand charge of VEPCO;

James Outland, Rich Square Ginning Company, presented a statement as to the effect of the demand charge on the cotton ginning industry; and

Wallace G. Johnson, Cotton Ginning Marketing Specialist, North Carolina Department of Agriculture, testified as to the electric rates applicable to cotton ginners in various areas of North Carolina.

The Attorney General offered testimony and exhibits of witnesses as follows:

Dr. Charles P. Jones, Assistant Professor of Economics, North Carolina State University, as to rate of return required by VEPCO and

Dr. Charles E. Olson, Associate Professor in Public Utilities and Transportation, University of Maryland, as to rate of return and rate design.

The Commission Staff offered the testimony and exhibits of witnesses as follows:

F. Paul Thomas, Senior Staff Accountant, as to the Staff's audit of VEPCO's books;

Norman E. Tucker, Staff Engineer, as to VEPCO's methods of jurisdictional allocation and the Staff's review of this study;

Andrew W. Williams, Staff Engineer, as to the advantages and disadvantages of the proposed fuel clause;

Allen L. Clapp, Staff Engineer, as to his review of VEPCO's [97] Cost of Service Study and its accuracy; and

Professor Robert M. Spann, Assistant Professor of Economics at Virginia Polytechnic Institute and State University, as to rate of return, cost of capital, and his recommendations about rate design regarded in VEPCO's preparation.

EVIDENCE

FAIR VALUE OF PLANT IN SERVICE

Background

G. S. 62-133 provides that the Commission shall ascertain the fair value of the plant in service at the end of the test period, considering original cost, replacement costs, any other factors relevant to the present fair value of the property, and following the determination of fair value, fix a rate of return on the fair value of the property as will enable the utility by sound management to produce a fair profit (to VEPCO's stockholders), "considering changing economic conditions and other factors as they 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 (emphasis added)

Discussion

Before entering upon a discussion of the fair value of VEPCO's properties, it is incumbent upon the Commission in light of the opinions of the Supreme Court and the Court of Appeals to consider, inter alia, the replacement cost of VEPCO's property, inasmuch as the Company offered testimony regarding replacement cost. G.S. 62-133(b)(1) provides, in part, that replacement cost may be determined by trending such a reasonable depreciated cost to current cost levels, or by any other reasonable method. The Commission interprets G.S. 62-133(b)(1) to mean that "replacement cost" (or "reproduction cost new") envisions the reconstruction of utility plant in accordance with modern design and techniques and with the most up-to-date changes in the state of the art in power supply and distribution. On the other

hand, "reproduction cost" (or trended original cost as presented by Company Witness Reilly) is founded upon the premise that, if destroyed, the plant would be rebuilt with inefficiencies and outmoded obsolete design included. Consequently, replacement cost envisions a higher level of evidence than that of reproduction costs alone. Accordingly, if the "replacement cost" study of the Company in this proceeding is to be accepted, it must be based upon reasonable methodology in order to be of compelling and sufficient evidence of replacement cost. Therefore, while the trending of plant on a "brick-for-brick" basis offers some evidence of replacement cost, the various major plant accounts must be considered individually in terms of advancements in the art and whether much more efficiently and economically designed plant would be constructed today instead of plant designed and installed up to 30 or more years earlier. The value of replacement cost is also influenced by the condition of the plant as judged from an adequacy of service standpoint. In this case, adequacy of service was not in issue and hence no deductions were made in the findings of replacement cost for reasons of inadequate service.

(i) Original Cost

Evidence

The first factor prescribed by the Statute in determining fair value, the original cost (less depreciation) of VEPCO's investment in plant is not substantially disputed. There is no dispute as to the retail allocations of that portion of the plant devoted to North Carolina retail service. The original cost gross plant in service, as computed by the Staff, was found to be $85,315,115. The depreciation allowance was audited by the Commission Staff, and the depreciation rates used do not require adjustments. Depreciation reserve allocated to North Carolina retail business amounted to $18,884,992, contributions in aid of construction amounted to $206,931, resulting in a net electrical plant in service of $66,223,192 (not including an allowance for working capital of $1,930,466).

(ii) Replacement Cost

Evidence

In estimating the fair value of VEPCO's plant, a replacement cost study which envisions replacing the utility plant in accordance with modern design and techniques and the most up-to-date changes in the state of the art was not performed by Company Witness Reilly. The study performed by Mr. Reilly trended the original cost of the plant to the June 30, 1972 price level.

Mr. Reilly testified substantially as follows:

Trended original costs were calculated using the Handy Whitman Index of Public Utility Construction Costs. The calculation of accrued depreciation applicable to the trended original cost was made in accordance with the straight line method applied on a group plan. Specific estimates of average life and Iowa type survivor curves were made for each class of property using the company's own retirement experience as a basis of judgment. These were used to estimate the average condition percent of the trended original cost or the trended original cost less depreciation expressed as a percent of the trended original cost. Obsolescense was taken care of through depreciation and not through the trending process.

Mr. Reilly determined a trended original cost to the June 30, 1972 price level of the Company's utility plant in service at July 1, 1973, as follows:

Total Production Plant - $1,023,103,279; Total Transmission Plant - $473,706,133; Total General Plant - $48,624,979; Total N. C. Distribution Plant - $71,951,991; and Total Common Plant (Allocated to Electric) - $19,297,774. He estimated the accrued depreciation applicable to the trended original costs yielding trended original costs, less depreciation, of the Company's electric plant in service at June 30, 1972, as follows: Total Production Plant - $658,901,152; Total Transmission Plant - $375,693,016; Total General Plant - $33,039,006; Total N. C. Distribution Plant - $48,447,854; and Total Common Plant (Allocated to Electric) - $11,426,753. These trended costs restate the cost of the plant as it existed at June 30, 1972 making allowance for factors of obsolescense and inadequacy and other factors in the depreciation that was applied to the trended original cost.

FAIR RATE OF RETURN

Background

As provided by G.S. 62-133(b)(4), the North Carolina Utilities Commission is charged by law to "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,...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." (emphasis added)

The expert witnesses testifying on accounting procedures, rate of return, and finances of Virginia Electric and Power Company have expressed differences of opinion as to a fair rate of return necessary to provide a fair profit for stockholders under this requirement.

Evidence

Mr. T. Justin Moore, Jr., President of Virginia Electric and Power Company, testified concerning the company's financial condition and future financial requirements. Mr. Moore testified that VEPCO is obliged to invest 2.4 billion dollars in additional facilities during the five (5) year period 1972 - 1976. Of this amount, 1.5 billion must be raised from the sale of securities in the financial market.

Mr. Moore testified that revenues have not increased in proportion to substantial increases in the cost of VEPCO's electric operations. The increases in cost include substantially all items involved in producing and distributing electricity including the increases in the cost of capital required to pay for new facilities. While interest rates remain substantially above VEPCO's embedded interest cost, there is not likely to be any dramatic technological advance or increase in the economies of scales sufficient to offset the steady erosion of financial position that is taking place.

Mr. Moore further testified that VEPCO's preferred stock has been downgraded from Aa to A. VEPCO sold 50 million dollars of preferred stock in September 1972 at a dividend rate of $7.72. Had VEPCO been able to maintain its Aa rating this dividend rate would have been perhaps 20 basis points lower. If VEPCO's bonds were to be downgraded from Aa to A, it would likely cost the company 20 basis points or .2% more in interest on its bonds. This would cost the company over the 30 year life of such bonds an additional 6 million dollars in interest for every 100 million dollars of bonds, issued, and VEPCO has been issuing bonds at the rate of over 100 million dollars per year.

Dr. Charles F. Phillips, Jr., Professor of Economics at Washington and Lee University, witness for the company, offered testimony and exhibits concerning costs of capital and rate of return.

Dr. Phillips testimony presented studies and conclusions relative to the cost of capital of Virginia Electric and Power Company including the effect on the company's cost of capital should the Commission for rate-making purposes add to the equity component the increment by which the fair value of North Carolina property exceeds their net original cost.

Dr. Phillips testified that his decision as to the cost of capital or fair rate of return to the company involved basic economic criteria, a review of the current economic environment, an analysis of the cost rate required to service the senior capital, an analysis of the rate of earnings required for the company's common stock equity and a compositing of the cost of senior capital with the cost of common stock equity in the capital structure to determine

the company's overall cost of capital or fair rate of return.

Dr. Phillips testified that the embedded cost of debt including preferred stock to the company at the end of the test year was 6.01% and the cost of common equity capital to the company is 13.5%.

Dr. Phillips testified that the overall cost of capital or fair rate of return allocated to North Carolina jurisdictional service after the inclusion of the fair value adjustment to the equity component to be 8.73%. This computation was based upon the addition of $16,008,000 to the equity component with cost rates of 6.01% for debt, 13% for common equity and 0% for tax deferrals.

Mr. Carl H. Seligson, Vice President of Merrill Lynch, Pierce, Fenner & Smith, Incorporated, witness for the company, testified to the adequacy of the proposed rates of Virginia Electric and Power Company for the company to attract the capital required to provide the necessary service to its customers.

Mr. Seligson testified that in order to preserve its financial integrity, maintain its credit and raise the required capital, the company must be permitted to earn a sufficient amount to provide a satisfactory coverage of interest charges ratio and preferred dividend requirements while maintaining a reasonable balance in its capital structure.

Mr. Seligson testified that the company in order to attract capital at reasonable rates should maintain an interest coverage ratio of no less than 3.0 to 3.5 times. The proposed rates in this proceeding when added to total system operations would provide a pro forma interest coverage of 2.92 times.

Mr. Seligson testified that with the company's pace of load growth, and consequently the growth in required plant and capital, the present and projected ratio of interest coverage is low and in his judgement the return on common equity for the company should be sufficient to provide the adequate coverage ratio and should be set with current alternate investment returns considered. To this end Mr. Seligson recommended that a return on common equity of 14% - 15% would be an appropriate level.

Dr. Robert M. Spann, Assistant Professor of Economics at Virginia Polytechnic Institute and State University, witness for the Commission Staff, offered testimony and exhibits concerning the cost of capital and the fair rate of return. Dr. Spann testified that the determination of the cost rate to apply to the debt and preferred stock or senior equity components of the capital structure is not extremely complicated. However, the determination of the cost of equity capital is much more complex. The difficulty

involved in estimating the cost of equity capital arises when it is observed that equity financing involves no contractual obligation.

The key criterion in the cost of equity capital estimation or in investment decisions is the rate of return the investor expects to earn. The cost of this equity capital to a firm as a theoretical proposition can be determined precisely through the method known as the Discounted Cash Flow Method (DCF).

Dr. Spann presented cost of capital estimates for VEPCO from three sources, VEPCO data, a regression study and a sample of eight electric utility risk equivalent common stocks. The cost of capital estimates encompassed various growth rates at 5, 10 and 15 year intervals. Dr. Spann testified that "Incorporating all these factors, plus the fact that cost of equity estimates were generally lower when VEPCO data was included than when it was excluded, leads to a cost of equity capital estimate of 10.8% to 11.4%" and most likely VEPCO's cost of equity capital is in the lower end of this range.

Dr. Spann testified that the embedded cost of debt as of December 1972 was 5.94% and the cost rate for preferred stock was 6.77%.

Dr. Spann further testified that the cost of capital and the fair rate of return to VEPCO based on the capital structure as determined by the Commission Staff is in the range of 7.42% to 7.61%, and that the cost of capital on the capital structure advocated by the company would increase the rate of return to 7.75%. Therefore, Dr. Spann concludes that the probable range on a fair rate of return to VEPCO is 7.42% to somewhat under 7.75%, but definitely no higher than 7.75%.

Dr. Charles P. Jones, Assistant Professor of Economics at North Carolina State University, witness for the Attorney General, offered testimony and exhibits concerning the cost of capital and the fair rate of return. Dr. Jones testified that estimation of the cost of equity capital is the most difficult part in determining the cost of capital to a utility, and in measuring the cost of equity capital one must consider both return and risk.

Dr. Jones implemented the Discounted Cash Flow Method, a method accepted and widely used by students of finance in calculating the cost of equity capital, in arriving at his estimate of the cost of equity capital to VEPCO.

Dr. Jones testified that the cost of existing equity capital for VEPCO is 10.56% and the flotation costs involved in selling new common stock is around 3.5%. In considering the cost of existing equity capital and the flotation costs associated with the selling of new common stock, Dr. Jones testified that 10.94% is a fair and even slightly

"stretched" basis to use for the cost of equity capital to VEPCO.

Dr. Jones further testified that the weight given to each component of the capital structure and the embedded cost of debt and preferred stock used in his determination of the overall cost of capital were the same as those used by the rate of return witness for the company. Dr. Jones found the cost of capital and the fair rate of return to VEPCO to be 7.44%.

Mr. Alvis M. Clement, Senior Assistant Treasurer and Assistant Secretary of Virginia Electric and Power Company, offered testimony and exhibits concerning rates of return on plant for the test period. His testimony was substantially as follows: The revenues applicable to North Carolina jurisdictional operations amounted to $20,147,000, operating revenue deductions of $15,425,000 which resulted in net operating income for return of $4,722,000. The aggregate of the original cost rate base components for North Carolina jurisdictional customers is $68,960,000. The rate of return on the original cost rate base allocated to North Carolina was 6.85%. The fair value rate base of $84,968,000 as determined by Mr. John J. Reilly of Ebasco Services, Inc. when applied to net operating income for return results in a return of 5.56%.

Mr. Clement testified to accounting and pro forma adjustments which resulted in the change of net operating income for return per allocation from $4,722,000 to $4,551,000 and the original cost rate base from $68,960,000 to $70,309,000. The rate of return on the original cost rate base would become 6.47% and the return on fair value 5.27%.

Mr. Clement testified that after the requested increase in rates and after provision for growth the company would realize gross revenues of $23,973,000 and operating revenue deductions of $18,059,000 with $5,914,000 remaining in net operating income for return. After applying the net operating income for return of $5,914,000 to the original cost rate base of $70,258,000 the rate of return would become 8.42%. The rate of return on the fair value rate base of $86,317,000 would be 6.85% after the requested increase.

Mr. Clement testified to the capital structure of the company at June 30, 1972, and the annualized cost and embedded cost of senior capital, namely, the debt and preferred stock outstanding as well as pro forma capitalization at December 31, 1972.

Mr. Clement testified that the return on common equity from North Carolina jurisdictional service for the test year ended June 30, 1972, was 9.52% and would have been 13.20% had the new rates been in effect for the test year and after the addition to common equity to reflect the fair value rate

base, the return is 6.31% and would have been 8.74% had the new rates been in effect during the test year.

Staff witness F. Paul Thomas presented testimony on rates of return as follows: After accounting and pro forma adjustments and allocation to North Carolina jurisdictional, the original cost investment is $66,223,192 and after adding working capital reduced by tax accruals and average customer deposits the net original cost investment becomes $68,153,658, which with a net operating income for return of $4,818,079, results in a rate of return of 7.07% under present rates. A return of 9.87% on book common equity was found at the end of the test period using present revenues. After allowing for the proposed increase, the return on original cost investment rises to 7.73% while the return on book equity becomes 15.45%.

The differences in the rate of return figures as presented by Mr. Clement and Mr. Thomas result largely from the following differences in accounting and pro forma adjustments: (1) Staff eliminated $20,328 of promotional payments allocated to North Carolina but wholly applicable to Virginia; (2) Mr. Clement included $19,000 of estimated maintenance expenses for environmental plant under construction during the test period; (3) In determining the net operating income for return, the Staff deducted $3,817 for interest on customer deposits while Clement did not deduct this amount; (4) Mr. Clement included in the investment $1,341,000 of environmental plant under construction during the test period; (5) Staff deducted the investment in a tourist and information center in the amount of $39,868 while Clement did not deduct this item; and (6) In determining the allowance for working capital, Mr. Clement did not reduce the amount for average tax accruals or average customer deposits.

Automatic Fossil Fuel Adjustment Clause

Background

Inasmuch as the Company included a request for a fuel clause in its Application and offered supporting testimony, it is incumbent upon the Commission to consider the suitability of the proposed fuel clause.

Evidence

Mr. John M. McGurn, Chairman of the Board of Directors and Chief Executive Officer of Virginia Electric and Power Company, testified substantially as follows:

Increases in the cost of fuel have been particularly damaging to VEPCO because fuel amounts to about one-half of total operating costs and fuel costs have increased in an unprecedented manner. In the 1971 general rate case, the average cost of fuel consumed was 30.41¢ per million BTU's or 3.12 mils per kilowatt hour generated, whereas, in the

five months ending May 31, 1971, the average cost of fuel consumed increased to 42.35¢ per million BTU's or 4.39 mils per kilowatt hour generated. Recently, fuel prices have stabilized somewhat but at substantially higher levels. In the future prospects for fuel prices are that they will increase further.

VEPCO has converted several generating stations from coal to oil with results that 80% of its fossil fuel generation excluding its Mt. Storm station is now supplied by oil. This permitted substantial savings in recent years. The bulk of its oil supply is presently furnished under long term contracts that expire in May 1975 and June 1977. There is every indication that further increases in addition to substantial increases provided for in the contracts can be expected after the contracts expire and new contracts are negotiated.

The coal market shows continuing signs of instability and VEPCO believes that coal cost increases there are impending. To protect itself against a crisis of the type that was precipitated by the large fuel cost increases in 1970 and 1971, VEPCO proposes, as part of its application, a fossil fuel adjustment clause. A fossil fuel adjustment clause provides for electric rates to be increased or decreased on a per kilowatt hour basis in an amount equal to the change in revenue requirements resulting from an increase or decrease in the cost of fossil fuel. If permitted to become effective, this provision will pass on to VEPCO's customers the effects of all increases and decreases in the cost of fossil fuel with the minimum of regulatory lag. The clause is to apply only to fossil fuels whose costs have proved to be the most volatile. The fossil fuel adjustment clause is limited to fossil fuel generation so it will not be affected by nuclear fuel cost. VEPCO expects that nuclear fuel cost will be more stable than fossil fuel cost over the long run, so automatic adjustment for nuclear fuel cost will not be as necessary as automatic adjustment for fossil fuel cost.

Mr. Robert S. Gay, Manager of Rates and Contracts for Virginia Electric and Power Company, testified substantially as follows:

The fossil fuel adjustment clause proposed for North Carolina is based on the 1971 average per kilowatt hour fuel cost of 4.19 mils. The Virginia fuel clause uses the base of 4.22 mils per kilowatt hour. In both states the fossil fuel adjustment clause is applicable to all kilowatt hours sold on a per kilowatt hour basis. If the company were to bill in January for purposes of determining the fossil fuel adjustment factor, it would take the three months ending cost of fuel as of the end of November and determine the adjustment accordingly.

The fossil fuel adjustment clause will ensure that the company will not have unintended increases or decreases in revenues. Customers will realize credits and charges

directly. The fossil fuel adjustment clause takes into account any efficiencies realized by the company and passes these savings directly to the customer.

Since the Commission has jurisdiction and reviews VEPCO's operations on a regular basis, VEPCO and its fuel suppliers would not be able to abuse the fossil fuel adjustment clause by increasing rates by means of contracts increasing prices of fuel. The Commission may review any rates altered by the fuel clause at any time. The fuel clause only pertains to fossil fuel related expenses. However, there is nothing in the clause which provides for the public to be heard on automatic increases produced by it. Under the proposed fuel clause, no one can predict the exact and precise cost of fuel or the amount of rate increases produced by the clause.

The company has the incentive to purchase fuel efficiently because of the long run need to keep rates down for economic and load balancing purposes. Unnecessarily high rates are no advantage at all to the company in the long run.

Company Witness W. W. Carpenter testified substantially as follows:

The four classical criticisms of the principal of automatic fuel cost adjustment are: 1) it usurps the prerogatives of regulation; 2) rates may be escalated for fuel costs when the utility is earning more than a fair rate of return; 3) that automatic recovery of added cost dulls the utility's incentive to exercise control over fuel cost; 4) automatic use of fixed adjustment factor does not keep pace with improvement in either generation efficiency or in distribution efficiency.

Constant surveillance and the ability to initiate an investigation of the operation of any fuel clause at any time effectively eliminates the first two criticisms. The third criticism is not justified because the proposed clause is not applicable to every kilowatt hour sold, hence complete recovery of increased cost can never be achieved and there remains a real incentive to exercise the alternatives available to management to control fossil fuel cost. The fourth criticism is not valid because this adjustment measures changes in the cost of fossil fuel per kilowatt hour of sales, thus all savings resulting from improvements to heat rate and loss factor are automatically passed on to the customer.

The fuel cost adjustment proposal conforms to the criteria imposed by the Federal Power Commission. Many utilities have been using fuel clauses of some type or other. A recent report by Ebasco shows that 130 out of 217 utilities listed some form of fuel clause. The cost of fuel for nuclear generation is specifically excluded from the proposed clause.

Mr. Andrew W. Williams, Commission Staff Nuclear Engineer, testified substantially as follows:

The Staff investigated the rationale of fuel adjustment clauses, possible implications resulting from this automatic fuel adjustment clause and its relative efficiency compared to other forms of fuel adjustment clauses. There are advantages and disadvantages to an automatic fuel clause and the Staff is of the opinion that it is a prerogative of the Commission to determine the reasonableness of a fuel clause.

In general, fuel cost adjustment clauses are designed to increase or decrease the rates of an electric utility automatically when the utility experiences an increase or decrease in its fuel cost. The purpose of such a design is to lessen the effect of varying fuel costs on a utility.

Principle advantages of an automatic fuel clause include the following:

a) rates are allowed to change in proportion to fuel costs possibly eliminating the necessity of frequent rate proceedings;

b) the cost of energy is applied directly to energy users;

c) rates in effect reflect current fuel costs instead of past fuel costs; and

d) a fuel adjustment clause tends to make a utility less risky and therefore more attractive to investors because it helps stabilize rates of return.

Principle disadvantages of an automatic fuel clause are as follows:

a) an automatic fuel clause may usurp the prerogatives of regulation;

b) rates may be increased under the fuel clause while a utility is earning more than a predetermined fair rate of return;

c) a fuel clause does not necessarily give credit for improvements in generation efficiency or in distribution efficiency;

d) a fuel clause may reduce the incentive of a utility to seek the lowest fuel costs;

e) a fuel clause may make a utility's position in fuel price negotiations less favorable;

f) a fuel clause may reduce the incentive for a utility to operate efficiently; furthermore, it may provide

incentive for a utility to operate at less than maximum efficiency; and

g) a fuel clause may make the purchase of higher quality, more expensive fuels more economically attractive than installation of pollution control equipment when the reverse would be more attractive without the fuel clause.

VEPCO's proposed fuel clause is not based on a fixed thermal efficiency factor. Therefore, improvements in efficiency are automatically passed on to the customers. An incentive factor of 8/10, 7/10, etc., could be included in the adjustment factor formula. This would tend to reduce the disadvantages of the fuel adjustment clause. The incentives referred to are of a short-term nature and will be tempered to a degree by the overall long-term incentive of the company to keep electric rates low to maintain competitiveness with other energy sources.

Since VEPCO's fossil fuel adjustment factor is calculated by a formula with a lag between the fossil generation used to determine the cost per kilowatt hour and the total sales to which the adjustment factor is applied, the company could collect additional revenues during the lag period each time a new non-fossil unit is installed.

An incentive factor cranked into the fossil fuel adjustment factor formula would tend to eliminate the advantages as well as the disadvantages of the fuel clause.

Cost of Service

Background

The Cost of Service Study has become of significant importance in the matter of setting rates which are just and reasonable. For this reason, part of the Hearing was consumed in the discussion of the Cost of Service Study and its appropriateness for use in setting rates.

There are two types of cost of service studies under consideration in this case. The first is the allocation of rate base and expenses between wholesale and retail and State jurisdictions. This is referred to as the "Allocation Study". It is the allocation study which forms the basis for determining the overall revenues required from North Carolina Retail Service.

The "Cost of Service Study" is a collection of methods of allocating the rate base and expenses of a utility to the individual classes of service so that the costs of providing service to each class of service may be determined. Appropriate use may be made of this data in examination of the rate of return earned by the different classes of service and in the design of rates to ensure that revenues are recovered in a desired manner. There are two main goals of these studies. The first is to allocate the rate base,

expenses and revenues to the classes of service as accurately as is possible. The second main goal is to utilize methods of allocation whose properties will remain stable over the years so that these studies may be used for reliable trending over time.

North Carolina utilities use the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts to record expense and rate base items. Most of the NARUC uniform accounts are customer related, demand related, or energy related. Customer accounts expenses are an example of all customer related costs - that is, costs which are related to the number of customers and do not vary with the usage or the demand which a customer places on the system. These accounts are divided among the different classes of service on the basis of the number of customers receiving the class of service.

Other accounts, such as transmission, vary directly with demand and are allocated to the classes of service based upon the total demand impact which each class of service has on the system. However, many of the accounts, such as distribution, vary with both demand and the number of customers. In order to properly allocate the customer related portion of the plant upon customer related factors, and the demand related portion of the plant upon demand factors, these portions of the plant are separated so that they might be properly allocated. Energy related accounts are allocated to the various classes of service on the basis of energy usage factors.

All these accounts are totaled to give the customer, demand, and energy related expenses and net plant investment for each class of service. These may be used as input into rate design. The sum of the customer, demand, and energy related costs give the revenue deductions and plant investment and allowance for working capital which may be used with revenues to calculate the rate of return earned by each class of service.

Evidence

The Commission Staff made a full and complete investigation of the 1971 Cost of Service Study. Staff Witness Clapp testified substantially as follows:

The use of the minimum-intercept method of calculating certain of the customer components of distribution costs is recommended by the Staff in order to refine the accuracy of the study and produce more stable and comparable results over time. In general, the VEPCO study follows accepted standards for such studies but 1) VEPCO did not properly measure demands at the time of system peak, and therefore, the demand factors used in the study are not as precise as would be desired, and 2) certain areas of VEPCO's study can be improved in both preciseness and variability over time.

Where the actual cost data is not available for the minimum size component necessary to carry the minimum load, the use of the minimum- intercept method of calculating customer costs is preferred. This uses the best of both the minimum-size and zero-intercept methods of allocation.

The minimum-intercept method takes into the minimum size which is necessary for safety and minimum load operation, and further is based upon premises which are stable and do not change over time, thus the comparability remains to allow trending over time.

The Staff makes the following recommendations: 1) that coincident demands should be measured at the time of system peak, and that demand data taken at the time of the top five daily system peaks (if all five are within 1/2% of the yearly system peak) should be averaged to calculate the coincident demand factors to assure proper assignment of coincident peak responsibility; 2) that the distribution line portion of the Account 360, Land and Land Rights should be allocated on customers only; 3) that Account 364, Poles, Towers, and Fixtures should be allocated to primary and secondary based upon the number of wires on each pole in the sample, weighted by the relative difference in wire sizes, and all neutrals should be allocated to the primary, that if poles are initially installed oversized to carry planned later wire additions, the final design should be used in the above allocation, and that the Minimum Intercept cost of a Class 7 pole should be used when computing the customer component; 4) that the calculation of the customer component of Account 365, Conductors should be based upon two-wire secondaries and primaries and three-wire joint secondary-primary lines, and that the Minimum Intercept cost of #4 ACSR or equivalent should be used; 5) that the calculation of the customer component of Account 367, Underground Conductors and Devices should be based upon #4 Al U.G. cable primary and #10 Cu. or #8 Al duplex 600 V underground cable (or such cable as to carry a minimal load) for secondaries; 6) that the calculation of the customer component of Account 368, Transformers should be based upon a 0 Kva Minimum Intercept in order to reflect only installation costs and minimum tank and core size; 7) that the calculation of the customer component of Account 369, Services should be based upon #4 EC, #6 ACSR, #10 S.D. Cu., or #12 M.H.D. Cu. for overhead services and #10 Cu. or #8 Al duplex 500 volt U.G. cable for underground.

The 1971 Cost of Service Study filed by VEPCO gives an indication of the relative rates of return earned by the different classes of service, and in that regard, is useful in both the ratemaking and management processes.

Company Witness Carpenter testified substantially as follows:

Stability in methods of allocation in Cost of Service Studies is desirable, but Mr. Clapp has misplaced the

emphasis on the past rather than the future. Since no transformers of services are presently installed of the size that Mr. Clapp suggests, using these old type minimum units as present minimum sizes for historical stability would defeat the relationship of price to present cost. Present installation standards should be used as the minimum plant to achieve stability in the future because rates are to be used in the future. The Company uses a 5-day average of demand data simply to achieve stability. With respect to the averaging of the top five daily peaks within 0.5% or more of the system peak, as air conditioning saturation continues to increase, there will be broader system peak that may increase the potential hours of peak loading. Each hour would have to be examined by sample customer load testing and that would become a burden.

The concept of no load service is irrational. A zero KVA size transformer may lead to the incorrect conclusion that the entire investment in line transformers is demand related or that VEPCO could have a three state secondary distribution system operating with no primary or transmission lines.

Overall, Mr. Clapp's suggestions would increase customer-related costs which would inevitably increase the residential costs of service.

VEPCO was not measuring demand at the time of the system peak in 1971. Mr. Carpenter testified that he, as Director of the Rate Department of Ebasco Services, Inc., consultant to VEPCO, had the overall responsibility for the methodology used but that he personally did not direct VEPCO in its actions in preparing the Cost of Service Study. This action was performed by someone under his supervision.

RATES

Background

A matter of major importance in any rate case is the allocation of the revenue requirements, found to be just and reasonable, to the customers of the utility involved.

The fact that VEPCO has not sought, on its own motion, to change its basic rate structure appreciably in this proceeding does not relieve the Commission from the responsibility of examining or changing VEPCO's rate structure if deemed necessary. The Commission has both the authority and the mandate to make such changes in rate structure on its own motion as are necessary to correct or prevent undue discrimination or other debilitative conditions. This position is supported by G.S. 62-130(d) which states that the Commission may revise rates previously fixed "...as often as circumstances may require..." The fact that VEPCO's rate designs have been previously approved by this Commission does not prohibit this Commission from changing those rate designs and relationships in light of

new and superior evidence. The N.C. Supreme Court decided that rates fixed by other of the Commission are to be considered just and reasonable "... unless and until they shall be charged (sic) or modified on appeal, or the further action of the Commission..." (emphasis added) (In re Petition for Increase of Street Car Fares in the City of Charlotte, the Southern Public Utilities Company 179 N.C. 151 (1919)).

The scope of the Commission's power to make its own decision in the setting of rates is further defined by N. C. Supreme Court decision in Utilities Commission v. Lee Telephone Company 263 N.C. 702, which states that "...upon a petition for increase in rates the Commission is not required to accept the proposed rates or to reject them all together." The provisions of G.S. 62-133 are that "the Commission shall fix such rates as shall be fair both to the public utility and to the consumer." As to what is fair to the public utility, paragraph 5 of subsection (b) states that the Commission shall "...Fix such rates to be charged by the public utility as will earn in addition to reasonable operating expenses ascertained in 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 standard of fairness to the consumer is set forth in G.S. 62-140 in which paragraph (a) states that "No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of services. The Commission may determine any questions of fact arising under this section."

With respect to the question of discrimination and undue discrimination, the courts and the utility economists are in general agreement. Kahn defines rate discrimination as "charging different purchasers prices that differ by varying proportions from the respective marginal costs of serving them." (Alfred E. Kahn, The Economics of Regulation: Principles and Institutions, Vol. 1, John Wiley & Sons, Inc., 1970, New York, p. 123)

Lake, in his book on utility discrimination stated:

> "If a rate to a class of patrons is not sufficient to cover the separable costs of serving them, either the utility investor must absorb the loss or other patrons will have to pay a higher rate than they would pay if the favored group were not served at all, and the greater the volume of the favor traffic the greater is the loss. Either alternative, unless the amount is insignificant, is an injury to the other patrons, since a long continued, substantial reduction in the investor's income will result in

> poorer service. For this reason it would be generally agreed that every expense which can be attributed entirely to the service of a single class of patrons should be borne by that class alone unless reasons of the most urgent nature for passing it on to others or to the investor are proved." (I. Beverly Lake, Discrimination by Railroads and Other Public Utilities, Edwards & Broughton, Raleigh, N. C., 1947, p. 174)

Bonbright concurred, and addressed the practice of rate discrimination:

> "As a wise, practical rule, rate differentials should not often be permitted unless they can be expected to result in lower rates even for those consumers who are discriminated against...will make some contribution to total revenue requirements over and above incremental costs....
>
> Permission to discriminate...should seldom be granted in the absence of good evidence that the favored rates will cover, not just those short-run incremental costs..., but rather those 'long-run' incremental costs (including incremental capital costs) which can be expected to persist for the indefinite future. Otherwise, there arises the danger...that the favored consumers will secure a kind of vested interest in the maintenance of their preferential rate relationships even after the economic excuse for this preference has ceased to be valid." (Bonbright, Principles of Public Utility Rates, Columbia University Press, New York, 1961, pages 383,384)

In addition to the criteria established in paragraph (b) of G.S. 62-133, paragraph (d) empowers the Commission to "...consider all other material facts of record that will enable it to determine what are reasonable and just rates."

Cost of service is a major factor in determining the reasonableness of rates and the existence of discrimination in rates. (See State Ex Rel Utilities Commission v. Nello L. Teer Company 266 N.C. 366)

It is incumbent upon this Commission to consider changing economic climates and/or other factors which affect the economic well-being of a utility and its ratepayers, and indeed it is the duty of the Commission to seek evidence to support the validity of existing rates or the necessity for change. Having determined the revenues which are just, reasonable, and necessary, the Commission must then examine the rates which are to produce those revenues with respect to the ability of the rate structures to recover the necessary revenues, the relationship of the rates to the costs of service, discrimination, and other such factors as

may be necessary to determine that the rates which are set in this proceeding are just and reasonable.

Rate Schedules

The following is a list of VEPCO's major rate schedules:

Schedule No. 1 - Residential Service. This schedule is applicable to separately metered and billed supply of alternating current electricity to any customers for use in and about a) a single-family residence, flat or apartment, b) a combination farm and one occupied single family residence, flat or apartment, or c) a private residence used as a boarding and/or rooming house with no more than one cooking installation nor more than ten bedrooms.

Schedule No. 5 - Small General Service. This schedule is applicable to the supply of alternating current electricity to any customer. This schedule is not applicable for breakdown, relay or parallel operation service.

Schedule No. 6 - Large General Service. This schedule is applicable for the supply of 50 KW or more of alternating current electricity to any customer.

Schedule No. 7 - Electric Heating. This schedule is applicable to any general service customer purchasing alternating current electricity for storage water heating, for clothes drying, or for space heating, where the customer also purchases electricity for other purposes at the same location in accordance with a general service schedule. Where electricity is used for space heating, and the same space is cooled by air conditioning equipment that serves no additional space, the air conditioning equipment may be served on this schedule through the same meter.

Schedule No. 26 - Outdoor Lighting Service. This schedule is applicable to any customer for outdoor lighting service.

Municipal and County Service. Service to these governmental customers is charged on schedules that are included as part of the service agreement.

Rate Design

Background

VEPCO's present rate design, outlined above, was put into effect May 1, 1971. VEPCO generally adopted the view that this rate structure was the most appropriate design to follow except that it should be revised to reflect the significant increase in fuel cost incurred since it was designed. The major change in rate design proposed by VEPCO

in this case was on the Municipal and County Service classes. Prior to this Application these customers were served on individually negotiated contracts. VEPCO's proposal in this Application was to design rate schedules on which the customers would be served, just as with other N.C. retail customers. The proposed rates put large increases on these classes of service.

A second rate design was introduced into evidence. This design would produce equal rates of return between rate classes. This rate structure was requested from VEPCO by the Commission but was not supported by the Company.

Staff and Attorney General's witnesses pointed out alleged weaknesses in VEPCO's proposed rate structure and suggested changes to correct these weaknesses. Both witnesses stressed the need for rate structures that would 1) return revenues that would more nearly equalize rates of return between classes, 2) charge in all schedules so as more nearly recover incremental costs, and 3) to obtain revenues from customers that use electricity at peak times which more closely cover the costs of supplying that energy.

The Northeastern Cotton Ginners Association introduced testimony proporting to show the effect of VEPCO's present and proposed rates on its members. Many governmental customers, such as municipals and school systems, introduced testimony against the increases proposed for their class of service.

Evidence

Mr. Robert S. Gay, Manager of Rates and Contracts for Virginia Electric and Power Company, testified on the matter of rate design substantially as follows:

The design of the rate schedules proposed by VEPCO preserves the general relationship established in the 1971 rate case. In this case, a seasonal price differential was approved in recognition of the higher cost burden of summer-oriented loads. The proposed rates also eliminate the differential between rates to municipals and counties and raise the level of these rates closer to the level of the general service rates.

There were five major objectives in the design of the proposed rates:

1) To produce the additional revenues required;

2) To distribute these revenue increases among the schedules in line with the nature of VEPCO's experienced increases in costs;

3) To limit the description of the historical relationships among customer classes;

4) To continue to encourage seasonally-balanced usage which will tend to improve system load factor; and

5) To partially correct an unreasonably low level of rates that historically have been offered for local governmental services.

The first step in the design of the proposed rates was to determine the increases for outdoor lighting service, electric heating, governmental services, and the facilities charge plan. Of the total of $2,480,000 increase (based on 1971), the increases on these minor rates were only $371,653.

The basic structure of each rate schedule was not changed. The increase was distributed by repricing within each schedule so that all customers on a schedule received an equitable share of the increase. The increase was divided between schedules as follows: First, the energy-related components of the present revenues excluding the surcharge was determined by multiplying the KWH sold in each major class by the 1969 energy-related cost per KWH. This energy-related component was then subtracted from the total revenues of each major rate class to give the demand and customer related components of the present rates. The percentage of these non-energy related components of each class to the total non-energy related costs were obtained.

The amount of increase to be requested was determined and added to present revenues to obtain the total proposed revenues. The energy-related component of these revenues was determined by the method mentioned above using 1971 energy related expense per KWH. The energy-related portion was subtracted to leave the total non-energy related component of the proposed revenues. This component was then allocated to each rate class by using the percentages calculated. The energy and non-energy related portions were added for each class to give the total class revenue objectives.

The specific changes proposed for each rate schedule will be discussed below:

Schedule 1 - Residential

The addition of an additional block into the summer rate schedule and the increase of the terminal block during this period cause bills in excess of 600 KWH rendered in the summer to be increased relatively more than average. The average increase would be slightly less than 12.0% with greater increases in the summer than in the winter. The proposed rates were designed to bring the summer and winter rates for large users more nearly in line with the costs of serving summer and winter oriented loads.

Schedule 5 - Small General Service

There were no major changes in this schedule other than increases in all blocks of energy consumption as well as in the minimum demand charge. The total percentage increase proposed for this schedule was 12.9%.

Schedule 6 - Large General Service

Each price in the monthly rates was increased. A minimum charge was specified. The total percentage increase for these customers would be 8.8%.

Schedule 7 - Electric Heating

A larger portion of the increase was allocated to the rates for the summer months than for the winter months. The demand charge would only apply to summer usage. The overall annual percentage increase would be 6.9%.

Schedule 26 - Outdoor Lighting Service

The prices for this schedule have been expressed as a monthly rate rather than an annual rate. The schedule has been revised to permit public street and highway lighting to be served on this schedule. This revision consisted of showing incandescent lamps and flourescent units in Paragraph II - Flat Charge. Neither of these types of lighting will be open to new customers (incandescent service was closed in Docket E-22, Sub 118 and this docket requests that flourescent service be closed). Paragraph II specifies a minimum charge. The increase would be 10.1%.

Schedule 30 - County, Municipal, or Housing Authority Electric Service

This schedule is designed to replace the existing rates which are contained in the agreement forms and supplementary schedules for governmental service. Before, these customers were served under individually executed form contracts which set forth rates for various types of service; therefore, new contracts had to be negotiated for each change in rates. VEPCO intends to serve these customers on Schedule 30 in the future. The pricing of Schedule 30 is the same as the present Small General Service rates. The goal is to eventually serve these governmental customers on the same rate as the Small General Service customers. Traffic Control Service will be billed on Schedule 30. Street and Highway Lighting will be billed on Schedule 26.

Schedule 42 - County, Municipal or Housing Authority All-Electric Service

Pricing in this schedule is similar to pricing in Schedule 7. This rate replaces the rate in the supplemental agreement for County All-Electric School Service. The

percentage increases for governmental service is shown below:

Type of Service	Percentage Increase Municipal	County
Misc. Light and Power	111.7	36.7
Street Lighting	39.2	31.7
Traffic Lighting	158.8	168.2
Total	78.2	36.5

There is a 9.3% increase proposed for the facilities charge.

The Small General Service Schedule earned a rate of return that was almost twice as much as the Large General Service and Residential customers earned. The Company did not consider this discriminatory because of many other factors. The value of service is greater for these customers because they use the power to promote their product. Also, these customers can deduct electrical expenses for tax purposes.

On present rates the Schedule 5 customers paid a rate of return that was 1.82 times the jurisdictional average rate of return. Under the proposal, this class would pay 1.75 times the average rate of return.

On rebuttal, Mr. Gay testified substantially as follows:

VEPCO has proposed to continue the historical trend of charging Schedule 5 customers a rate of return substantially greater than the average. Schedule 5 recovers more than incremental costs. The incremental energy charge is higher in the lower ranges where demand charge is inoperative. As the demand increases, the incremental energy charge declines. This occurs because the customer component and the demand component previously included in the energy charge is now included in the additional charges due to the increased demand and is thus less significant. There are no demand measurements on Schedule 5 for small customers due to cost of the additional meter. For large customers with demand meters Schedule 5 recognizes size, load factor, diversity, and incremental pricing. The rate form of Schedule 5 is not unreasonable. It offers off-peak discounts. The major improvements on the rate design of this Schedule would be a widening of the summer-winter price differential and a reduction of the winter minimum demand charge.

With reference to Schedule 6, there is no need to have increased the demand charges in the last blocks. As the size of the load increases, there is less distribution costs associated with the load. Also, most of the growth in demand is not in the tail blocks.

The discount to water heating customers should neither be eliminated nor reduced. At present, the rate of return paid

by these customers is higher than on the non-heating customers. This disparity in rate of return will widen if the discount is reduced.

On the matter of rate design, Professor Spann testified substantially as follows:

The Commission must set rates for the different rate classifications which are equitable and non-discriminatory. The effects of different rate structures on future revenue requirements must also be considered. Rates should be set such that the Company recovers its operating costs plus earns the rate of return necessary to attract new capital; rates set for various classes of customers should recover the costs of serving those classes. Also, rate structures should reflect incremental costs. If rates for a particular class are set in excess of the revenues necessary to recover the fully distributed cost of serving that class, those customers are being discriminated against. Also, if different classes are charged rates which produce different rates of return, the overall rates of return for the Company will change over time as the distribution of customers changes over time. The rate of return actually earned by the Company will depend upon how the system grows.

Charging a class of customers less than the full costs of providing power leads to the wasteful consumption of energy. Pricing less than costs encourages additional usage of electricity and inefficient use of limited natural resources.

Incremental costs are the additional costs incurred by the system by increasing output by one unit. If incremental prices fall short of incremental costs, system growth will require continuous rate increases in order for the company to earn a fair rate of return. If incremental prices are higher than costs, the rate of return will exceed that allowed by the Commission. If incremental prices are below incremental costs, electrical usage is encouraged by low prices, but consumers are not paying the full costs of providing service.

Incremental demand costs are different at different times of the year. During off-peak periods, no equipment must be added to supply load, therefore, incremental demand costs are zero. During the peaking period, an increase in demand requires new plant and thus incurs a cost to the system.

Incremental customer costs are the same at all times of the year.

Incremental energy costs consist primarily of fuel and related maintenance. These costs are slightly higher in the summer due to the less efficient operation of the system under conditions of high ambient air and water temperatures.

VEPCO is currently a summer peaking system and should remain so in the future since the summer peak is growing faster than the winter peak. Since costs are higher in the summer and summer peaks are larger, VEPCO's proposal to increase the rates to large summer users more than average and to increase rates to large winter users less than average is consistent with incremental utility pricing. VEPCO's proposed residential rates should decrease usage in the summer and increase usage in the winter thus improving the system load factor.

VEPCO's small general service rate, Schedule 5, includes a demand charge for customers who use over 3000 KWH per month. The demand charge is in the form of a block extender. For each KW of demand (for |0 through 30 KW), |95 KWH are added to the lengths of the third and fourth blocks. Also, |05 KWH are added to these blocks for each KW of demand over 30 KW.

The large general service rate, Schedule 6, is applied primarily to larger users. The demand and energy charges are separated explicitly; however, there is also a block extender in the second block of the energy charge schedule.

The rate charged for each additional KW and KWH should be as close to incremental demand and energy costs as possible. The demand and energy charges in Schedule 6 largely reflect incremental costs. The major discrepancy between the rates in Schedule 6 and incremental pricing is that if the winter peak is greater than 90% of the preceding summer peak, the customer gets no reduction in his bill due to his high winter (off-peak) usage. Also, the incremental demand charge is the same in the winter as in the summer.

Pricing in Schedule 5 is not in line with incremental costs. VEPCO would be charging customers with billing demands in excess of 50 KW considerably less than the costs of providing capacity to meet increases in billing demand. The charge could be as low as 34¢ per KW for increases in demand. Demand costs are far in excess of this 34¢ figure. This low demand charge gives no incentive for economical or efficient use of power. Alsc, low demand charges usually require high energy charges. These charges could range to 2.66¢/KWH during off-peak periods. This high charge could discourage use during off-peak periods. This method of pricing can have the result of lowering load factors.

The situation in Schedule 5 could be relieved easily by requiring all customers with demands of 50 KW or more to be charged on Schedule 6.

Rates based on Cost-of-Service are desirable in that |) they are more fair because each class of service would pay only the cost of serving that class, 2) the system would not experience rate of return attrition due to classes earning low rate of return growing faster than other classes, and 3)

they eliminate below cost electricity sales which result in wasteful consumption of scarce energy resources.

There are ways of moving toward the Cost-of-Service rates. One method would be to:

1) Grant no increase in the Small General Service class;

2) Eliminate the switch over provision between Schedules 5 and 6 in the summer months for customers with billing demands in excess of 50 KW; or

3) If full increase is not granted, reduce the proposed residential rates more than the proposed Large General Service rates.

Mr. Charles Olson testified substantially as follows:

There are several economic functions which should be performed by utility rates. The first is capital attraction. The utility must be able to charge rates which will allow it to attract the necessary capital at reasonable terms. Secondly, rates should encourage efficient operation by the utility. Thirdly, rates should be designed to cover the full costs of providing service, including environmental costs. Total revenues should cover total costs, and incremental costs should be covered by the incremental prices. All rates cannot be incrementally priced because the revenues obtained would be greater than the distributed costs. Rates should be designed to reflect future cost trends to avoid frequent rate increases. Finally, each class of customers must contribute the appropriate amount toward the total cost of providing service. Also, rates should be simple, easy to understand, and stable.

Rates should be designed to account for basic social and economic policy objectives such as environmental protection and conservation of natural resources. Rate design influences the patterns of electrical consumption of all customers. If rates are below incremental costs, consumers will purchase more heating and cooling equipment than if rates were higher. Also, customers will purchase equipment with less thought to the efficiency of the equipment, proper insulation of their homes, etc. Growth induced by below cost rates does not make the service area better off economically. Rates should be designed to discourage wasteful or unnecessary use of energy at all times for environmental protection and the preservation of natural resources.

Utilities have traditionally designed rates to promote electric consumption by designing the last block so that it contributes less to overhead than the earlier blocks.

Promotional rates have been justified by four arguments:

1) Excess capacity. While there was excess capacity in the past, this is no longer the case.

2) Load factor improvement. It was felt that an increase in off-peak usage would improve load factors; however, now most increases occur during the summer or winter peaks.

3) Economies of Scale. Lower unit costs are no longer realized with utility expansions. In fact, costs are increasing greatly.

4) Technological improvements. It is unlikely that technology can provide any breakthrough to clean, economical power in the near future.

There are no longer any reasons to continue promotional rates. Promotional rates are not cost based; they are based on value of service. Promotional rates are justified during a period of decreasing costs; however, during a time of increasing costs there is little or no economic reason for their adoption.

VEPCO has followed the practice of charging the highest prices in markets in which demand is least responsive to price and lower prices where demand is more responsive to price (i.e., larger per unit prices to small customers). By doing this, demand can be expanded at the most rapid rate.

Now that costs are increasing, rates in trailing blocks should reflect the incremental cost of supplying electric energy. Also, rates to the various classes should no longer be designed to increase growth in demand because as demand grows costs will increase. Rates of return should be the lowest to classes whose demand is least responsive to price and higher to classes whose demand is more responsive to price. There is no longer any justification for declining block rates for demand or energy charges. The only exception is for rates that promote off-peak usage of electricity. This usage is desirable because it lowers the unit costs by better utilizing existing capacity. However, these rates should not encourage additional loads at the time of the system peak.

VEPCO has not justified any of their proposed rates with respect to the changed economic conditions, changed environmental conditions, or cost of service. The proposed rates are not based on sound economic principles. They are not designed so as to allow VEPCO to attract capital favorable since they do not protect against attrition of earnings which will occur in times of rising costs. For example, since the proposed industrial rates are not designed to produce increased revenues with increased usage, revenue deficiencies will occur as usage increases. If the quantity discounts in the high use blocks were lessened,

attrition would be less as usage increases. Rates must be designed to increase revenues as rapidly as costs increase. Also, if rates of return were equalized for all rate classes, less growth and less attrition would result. The proposed rates are unduly discriminatory between customer classes in that the small general service schedule returns twice the North Carolina average rate of return. VEPCO is proposing to increase rates to these customers by a larger percentage than the rates to the residential or large general service customers. Also, the discount provisions of Schedule 7 have not been justified by cost of service data. The proposed rates also fail to recover incremental costs of providing power from new plants. New plant operating costs alone were estimated at 9.5 mils/KWH while a large industrial customer would only pay 9.75 mils/KWH under the proposal or less than the generation costs if gross receipts tax is added.

Recommendations for changes in the rate structure proposed by VEPCO are:

1) Each class of customers should pay the same or approximately the same rate of return. At least, Schedule 5 customers should receive no increase at this time;

2) Schedule 7 should be eliminated;

3) The water heating discount should be eliminated or, at least, reduced. It increases on-peak usage as well as off-peak usage; and

4) The quantity discount in Schedule 6 should be reduced so that the last demand block reflects the incremental cost of supplying that demand.

Changes in rate design which reflect changing conditions are advantageous in that they serve to inform customers of the increasing cost (both economically and socially) of energy and of the need to adjust energy consumption patterns.

FINDINGS OF FACT

Fair Value of Plant in Service

(i) Original Cost

1. That Virginia Electric and 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 pursuant to the decision of the North Carolina Supreme Court in the Lee Telephone Company case, State of North Carolina ex rel Utilities Commission, et als, vs. Morgan, 277 NC 255 (1970), no sums expended or recorded on VEPCO's books for plant under construction or for plant held for future use should be nor have been included in VEPCO's plant.

3. That the actual investment currently consumed through reasonable actual depreciation during the test period was $2,531,225.

4. That the original cost depreciated of VEPCO's electrical plant in service subject to the Commission's jurisdiction excluding $1,341,000 of plant under construction and $39,868 invested in a tourist and information center is $66,223,192 (after deducting contributions in aid of construction but not including allowance for working capital).

(ii) Replacement Cost

5. That the trended original costs, depreciated, of the electric plant in service, subject to Commission jurisdiction are found by applying the staff allocation factors to the total company trended original costs, depreciated, as calculated by Mr. Reilly, and that these are:

Production Plant	$26,766,541
Transmission Plant	17,297,612
Distribution Plant	44,484,690
General Plant	1,858,996
Common Plant	612,371
Total Electric Plant	$91,020,210

and that the Replacement Cost is $91,020,210.

(iii) Fair Value

6. That the working capital allowance found to be reasonable for VEPCO's North Carolina retail operations was determined by taking the cash working capital of $1,269,215 and adding to it materials and supplies, $1,619,088. Average tax accruals in the amount of $664,348, average customer deposits of $90,235, and a fuel payment lag of $203,254, were offsets to the working capital allowance, resulting in a net working capital allowance in the amount of $1,930,466 and that the amount of working capital is $1,930,466.

7. That 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, and considering the replacement cost of said property and considering the condition of the property and the outmoded design of some of the older plant, the Commission finds that the fair value of said plant should be derived from giving two-thirds weighting to original cost and one-third weighting to replacement cost. By this method, the Commission finds that the fair value of the said plant devoted to retail service in North Carolina is $74,488,865 or $76,419,331 including $1,930,466 allowance for working capital.

Fair Rate of Return

8. That after the Staff's accounting and pro forma adjustments and jurisdictional factors, VEPCO'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 $21,456,589; that the reasonable operating revenue deductions of VEPCO during the test period was $16,634,693; that the net operating income for return at the end of the test period, after a reduction of $3,817 representing interest on customer deposits, after accounting and pro forma adjustments, was $4,818,079, giving a rate of return on depreciated original cost of plant of 7.07%; a return on original cost equity of 9.87% and a return on fair value of 6.31%. That such rates are insufficient to provide a fair profit to VEPCO's stockholders considering changing economic conditions, and insufficient to allow VEPCO to compete in the market for capital funds on terms which are reasonable and fair to its customers and existing investors.

9. That the rate of return necessary on the fair value of VEPCO's property to allow VEPCO, with sound management, to produce a fair profit for its stockholders, considering 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 6.89%, which rate of return will produce $962,685 of additional gross revenues on North Carolina retail electric service; and that the additional gross operating revenues of $962,685 will increase the net income available to the common stockholders from $2,069,730 to $2,515,500 for a rate of return on book value common equity of 12% and a rate of return on

fair value common equity of 8.61%. The 12% rate of return on book value common equity would provide a before income tax interest coverage ratio of 2.61 times.

Automatic Fossil Fuel Adjustment Clause

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

11. The proposed fuel clause could produce increases in VEPCO's electric rates in North Carolina without any opportunity of the VEPCO customers or the public to be heard, and without any opportunity to examine said rate increases to determine if they are just and reasonable and non-discriminatory and without any opportunity to determine the fair rate of return or fair value of VEPCO's property during said time in the future.

12. That the disadvantages of the proposed automatic fuel adjustment clause substantially outweigh the alleged advantages of the clause, and any rate increase so imposed under the fuel clause, together with the fuel clause itself, is therefore considered by the Commission to be unjust and unreasonable.

Cost of Service

13. That the 1971 Cost of Service Study filed by VEPCO gives an indication of the relative rates of return earned by the different classes of service, and in that regard, is useful in both the ratemaking and management processes.

14. That it is necessary that a Cost of Service Study be based upon allocation methods which are both accurate and stable over time.

Rate Design

15. That VEPCO's proposed procedure for increasing its rates and the proposed rate design is, for the most part, just and reasonable.

16. That the Small General Service class is paying a rate of return greatly in excess of the system average rate of return.

17. That VEPCO's proposed rate design is based on a revision of its present rates and would incorporate the significant increase in its fuel costs used in generation of energy along with increases in fixed costs.

18. That the Company's proposal to design rate schedules for governmental service is appropriate.

19. That the use of incremental pricing is based upon sound economic principles, promotes maximum efficiency, and inhibits attrition of earnings, that expansion of service which is priced below the total incremental cost of that expansion will lower the rate of return; and that the expansion of service which is priced above the total incremental cost of that expansion will raise the rate of return.

CONCLUSIONS

Fair Value of Plant in Service

The trended original cost study by Witness Reilly for the applicant has deficiencies which make it unacceptable as a complete and reasonable method for determining replacement cost. Instead of performing a time "replacement cost study", the witness computed the trended original cost of the properties and subtracted from the figure, thus derived an allowance for depreciation, which allegedly included some undetermined amounts for "wear and tear, decay, action of the elements, inadequacy, obsolescense, changes in the art, changes in demand and requirements of public authorities." While Mr. Reilly did account for advances in the art of construction, he made no attempt to determine the value of the utility plant as if the entire plant were designed in accordance with the present state of the art for the design and operation of electric systems, including modern technologies and efficiencies. In view of this and the previously stated fact that the Commission considers the replacement cost more than just a "brick-for-brick" reproduction cost, the Commission finds the trended original cost method as employed insufficient as a complete and reasonable determination of replacement cost.

The Commission believes the replacement cost which was determined merely by trending and depreciating original costs without proper consideration for improvements in plant design and efficiency is excessive. However, the Commission is of the opinion that the trended original cost, depreciated, is the best estimate of the replacement cost that can be derived from the evidence on record. Furthermore, the Commission believes this replacement cost can be combined with the original cost to determine the appropriate Fair Value of the electric plant in service provided that proper weighting is applied to eliminate deficiencies in the replacement cost estimate.

The Commission concludes that the Company's proposed inclusion in the rate base of $1,341,000 representing plant under construction should be disallowed inasmuch as the same was not plant in service, used and useful, or in operation during the test period, and further that the investment in the tourist and information center should not be included in the rate base.

The Commission concludes that the reasonable original cost of the property, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, and the replacement cost of said property are appropriate factors to be used in determining the fair value of said property if consideration is given to the condition of the property and the outmoded design of some of the older plant when weighting these factors. The Commission further concludes that the proper weighting, considering depreciated original cost, replacement cost, and the outmoded design of some of the older plant, is two-thirds weighting for original cost and one-third weighting for replacement cost. By this method the Commission determines the fair value of the said plant devoted to retail service in North Carolina to be $74,488,865 or $76,419,331 including $1,930,466 allowance for working capital.

Fair Rate of Return

The Application of VEPCO in this proceeding seeks an increase under the proposed rates to produce $2,517,328 of additional annual revenue, on an annualized basis, based on the customers connected at the end of the test period. The following tables based on the Findings of Fact, show the derivation of the $962,685 of such increased revenue found to be reasonable from the records in this proceeding with the adoption of Staff adjustments:

VIRGINIA ELECTRIC AND POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RETURN

	Present Rates	Approved Increase	Approved Rates
Operating Revenues			
Gross operating revenues	$21,456,589	$962,685	$22,419,274
Operating Revenue Deductions			
Fuel expense	5,345,524		5,345,524
Purchased power	1,088,636		1,088,636
Operation and maintenance expenses (excluding purchased power)	4,808,188		4,808,188
Depreciation	2,531,225		2,531,225
Taxes-other than income	2,205,375	57,761	2,263,136
Taxes-state income	174,489	54,295	228,784
Taxes-Federal income	485,189	408,302	893,491
Taxes-deferred income	(63,357)		(63,357)
Investment tax credit normalization	162,428		162,428
Investment tax credit amortization	(103,004)		(103,004)
Total operating revenue deductions	16,634,693	520,358	17,155,051
Net operating income	4,821,896	442,327	5,264,223
Less: interest on customer deposits	3,817		3,817
Net operating income for return	$ 4,818,079	$442,327	$ 5,260,406

Investment in Electric Plant			
Electric plant in service	$84,864,279	$	$84,864,279
	450,836		450,836
Total investment in electric plant	85,315,115		85,315,115
Less: Accumulated depreciation	18,884,992		18,884,992
Contributions in aid of construction	206,931		206,931
Net investment in electric plant	66,223,192		66,223,192
Allowance for Working Capital			
Materials and supplies	1,619,088		1,619,088
Cash	1,269,215		1,269,215
Less: Fuel payment lag	203,254		203,254
Average tax accruals	664,348	85,405	749,753
Customer deposits	90,235		90,235
Total allowance for working capital	1,930,466	(85,405)	1,845,061
Net investment in electric plant plus allowance for working capital	$68,153,658	$(85,405)	$68,068,253
Rate or returns on original cost net investment - %	7.07		7.73
Fair value rate base	$76,419,331		$76,333,926
Rate of return on fair value	6.31		6.89

VIRGINIA ELECTRIC AND POWER COMPANY
DETERMINATION OF EMBEDDED COST
OF DEBT AND PREFERRED DIVIDENDS
BASED ON TOTAL COMPANY CAPITALIZATION AT JUNE 30, 1972

Type of Capital	Amount Total Company	Ratio %	Interest and Dividend Requirements	Embedded Cost of Debt %
Total debt	$1,246,223,641	56.49	73,017,615	5.86
Preferred stock	241,740,058	10.96	15,932,132	6.59
Interest-free capital	38,935,845	1.77		
Common equity	679,051,187	30.78		
Total capitalization	$2,205,950,731	100.00		

VIRGINIA ELECTRIC AND POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS

	Present Rates - Original Cost Net Investment		
	Rate Base	Embedded Cost - %	Net Operating Income for Return
Capitalization			
Total debt	$38,500,001	5.86	$2,256,100
Preferred stock	7,469,641	6.59	492,249
Interest-free capital	1,206,320		
Common equity	20,977,696	9.87	2,069,730
Total capitalization	$68,153,658		$4,818,079

Authorized Rates - Original Cost Investment

Capitalization	Net Investment	Embedded Cost and Return on Common Equity	Net Operating Income for Return
Total debt	$38,451,756	5.86	$2,253,273
Preferred stock	7,460,281	6.59	491,633
Interest-free capital	1,204,808		
Common equity	20,951,408	12.00	2,515,500
Total	$68,068,253		$5,260,406

Authorized Rates - Fair Value Rate Base

Capitalization	Net Investment	Embedded Cost and Return on Common Equity	Net Operating Income for Return
Total debt	$38,451,756	5.86	$2,253,273
Preferred stock	7,460,281	6.59	491,633
Interest-free capital	1,204,808		
Common equity	29,217,081	8.61	2,515,500
Total	$76,333,926		$5,260,406

The ability of VEPCO to provide adequate service in its service area and to construct needed plant to meet the increased demand for electric current and the law require that VEPCO be allowed to earn a rate of return at a level so as to attract the capital necessary for such a program.

The earnings of VEPCO during the test period under the present rates are insufficient to provide adequate service and to compete in the market for additional capital for expansion of service and to provide a fair return on the investment of its stockholders.

Changes in the interest charges coverage ratio has a direct influence on the rate of return to the common stockholder's equity due to the fact that the interest costs must be deducted from net operating income before the rate of return to the common equity capital can be computed. In the instant situation the Commission concludes that it is necessary to provide additional revenues so that VEPCO's coverage ratio will be adequate. The interacting functions of the coverage ratio and the rate of return on common equity, two important earnings criteria recognized in the financial markets from which VEPCO must seek funds, have been carefully considered by the Commission.

VEPCO's bond indenture requires that all interest on its first and refunding mortgage bonds must be earned at least twice (the ratio being computed before income taxes) before additional bonds may be sold. Based on the test year operations and after accounting and pro forma adjustments, the fixed charges coverage ratio (which include interest charges on all types of debt on an annualized basis) computed before income taxes was 2.21 times at the present level of rates. At the level of rates herein approved the interest coverage ratio will increase to 2.61 times and the rate of return on the common stockholder's equity will be 12% and on fair value equity of 8.61%.

The rates proposed by VEPCO 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 $962,685.

The Commission concludes that an increase of $962,685 or 38.24% of the $2,517,328 increase requested in the application is necessary to maintain VEPCO's facilities and service in accordance with the reasonable requirements of its customers in North Carolina and to provide a fair rate of return to VEPCO on the fair value of its properties used and useful in North Carolina.

Automatic Fossil Fuel Adjustment Clause

The Commission, after studying the purported advantages of an automatic fuel clause, concludes that the most attractive feature of the proposed clause is the possibility of its eliminating the necessity of frequent rate proceedings by reducing attrition in earnings resulting from increases in fuel costs. However, the Commission is of the opinion, in view of the current inflationary economic climate and the increasing cost aspect of electric utilities that frequent requests for rate increases will be filed regardless of a fuel clause. Faced with this probability, the Commission believes that the other purported advantages are decreased in significance and their purpose can be achieved by appropriate rate design and formal rate proceedings. There are several significant disadvantages to an automatic fuel adjustment clause and the Commission is of the opinion that

these disadvantages are adequate reason to deny the proposed automatic fossil fuel adjustment charge.

Furthermore, denial of the proposed fuel clause precludes the possibility of increases at some time in the future in VEPCO's electric rates in North Carolina without adequate opportunity for the VEPCO customers or the public to be heard, and without opportunity for the Commission to examine said rate increases to determine if they are just and reasonable and non-discriminatory and to determine the fair rate of return or fair value of VEPCO's property during said time in the future.

Cost of Service

While certain areas of the Cost of Service were performed in a logical and disciplined manner, other areas were inconsistent in methodology. It is apparent that VEPCO did not measure demands at the time of a system peak for use in Cost of Service Study allocations based on system peak. Instead of justifying its methodology, the Company chose to stress to the Commission the probability that the Staff's recommendations would likely have the effect of assigning more demand responsibility to the residential class.

This Commission cannot condone the selection of allocation methods in order to artificially prevent the allocation of costs to the responsible classes of service, no matter which class of service might appear to benefit. This Commission must have, and indeed it is imperative that it deems to have, the most accurate and stable Cost of Service Study which is practical to produce. It would appear that this should also be the attitude and concern of Virginia Electric and Power Company for how else is the Company to properly plan its actions but to ascertain the direction in which its costs are heading and the relationship of these costs to its rate structures and its operations. In these times of changing cost relationship, it is mandatory that complete, accurate, responsible cost of service studies be regularly produced and studied.

Rate Design

Throughout the post World War II period and up to the present time, the Commission has permitted the matter of rate design to reside almost solely in the hands of the management of the power utilities that serve North Carclina. Relatively few public complaints arose through the years from this practice because the utilities were, and happily so for both them and their customers, smoothly sliding down their decreasing production cost curves. The more power that could be generated, the less it would cost to produce each additional unit of power, resulting in more profits for the utilities, at least in the short run, and cheaper rates for their customers. Under such circumstances and with the utilities themselves demonstrating interest in simplifying and improving their rate designs, it is not surprising that

few public complaints and little Commission attention was given to the complex matter of how revenues were collected.

However, the present situation, in which the electric utility industry has become an increasing cost industry, brought about by the energy shortages, inflation, the requirement to internalize environmental costs, etc., has resulted in VEPCO filing almost annual applications for rate increases. There does not appear to be an immediate end in sight to the problems of rising costs. Consequently, inefficient and unduly discriminatory pricing policies which will result in or accentuate erosion in earnings and require rate relief, or add to the amount of rate relief that might be needed, should not be permitted. In this regard, the Commission is presently of the opinion that, for the most part, the method used in adjusting the pricing in the Company's proposed rate structure and the proposed basic rate design is reasonable.

With regard to the total revenues received from each customer class, the Commission concludes that the rates and charges for any class of service should normally recover all the costs, including a reasonable return, of providing that service. If all classes of service earn revenues which exactly cover all costs of service, each class will earn the average rate of return, but the Commission concludes that some variation, within a reasonable range, in rates of return between classes, is acceptable and does not necessarily result in discrimination between classes of customers.

With the above in mind, it is concluded that certain changes in the relative total amount of revenues collected from each class is necessary. The Commission is of the opinion that Schedule 5 and 7 customers are paying much greater than the average rate of return and, therefore, should receive no increase in rates at this time. Furthermore, it appears that the $1.95/KW minimum charge of Schedule 5 is excessive during the off-peak season and should be reduced. The increase of the proposed Outdoor Lighting Service schedule, Schedule 26, is felt to be reasonable in view of the classes' low rate of return. Thus, it is concluded that the full increase proposed should be permitted on Schedule 26. With respect to the Municipal and County customers, the design of rate schedules for these classes is appropriate, as is serving both County and Municipal customers on the same schedule. However, the proposed rates which generate revenues that raise the rate of return on these classes of customers from well below average to well above average in one increase are excessive and unwarranted. The increase proposed by serving Municipal and County Street Lighting on Schedule 26 is very large. It is the conclusion of the Commission that this increase is greater than necessary and, therefore, a schedule should be designed for governmental street lighting service which will reduce the increase for this service. It is believed that these changes in VEPCO's proposal will result in rates that

will move the rates of return in each schedule closer together and, thus, will be more equitable and just.

The Commission further concludes that it is incumbent upon VEPCO to review its rate structure on a recurring basis in order to achieve a continuing minimum of disparity of rates of return between classes of customers.

IT IS, THEREFORE, ORDERED:

1) That effective on bills rendered on and after August 1, 1973 for service rendered after July 1, 1973, the Applicant, Virginia Electric and Power Company, is authorized and permitted to put into effect increased rates and charges. Such increases in rates shall produce no more total annualized additional revenue as of the end of the test period than $962,685 being 38% of the increased revenue sought under the proposed rates of $2,517,000.

2) That VEPCO will prepare rate schedules, in accord with its rate design procedures as testified to at the hearing and in accord with the following:

a) No change shall be made in the basic Small General Service schedules (nos. 5 and 7) that were in effect prior to the Application except that the minimum charge on Schedule No. 5 during the Base Months (November through June) shall be no more than $1.00 per KW of demand.

b) The Outdoor Lighting Schedule (No. 26) shall be as proposed in the Application.

c) The Facilities Charges shall be as proposed in the Application.

d) Rate schedules shall be designed in accord with the Company's general proposal for all Municipal and County Service; however, the amount of increase shall be reduced from the proposed rates. A schedule shall be designed for governmental street lighting.

e) The increased revenues granted shall be allocated among the schedules and their respective subsections approximately as outlined below:

Schedule	Total Revenue Increase	% Increase
Residential Schedule No. 1	$538,124	6.44
Small General Service Schedules 5 & 7	(22,059)	(.62)
Large General Service Schedule 6 (inc. Breakdown, Relay, 11)	322,204	4.12
Outdoor Lighting Service Schedule No. 26	31,120	10.09
Facilities Charges	5,996	9.29
Municipal Service		
Misc. Light & Power	32,183	20.44
Street Lighting	30,009	20.00
Traffic & Caution	2,154	29.06
County Service		
Misc. Light & Power	17,042	6.40
All Elec. Bldg. Service	4,048	8.49
Street Lighting	1,840	16.20
Traffic & Caution	22	30.56
Total	$962,683	4.64

(3) That the filing and use of the Automatic Fossil Fuel Adjustment Clause by Virginia Electric and Power Company proposed in this proceeding be, and the same is, hereby denied.

(4) That said rate design shall be submitted by July 20, 1973, and that said rates are to be effective on bills rendered on and after August 1, 1973, for service rendered after July 1, 1973.

(5) That the revenues and rates of return on net original plant investment plus allowance for working capital based upon 1971 sales, be calculated for each rate schedule under the rate design proposed by VEPCO in obtaining the $962,685 increase with results furnished to the Commission no later than July 20, 1973.

(6) That the rates approved under the Undertaking filed by VEPCO on February 9, 1973, are to be cancelled upon the effective date of the rates approved in this Order. All revenue received from customers from the rates allowed under the Undertaking over and above the revenue that would have been realized had the rates approved herein been in effect since March 1, 1973, shall be refunded, with interest of 6% per annum, to each customer.

(7) That VEPCO shall complete and file with the Commission annually on April 30 a Cost of Service Study detailing the rate of return earned by each class of service, and the customer, demand and energy components of revenue deductions and net plant investment, and allowance for working capital; that such studies shall be based upon each calendar year's operations; that demand data used shall have been taken within two years of the end of the period

under study; that the methods of execution of cost of service studies shall be determined by the Company with the goals of accuracy, responsible allocation, and stability over time; and that studies based upon alternative methods may be submitted for consideration, but that at least one shall be based upon the following:

(a) Sizes of distribution plant used in computation of customer components shall be the minimum sizes which will meet the requirements of the National Electrical Safety Code and other like restrictions, and costs for such sizes of equipment shall be actual costs, if available, or shall be computed using statistical regression techniques and the minimum-intercept method.

(b) Coincident demands shall be measured at the time of daily system peaks, and that demand data taken at the time of the top five daily system peaks (if all five are within 1/2% of the yearly system peak) shall be averaged to calculate the coincident demand factors to assure proper assignment of coincident peak responsibility.

(c) The distribution line portion of Account 360, Land and Land Rights, shall be allocated on customers only.

(d) Account 364 - Poles, Towers, and Fixtures, shall be allocated to primary and secondary based upon the number of wires on each pole in the sample, weighted by the relative difference in wire sizes, and all neutrals shall be allocated to the primary, that if poles are initially installed oversized to carry planned later wire additions, the final design shall, if possible, be used in the above allocation, and that the Minimum Intercept cost of a Class 7 pole shall be used when computing the customer component.

(e) The calculation of the customer component of Account 365 - Conductors, shall be based upon two-wire secondaries and primaries and three-wire joint secondary-primary lines, and that the Minimum Intercept cost of #4 ACSR or equivalent shall be used.

(f) The calculation of the customer component of Account 367 - Underground Conductors and Devices, shall be based upon #4 Al UG cable primary and #10 Cu or #8 Al duplex 600 V UG cable (or such cable as to carry a minimum load) for secondaries.

(g) The calculation of the customer component of Account 368 - Transformers, shall be based upon a 0 KVA Minimum Intercept.

(h) The calculation of the customer component of Account 369 - Services, shall be based upon #4 EC, #ACSR, #10 AD Cu., or #12 MHO Cu for overhead services and #10 Cu or #8 Al duplex 600 volt UG cable for underground.

And, that each study shall include an analysis of the changes in customer demands, rates of return, and expense and plant factors which have occurred since the 1971 Cost of Service Study, and that such studies shall continue to be made and filed with the Commission each year through 1984, and thereafter in like manner unless terminated by the Commission.

8) For any industrial customers having unusually low load factor brought about by sporadic and infrequent operation of heavy power usage equipment, VEPCO is hereby ordered to immediately begin the review of the possibility and justification for, if any, of establishing an off-peak seasonal night-time rate which might encourage the use of such equipment at off-peak times.

9) That VEPCO design and transmit to its customers at the time of their next monthly billing following August 1, 1973, a final notice advising its customers of the increase in rates and the revised rate schedules on which they are served.

10) That all motions in the matter, taken under advisement and still pending, which have not been made moot by the foregoing findings, conclusions, and ordering paragraphs are hereby denied, including the motion of the municipal intervenors that their rates not be subject to this proceeding by virtue of the contracts entered with VEPCO.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 141

WELLS, COMMISSIONER, CONCURRING. Although I believe the rates of return allowed in this Order to be too high, I have concurred in the result of the Order, principally because through this Order, we have accomplished substantial improvement in VEPCO's rate design, and have managed to either eliminate or substantially correct some glaring inequities.

I am also particularly pleased that through this Order we have avoided adopting VEPCO's proposed automatic fossil fuel clause adjustment, as I believe the automatic fuel clause adjustment to be a particularly sinister device for making electric rates in these times.

Hugh A. Wells, Commissioner

DOCKET NO. E-2, SUB 222

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Power & Light Company - Authority to Issue and Sell $100,000,000 Principal Amount of First Mortgage Bonds, ___% Series Due 2003	) ORDER GRANTING) AUTHORITY TO) ISSUE AND SELL) SECURITIES

This cause comes before the Commission upon Application of Carolina Power & Light Company (Company), filed under date of April 19, 1973, through its Counsel, Thos. E. Capps, wherein authority of the Commission is sought as follows:

To issue and sell $100,000,000 principal amount of First Mortgage Bonds, ____% Series due 2003.

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 February 28, 1973, consists of common stock with a stated value of $353,219,788 and preferred stock having a stated value of $173,800,900.

3. The Company's existing long-term debt at February 28, 1973, amounted to $634,030,000 in First Mortgage Bonds, $50 million in a Six-Year Term Note and $110,242 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, and E. J. McCabe and Robert T. Lavender becoming successor therein (successor to Frederick G. Herbst, Richard H. West, and J. A. Austin) and amended by sixteen Supplemental Indentures.

4. The Company proposes to issue and sell $100,000,000 principal amount of First Mortgage Bonds, ____% Series due 2003, to be secured under a Seventeenth 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 $180,738,716 in the period August 1, 1972 through February 28, 1973. The net proceeds from the proposed sale of First Mortgage Bonds will be used for general corporate purposes including the reduction of short-term borrowings incurred primarily for the construction of new facilities.

6. The Company proposes on or about May 16, 1973, 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 May 22, 1973, 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 $135,000.

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 $100,000,000 principal amount of First Mortgage Bonds, ____% Series due 2003;

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 Seventeenth Supplemental Indenture to be dated as of May 1, 1973, 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 Sixteenth 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 Seventeenth 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 27th day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 223

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Carolina Power & Light Company for Authority to Amend its Stock Purchase-Savings Program for Employees	))))	ORDER GRANTING AUTHORITY TO AMEND STOCK PURCHASE-SAVINGS PROGRAM FOR EMPLOYEES

This cause comes before the Commission upon an application of Carolina Power & Light ("Company") filed under the date of May 15, 1973, through its Counsel, Thos. E. Capps, whereby authority of the Commission is sought as follows:

To amend the Company's Stock Purchase-Savings Program for Employees.

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 it is engaged in generating, transmitting,

delivering and furnishing electricity to the public for compensation.

2. The Company's capital stock outstanding as of March 31, 1973, consisted of Common Stock with a stated value of $353,342,997 and Preferred Stock for a stated value of $173,800,900.

3. By action of its Board of Directors and shareholders, the Company established in 1961 a Stock Purchase-Savings Program for Employees (the "Program"). The nature of the Program and the manner of its operations are set forth in the May 18, 1961, order of this Commission in Docket No. E-2, Sub 78.

4. By action of its Board of Directors on March 9, 1966, and ratified by the shareholders on May 18, 1966, the Program was amended subject to regulatory approval. The nature of said amendments are set forth in the May 18, 1966, order of this Commission in Docket No. E-2, Sub 129 which approved the amendments to the Program.

5. On December 20, 1972, the Board of Directors of the Company proposed that the Program be amended, said amendments were approved by the shareholders at the 1973 Annual Meeting of Shareholders held on May 16, 1973, so as to (i) lower the minimum age limit for participation from 21 years of age to 18 years of age; (ii) reduce the time an employee must have been employed by the Company before he is eligible to participate in the Program from 1 year to 90 days prior to class formation; (iii) increase the savings that an employee may make from a range of 2% to 5% of eligible earnings to a range of 2% to 6% of such earnings; and (iv) increase the additional amount employees may save from a maximum of 5% to a maximum of 6% of earnings, for which the Company does not make a contribution.

6. The Program has been well received by the Company's employees. Approximately 79.2% of eligible employees are currently participating. The Company is confident that amendments to the Program increasing the benefits available thereunder and to a larger number of employees will create an even greater interest among employees and further increase the ability of the Company to retain skilled personnel and to attract desirable new employees. The proceeds to be received by the Company from the issuance and sale of its common stock pursuant to the Program will be used for general corporate purposes.

7. The Company estimates that it will incur expenses in the amount of $8,000 in connection with the amendment of the Program.

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 or 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 Carolina Power & Light Company be, and it is hereby, authorized, empowered and permitted under the terms and conditions set forth in this application:

1. To amend the Stock Purchase-Savings Program for Employees:

   (i) To lower the minimum age limit for participation from 21 years of age to 18 years of age;

   (ii) To reduce the time an employee must have been employed by the Company before he is eligible to participate in the Program from 1 year to 90 days prior to class formation;

   (iii) To increase the savings that an employee may make from a range of 2% to 5% of eligible earnings to a range of 2% to 6% of such earnings; and

   (iv) To increase the additional amount employees may save from a maximum of 5% to a maximum of 6% of earnings, for which the Company does not make a contribution.

IT IS FURTHER ORDERED, That the Company shall file with the Commission as Exhibit C to its application, a certified copy of the vote taken on the proposed Amendments at the May 16, 1973, Annual Meeting of Shareholders of the Company, and that the Company shall file with the Commission a report, in duplicate, setting forth the extent of employee participation, 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 authorized has been sold.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 226

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Power & Light Company-- Application for Authority to Issue and Sell 500,000 Shares of Preferred Stock A, $7.45 Series	)	ORDER GRANTING AUTHORITY TO NEGOTIATE SALE OF SECURITIES

This cause comes before the Commission upon an Application of Carolina Power & Light Company (Company) filed under date of September 13, 1973, through its Counsel, W. E. Graham and Thos. E. Capps, wherein authority of the Commission is sought as follows:

1. To issue and sell 500,000 shares of Preferred Stock A, without par value, to The Prudential Insurance Company of America with a dividend rate of 7.45%.

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 as of June 30, 1973, consists of common stock with a stated value of $353,860,047 and preferred stock having a stated value of $173,800,900.

3. The Company's existing long-term debt at June 30, 1973 amounted to $734,030,000 in First Mortgage Bonds and $50,110,242 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, as supplemented and amended by seventeen Supplemental Indentures.

4. The Company proposes to issue and sell 500,000 shares of Preferred Stock A, $7.45 Series, to The Prudential Insurance Company of America in accordance with a Preferred Stock Purchase Agreement substantially in the form annexed as Exhibit A to the Application.

5. Construction expenditures for additional electric plant totaled $12,426,125 in the period from March 1, 1973, through June 30, 1973. The net proceeds from the proposed sale of Preferred Stock A will be used for general corporate purposes including the reduction of short-term borrowings incurred primarily for the construction of new facilities.

6. The Company estimated that it will incur expenses in the amount of $100,000 in the sale of the Preferred Stock A.

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 Carolina Power & Light Company be, and it is hereby, authorized, empowered and permitted upon approval by the shareholders of the amendment to its Charter creating Preferred Stock A and under the terms and conditions set forth in its Application:

1. To issue and sell 500,000 shares of Preferred Stock A, $7.45 Series, without par value, to The Prudential Insurance Company of America, with a dividend rate of 7.45%;

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

3. To file, within thirty (30) days after the sale of the Preferred Stock A, two (2) copies of the Preferred Stock Purchase Agreement in final form and a report, in duplicate, of the sale of Preferred Stock A, as Supplemental Exhibits in this proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 153

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Power Company for Authorization Under North Carolina General Statute 62-161 to Issue and Sell Securities (Preferred Stock)	) ORDER GRANTING) AUTHORITY TO ISSUE) AND SELL PREFERRED) STOCK

On March 6, 1973, Duke Power Company (the Company) filed an application with this Commission for authority to issue and sell a maximum of 600,000 shares of a new series of its Cumulative Preferred Stock of the par value of $100 per share to be designed as "7.35% Cumulative Preferred Stock, Series I" (the proposed stock).

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina; that it is a public utility engaged in the business of generating, transmitting, distributing and selling electric power and energy, and in the business of operating water supply systems, and is a public utility under the laws of this State and in its operations in this State is subject to the jurisdiction of the North Carolina Utilities Commission. It is duly domesticated in the State of South Carolina and is authorized to conduct business and is conducting and carrying on the business heretofore mentioned in that State; that it is also a public utility under the laws of the State of South Carolina and that in its operations in that State is subject to the jurisdiction of The Public Service Commission of South Carolina; and that it is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Power Commission.

2. The Company represents that the proposed stock will be issued pursuant to its Articles of Incorporation whereby the Company is authorized to issue and sell any of its authorized and unissued shares of preferred stock upon such consideration (not, however, to be less than the par value thereof), upon such terms in such manner, and with such variations as to (a) the rates of dividends payable thereon, (b) the terms on which the same may be redeemed (not, however, to be less than par), (c) the terms or amount of any sinking fund provided for the purpose of redemption thereof, and (d) the terms upon which the holders thereof

may convert the same into stock of any other class or classes, or into one or more series of the same class, or of another class or classes, as may be determined by its Board of Directors at the time of creation of such series.

3. The Company proposes, subject to the approval of this Commission and The Public Service Commission of South Carolina, to issue and sell on or about March 29, 1973, to The Prudential Insurance Company of America through private placement by Morgan Stanley & Company a maximum of 600,000 shares of the proposed stock, at a price of $100 per share at a rate of dividend of 7.35%. No registration rights under the Securities Act of 1933, as amended, will be granted to the purchaser. The proposed stock will be nonrefundable at a lower cost of money from or in anticipation of a refunding operation involving the proceeds from the sale of indebtedness or of a preferred stock senior to or on a parity with the proposed stock, or in any case, through the sale of additional junior equity securities, prior to March 15, 1978. Otherwise, the proposed stock will be redeemable on not less than 30 days' notice at $110 per share prior to March 15, 1983; thereafter and prior to March 15, 1988 at $103 per share; and thereafter at $101 per share. On March 16, 1984, and on each March 16 thereafter, the Company will redeem at a price of $100 per share 4% of the number of shares of the proposed stock originally issued. The Company will have the non-cumulative option to as much as double the redemption payment, provided however, that not more than 200,000 shares of the proposed stock may be redeemed pursuant to this option. Except as otherwise stated in this paragraph, the provisions of the proposed stock will generally follow those of the prior series of preferred stock issued during the past several years and presently outstanding.

4. The Company asserts 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 of the proposed stock (other than the placement fee negotiated with the aforesaid investment banker) will be paid in connection with the issue and sale of the proposed stock. Such placement fee will not exceed $.375 per share of the proposed stock or a maximum of $225,000 and it is estimated that the total expenses to be incurred by the Company in connection with the issue will not exceed $275,000 including such placement fee, which is considerably less than expenses incurred generally in a comparable public sale.

5. The Company represents that, based on its own study and the advice of its investment counselors, the sale of the proposed stock in the manner contemplated is favorable in that the private placement market provides a new source of capital that is not otherwise available through public sale and the utilization of such market allows the Company to keep out of the public market where there is a possibility

of an unfavorable rating by rating agencies. The Company estimates that the dividend rate on the proposed stock is about one-tenth of one percent below the rate that could be expected on the public market and that the utilization of this type sale avoids the risk of last minute adverse market conditions.

6. 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 the continuing increase in demand for electric service and to construct and maintain an adequate margin of reserve generating capacity. The Company asserts that its total kilowatt hour regular sales for 1972 were 39,228,247,000, representing an increase of 8.2% over the amount of regular sales during 1971 and more than double the amount of such sales in 1964. On July 24, 1972, the Company reached a peak load of 7,449,500 kilowatts, an increase of about 10.8% over the previous winter peak of 6,723,085 and an increase of about 12.5% over the previous summer peak of 6,622,125 of June 28, 1971. The Company expects this rate of growth to continue into the future and long-term financing of its current construction program is essential if the Company is to continue to be able to meet its obligations to the public to provide adequate and reliable electric service. Expenditures for the Company's construction program were $453,758,000 for 1972 and are estimated at $453,200,000 for the year 1973.

7. The Company indicates that the net proceeds from the sale of the proposed stock will be applied and used to finance the cost of construction of additions to its electric plant facilities, including the repayment of outstanding short-term obligations (commercial paper and bank loans) incurred for its construction program. At January 31, 1973, such outstanding obligations amounted to $39,900,000, and are expected to reach about $104,000,000 by the time proceeds from the sale of the proposed stock are available.

CONCLUSIONS

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 proposed 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 services 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 Duke Power Company, be, and it hereby is authorized, empowered and permitted, upon the terms and conditions set forth in its application:

1. To issue and sell to The Prudential Insurance Company of America through private placement by Morgan Stanley & Company a maximum of 600,000 shares of its preferred stock, $100 par value with a dividend rate of 7.35%;

2. The net proceeds to be derived from the issuance and sale of the proposed stock shall be used for the purposes set forth in the application;

3. Within thirty (30) days after the sale of the proposed stock is consummated, the Company shall report to the Commission the sale of the stock (including the Purchase Agreement in the form executed together with the Statement of Classification of Shares as adopted by the Company and the expenses of sale); and

4. 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 proposed 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 22nd day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company for Authorization Under North Carolina General Statute 62-161 to Issue and Sell Securities (First and Refunding Mortgage Bonds)	))))	ORDER GRANTING AUTHORITY TO ISSUE AND SELL SECURITIES

On May 23, 1973, Duke Power Company (Company), filed an application for authority to issue a maximum of $100,000,000 principal amount of First and Refunding Mortgage Bonds ____% Series Due 2003, with the selling price and interest rate to be established through competitive bidding, and to execute and deliver a Supplemental Indenture to its First and Refunding Mortgage to secure payment of the bonds.

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina; is a public utility engaged in the business of generating, transmitting, distributing and selling electric power and energy, and in the business of operating water supply systems and urban transportation systems, and is a public utility under the laws of this State and in its operations in the State is subject to the jurisdiction of the North Carolina Utilities Commission. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business and is conducting and carrying on the businesses heretofore mentioned in that State. It is also a public utility under the laws of the State of South Carolina and in its operations in that state is subject to the jurisdiction of the Public Service Commission of South Carolina; and is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Power Commission.

2. The Company represents that it now proposes to issue and sell during the month of June, 1973, at competitive bidding, a maximum of $100,000,000 principal amount of a new series of its First and Refunding Mortgage Bonds ____% Series Due 2003, said bonds to be created and issued under its First and Refunding Mortgage, dated as of December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), Trustee, as heretofore supplemented and as to be further supplemented by a Supplemental Indenture to be executed in connection with the issuance of the bonds.

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

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

5. The Company represents that the net proceeds from the sale of the bonds will be applied and used by it for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of outstanding short-term obligations incurred for that purpose. The Company further represents that on March 31, 1973, such outstanding obligations amounted to $30,971,000 and are expected to be about $115,000,000 by the time funds may be received from the sale of the proposed bonds.

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

7. 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 construct and maintain an adequate margin of reserve generating capacity. The Company represents that its total kilowatt hour regular sales for 1972 were 39,228,247,000 representing an increase of 8.2% over such sales in 1971 and more than double the amount of such sales in 1964. The Company further represents that its peak of 7,449,500 kilowatts reached on July 24, 1972, exceeded its previous summer peak by 12.5%, and its peak load of 7,247,045 kilowatts on February 12, 1973, exceeded its previous winter peak by 7.8%. The Company expects that this rate of growth will continue; and that long-term outside financing of its current construction program is essential if the Company is to continue to be able to meet its obligations to the public to provide adequate and reliable electric service. Expenditures for the Company's construction program were $453,758,000 for 1972 and are estimated at $466,200,000 for 1973.

CONCLUSIONS

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 Bonds by the Company is:

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

(b) Compatible with the public interest;

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

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED That Duke Power 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 during the month of June, 1973, a maximum of one hundred million ($100,000,000) dollars principal amount of a new series of its First and Refunding Mortgage Bonds ____% Series Due 2003;

2. To execute and deliver a Supplemental Indenture to its First and Refunding Mortgage dated as of December 1, 1927, to Morgan Guaranty Trust Company of New York, as Trustee, to secure payment of the bonds;

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

4. That should the Company issue and sell less than $100,000,000 principal amount of the bonds, it shall file with the Commission, as a part of its report of sale, a balance sheet of a reasonably current date and journal entries showing the effect of the issuance and sale of the bonds; and

5. That this proceeding be and the same is continued on the docket of the Commission, without day, for the purpose of receiving the Supplemental Indenture in final form and

the terminal results of the sale, as hereinabove provided; and nothing in this order shall be construed to deprive this Commission of its regulatory authority under law.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 160

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Power Company for Authorization under North Carolina General Statute 62-161 to Issue and Sell Securities (First and Refunding Mortgage Bonds)	) ORDER GRANTING) AUTHORITY TO) ISSUE AND SELL) SECURITIES

On October 10, 1973, Duke Power Company (Company) filed an application for authority to issue a maximum of $100,000,000 principal amount of First and Refunding Mortgage Bonds ____% Series B Due 2003, with the selling price and interest rate to be established through competitive bidding, and to execute and deliver a Supplemental Indenture to its First and Refunding Mortgage to secure payment of the bonds.

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina; is a public utility engaged in the business of generating, transmitting, distributing and selling electric power and energy, and in the business of operating water supply systems and urban transportation systems, and is a public utility under the laws of this State and in its operations in the State is subject to the jurisdiction of the North Carolina Utilities Commission. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business and is conducting and carrying on the businesses heretofore mentioned in that State. It is also a public utility under the laws of the State of South Carolina and in its operations in that state is subject to the jurisdiction of The Public Service Commission of South Carolina; and is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Power Commission.

2. The Company now proposes to issue and sell during the month of November, 1973, at competitive bidding, a maximum of $100,000,000 principal amount of a new series of its First and Refunding Mortgage Bonds ____% Series B Due 2003,

said bonds to be created and issued under its First and Refunding Mortgage, dated as of December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), Trustee, as heretofore supplemented and as to be further supplemented by a Supplemental Indenture to be executed in connection with the issuance of the bonds.

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

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

5. The net proceeds from the sale of the bonds will be applied and used by it for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of outstanding short-term obligations incurred for that purpose. On August 31, 1973, such outstanding obligations amounted to $59,971,000 and are expected to be about $125,000,000 by the time funds may be received from the sale of the proposed bonds.

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

7. The Company 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 construct and maintain an adequate margin of reserve generating capacity. Total kilowatt hour

regular sales for 1972 were 39,228,247,000 representing an increase of 8.2% over such sales in 1971 and more than double the amount of such sales in 1964. The Company's peak of 8,235,585 kilowatts reached on August 29, 1973, exceeded its 1973 winter peak of 7,247,045 kilowatts by 13.6%, and its previous summer peak load of 7,449,500 kilowatts, reached on July 24, 1972, by 10.6%. Expenditures for the Company's construction program were $453,758,000 for 1972 and are estimated at $466,200,000 for 1973.

CONCLUSIONS

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 bonds by the Company is:

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

(b) Compatible with the public interest;

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

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Duke Power 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 during the month of November, 1973, a maximum of one hundred million ($100,000,000) dollars principal amount of a new series of its First and Refunding Mortgage Bonds ____% Series B Due 2003;

2. To execute and deliver a Supplemental Indenture to its First and Refunding Mortgage dated as of December 1, 1927, to Morgan Guaranty Trust Company of New York, as Trustee, to secure payment of the bonds;

3. To use the net proceeds from the sale of the bonds for the purpose of financing the cost of construction of additions to its electric plant facilities, including the repayment of outstanding short-term obligations incurred for that purpose;

4. That the Company report to the Commission the sale of the bonds (including the interest rate to be borne by them, the price received by it for them and the expenses of sale)

within thirty (30) days after the sale is consummated, and within such time it shall file with the Commission a copy of the Supplemental Indenture to be executed and delivered in connection with the issuance of the bonds in the final form in which it is executed;

5. That should the Company issue and sell less than $100,000,000 principal amount of the bonds, it shall file with the Commission, as a part of its report of sale, a balance sheet of a reasonably current date and journal entries showing the effect of the issuance and sale of the bonds; and

6. That this proceeding be and the same is continued on the docket of the Commission, without day, for the purpose of receiving the Supplemental Indenture in final form and the terminal results of the sale, as hereinabove provided; and nothing in this order shall be construed to deprive this Commission of its regulatory authority under law.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 157

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Virginia Electric and Power Company Application for Author- ity to Sell Pollution Control Facilities and Issue Notes	)))))	ORDER GRANTING AUTHORITY TO SELL POLLUTION CONTROL FACILITIES AND ISSUE NOTES

This cause came before the Commission upon an application of Virginia Electric and Power Company (VEPCO) filed September 4, 1973, wherein authority is sought by VEPCO to sell Pollution Control Facilities and issue Notes 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 North Anna Nuclear Power Station, located in Louisa County, Virginia, and VEPCO's Yorktown Generating Station, located in York County, Virginia, will include, when fully completed, air and water pollution control equipment. VEPCO may, from time to time, replace or modify such equipment or add additional pollution control equipment (all such equipment being referred to hereinafter as the Pollution Control Facilities). The Pollution Control Facilities will be "pollution control facilities" within the meaning of the Virginia Industrial Development and Revenue Bond Act (Code of Virginia, 15.1-1373 et seq.) (the Industrial Development Act) and 103 of the U. S. Internal Revenue Code of 1954, as amended (the IRC).

3. The proposed transaction will enable the Company to finance the capital requirements attributable to the Pollution Control Facilities at a lower interest cost than any alternate means of financing. The proposed transaction, which is described in the application, is as follows:

(a) VEPCO would enter into agreements (the Agreements) with the Industrial Development Authority of the Town of Louisa, Virginia, and with the Industrial Development Authority of York County, Virginia (the Authorities), each of which is a political subdivision of the Commonwealth of Virginia and each of which is organized and existing pursuant to the Industrial Development Act. The Agreements would provide that beginning in September, 1973, or as soon thereafter as possible, and thereafter during construction of the Pollution Control Facilities, the Authorities will, periodically at VEPCO's request and in accordance with the Industrial Development Act, issue short-term obligations (the Original Issue Notes), the interest on which will be exempt from Federal income taxation pursuant to IRC 103 (c) (4) (F) (governing income taxation of obligations, the proceeds of which are used to acquire pollution control facilities.)

(b) The proceeds of the sale of the Original Issue Notes will be deposited with Manufacturers Hanover Trust Company (the Trustee), under trust agreements between it and the respective Authorities. As construction progresses, the Authorities will acquire an interest in portions of the Pollution Control Facilities from VEPCO, subject to the prior lien of the Indenture Trustee under VEPCO's Indenture of Mortgage, at a price equal to the cost of those facilities to VEPCO. The price will be paid by the Trustee from the proceeds of the Original Issue Notes, upon authorization by the appropriate Authority, to reimburse VEPCO for its costs incurred in constructing the Pollution Control Facilities. Section 15.1-1379 of the Industrial Development Act expressly empowers the Authorities to issue

obligations and to use the proceeds of the sale of such obligations to acquire pollution control facilities.

(c) It is contemplated that each issuance of Original Issue Notes will be refunded, as it becomes due, by the issuance of similar short-term tax-exempt obligations (the Refunding Notes). The Refunding Notes which redeem the Original Issue Notes will, in turn, be redeemed by subsequent issues of Refunding Notes. While the issuance of Refunding Notes to redeem maturing Original Issue Notes and Refunding Notes (together, the Authority Notes) will not be limited in time, it is planned that all outstanding Authority Notes will be repaid from proceeds of the sale of the Authorities' long-term tax-exempt pollution control bonds (the Bonds) at or about the time that construction of the Pollution Control Facilities is entirely completed. As collateral for the Authority Notes, VEPCO will issue, at the time of the issuance of the Authority Notes, its own notes (the VEPCO Notes), payable to the particular Authority and equal in amount, maturity and interest rate to the Authority Notes. The Authorities are to have no obligation in respect to the Authority Notes except to refund the Authority Notes until the issuance of the Bonds, and in the event that refunding is not possible, to make payments from the proceeds of VEPCO Notes.

(d) The VEPCO Notes and the interest of the Authorities under the Agreements will be assigned to the Trustee as security for payment of the Authority Notes.

(e) The Authority Notes, countersigned by the Trustee, will be sold by Lehmen Brothers, Incorporated, as agent for the Authorities (the Agent), at the rate of interest current at the time, maturing from 5 to 364 days, and in denominations of not less than $100,000. As compensation for these services, the Agent will be paid a commission according to the following fee schedule, calculated on the basis of a 365-day year: for maturities of 5-179 days, 0.125 of 1%; for maturities of 180-364 days, 0.07 of 1%. It is contemplated that the amount of Authority Notes outstanding may reach up to $75,000,000 through 1974.

(f) When an issue of Authority Notes matures, it is possible that, because of market conditions, it would be inadvisable or inappropriate to sell Refunding Notes in the money market on the maturity date of the refunded issue. This could occur if other persons issued large amounts of short-term obligations on the maturity date of the refunded issue so that the money market could not absorb, at reasonable interest rate, the refunding issue in addition to the other obligations. If it should become necessary, it is expected that either VEPCO or the Agent would purchase or cause to be purchased the refunding issue for a temporary period until the Refunding Notes could be absorbed in the money market. The obligation of the Agent to hold the Refunding Notes will be limited to a temporary period of up to 30 days. While there will be no limitation on how long

VEPCO could own the Notes, it is expected that VEPCO would not own any of the Notes for a period longer than 30 days.

(g) VEPCO is to retain the absolute right to possess, use and manage the Pollution Control Facilities during the term of the Agreement, subject only to its provision.

(h) All expenses of the transaction will be paid by VEPCO, charged to unamortized discount and expense until issuance of the Bonds and then amortized over the term of the bonds. The sale of the Authority Notes will be accounted for as short-term debt. Although the Authority Notes will be issued substantially in amounts required to reimburse VEPCO for expenditures for Pollution Control Facilities to date of issue, the real security therefor will be the VEPCO Notes or like tenor. The Authority Notes will merely reduce the amount of bank loans or commerical notes that would otherwise be outstanding, but at a substantial saving in interest cost. Accordingly, VEPCO plans to charge interest accrued on the Authority Notes to interest expense, as would be the case with respect to the bank loans or commercial notes that would otherwise be outstanding, and continue to provide allowance for funds used during construction on expenditures on Pollution Control Facilities recorded in construction work in progress. After the sale of the Bonds, VEPCO will account for its payments to the Authorities as installment purchases of the Pollution Control Facilities. The cost of such facilities will be recorded in utility plant and the Bonds will be recorded as long-term debt. When VEPCO receives proceeds from the Bonds with respect to Pollution Control Facilities constructed, VEPCO will stop recording allowance for funds used during construction. Interest accrued on the Bonds will, however, be charged to utility plant until the Pollution Control Facilities are placed in commercial operation. Thereafter, interest accrued on the bonds will be charged to interest expense. In the event that there is any interest receivable from the temporary investment of any proceeds from the Bonds prior to commercial operation, it will be credited to utility plant. Accrued interest payable on the Authority Notes during the construction period will be added to the obligations issued by the Authorities.

4. 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 $190,000.

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 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 and will not impair its ability to perform that service; and

(d) Reasonably necessary and appropriate for such purposes.

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 transactions described in this order and in the application (other than the issuance of the Bonds for which additional authorization will be required), including the assumption of the obligations set out in the Agreements, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transactions.

2. To devote the proceeds of the transactions described in this order and in the application to the purposes set forth in the application.

3. To account for the transactions relating to the Authority Notes and the VEPCO Notes as described in the application.

IT IS FURTHER ORDERED That the Trustee will not render any service to the public as a utility or exercise any of the rights or privileges or bear any of the duties or obligations of a public utility or public service company, and therefore the Trustee shall not be considered a public utility or public service company by reason of the transactions described above and in the application.

IT IS FURTHER ORDERED That VEPCO file with this Commission after the consummation of the transactions described in this order and in the application, monthly reports setting forth the terms of such transactions (including the expenses of the transactions), and at the time of the first such report VEPCO shall file with this Commission a copy of the Agreements, The Trust Agreements and all other instruments, documents and agreements entered into by VEPCO that are material to the transactions 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 results of the transactions, 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 complying with any law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. ES-18
DOCKET NO. ES-31
DOCKET NO. ES-48
DOCKET NO. ES-63

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

DOCKET NO. ES-18)
Joint Application of Duke Power Company)
and Wake Electric Membership Corporation)
under Chapter 287, Public Laws 1965)
[G. S. 62-110.2 (c)] for Assignment of)
Areas in Durham, Granville and Wake)
Counties)
)
DOCKET NO. ES-31)
Joint Application of Carolina Power &)
Light Company, Duke Power Company, and)
Randolph Electric Membership Corporation)
under Chapter 287, Public Laws 1965)
[G.S. 62-110.2 (c)] for Assignment of)
areas in Chatham County) ORDER ASSIGNING
) AND REASSIGNING
DOCKET NO. ES-48) SERVICE AREAS
Joint Application of Duke Power Company)
and Piedmont Electric Membership Corpo-)
ration under Chapter 287, Public Laws)
1965 [G.S. 62-110.2(c)] for Assignment)
of Areas in Durham and Orange Counties)
)
DOCKET NO. ES-63)
Joint Application of Carolina Power &)
Light Company and Piedmont Electric)
Membership Corporation under Chapter)
287, Public Laws 1965 [G.S. 62-110.2(c)],)
for Assignment of Electric Service Areas)
in Orange County)

BY THE COMMISSION. This consolidated proceeding is before the Commission on the Commission's own motion following the action of the North Carolina General Assembly in Chapter 634, Session Laws 1971 [G.S. 62-3 (23)e], which provides that the University Enterprises of the University of North Carolina in Chapel Hill shall be a public utility. On November 30, 1971, pursuant to Chapter 723, Session Laws of

1971, Governor Robert Scott appointed a Special Utilities Study Commission (hereafter called the Special Commission) to study the feasibility or advisability of retaining, selling or otherwise disposing of the utilities, including the electric system, owned and operated by University Enterprises of the University of North Carolina (hereafter called UNC). The legislation authorizing the Special Commission provided that it would consult with this Commission during the course of negotiations prior to any transfer of the electric system or any of the other utilities. The Special Commission, after lengthy study, determined that the interests of all concerned would be best served by UNC's divesting itself, through sale, of the majority of the electric utility property and facilities. Prior to such divestiture, it is necessary that definite boundaries be established for the electric service franchise area of UNC.

Accordingly, on January 17, 1973, pursuant to the Commission's request under Chapter 634, Session Laws of 1971, UNC filed with this Commission its franchise service area maps showing the territory in which its electric system operated and which it wished this Commission to assign to it as an electric supplier as provided by G.S. 62-110.2(c). Such maps covered portions of Orange, Durham and Chatham Counties and included some territory heretofore assigned to Duke Power Company (Duke), Carolina Power & Light Company (CP&L) and Piedmont Electric Membership Corporation (Piedmont) in the above captioned dockets as shown in the heading.

The assignments heretofore made by the Commission in these dockets show that territory now sought by UNC was assigned to other electric suppliers or was assigned to be unassigned as follows:

Docket No. ES-18	Duke was assigned territory in Durham County which UNC now seeks.
Docket No. ES-31	CP&L was assigned a portion of the territory in Chatham County which UNC now seeks. The remainder of the territory sought by UNC in Chatham County was left unassigned.
Docket No. ES-63	Piedmont and CP&L were assigned territory in Orange County which UNC now seeks.
Docket No. ES-48	This docket remains unassigned but Duke and Piedmont have requested assignment of territory which UNC now seeks.

The Commission treated the filing of the service area maps by UNC as a request for assignment of territory and a motion

to reopen the above dockets to the extent that territory sought by UNC was left unassigned or was assigned to another supplier. Being of the opinion that the matter affected the public interest, the Commission by Order date of August 13, 1973, reopened the above captioned dockets for the purpose of assigning territory to UNC, consolidated said dockets for public hearing on October 18, 1973, and required UNC to publish notice of the hearings.

Such notice was published on September 20 and 27 and on October 4 and 11, 1973, in the Chapel Hill Newspaper, a newspaper published daily, except Sunday, having general circulation in Chapel Hill and vicinity. The notice provided that anyone desiring to protest or intervene should file such protest or intervention at least ten (10) days prior to the hearing. On September 26, 1973, Petition for Leave to Intervene was filed by Consumers Utility Corporation of Orange County, the Municipalities of Chapel Hill and Carrboro and the County of Orange. Leave to intervene was granted by Commission Order on September 26, 1973. No other protests or interventions were filed.

Following this Commission's Order dated August 13, 1973, Carolina Power & Light Company, Duke Power Company, Piedmont Electric Membership Corporation, and University Enterprises of the University of North Carolina at Chapel Hill continued the extended negotiations, which they had been conducting over a considerable period of time, to present to the Commission an agreement with respect to an equitable allocation of service areas among them. On September 28, 1973, a prehearing conference was held by all parties and the Commission Staff in the Commission Library. At such conference, it appeared that CP&L and UNC were in complete agreement concerning allocation of the territories sought by UNC. Duke and Piedmont were not in complete agreement with UNC but expressed confidence that further negotiations would result in complete agreement.

These negotiations led to complete agreement with respect to service areas, whereupon the above parties filed a Joint Motion requesting this Commission, in accordance with public convenience and necessity, to make certain area assignments in this consolidated proceeding. After having had opportunity to review and examine the allocation proposed by the electric suppliers in their Joint Motion, the Intervenors notified the Commission that they had no objection to the proposed allocation and assignment of territory. Since no facts remained to be contested at a public hearing, the Commission concluded that the Joint Motion should be determined without hearing based upon the application, the verified Joint Motion and the records of the Commission. The hearing, which had been rescheduled for November 14, 1973, was cancelled by Commission Order dated November 13, 1973.

Attached to this Joint Motion, and marked Exhibits A, B and C, are maps of Chatham, Durham, and Orange Counties.

These maps, through use of and by reference to the legends thereon, show the areas which the above parties have agreed to request the Commission to assign to CP&L, Duke, Piedmont and UNC Electric and the areas which the above parties have agreed to request be designated as unassigned.

As part of their agreement upon area assignment, Piedmont and UNC Electric have made a specific agreement with respect to a line owned and operated by UNC Electric, beginning at the point at which UNC Electric now furnishes service to one retail customer at the intersection of Orange County Roads Nos. 1937 and 1005 and extending along Roads Nos. 1005 and 1942 to UNC Electric's television tower, which is served at the end of such line. UNC Electric does not now and never has furnished electric service to any other customer from this line extension, in conformity with an agreement between UNC Electric and Piedmont years ago when this extension was constructed. With respect to this line extension and the area around it, UNC Electric and Piedmont agreed to request the Commission to take the following action:

a. To assign the area in which the line extension is located to Piedmont, as is indicated on the attached map of Orange County, marked Exhibit C; and

b. To approve UNC Electric's agreement that so long as it owns the line extension, it will not furnish service from said line to any other premises unless ordered so to do by the Commission.

Based upon the verified Joint Motion and the records of the Commission, the Commission makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company and Duke Power Company are corporations duly organized and existing as public utilities under the laws of the State of North Carolina. Piedmont Electric Membership Corporation is an electric membership corporation duly organized and existing under the laws of the State of North Carolina. University Enterprises of the University of North Carolina at Chapel Hill is a public utility according to the provisions of G.S. 62-3(23)e.

2. All 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, Duke Power Company, Piedmont Electric Membership Corporation, and University Enterprises of the University of North Carolina at Chapel Hill are authorized to furnish and for many years have been

furnishing electric service to the public for compensation in the counties of Orange, Durham, and Chatham.

4. No other electric suppliers as defined in G. S. 62-110.2(a)3 operate in the areas in Orange, Durham, and Chatham Counties covered by this application, and no electric suppliers serving in other areas of these or 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, Duke Power Company, Piedmont Electric Membership Corporation, and University Enterprises of the University of North Carolina at Chapel Hill conducted extended negotiations with respect to Orange, Durham and Chatham 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 was reached between the applicants covering areas in Orange, Durham and Chatham Counties, which are outside the corporate limits of municipalities and more than three hundred (300) feet from the lines of any electric supplier and which are subject to assignment by this Commission under Section 62-110.2(c) of the General Statutes of North Carolina.

6. Maps of Orange, Durham and Chatham Counties were filed as Exhibits A, B and C to the Joint Motion; said maps through appropriate symbols and legends designate the areas which applicants request the Commission to assign, and also designate certain areas requested to be unassigned to any electric supplier.

7. Said maps show that each supplier has existing lines and facilities either in or in close proximity to the areas which it seeks to have assigned to it. Each supplier is capable of rendering adequate and dependable service in the areas for which it seeks assignment.

CONCLUSIONS

The Commission finds and concludes that the assignment of areas to the parties as designated by appropriate symbols and legends on the maps filed with the Joint Motion as Exhibits A, B and C is in accordance with public convenience and necessity.

IT IS, THEREFORE, ORDERED:

That the Joint Motion of Carolina Power & Light Company, Duke Power Company, Piedmont Electric Membership Corporation and University Enterprises of the University of North Carolina at Chapel Hill for area assignment be, and the same hereby is, approved; and the areas in Orange, Durham, and Chatham Counties subject to this proceeding which are 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 Exhibits A, B and C, which are on file with this Commission and are 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 18th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. ES-20, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of John A. Maddox and 40 Others for Reassignment of Service Area from Unassigned to Rutherford Electric Membership Corporation Because of Discrimination in Rates by the Town of Kings Mountain	)))))
	RECOMMENDED ORDER DISMISSING PETITION

HEARD IN: City Council Chamber, City Hall, 112 South Piedmont Avenue, Kings Mountain, North Carolina, on September 13, 1973, at 9:30 a.m.

BEFORE: Hearing Commissioner Hugh A. Wells

APPEARANCES:

For the Defendant:

Jack H. White, Esq.
Davis and White
Attorneys at Law
115 E. Mountain Street
Kings Mountain, North Carolina 28086
Appearing For: City of Kings Mountain

For the Respondents:

Hollis M. Owens, Jr., Esq.
Owens and Arledge
Attorneys at Law
Box 885, Rutherfordton, North Carolina 28139
Appearing For: Rutherford Electric Membership Corp.

George W. Ferguson, Jr., Esq.
Duke Power Company
P. O. Box 2178, Charlotte, North Carolina
Appearing For: Duke Power Company

For the Commission Staff:

Robert F. Page, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER. This proceeding was instituted by a petition filed with the Commission on February 8, 1973, by John A. Maddox and 40 others requesting reassignment of a service area from unassigned to assignment to Rutherford Electric Membership Corporation. The petition alleged discrimination in rates and excessive rates charged to petitioners by the Town of Kings Mountain, which served them with electric power. The petition followed an initial letter of inquiry received by the Commission from John A. Maddox and others on January 9, 1973. The Commission being of the opinion that the petition affects the public interest served the petition on Rutherford Electric Membership Corporation and Duke Power Company by order dated March 5, 1973, and by that order required answers to be filed by Duke and Rutherford and instituted an investigation into the matter.

On April 2, 1973, Duke filed Answer to the petition; on April 3, 1973, Rutherford Electric Membership Corporation filed its Answer. On April 5, 1973, the Town of Kings Mountain filed an Answer to the petition as an interested party. On April 11, 1973, notice to the petitioners of the Answers filed and copies of same were given by the Commission. In apt time the petitioners advised the Commission that the Answers were not acceptable and that they desired a public hearing to present evidence in support of their complaint. By Commission order dated June 5, 1973, the hearing was set for the time, date, and place previously indicated.

The matter came on for hearing on September 13, 1973, at 9:30 a.m. in the Council Chambers of the City Hall at Kings Mountain, North Carolina. The Defendant and Respondents were present and represented by counsel. The Commission Staff was present and was represented by counsel. Seven of the signing petitioners were present and offered testimony in support of their contentions. The City of Kings Mountain introduced a map of its lines and offered the testimony of its electrical system superintendent. Rutherford Electric Membership Corporation and Duke Power Company agreed to submit a joint map showing the location of their lines in the area in question as a late exhibit. The City of Kings Mountain stipulated that so long as petitioners in this action remained customers of the City of Kings Mountain, they would receive equal rate treatment with the customers

of the City who live inside the city limits. All parties to the action stipulated and agreed that (1) the area in question is completely outside of the corporate limits of the City of Kings Mountain, lying and being in Cleveland County; (2) all the petitioners reside outside the corporate limits of Kings Mountain and in Cleveland County, the area in question; (3) the area in question was the subject of consideration by the Commission for assignment in Docket No. ES-20 and was, in that docket, assigned as an unassigned area; (4) the City of Kings Mountain has certain power lines in the area in question which are presently serving the petitioners and which lines are located as shown on Kings Mountain Exhibit 1; and (5) both Duke Power Company and Rutherford Electric Membership Corporation have lines in the vicinity of the area in question and such lines are located as shown on a composite map to be introduced as a late exhibit by Duke and Rutherford.

Other evidence, principally the testimony of the petitioners and the City electric system supervisor tended to support the stipulations and, in addition, tended to show that: both the City lines and the Rutherford lines cross the petitioners' property, with the City lines being slightly closer to the buildings, houses or improvements on the property; the area in question lies generally one-half mile to three miles south of the corporate limits of the City of Kings Mountain, south of Interstate Highway 85 and along N. C. Highway 161 and N. C. State Road 2289, which are known as York Road and Galilee Road, respectively; many of the petitioners are served by Rutherford Electric Membership Corporation, such service consisting of courtesy lights or service drops to outlying buildings; petitioners had for many years been paying twenty percent (20%) more per kilowatt hour for electric power from Kings Mountain than customers of Kings Mountain living inside the corporate boundaries of the City for no other reason than the fact that petitioners did not live in the City; this twenty percent (20%) surcharge was removed as of the February, 1973, billing period and has not been reimposed, although city officials would not or could not guarantee that said surcharge would not be reimposed; petitioners could not obtain a satisfactory explanation of the tariff or schedule of rates under which they were being charged; petitioners are generally well satisfied with city maintenance and repair service and basically object only to the rates being charged them, specifically as to the former surcharge; the voltage in the city lines has recently been stepped up and, according to recent engineering analysis by independent consultants, is sufficient to render adequate service to petitioners and other city customers in the area; petitioners would prefer to be served by a supplier over whose rates they or the Commission could exercise control, but so long as their rates are the same as city customers living within the city limits they are satisfied; petitioners approached the Rutherford Electric Membership Corporation seeking to be served by Rutherford but were refused such service unless and until they were released by

the City of Kings Mountain, but the City has not agreed to release them.

Based upon thorough and careful consideration of the record, the testimony and exhibits making the evidence in this matter, the Commissioner makes the following

FINDINGS OF FACT

1. This matter is a complaint proceeding filed pursuant to North Carolina G. S. 62-73 seeking relief from allegedly discriminatory rate charges. The petitioners request the Commission to change the assignment of their area from its present status of assigned as unassigned in Docket No. ES-20 to assigned to Rutherford Electric Membership Corporation in this docket, thereby affording them relief from the alleged discrimination in rates.

2. Duke Power Company is a public utility as defined in Chapter 62 of the North Carolina General Statutes and is a corporation engaged in the business of producing, generating, transmitting, delivering or furnishing electricity for the production of light, heat or power to and for the public for compensation within its certificated area which includes territory adjacent to the area in question. Rutherford Electric Membership Corporation is a corporation duly organized under the laws of North Carolina with certificated territory adjacent to the area in question and principal offices in Rutherfordton, North Carolina. Both Duke and Rutherford are electric suppliers as defined in Section 110.2 of Chapter 62 of the General Statutes of North Carolina. Both Duke and Rutherford are, therefore, subject to the jurisdiction of and are properly before the Commission with respect to the subject matter of this proceeding.

3. The Town of Kings Mountain is a municipality having been incorporated by an act of the General Assembly. The Commission takes judicial notice of Chapter 360 of the Private Laws of North Carolina of 1909, as amended and revised. As a municipality, Kings Mountain is excluded from the definition of a public utility provided by Chapter 62 of the General Statutes of North Carolina.

4. Petitioners, each and all, are persons having an interest in the subject matter of the petition or complaint and, as such, are properly before the Commission in this proceeding. Each and all of the petitioners reside in or operate a business in the area in question. Petitioners amount to approximately ninety-five percent (95%) of all persons presently receiving electric power from the City of Kings Mountain in the area in question.

5. The area in question is a narrow corridor beginning on North Carolina Highway 161 at a point approximately one-half (1/2) mile south of Interstate Highway 85 in Cleveland County, and extending therefrom in a southerly direction

approximately two (2) miles along North Carolina Highway 161 and North Carolina State Road 2289. The area in question lies entirely in Cleveland County and is located wholly outside the corporate limits of the City of Kings Mountain.

6. The Commission takes judicial notice that the area in question was the subject of consideration for territorial assignment pursuant to North Carolina G. S. 62-110.2 in a previous Commission proceeding under Commission Docket No. ES-20. In that docket the area in question was assigned as an unassigned area.

7. Each and all of the petitioners is served with electric power by the City of Kings Mountain from lines belonging to the City which cross petitioners' properties. Rutherford Electric Membership Corporation owns lines which cross or abut the property of almost all of the petitioners. Rutherford serves many of the petitioners with courtesy lights or drop lines to outlying buildings on their property. Duke Power Company has several lines in close proximity to the area in question. At present, Duke serves none of the petitioners.

8. The quality of the electric power furnished to petitioners is good, and the standard of maintenance and repair furnished by the City is high. The rates presently being charged to petitioners by the City are the same rates being charged to customers of the City who live within the corporate boundaries of Kings Mountain. The City has stipulated and the Commission specifically finds that the City will continue to furnish equal rate treatment to the petitioners as long as they remain customers of the City.

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

CONCLUSIONS

The petition and request for public hearing were grounded on the contentions that the City of Kings Mountain had practiced, was practicing and would continue to practice discrimination in the rates charged to petitioners vis a vis residents of the City merely because petitioners lived outside the corporate boundaries of the City. All of the evidence clearly demonstrates that such discrimination ceased from and after the February 1, 1973, billing period, that such discrimination is not now being practiced by the City and that as long as petitioners remain customers of the City, such discrimination will not again occur. The Commissioner, therefore, concludes that the petitioners' principal complaint has been satisfied and that the petition should be denied.

Accordingly, IT IS, HEREBY, ORDERED:

That the relief requested by the petitioners is denied and the petition of John A. Maddox and 40 others filed with this Commission on February 8, 1973, is dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. EC-59, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
The Transfer of Electric Service Areas of Ocracoke Electric Membership Corporation to Tideland Electric Membership Corporation	))))	ORDER TRANSFERRING ELECTRIC 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 Tideland Electric Membership Corporation ("Tideland") and Ocracoke Electric Membership Corporation ("Ocracoke") have entered into, and effectuated as of January 1, 1973, an agreement whereby Ocracoke has transferred, conveyed and assigned all of its assets of whatever kind to Tideland, which in turn will assume totally all of Ocracoke's liabilities and obligations, effective as of Midnight EST December 31, 1972; that the United States Rural Electrification Administration has given its preliminary approval to the plan of combination; that the Commission by Order has heretofore, pursuant to G.S. 62-110.2(c), assigned certain electric service areas to Ocracoke, and designated certain areas as being unassigned, in Hyde County, North Carolina, via Commission Order of August 26, 1969 in Docket No. ES-46, the same being herein incorporated by reference; and it appearing that said assignment 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 Tideland and Ocracoke Electric Membership Corporations is hereby approved; and that the map on file with the Commission in electric service area assignment Docket No. ES-46 is hereby amended to show that the electric service areas heretofore assigned to Ocracoke 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 Ocracoke Electric Membership Corporation are now and hereafter assigned to Tideland Electric Membership Corporation.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 162

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Duke Power Company - Application Regarding Guarantee of Mining Subsidiary's Federal Black Lung Obligations	)))))	ORDER GRANTING AUTHORITY TO GUARANTEE PAYMENT OF FEDERAL BLACK LUNG BENEFITS BY EASTOVER MINING COMPANY

This cause comes before the Commission upon the Application of Duke Power Company ("Applicant") filed under date of December 18, 1973, by its counsel, Raymond A. Jolly, Jr., wherein authority of the Commission is sought as follows:

To guarantee Eastover Mining Company's obligations under the Federal Coal Mine Health and Safety Act of 1969, as amended.

FINDINGS OF FACT

1. Duke Power Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 422 South Church Street, Charlotte, 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. Eastover Mining Company ("Eastover"), a corporation organized and existing under the laws of the State of Kentucky with its principal office at Brookside, Kentucky, is a wholly owned subsidiary of Applicant engaged in mining coal in the States of Kentucky and Virginia for use by Applicant in the generation of electricity.

3. Pursuant to the Federal Coal Mine Health and Safety Act of 1969, as amended, all coal mine operators, including Eastover, must by January 1, 1974, make provision for payment of pneumoconiosis (Black Lung) claims by either qualifying as a self-insurer or obtaining a policy of

insurance to guarantee payment of claims for which the operator may be found liable under the Act.

4. Because of the high rates charged by commercial insurance companies for policies of insurance which would pay claims as provided under the Act, a self insurance program supplemented by commercial insurance coverage with high deductibles is likely to result in substantial annual savings in Eastover's operating costs which savings will, in turn, be reflected in the cost of coal mined by Eastover and sold to Applicant for use in generating electricity to serve the public as a utility.

5. The U. S. Department of Labor has refused to further consider Eastover as a self-insurer unless Applicant signs a guarantee of payment of all of Eastover's obligations under the Act and by regulations promulgated pursuant to the Act, the Department would most likely take the position that Applicant is liable, even if Applicant does not sign the guarantee, to the extent that Eastover fails to meet its obligations under the Act.

6. Although Applicant's guarantee to pay is contingent upon Eastover's failure to meet its obligations under the Act, the amount of payment upon such contingency would be substantial. As its guarantee for such eventuality, Applicant proposes to purchase an indemnity bond in the amount of $486,000. This guarantee is a stop-gap measure, designed only to run until the State provides adequate black lung benefits.

7. The amount expended by the Applicant upon the failure of Eastover to meet its obligations must be borne by either the ratepayer, as an operating expense, or the Applicant's shareholders, as an income deduction.

CONCLUSIONS

1. From a review and study of the Application, its supporting data and other information in the files of the Commission, the Commission is of the opinion and so concludes that Applicant's proposed guarantee 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.

2. The Commission further concludes that in the event Applicant is required to pay over any amount for black lung benefits, such expenditure resulting from the above shall be excluded, for ratemaking purposes, from a determination of the rate of return allowed on the common stockholder's equity.

IT IS, THEREFORE, ORDERED that Applicant be, and it is, hereby authorized, empowered and permitted, consistent with the Conclusions set forth above, to guarantee payment of all Eastover Mining Company's obligations incurred under the Federal Coal Mine Health and Safety Act of 1969, as amended, by signing a guarantee substantially in the form shown in section IX of Appendix I of its Application.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-22, SUB 155

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Virginia Electric and Power	) ORDER GRANTING AUTHORITY
Company-Application for Authority	) TO SELL NUCLEAR FUEL AND
to Sell Nuclear Fuel and Purchase	) PURCHASE UNDER CONTRACT
Under Contract the Heat Generated	) THE HEAT GENERATED
Therefrom	) THEREFROM

This cause came before the Commission upon an application of Virginia Electric and Power Company (VEPCO) filed May 23, 1973, wherein authority is sought by VEPCO to sell Nuclear Fuel and purchase under contract the heat generated therefrom, 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 presently owns 157 fuel assemblies (comprising the initial core) of Nuclear Fuel at its Surry Nuclear Power Station in Surry County, Virginia, now being utilized to produce heat for the operation of Surry Unit No. 2 and it plans to acquire from time to time additional fuel assemblies to replace those assemblies which have been depleted (all such assemblies being referred to hereafter as the Nuclear Fuel). The 157 fuel assemblies presently owned are described in Exhibit I to the application.

3. The proposed transaction would reduce the amount of new securities to be sold in aid of VEPCO's 1973 construction program. The proposed transaction, which is described in the application, is as follows:

(a) VEPCO would transfer the 157 fuel assemblies, free from the lien of its Indenture of Mortgage, to National Bank and Trust Company, Charlottesville, Virginia (the Trustee), under a Trust Agreement between the Trustee and Union Bank, a California corporation, as Trustor and Beneficiary. Pursuant to a Heat Supply Contract (the Contract) between VEPCO and the Trustee, the Trustee would agree to acquire the Nuclear Fuel and to sell to VEPCO the heat generated thereby. VEPCO would agree to pay for such heat over the life of the Contract whether or not generated by the Nuclear Fuel or taken by VEPCO. When depleted, the Nuclear Fuel would be sold by the Trustee to VEPCO at its then fair market value in accordance with the terms of the Contract. The Contract would have an initial term of 5 years and could be extended until 2023.

(b) To obtain funds to pay for, or to reimburse VEPCO for the Nuclear Fuel, the Trustee would issue and sell its promissory notes (the Notes) in the commercial paper market (at the rate of interest current at the time, maturing from 5 to 270 days from the date of issue). To improve the marketability of the Notes, they would be supported by irrevocable letters of credit issued by Union Bank (the Bank) pursuant to a Credit Agreement between the Bank and the Trustee. The Credit Agreement would also provide that upon the occurrence of certain conditions, the Trustee would borrow directly from the Bank and issue the Trust's promissory notes to the Bank (the Funded Notes) to evidence such borrowings. The rate of interest of such Funded Notes would be equal to the higher of the Bank's short-term commercial prime rate divided by 0.8 or the rate for federal funds in an open market (weekly average) plus 1/4%. The Notes would be marketed on a discount basis to provide the dealer with the customary gross spread of 1/8th of 1%. The Bank would be entitled to a fee at the rate of 3/4ths of 1% per annum on the average daily amount of all outstanding Notes. These arrangements would provide 100% of the original cost of the Nuclear Fuel, exclusive of allowance for funds used during construction, plus capitalized costs of this transaction and exclusive of the value of fuel burned through May 31, 1973. VEPCO would not make or

guarantee the Notes, the letters of credit or the Funded Notes.

(c) VEPCO would have the absolute obligation to take or pay for the heat generated by the Nuclear Fuel and the right to take such heat in quarterly installments which would include amounts allocated against burn-up charges and financing charges. All expenses of the transaction are to be paid either by VEPCO or by the Bank out of its fee. VEPCO is to have the absolute right to possess, use and manage the Nuclear Fuel during the term of the Contract subject only to its provisions.

(d) While VEPCO is assuming the risks of ownership in a financial sense, the Contract payments for heat are such that it will not build up a material equity in the property; accordingly, the Company proposes to account for the transaction as a contract for the future purchase of a commodity. VEPCO proposes to charge its payments under the Contract to fuel expense.

4. 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 $63,000.

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 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 and will not impair its ability to perform that service;

(d) Reasonably necessary and appropriate for such purposes.

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 transaction described in this order and in the application, including the assumption of the obligations set out in the Contract, and to execute such instruments, documents and agreements as shall be necessary or appropriate in order to effectuate such transaction.

2. To devote the proceeds of the transactions described in this order and in the application to the purposes set forth in the application.

3. To account for the transaction as a contract for the future purchase of a commodity and to charge the payments under the Contract to fuel expense.

IT IS FURTHER ORDERED That neither the Trustee nor the Bank 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 or public service company, and therefore both the Trustee and the Bank, and each of them, shall not be considered a public utility or public service company by reason of the transactions described above and in the application.

IT IS FURTHER ORDERED That VEPCO file with this Commission within thirty (30) days after the 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 first 157 fuel assemblies of Nuclear Fuel and the expenses of the transaction), and within such time VEPCO shall file with this Commission a copy of the Bill of Sale, Contract, Credit Agreement and all other instruments, documents and agreements entered into by VEPCO that are material to the transaction and 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 transactions, 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 complying with any law or the Commission's regulations.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-21, SUB 90

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Natural Gas Corporation for an Adjustment of Its Rates and Charges	)))	ORDER DENYING INCREASE

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 31, 1972 and November 1, 1972.

BEFORE: Chairman Marvin R. Wooten, Presiding and Commissioners John W. McDevitt, Hugh A. Wells and Miles H. Rhyne (See Note Page 21)*

APPEARANCES:

For the Applicant:

Donald W. McCoy, Esq., and Alfred E. Cleveland, Esq.
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
Box 1688, Fayetteville, North Carolina

For the Intervenors:

J. A. Bouknight, Jr., Esq.
Tally, Tally & Bouknight
Attorneys at Law
Box 1660, Fayetteville, North Carolina
Appearing for: Municipalities of Greenville, Monroe, Rocky Mount and Wilson, N. C.

I. Beverly Lake, Esq.
Assistant Attorney General
Ruffin Building
Raleigh, North Carolina
Appearing for: Using and Consuming Public

For the Commission Staff:

William E. Anderson, Esq.
Assistant Commission Attorney
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Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding was instituted by the filing of an Application on May 25, 1972 by North Carolina Natural Gas Corporation (hereinafter also styled "N. C. Natural" or "the company") in which it seeks an increase in its rates and charges for natural gas service. On June 15, 1972, the Commission issued its Order declaring the proceeding to be a general rate case, suspending the proposed rates, setting a test period ending May 31, 1972 and requiring the Petitioner to file a revised Application, with exhibits, in accordance with the updated test period; the revised Application and exhibits were filed on July 14, 1972.

On October 9, 1972, the municipalities of Greenville, Monroe, Rocky Mount and Wilson, North Carolina filed a Petition for Leave to Intervene alleging that said

municipalities own and operate natural gas distribution systems serving their citizens and customers, purchasing natural gas at wholesale from North Carolina Natural Gas Corporation and selling such gas at retail.

On October 12, 1972 the Attorney General filed a Notice of Intervention which was allowed by Order issued October 18, 1972. Also on October 18, 1972, the Commission issued its order allowing the intervention of the municipalities of Greenville, Monroe, Rocky Mount and Wilson (hereinafter also collectively styled "municipalities").

On October 12, 1972, the municipalities filed a Motion for an extension of time in which to file expert testimony, which was allowed by Commission Order issued October 18, 1972.

On October 20, 1972, the company filed amended exhibits and the matter came on for hearing at the time and place designated by prior Commission Order. When the matter was called for hearing, N. C. Natural's filing was amended so that the exhibits would reflect Commission approval of a tracking increase effective October 1, 1972, in Docket No. G-21, Sub 94. N. C. Natural also filed the requisite affidavits of publication of notice.

STIPULATIONS

Certain stipulations were proposed and agreed upon prior to the offering of testimony, as follows:

1. That N. C. Natural responded to a request by municipalities for studies evidencing the need for a sixty day working capital allowance as follows:

> "The sixty day working capital allowance for operating and maintenance expenses is traditional in rate filings for utilities over the year. Therefore, no study to substantiate this period was made."

2. That in response to Municipalities' request for estimated construction expenditures for the years 1973 through 1975, N. C. Natural responded as follows: 1973 - $3,000,000; 1974 - $3,000,000; 1975 - $5,000,000.

SUMMARY OF EVIDENCE

Mr. Frank Barragan, Jr., President and a Director of N. C. Natural, testified that N. C. Natural is engaged in the transmission and distribution of natural gas in 58 communities in 28 counties in eastern North Carolina, including gas sales to four municipal gas distribution systems and 80 industrial pipeline customers, serving approximately 65,000 customers; that N. C. Natural earned its first profit in the fiscal year 1964, having had a

general rate increase in |96| and having had a number of rate reductions and "tracking" increases between |96| and the present; that N. C. Natural has not curtailed the gas service to its municipal customers even though their firm loads have increased during the gas shortage; (Transco curtailed N. C. Natural's sales by 7.7|% during the test year); that the most recent debt financing occurred in early |968 with an interest cost of 6.78%; that equity must be increased by converting $3,000,000 of convertible bonds presently outstanding in order to sell additional first mortgage bonds on favorable terms; that the company needs to construct additional facilities at an estimated cost of at least $7,000,000 to meet projected peak day requirements; that the company has not imposed restrictions on gas sales; that the demand for natural gas in North Carolina Natural's service area is increasing at an abnormal rate; and that N. C. Natural needs to improve its rate of return on the fair value of its property to compete in the capital market.

Mr. Barragan further testified that N. C. Natural has been unable to recoup the total increased purchased gas cost to it from Transco through the tracking filings, that the company estimated that the construction of the projected peak shaving facilities would take place in |975; that the last three years, |969, |970 and |97| have been the best earning years that N. C. Natural has ever had; that he was quoted in Standard and Poor's as stating that "an unusual warm winter adversely affected revenues and earnings. That average winter weather would have increased earnings by 25¢ a share"; that depending on the dividend rate N. C. Natural will be able to finance part of the $3,000,000 estimated construction budget from internal sources; that the Commission treated the |97| tracking case as a general rate case and allowed a |2.7|% rate of return on equity; and that a primary objective of N. C. Natural is to keep the equity ratio as it is at the present time, plus the $3,000,000 conversion of convertible bonds into common stock.

Mr. William G. Hill, Vice President-Sales, North Carolina Natural Gas Corporation, participated in the preparation and design of the proposed rate schedules and testified that the rates proposed to be increased, the residential and commercial schedules, would be increased |5¢ per MCF or an average of |0%, the municipal schedules would be increased 8.444¢ per MCF or an average of |2%, the contract industrial sales would be increased by 8.444¢ per MCF or about |4%; and Rate Schedules No. 9 and ME-2 would be increased by 3.7¢ per MCF; that in the design of these rates, he considered the historical rate structure, the value of the service being rendered to the customer, the cost of the customer's alternate competitive fuel, and the need to maintain a balanced load growth and current and prospective gas supplies; that N. C. Natural's proposed domestic and small commercial heating rates would be approximately |8% less than electricity, 30% less than propane and about the same as No. 2 fuel oil; that the cost to the industrial customers of N. C. Natural at the proposed rates is equivalent to

coal; 40% less than No. 2 fuel oil and approximately 20% less than low sulfur No. 6 oil; and that considering each of the above factors, the proposed rates are just and reasonable and non-discriminatory as between the various classes of service furnished by N. C. Natural.

Mr. Howard L. Ford, Vice President and Treasurer offered testimony and exhibits reflecting N. C. Natural's operations for the twelve months ended May 31, 1972, reflecting pro forma adjustments to gross operating revenues as follows: (1) to annualize increased rates approved in Docket No. G-21, Sub 89 in the amount of $1,319,352, (2) to normalize sales for the effect of temperature during the test period in the amount of $262,956, (3) to eliminate revenues in the amount of $405,994 for the sale of gas volumes relating to the ACQ-2 contract which had expired, (4) to adjust revenues to normalize firm gas sales to Farmers Chemical Association, Incorporated, in the amount of $952,056, which he amended to $833,743; that the operating expenses reflect pro forma adjustments (1) to increase the cost of purchased gas associated with Docket No. G-21, Sub 89, (2) to eliminate the cost of ACQ-2 gas purchases, (3) "to increase the cost of gas for demand charges on curtailed volumes of gas not to be reimbursed by company's supplier" in the amount of $394,430, and (4) various pro forma adjustments to operation and maintenance expenses; an annualization factor of 2.7344% was added to the resulting net operating income, producing an adjusted net operating income of $2,871,981 (before the amendment to the FCAI pro forma adjustment); that the investment in gas utility plant in service was $43,654,285 after deducting the accumulated provision for depreciation and contributions in aid of construction and after adding materials and supplies in the amount of $659,522 and cash working capital in the amount of $2,024,488; that the rate of return on said net investment in utility plant plus allowance for working capital after the FCAI amendment is 6.71%; that the company's proposed rate adjustment would produce net operating income for return in the amount of $1,182,694 for a rate of return on said net investment of 9.39%; and that the proposed rates would produce a rate of return on equity of 16.40%, based on an adjusted equity figure of $14,656,941 which was produced by (1) deducting from equity the accounting and pro forma adjustments in the amount of $817,696 and the unrecovered purchased gas cost of $28,811, and (2) adding to equity the additional net operating income available to common equity which would be produced by the proposed rates in this case, in the amount of $1,182,694.

Mr. Ford further testified that the pro forma adjustment to revenues relating to Farmers Chemical in the amount of $833,743 is the annual revenue loss which would result from sale of the volumes represented by that amount to Farmers Chemical on their contract when Farmers Chemical is in full operation, because those volumes are currently sold to other consumers at higher prices; that the adjustment of $833,743 is based on the assumption that Farmers Chemical would be

consuming the full contract volume of 50,000 MCF a day and in the event that occurred Farmers Chemical would pay N. C. Natural a demand charge on the basis of 50,000 MCF rather than on the basis of 35,000 MCF, from which N. C. Natural would receive additional revenues in the amount of $400,050; that another assumption in the proposed pro forma adjustment is that sales to Farmers Chemical would be at 100% load factor, although Farmers Chemical did not operate at a 100% load factor during the test period; that the company's pro forma temperature adjustment is based on Fayetteville degree days only and not Fayetteville, Wilmington and Roanoke Rapids degree days and is computed on average MCF by degree day without breaking it down to rate classes or steps as the staff did; that the pro forma adjustment in the amount of $394,430 increasing the purchased gas cost reflecting curtailment volumes and priced out at the current demand charge was the subject of a Commission Order issued in Docket No. G-21, Sub 89 allowing a "tracking" increase of 1.8 cents per MCF as a means of recouping monies lost due to the curtailment.

Mr. Arthur P. Gnann, Jr., Vice President - Operations for North Carolina Natural, testified as to the replacement cost of the property of N. C. Natural which he determined at May 31, 1972 to be $59,853,482; he testified that procedures used in the development of replacement cost was to inventory the plant and apply current prices of materials and labor; however, since N. C. Natural had previously submitted such a study it utilized its study made in Docket No. G-21, Sub 61 showing the replacement cost of plant and property through September 30, 1970; that to update this study for the May 31, 1972 test year, he simply decreased the estimated percent conditions and applied this factor to the current cost at September 30, 1970 which produced reproduction cost at May 31, 1972 of plant in service as of September 30, 1970 of $53,267,238 to which he added additions at cost from September 30, 1970 to May 31, 1972 of $6,586,244; that this results in replacement cost of $59,853,482; that current costs of materials used in this study were derived from invoices and quotations from vendors who currently supply materials to N. C. Natural; that labor costs were developed from the two contractors currently being used by N. C. Natural on a bid price basis establishing unit prices for labor for laying pipelines; that developing the reproduction cost he gave no weight to changes in design of the system which would offer the most efficient use of plant for service to the public at current prices, and made no adjustment for changes in the art or for duplication of pipeline facilities.

Mr. Glenn E. Anderson, President of Carolina Securities Corporation and a Director of North Carolina Natural Gas Corporation, testified that he reviewed the financial statements of the company, annual reports to stockholders and interim financial reports for the current fiscal year; he testified that he compared the rate of return on average capital to the rate of return earned by comparable

companies; that the rate of return on average capital for the test period was 8.98% and that the return on average capital for the past seven years has shown a gradual increase from 6.0|% in |965 to 9.69% in |97| declining to 8.98% for the twelve months ending May 3|, |972; that N. C. Natural's return on equity and return on total capital has been historically low and only in the most recent 32 months have they approached a level which could be considered reasonable; that whether N. C. Natural will have to increase its equity base in the near future will depend upon several factors which cannot be determined at this time; that the company's present line of credit together with funds generated from other sources should cover its capital expenditures for about two years; that corporate bond yields will remain at or above present levels for the next year or two particularly in the utilities industry; that he selected six companies comparable to N. C. Natural in size, revenue and type of business having a range of return on average equity from a high of 2|.3% to a low of 8.6% with an average of |3.4% compared with |6.0% for North Carolina Natural Gas; that the four companies showing the lowest return on average common equity received rate increases which were not reflected in the latest year's earnings and if earnings are adjusted to add 40% of the amount of these increases the return on average equity for those four after the rate increases would be |6.9%; that N. C. Natural needs a rate of return of 9% on its total capital; that N. C. Natural has done an outstanding job of attracting capital under difficult conditions, serving its customers and improving its financial condition and it is now in the most favorable condition in its history to attract capital; and that N. C. Natural is being honestly and efficiently managed.

Mr. Anderson further testified that the decline in earnings from year end |97| to |2 months ending May 3|, |972 would be due in large measure to the unseasonably and unusually warm weather the company experienced; that the comparison of returns on average equity reflects different accounting periods such as the May 3|, |972 date used for N. C. Natural is from five to eight months after some of the other periods and five to six months after the rate increases which some of the other companies received and if their returns on average equity were computed as of the same date used for N. C. Natural their individual averages might be lower and their composite might well be less than the adjusted composite of |6.9%.

Dr. Charles E. Olson, Associate Professor of Public Utilities and Transportation, Department of Business Administration, College of Business and Public Administration, University of Maryland, testified regarding fair rate of return and revenue, expense and rate base adjustments; he testified that the embedded debt cost of N. C. Natural is 6.4|%; that the current cost of debt capital exceeds the embedded cost; that N. C. Natural will not have to issue additional debt capital for several years; that 6.0% is a reasonable cost rate for short term debt capital;

that short term loans should be considered a part of the capital structure in setting the fair rate of return and that deferred income taxes and the deferred investment credit are both sources of cost free capital; that the opportunity cost principle should be employed in the determining the cost of common equity; that the earnings-price ratio approach is more appropriate for N. C. Natural than the discounted cash flow approach; that N. C. Natural has experienced high growth rates in earnings, dividends and book value during the recent past but this trend has flattened during the test year; that the earnings-price ratio has varied significantly between 1966 and 1972 but has a central tendency at about 11%; that the earnings price ratio for the retail gas distributors presented monthly in the Public Utilities Fortnightly have a pattern similar to that of N. C. Natural and the earnings-price ratio for the bulk of these companies have been in the 9% to 11% range in the recent past; that the earnings-price ratio data indicates that investors in gas distribution utility stocks have a return requirement in the 10% to 11% range and because of N. C. Natural's size and other factors in order for N. C. Natural to be able to sell additional amounts of equity capital the stocks should sell a market to book ratio in excess of one, which can be accomplished by setting the return on equity capital above the investor return requirement; that accordingly the cost of equity capital to N. C. Natural is between 12% and 13%; that there is no apparent reason for forcing conversion of convertible bonds as the cost is less than the current cost of debt capital; that the actual test period capital structure is reasonable for determining the fair rate of return, and using the cost rate from 12% to 13% for common equity the total cost of capital to N. C. Natural is between 7.80% and 8.25%; that N. C. Natural will not experience attrition of earnings in the near future; that the tracking procedure being followed to increase the retail price of gas following wholesale price increases covers more than 60% of the company's revenues; that N. C. Natural is almost inflation proof; that in addition to reviewing rate of returns he reviewed certain of the pro forma adjustments and among those has concluded that N. C. Natural has not maintained a level of compensating balances at 15% of its notes payable on a regular basis in the recent past, leading to the conclusion that N. C. Natural is not in fact required to maintain the 15% in compensating balances claimed by N. C. Natural and allowed in the staff audit.

Mr. Kenneth J. Seeds, an engineer with R. W. Beck & Associates, an analytical and consulting engineering firm, testified on behalf of the municipalities regarding rate structure and cost of service; he testified that after studying and reviewing the present and proposed rates of North Carolina Natural, he made a "rough" cost of service analysis using generally accepted principles for cost allocations, based primarily on a weighting to the ratio of distribution plant 50.63% to transmission plant 49.37%; that using this type of weighting he arrived at an original cost

transmission line rate base of $26,011,167; that he then allocated 9.53% of this original cost rate base to the service of the municipalities; that he then allocated the 12 months' operating expenses using the data and reports of North Carolina Natural and sales of the municipalities to the total transmission and distribution plant ratios and revenues from which he determined that the net income to N. C. Natural from the municipalities was $525,186 which when equated to the original cost as noted above showed an indicated rate of return of 21.19%; that his study was prepared without the benefit of the data normally required to make a detailed authoritative study; that a detailed cost of service should be submitted by N. C. Natural in order to establish a non-discriminatory rate structure as between classes of customers; that a comparison of the rates to the municipalities with the rates to industrial customers of N. C. Natural indicated that the municipalities' rates were higher even though in his opinion the gas sales to the municipalities were less risky than other gas sales because these sales were generally for the benefit of residential, commercial and industrial customers; that he compared the rates of N. C. Natural to other companies serving both resale and industrial customers and found that the resale rates were generally lower; that the increase to the municipalities is approximately 12% while the overall percentage increase applied for by N. C. Natural is 9%; that in his opinion no increase to the municipalities should be allowed until such time as a cost of service study was submitted for consideration by the Commission.

Mr. Allen J. Schock, Staff Accountant, testified that he made an examination of the books and records of N. C. Natural covering twelve months' period ending May 31, 1972; that the gross operating revenues for said test period are $30,809,326 including pro forma adjustments (1) in the amount of $1,316,081 to annualize increased rates approved in Docket No. G-21, Sub 89 (2) in the amount of $327,048 to normalize sales for the effect of temperature during the test period and (3) in the amount of $406,550 to eliminate the sale of gas on the ACQ-2 contract which had expired; that the operating revenue deductions are in the amount of $27,311,462 producing a net operating income of $3,497,864; to this figure was added an annualization factor of 2.732% and from this figure was deducted interest on customer deposits in the amount of $15,003, producing a net operating income for return in the amount of $3,578,423; that the investment in gas utility plant in service is $41,097,544 after deducting the accumulated provision for depreciation and contributions in aid of construction from the gross plant; that the formula for computing working capital allowance for N. C. Natural based on test year operations produced a negative balance in that column of $260,869, resulting from adding the cash working capital in the amount of $978,815 (1/8th of operation and maintenance expenses plus minimum bank balance requirement of $630,000) material and supplies in the amount of $512,785, prepayments in the amount of $116,922 and deducting average tax accruals in the

amount of $1,615,659 and average customer deposits in the amount of $253,732; that the net investment in gas utility plant plus the allowance for working capital is $40,836,675 which when related to the net operating income for return figure indicates a rate of return on said net investment in the amount of 8.76%; that based on test period common equity of $14,575,797 the present rates produce a rate of return on common equity of 14.18%; that the company's proposed rate adjustment would produce net operating income for return in the amount of $4,803,600 for a return on said net investment of 11.83% and a rate of return on said end of period common equity of 22.58%.

BRIEFS

Briefs were filed on December 15, 1972. N. C. Natural contended that the Commission should adopt the various adjustments and figures offered by its witnesses and thereupon find (1) that present rates are inadequate and (2) that the proposed increases are just and reasonable. The municipalities contended that the Commission should adopt the adjustments and figures in the staff audit, with certain exceptions, including the following: (1) that the "tracking" loss due to Carolina Power & Light's coal-price contract should not be borne by other ratepayers and (2) that the minimum or compensating balances portion of the working capital allowance should not be included; that municipal rates should not be increased without an allocated cost study; that the Commission should find that N. C. Natural is earning more than a fair rate of return from present rates; and that N. C. Natural should be ordered to file revised rate schedules to reduce its test year revenues by $1,145,428.

Based upon the record the Commission makes the following

FINDINGS OF FACT

1. That North Carolina Natural Gas Corporation is a duly created and existing Delaware corporation authorized to do business, and doing business, in North Carolina as a franchised public utility providing natural gas service in eastern North Carolina and is properly before the Commission in this proceeding for a determination as to the justness and reasonableness of its proposed rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. That the increases in rates and charges proposed by North Carolina Natural Gas Corporation would produce a total of $2,595,577 in additional gross annual revenue.

3. That the test period set by the Commission and utilized by all parties in this proceeding was the twelve months' period ending May 1, 1972.

4. That due to the abnormally warm temperature during the test year North Carolina Natural Gas Corporation sold a substantially lesser portion of its gas than normal to its firm customers for heating purposes and experienced an abnormal decline in earnings as it received $327,048 less operating revenues than would otherwise have been received in the test period under normal temperature conditions; normalization of sales to give effect to the abnormal temperature requires that test year operating revenues be increased upward in the amount of $327,048.

5. That the increase in operating revenues approved in Docket No. G-21, Sub 89 requires that test period operating revenues be increased upward in the amount of $1,316,081 and the decrease in operating revenues occasioned by termination of the ACQ-2 gas sales requires that test period operating revenues be decreased by $406,550; similarly, annualization of the purchased gas cost associated with those two operating revenue adjustments requires a total increase to test period purchased gas in the amount of $1,351,499.

6. That N. C. Natural's test period gross operating revenues after the above accounting and pro forma adjustments were $30,809,326; its reasonable operating expenses and other revenue deductions for the test period were $27,311,462; after applying an annualization factor of 2.732% and allowing interest on customer's deposits paid during the test period in the amount of $15,003 as an operating expense the resulting net operating income for return is $3,578,423.

7. That the adjustment in the Staff audit in the amount of $7,009 reducing expenses to reflect the payment of dues, contributions, etc., to various civic and social clubs and other organizations properly chargeable to Account 426, as well as the Account 426 balance itself in the amount of $6,222, should be eliminated in calculating the return on equity; the tax effect consistent with that adjustment is to increase state income tax $794 and to increase federal income tax $5,796, and thereby to reduce net operating income for return from $3,578,423 to $3,571,833.

8. That N. C. Natural's earnings have increased during the past seven years, approaching a reasonable level in 1970 reaching a peak in 1971 and declining somewhat during the test period, in large measure due to the abnormally warm temperature prevailing during the test period heating season and to some extent due to Transco's curtailment of gas to N. C. Natural; that N. C. Natural's capital expenditures for the test period and the near future are sufficiently covered by the present line of credit and funds generated from other sources.

9. That N. C. Natural's end of period net investment in utility plant at original cost is $41,097,544 based on utility plant in service in the amount of $52,994,042 less the accumulated provision for depreciation in the amount of

$11,387,812 and contributions in aid of construction in the amount of $508,686.

10. That N. C. Natural's net investment in gas utility plant plus allowance for working capital is $40,836,675 including a working capital allowance based on test period operations including cash working capital which equals 1/8th of its test year operation and maintenance expenses plus a minimum bank balance requirement, certain prepayments, materials and supplies, and deducting average tax accruals and average customer deposits.

11. That the replacement cost of North Carolina Natural's property providing service to the public within this state as of the end of the test year is $53,100,445.

12. That the fair value of North Carolina Natural's property used and useful in providing service to the public within this State as of the end of the test period, considering the reasonable original cost of the property less that portion consumed by use and recovered by depreciation expense, the replacement cost of the property, and test period operations is $48,139,131.

13. That based upon the foregoing findings of net income and fair value, N. C. Natural's rate of return on fair value for the test year was 7.42%; its rate of return on its actual common equity investment for the test year was 14.22% and the rate of return on common equity as adjusted for the increment by which fair value exceeds original cost was 9.48%; said rates of return on fair value and common equity are sufficient to allow the utility by sound management to produce a fair profit to its stockholders to maintain its facilities and services in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

14. That the present rates and charges in effect during the test year produced sufficient rates of return on fair value and common equity but do not produce rates of return which are excessive; the rates and charges proposed by the N. C. Natural herein would produce excessive rates of return and therefore are not just and reasonable.

Whereupon the Commission reaches the following

CONCLUSIONS

1. In applying the criteria set forth in G. S. 62-133(b) the Commission must estimate the utility's revenue under the present and proposed rates, and ascertain the utility's reasonable operating expenses, by fixing a test period of twelve months ending as close as practicable before the opening of the hearing. Use of the test year so established is valid, as the Court said in the case of Utilities Commission v. City of Durham, 282 N. C. 308 (1972) "...if, but only if, appropriate pro forma adjustments are made for

abnormalities which existed in the test period and for changes in conditions occurring during the test period, and therefore, not in operation throughout its entirety".

2. In the present case both the Applicant and the Staff offered an adjustment to operating revenues normalizing revenues to reflect the abnormally warm test period temperature. Such a temperature normalization was the subject of extensive analysis by the Supreme Court of North Carolina in the case of Utilities Commission v. City of Durham, supra. In that case the Court said that where temperature was abnormally warmer than usual "to fail to adjust the test period revenues upward would lead to higher rates for service than necessary to yield the return to the company contemplated by G. S. 62-133(b) and would be unjust to the users of gas". Accordingly, we interpret that decision to be a mandate to give effect to substantial and compelling temperature normalization evidence. We therefore conclude that the adjustment to normalize temperature by increasing revenues in the amount of $327,048 is reasonable for use in the test year computations.

3. Similarly, we conclude that proper pro forma adjustments to the test period should include the adjustment of $1,316,081 to annualize revenues for higher rates due to various tracking increases, and an adjustment to purchased gas expense in the amount of $1,639,330 to annualize N. C. Natural's cost increases from Transco.

4. We further conclude that the test year must be proformed to annualize sales by eliminating the sale of gas purchased on the ACQ-2 rate in the amount of $406,550 and to annualize expenses by eliminating the purchase of said gas in the amount of $287,831.

5. N. C. Natural contends that a further pro forma adjustment should be made to test year revenues to give effect to a revenue loss which would result from a change in sales to Farmers Chemical Association, Incorporated, which is anticipated by N. C. Natural to occur at some point in the future, outside of the test period. N. C. Natural sells gas to Farmers Chemical on a twenty-year contract dated from 1969 providing for 50,000 MCF of natural gas per day. During the test period Farmers Chemical consumed only a portion of that contract volume and N. C. Natural sold the unused volume of gas to other consumers, notably Carolina Power & Light Company, at higher prices and thereby received greater revenues than it would have received had it sold the entire contract volume to Farmers Chemical. The basic premise governing pro forma adjustments to test period figures is that "changes in conditions occurring during the test period and therefore not in operation throughout its entirety" should be proformed. Utilities Commission vs. City of Durham, supra. The changes in circumstances which N. C. Natural contends should be proformed into the test period figures, however, did not occur during the test period, did not occur between the end of the test period and

the time of the public hearing, and are not subject to any precise finding as to when they will occur. N. C. Natural originally proposed an adjustment decreasing revenues in the amount of $952,056; at the hearing that adjustment was reduced by $118,313 leaving a proposed adjustment in the amount of $833,743; the company witness conceded further that in the event Farmers Chemical did begin taking the full contract volume, N. C. Natural would receive additional (demand charge) revenues in the amount of $400,050. This would reduce the proposed pro forma adjustment by almost one-half. The remaining pro forma adjustment sought by N. C. Natural would also be reduced by the failure of Farmers Chemical to operate at 100% load factor. We conclude that the proposed pro forma adjustment, being so highly speculative, is not an appropriate adjustment to operating revenues.

6. N. C. Natural further contends that an additional pro forma adjustment to test period purchased gas expense should be made in the amount of $394,430 to increase the cost of gas for demand charges on curtailed volumes of gas not to be reimbursed by Transco. We conclude, however, that N. C. Natural has been adequately protected from the loss occasioned by the Transco curtailment by means of the Commission's Order issued in Docket No. G-21, Sub 89 allowing a tracking increase of 1.8¢ per MCF which will enable N. C. Natural to recoup the $394,430 which it estimates will be lost due to the curtailment. Any further pro forma adjustment reflecting this amount would allow a double recovery and for that reason such a pro forma adjustment should not be made to test period expenses.

7. Miscellaneous expense items which are nonoperating in nature, including payments or donations for charitable, social or community welfare purposes, civic, political, and related activities, are classified in Account 426 and were not considered an operating revenue deduction for the purpose of ascertaining net operating income by either the Staff or N. C. Natural, which charged $6,222 to Account 426 for the test period. In the Staff audit expenses in the amount of $7,009 were reduced to reflect the payment of dues, contributions, etc., to various civic and social clubs and other organizations were reclassified to Account 426. Consistent with the Commission's Order in Docket No. G-9, Sub 96, In the Matter of Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Its Rates and Charges, these items have been eliminated in the computation determining total income before interest charges in the calculations and tables representing the statement of return on common equity, and the tax effect recognized in determining net operating income.

8. The following tables illustrate the Findings of Fact and Conclusions as to test period operation and rates of return:

NORTH CAROLINA NATURAL GAS CORPORATION
STATEMENT OF RATE OF RETURN AFTER ADJUSTMENTS
FOR THE 12 MONTHS' PERIOD ENDED MAY 31, 1972

	After Adjustments
Operating Revenues	
Gross operating revenues	$30,809,326
Operating Revenue Deductions	
Purchased gas	19,270,804
Operation and maintenance expenses	2,790,526
Depreciation and amortization	1,196,996
Taxes - other than income	2,500,965
Taxes - state income	108,214
Taxes - Federal income	803,142
Deferred Federal income tax	777,405
Investment tax credit	(130,000)
Total operating revenue deductions	27,318,052
Net operating income	3,497,864
Add: Annualization factor (2.732%)	95,562
Less: Interest on customer deposits	15,003
Net operating income for return	$ 3,571,833
Investment in Gas Utility Plant	
Utility plant in service	$52,994,042
Less Reserves and Contributions	
Accumulated provision for depreciation	11,387,812
Contributions in aid of construction	508,686
Total reserves and contributions	11,896,498
Net investment in gas utility plant	41,097,544
Allowance for Working Capital	
Cash (1/8 of operation and maintenance expenses plus minimum bank balance requirement of $630,000)	978,815
Materials and supplies	512,785
Prepayments	116,922
Less: Average tax accruals	(1,615,659)
Average customer deposits	(253,732)
Total allowance for working capital	(260,869)
Net investment in gas utility plant and allowance for working capital	$40,836,675
Rate of return - percent	8.75
Fair value rate base	$48,139,131
Rate of return on fair value - percent	7.42

NORTH CAROLINA NATURAL GAS CORPORATION
STATEMENT OF RETURN ON COMMON EQUITY
FOR THE 12 MONTHS' PERIOD ENDED MAY 31, 1972

Net operating income for return	$ 3,571,833
Other income	72,758
Amount available for fixed charges	3,644,591
Fixed charges	1,571,558
Amount available for common equity	2,073,033
Common equity	14,575,797
Return on common equity	14.22%
Fair value common equity	21,878,253
Return on fair value common equity	9.48%

9. The Commission has found the replacement cost of N. C. Natural's property to be $53,100,445, based on the plant reproduction cost study introduced by N. C. Natural adjusted to allow for duplication of facilities, redesign of the system to reflect efficiencies, changes in the art and changes in the art of construction of pipelines, and after adjusting for contributions in aid of construction and for the working capital allowance; the fair value of N. C. Natural's plant devoted to public service is determined by the Commission to be $48,400,000 which when reduced by the working capital allowance of ($260,869) produces the fair value of the utility's property devoted to public service, or the fair value rate base, of $48,139,131, based on consideration of the original cost of the properties devoted to public service, $40,836,675, and the replacement cost of these properties determined by the Commission to be $53,100,445.

10. After considering N. C. Natural's test period revenues and expenses, capital structure and financing requirements, end-of-period plant and its fair value, its construction program its relative financial stability during the period 1970 through the test period, its ready access to protection from increases in the wholesale cost of gas by way of "tracking filings" and its test period rates of return on fair value and common equity, we conclude that N. C. Natural test period operations reflect that it is able by sound management to produce a fair profit to its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms and is in fact accomplishing those objectives; accordingly, we conclude that the facts herein have not established the need for an increase in rates and charges based upon test period operations. Similarly, the intervening municipalities have not borne the burden which shifted to them of establishing that the rates of return produced by present rates and charges are excessive. We, therefore, conclude that no adjustment in rates and charges is required at this time.

11. As in the order in Docket No. G-9, Sub 96, In the Matter of Application of Piedmont Natural Gas Company, Inc. for an Adjustment of Its Rates and Charges, we recognize that the current natural gas supply will not be substantially alleviated in the future, and therefore conclude that N. C. Natural as well as other natural gas distributors in North Carolina, should refrain from engaging in promotional practices or in the use of promotional advertising which would entice and encourage the use of natural gas, and that expenditures for such purposes should not be allowed as reasonable operating expenses in the future until this Commission shall order otherwise. In view of the fact that the Commission has not heretofore instructed the natural gas distributors in North Carolina with regard to these matters, it would not be fair to exclude such expenses as reasonable operating expenses in the determination of this rate proceeding, and accordingly, we have not done so. In further elaboration of these matters, the Commission concludes that educational and informational advertising practices and programs which educate the public as to the appropriate use of natural gas and the conservation of energy are valid and reasonable and should not be discouraged.

12. N. C. Natural has certain contract schedules covered by filed tariffs which have not been increased except for tracking increases since the contracts were signed in the late 1960's. The Commission concludes that in future rate cases that these rates should be subject to review and consideration, along with all of the rate schedules in effect at the time of any general rate proceedings affecting this company.

IT IS, THEREFORE, ORDERED that the rate increases proposed herein be, and hereby are, denied, and the Application be, and hereby is, dismissed and the proceeding terminated.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

*Commissioner Rhyne resigned on December 28, 1972, and did not participate in the decision. Commissioner Roney did not participate in the decision.

DOCKET NO. G-21, SUB 98

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Natural Gas Corporation, for an Adjustment of Its Rates and Charges	)	ORDER APPROVING TRACKING INCREASE

BY THE COMMISSION: On February 27, 1973, North Carolina Natural Gas Corporation ("N.C. Natural") filed alternative Applications with the North Carolina Utilities Commission in this Docket and in Docket No. G-21, Sub 99, in which it seeks to increase its rates to its customers in order that it might recover increases in the cost of gas to it from its wholesale supplier, Transcontinental Gas Pipe Line Corporation (Transco). In its filing with the Federal Power Commission (FPC), Transco is seeking to recover an increase in the cost of gas to it of $.014 per Mcf effective April 1, 1973. This increase of $.014 per Mcf is composed of $.008 per Mcf increase which represents increases in the cost of gas to Transco from its suppliers, while $.006 per Mcf represents unrecovered gas cost which Transco has incurred and which Transco is seeking to recover pursuant to its purchased gas adjustment clause approved by the Federal Power Commission (FPC) under Docket No. RP 73-3. The $.014 per Mcf increase in the cost of gas will be collected for a period of approximately six months or until Transco has recovered its unrecovered gas cost and at that time the rate to N. C. Natural will be adjusted by Transco accordingly.

The increase in rates sought by N. C. Natural in this docket is $.015 per Mcf ($.014 per Mcf cost of gas increase plus related gross receipt taxes) and will result in an annual increase in cost of gas to N. C. Natural's customers of $552,520.

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 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 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 N. C. Natural filed the following data in this proceeding:

1. Summary of N. C. Natural's rates and charges as filed with this Commission in Docket No. G-21, Sub 94.

2. Schedules of the proposed rates and charges which N. C. Natural seeks to place in effect on April 1, 1973, in this Docket No. G-21, Sub 98.

3. Statement of net investment at original cost.

4. Statement of present fair value rate base.

5. Statement showing plant balances and accrued depreciation balances and depreciation rates.

6. Statement of materials and supplies necessary for operation of the Petitioner's business.

7. Statement showing amount of cash working capital which Petitioner finds necessary to keep on hand.

8. Statement of net operating income for return for twelve months ended May 31, 1972.

9. Statement showing effect of proposed increase in rates.

10. Balance sheet and income statement for the year ended May 31, 1972.

11. Statement showing rate of return on rate base.

12. Statement showing rate of return on equity.

13. A copy of the Federal Power Commission Order, under which the wholesale price increase is to be incurred, will be submitted as a late exhibit filed when available.

Exhibits (3) through (8) were filed in the general rate case Docket No. G-21, Sub 90 in which the Commission issued its Order Denying Increases on March 7, 1973. The additional data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staffs and a report of same submitted to the Commission for its consideration.

Notice of the proposed filing in this docket was given to the public by N. C. Natural by inserting a public notice in

various newspapers throughout its service area in North Carolina.

Based on the application as filed and the records of the Commission in this docket, the Commission makes the following

FINDINGS OF FACT

1. That North Carolina Natural Gas Corporation is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2. That the increase in the cost of gas which Transco is seeking to recover in Docket No. RP73-3, has been approved by the Federal Power Commission effective April 1, 1973.

3. That N. C. Natural filed tariffs to recover this increase in the cost of gas plus related gross receipts taxes to become effective on all bills rendered pursuant to said revised tariffs on and after April 13, 1973. All tariffs will be increased by $.015 per Mcf.

4. That the rates of return as found to be just and reasonable by the Commission in the Order in Docket No. G-21, Sub 90 issued on March 7, 1973, for the test period ending May 31, 1972, and those determined by the Commission in this docket are listed below:

	Approved in Docket No. G-21, Sub 90	After Proposed Tracking Increase
On investment	8.75	8.62
On equity	14.22	13.87

5. That the rates of return on end of period investment and on equity after the adjustments for the proposed increases as applied for herein have decreased from those found just and reasonable by the Commission in its general rate case order issued March 7, 1973.

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 increase in cost of gas to them from their wholesale supplier 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 therein, if the Commission concludes from such review and analysis that the filings will not result in an increase in the company's rate of return over that most recently approved by the Commission, that the pass-on of the wholesale increased cost of gas will 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.

The Commission concludes that in this proceeding the rate of return of N. C. Natural has decreased since the last general rate proceeding in Docket No. G-21, Sub 90, which order was issued on March 7, 1973.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by N. C. Natural that seeks solely to recover increases in the cost of gas to it from its supplier 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.

IT IS, THEREFORE, ORDERED, as follows:

1. That the tariffs filed by N. C. Natural as Exhibit No. 2 in this Docket No. G-21, Sub 98, be, and are hereby, authorized to become effective on all bills rendered on and after April 13, 1973.

2. That at such time that the rate to N. C. Natural is reduced as a result of Transcontinental Gas Pipe Line Corporation having collected its unrecovered gas cost, North Carolina Natural Gas Corporation shall immediately file on one day's notice reduced tariffs reflecting this change plus applicable gross receipt taxes.

3. 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, N. C. Natural shall immediately file tariffs reflecting corresponding decreases in its tariffs as authorized herein.

4. That in the event any refunds are received by N. C. Natural from Transcontinental Gas Pipe Line Corporation as a result of action by the Federal Power Commission or if producer refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to N. C. Natural, all such refunds, if any, shall be placed in the Restricted Account No. 253 "Other Deferred Credits" and shall be held in said restricted account subject to disposition and direction by the North Carolina Utilities Commission. Information concerning future refunds shall be furnished the Commission not less than 15 days from the date of receipt, the information shall include the source thereof including the docket numbers and order dates of any proceeding involved in such refunds.

5. 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 30th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

Upon application by North Carolina Natural Gas Corporation the North Carolina Utilities Commission approved increased rates on all bills rendered on and after April 13, 1973. The increase approved results in an increase of $.0115 per Mcf on all rate schedules. This increase allows N. C. Natural Gas Corporation to recover only the increase in cost of gas to it from its supplier, Transcontinental Gas Pipe Line Corporation, which has been approved by the Federal Power Commission, plus related gross receipts taxes.

DOCKET NO. G-21, SUB 102

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina	)	ORDER ESTABLISHING
Natural Gas Corporation for an	)	MEMORANDUM ACCOUNT
Adjustment of Its Rates and	)	FOR TRACKING UNRECOVERED
Charges	)	GAS COST

BY THE COMMISSION. On September 5, 1973 North Carolina Natural Gas Corporation (North Carolina Natural) filed a letter petition in which it requested authority to recover increases in the cost of gas to it for the period August 13 - 31, 1973 and the difference between the cost of gas as identified by the rates listed in Appendix A and Appendix B in this Commission's Order of August 23, 1973 from September 1, 1973 by debits or credits to a deferred account. This action is necessary because the Federal Power Commission has not taken any final action on tariffs filed by Transcontinental Gas Pipe Line Corporation (Transco). Transco, however, is authorized under the Natural Gas Act to place in effect on August 13, 1973, Appendix A rates as shown in this Commission's Order dated August 23, 1973 subject to change or refund. North Carolina Natural proposes to record the differences in the cost of gas to a deferred account for future tracking as required.

On August 23, 1973 this Commission issued an order in the above captioned matter in which it approved increased rates for North Carolina Natural in order to recover increases in cost of gas to it from Transco as approved by the Federal Power Commission. The rates approved were based on the "Settlement Rates" as filed for by Transco and as listed as Appendix B attached to the order of the Commission dated

August 23, 1973. The effective date of the increased rates as approved by this Commission for North Carolina Natural was on all meters read on and after September 14, 1973. September 1, 1973 was the effective date of the "Settlement Rates" in Transco's settlement filing with the Federal Power Commission.

North Carolina Natural was advised on August 31, 1973 that the Federal Power Commission had not issued an order with respect to Transco's application in Federal Power Commission Docket No. RP73-69 and RP72-99. Accordingly, Transco will place into effect subject to adjustment and/or refund, the rates which it filed with the Federal Power Commission on May 30, 1973 which rates were attached to this Commission's Order of August 23, 1973 as Appendix A.

The Commission's Order of August 23, 1973 authorized North Carolina Natural to file on one day's notice revised tariffs to reflect rates higher or lower than the Transco "Settlement Rates" as approved by the Federal Power Commission. The Federal Power Commission has not issued an order in this matter and in accordance with the Natural Gas Act and the Rules and Regulations of the Federal Power Commission, Transco will begin collecting higher rates than the "Settlement Rates" effective August 13, 1973. It is anticipated that the Federal Power Commission will ultimately approve the "Settlement Rates" and in order to avoid collecting excessive amounts from its customers which North Carolina Natural would be required to refund and at the same time permit North Carolina Natural to recover only the increased cost of gas to it from August 13, 1973, North Carolina Natural request the Commission's approval of the following:

1. North Carolina Natural will place into effect the rates approved in Docket No. G-21, Sub 102 effective September 14, 1973.

2. Amounts billed by Transco in excess of the rates included in Appendix B of the Order dated August 23, 1973, in Docket No. G-21, Sub 102, will be charged to a memorandum account.

3. Any refund of amounts collected by Transco as ordered by the FPC will be credited to the memorandum account.

4. North Carolina Natural will file on one day's notice revised rate schedules to reflect any changes in Transco's rates from their proposed "Settlement Rates" as approved by the FPC.

5. North Carolina Natural would be authorized to recover or refund the balance in the memorandum account through an increase or decrease in its rates for such time and in such amount as approved by the Commission.

The Commission is of the opinion that the approval of the action requested by North Carolina Natural would permit North Carolina Natural to recover only the cost of gas to it as approved by the Federal Power Commission. North Carolina Natural will receive no additional net income as a result of this action.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1) That North Carolina Natural Gas Corporation be and is hereby authorized to charge to a memorandum account amounts collected by Transcontinental Gas Pipe Line Corporation in excess of the rates included in Appendix B of the Commission's Order dated August 23, 1973 in Docket No. G-21, Sub 102 from September 1, 1973, until such time as a final order is issued by the Federal Power Commission in FPC Docket No. RP73-69 and RP 72-99.

2) That North Carolina Natural Gas Corporation be authorized to charge to the memorandum account amounts collected by Transcontinental Gas Pipe Line Corporation during the period August 13 - 31, 1973 in excess of the rates in effect on April 1, 1973 as approved by the Federal Power Commission for Transcontinental Gas Pipe Line Corporation.

3) That North Carolina Natural Gas Corporation shall credit to the memorandum account any refund of amounts collected by Transcontinental Gas Pipe Line Corporation as ordered by the Federal Power Commission.

4) That North Carolina Natural Gas Corporation, shall file on one day's notice revised rate schedules to reflect any changes in Transcontinental Gas Pipe Line Corporation's rates from its proposed settlement rates as approved by the Federal Power Commission.

5) North Carolina Natural Gas Corporation shall file a monthly report reflecting the authorization herein granted.

6) That this docket shall remain open for such further orders as are required.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-3, SUB 51

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Pennsylvania & Southern Gas Company (North Carolina Gas Service Division), for an Adjustment of Its Rates and Charges.	) ORDER APPROVING TRACKING INCREASE

BY THE COMMISSION: On February 28, 1973, Pennsylvania & Southern Gas Company (North Carolina Gas Service Division), ("N.C. Gas Service") filed a Petition with the North Carolina Utilities Commission in this Docket No. G-3, Sub 51, in which it seeks to increase its rates to its customers in order that it might recover increases in the cost of gas to it from its wholesale supplier, Transcontinental Gas Pipe Line Corporation (Transco). In its filing with the Federal Power Commission (FPC), Transco is seeking to recover an increase in the cost of gas to it of $.014 per Mcf effective April 1, 1973. This increase of $.014 per Mcf is composed of $.008 per Mcf increase which represents increases in the cost of gas to Transco from its suppliers, while $.006 per Mcf represents unrecovered gas cost which Transco has incurred and which Transco is seeking to recover pursuant to its purchased gas adjustment clause approved by the Federal Power Commission (FPC) under Docket No. RP73-3. The $.014 per Mcf increase in the cost of gas will be collected for a period of approximately six months or until Transco has recovered its unrecovered gas cost and at that time the rate to N.C. Gas Service will be adjusted to Transco accordingly.

The increase in rates sought by N.C. Gas Service in this Docket is $.0152 per Mcf ($.014 per Mcf cost of gas increase plus related gross receipts taxes and insurance costs) and will result in an annual increase in cost of gas to N.C. Gas Service's customers of $49,108.

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 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 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 N.C. Gas Service filed the following data in this proceeding:

1. Summary of N.C. Gas Service's present rates and charges as filed with this Commission.

2. Schedules of the proposed rates and charges which N.C. Gas Service seeks to place in effect on April 13, 1973, in this Docket No. G-3, Sub 51.

3. Statement of net investment at original cost.

4. Statement of present fair value rate base.

5. Statement showing plant balances and accrued depreciation balances and depraciation rates.

6. Statement of materials and supplies necessary for operation of the Petitioner's business.

7. Statement showing amount of cash working capital which Petitioner finds necessary to keep on hand.

8. Statement of net operating income for return for twelve months ended December 31, 1972.

9. Statement showing effect of proposed increase in rates.

10. Balance sheet and income statement for the year ended December 31, 1972.

11. Statement showing rate of return on rate base.

12. Statement showing rate of return on equity.

13. A copy of the Federal Power Commission Order, under which the wholesale price increase is to be incurred, will be submitted as a late exhibit filed when available.

The data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staffs and a report of same submitted to the Commission for its consideration.

Notice of the proposed filing in this docket was given to the public by N.C. Gas Service by inserting a public notice

in various newspapers throughout its service area in North Carolina.

Based on the application as filed and the records of the Commission in this docket, the Commission makes the following

FINDINGS OF FACT

1. That Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2. That the increase in the cost of gas which Transco is seeking to recover in Docket No. RP73-3, has been approved by the Federal Power Commission effective April 1, 1973.

3. That N.C. Gas Service filed tariffs to recover this increase in the cost of gas plus related gross receipts taxes and insurance costs to become effective on all bills rendered on and after April 13, 1973. All tariffs will be increased by $.0152 per Mcf.

4. That the rates of return as found to be just and reasonable by the Commission in the Order in Docket No. G-3, Sub 48 issued on November 20, 1972, for the test period ending March 31, 1972, and those determined by the Commission in this docket are listed below:

	Approved in Docket No. G-3, Sub 48	After Proposed Tracking Increase
On investment	9.13	8.64
On equity	12.00	10.27

5. That the rates of return on end-of-period investment and on equity after the adjustments for the proposed increases as applied for herein have decreased from those found just and reasonable by the Commission in its general rate case order issued November 20, 1972.

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 increase in cost of gas to them from their wholesale supplier 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 therein, if the Commission concludes from such review and analysis that the filings will not result in an increase in the company's rate of return over that most recently approved by the Commission, that the pass-on of the wholesale increased cost of gas will 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.

The Commission concludes that in this proceeding the rate of return of N.C. Gas Service has decreased since the last general rate proceeding in Docket No. G-3, Sub 48, which order was issued on November 20, 1972.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by N.C. Gas Service that seeks solely to recover increases in the cost of gas to it from its supplier 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.

IT IS, THEREFORE, ORDERED as follows:

1. That N.C. Gas Service be, and is hereby, authorized to file revised tariffs with the increase sought herein, effective on all bills rendered on and after April 13, 1973.

2. That at such time that the rate to N.C. Gas Service is reduced as a result of Transcontinental Gas Pipe Line Corporation having collected its unrecovered gas cost, N.C. Gas Service shall immediately file on one day's notice reduced tariffs reflecting this change plus applicable gross receipts taxes.

3. 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, N.C. Gas Service shall immediately file tariffs reflecting corresponding decreases in its tariffs as authorized herein.

4. That in the event any refunds are received by N.C. Gas Service from Transcontinental Gas Pipe Line Corporation as a result of action by the Federal Power Commission or if producer refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to N.C. Gas Service, all such refunds, if any, shall be placed in the Restricted Account No. 253, "Other Deferred Credits" and shall be held in said restricted account subject to disposition and direction by the North Carolina Utilities Commission. Information concerning future refunds shall be furnished the Commission not less than 15 days from the date of receipt; the information shall include the source thereof including the docket numbers and order dates of any proceeding involved in such refunds.

5. 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 March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

Upon application by Pennsylvania & Southern Gas Company (North Carolina Gas Service Division), the North Carolina Utilities Commission approved increased rates on all bills rendered on and after April 13, 1973. The increase approved results in an increase of $.0152 per Mcf on all rate schedules. This increase allows N.C. Gas Service to recover only the increase in cost of gas to it from its supplier, Transcontinental Gas Pipe Line Corporation, which has been approved by the Federal Power Commission, plus related gross receipts taxes and insurance costs.

DOCKET NO. G-3, SUB 52

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 ESTABLISHING SUSPENSE ACCOUNT FOR TRACKING UNRECOVERED GAS COST

BY THE COMMISSION. On September 27, 1973 Pennsylvania & Southern Gas Company, North Carolina Gas Service Division (N. C. Gas Service) filed a Motion for Supplemental Order in which it requested authority to recover increases in the cost of gas to it for the period August 13 - 31, 1973 and the difference between the cost of gas as identified by the rates listed in Appendix A and Appendix B in this Commission's Order of August 23, 1973 from September 1, 1973 by debits or credits to a suspense account. This action is necessary because the Federal Power Commission has not taken any final action on tariffs filed by Transcontinental Gas Pipe Line Corporation (Transco). Transco, however, is authorized under the Natural Gas Act to place in effect on August 13, 1973, Appendix A rates as shown in this Commission's Order dated August 23, 1973 subject to change or refund. N. C. Gas Service proposes to record the differences in the cost of gas to a suspense account for future tracking as required.

On August 23, 1973 this Commission issued an order in the above captioned matter in which it approved increased rates for N. C. Gas Service in order to recover increases in cost of gas to it from Transco as approved by the Federal Power Commission. The rates approved were based on the "Settlement Rates" as filed for by Transco and as listed as Appendix B attached to the order of the Commission dated

August 23, 1973. The effective date of the increased rates as approved by this Commission for N. C. Gas Service was on all meter readings on and after September 14, 1973. September 1, 1973 was the effective date of the "Settlement Rates" in the settlement filing with the Federal Power Commission.

N. C. Gas Service was advised on September 4, 1973 that the Federal Power Commission had not issued an order with respect to Transco's application in Federal Power Commission Docket No. RP73-69 and RP72-99. Accordingly, Transco will place into effect subject to adjustment and/or refund, the rates which it filed with the Federal Power Commission on May 30, 1973 which rates were attached to this Commission's Order of August 23, 1973 as Appendix A.

The Commission's Order of August 23, 1973 authorized N. C. Gas Service to file on one day's notice revised tariffs to reflect rates higher or lower than the Transco "Settlement Rates" as approved by the Federal Power Commission. The Federal Power Commission has not issued an order in this matter and in accordance with the Natural Gas Act and the Rules and Regulations of the Federal Power Commission, Transco will begin collecting higher rates than the "Settlement Rates" effective August 13, 1973. It is anticipated that the Federal Power Commission will ultimately approve the "Settlement Rates" and in order to avoid collecting excessive amounts from its customers which N. C. Gas Service would be required to refund and at the same time permit N. C. Gas Service to recover only the increased cost of gas to it from August 13, 1973, N. C. Gas Service requests the Commission's approval of the following:

1. N. C. Gas Service will maintain in effect the rates approved in Docket No. G-3, Sub 52 effective September 14, 1973.

2. Amounts billed by Transco in excess of the rates included in Appendix B of the Order dated August 23, 1973, in Docket No. G-3, Sub 52, will be charged to a suspense account.

3. Any refund of amounts collected by Transco as ordered by the FPC will be credited to the suspense account.

4. N. C. Gas Service will file on one day's notice revised rate schedules to reflect any changes in Transco's rates from their proposed "Settlement Rates" as approved by the FPC.

5. The balance, if any, remaining in the suspense account would be transferred to the memo account.

6. N. C. Gas Service would be authorized to recover or refund the balance in the memo account through an increase or decrease in its rates for such time and in such amount as approved by the Commission.

The Commission is of the opinion that the approval of the action requested by N. C. Gas Service would permit N. C. Gas Service to recover only the cost of gas to it as approved by the Federal Power Commission. N. C. Gas Service will receive no additional net income as a result of this action.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1) That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, be and is hereby authorized to charge to a suspense account amounts collected by Transcontinental Gas Pipe Line Corporation in excess of the rates included in Appendix B of the Commission's order dated August 23, 1973 in Docket No. G-3, Sub 52 from September 1, 1973 until such time as a final order is issued by the Federal Power Commission in FPC Docket No. RP73-69 and RP72-99.

2) That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, be authorized to charge to the suspense account amounts collected by Transcontinental Gas Pipe Line Corporation during the period August 13-31, 1973 in excess of the rates in effect on April 1, 1973 as approved by the Federal Power Commission for Transcontinental Gas Pipe Line Corporation.

3) That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, shall credit to the suspense account any refund of amounts collected by Transcontinental Gas Pipe Line Corporation as ordered by the Federal Power Commission.

4) That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, shall file on one day's notice revised rate schedules to reflect any changes in Transcontinental Gas Pipe Line Corporation's rates from its proposed settlement rates as approved by the Federal Power Commission.

5) That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, shall transfer to the memoranda account any balances remaining, if any, in the suspense account.

6) That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, shall file a monthly report reflecting the authorization herein granted.

7) That this docket shall remain open for such further orders as are required.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. G-9, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc., for an Adjustment of Its Rates and Charges	)	ORDER ESTABLISHING RATES

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 3, 4 and 5, 1972.

BEFORE: Chairman Marvin R. Wooten, Presiding and Commissioners John W. McDevitt, Hugh A. Wells and Miles H. Rhyne (See Note page 25)*

APPEARANCES:

For the Applicant:

Jerry W. Amos, Esq., and
James T. Williams, Jr., Esq.
McLendon, Brim, Brooks, Pierce and Daniels
Attorneys at Law
P. O. Drawer U, Greensboro, North Carolina 27402

For the Commission Staff:

Edward B. Hipp, Esq.
Commission Attorney, and
William E. Anderson, Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
One West Morgan Street
Raleigh, North Carolina 27602

BY THE COMMISSION: On March 7, 1972, Piedmont Natural Gas Company, Inc., (hereinafter also styled "Piedmont"), filed its Petition or Application with this Commission in which it seeks an increase in its rates and charges for natural gas service.

On March 14, 1972, the Commission issued its Order declaring the proceeding to be a general rate case, suspending the proposed rates, setting a test period ending April 30, 1972, and requiring the Petitioner to file such a revised Application, due June 15, 1972, as would be in accordance with the changed test period.

On June 12, 1972, the Petitioner filed a Motion for Extension of Time in which to file the revised Application, exhibits and work papers, which the Commission allowed by Order issued on June 13, 1972.

The Amended Petition or Application was filed on June 22, 1972. The Amendment included amended tariffs which included the increase of 1.802¢ per Mcf authorized by the Commission in Docket No. G-9, Subs 92, 94, 97, 98 and 100 as allowed in the "tracking" Order issued May 2, 1972, in those dockets. On July 18, 1972, the Commission issued its Order allowing the amendment and suspending the tariffs filed with said Amended Petition on June 22, 1972.

On September 1, 1972, Piedmont filed a Motion for Leave to Amend its Amended Petition, alleging further increases in its cost of gas from Transcontinental Gas Pipe Line Corporation and from Carolina Pipeline Company. Piedmont filed contemporaneously an Amendment to Amended Petition reciting the nature of those alleged wholesale increases and attaching thereto certain exhibits.

Again on September 11, 1972, Piedmont filed a further Motion for Leave to Amend the Amended Petition, alleging additional increases in the cost of purchased gas and also filing contemporaneously a Second Amendment to Amended Petition, with exhibits.

On September 14, 1972, a Motion was filed on behalf of the Commission's Staff for an extension of time to file its testimony, which was allowed by Commission Order issued September 14, 1972.

On September 22, 1972, Piedmont filed another Motion for Leave to Amend the Amended Petition and contemporaneously a Third Amendment to Amended Petition, with exhibits.

On September 28, 1972, Piedmont filed its Undertaking alleging the pendency of its general rate case, the suspension of the proposed rates by the Commission, and its statutory right as set out in G. S. 62-135 to put the proposed rate schedules into effect upon the filing by Piedmont with the Commission of a satisfactory Undertaking.

The matter came on for hearing at the time and place designated by prior order. As the first matter of business, the Commission inquired whether any person had objection to approval of the Undertaking by the Commission. There being none, the Undertaking was approved, and on October 6, 1972, the Commission issued its order recognizing the statutory rights of Piedmont under G. S. 62-135 for temporary rates under Bond or Undertaking and reciting approval of the Undertaking as filed.

SUMMARY OF EVIDENCE

Mr. J. D. Pickard, President and Chief Executive Officer of Piedmont Natural Gas Company testified that this proceeding is Piedmont's first rate case since |959 seeking to increase rates for other than tracking purposes; that at the end of the test year Piedmont had approximately |70,000 customers; that the rate increase is sought at this time because of the effect of Transco's gas curtailment thereby increasing Piedmont's demand cost; and further, that the reduction in available supply of gas has resulted in a shift in Piedmont's sales from more profitable industrial and commercial customers to its less profitable residential customers.

Mr. Matheney, Senior Vice President-Finance, testified that the original cost of Piedmont's plant is $|2|,969,89| of which the North Carolina portion is $88,965,877; that working capital required by the company for its North Carolina operations is $2,894,874, based on one-sixth of test year operation and maintenance expenses, (including minimum bank balances and excluding average federal income tax accruals); that the revenues should be normalized and annualized in the amount of $|,298,209, including a temperature normalization of $348,836; that the cost of purchased gas should be annualized in the amount of $|,085,|29, and an adjustment made to other operation and maintenance expenses in the amount of $56|,322, including $425,873 for wage adjustments a portion of which took place outside the test period; that the rate of return on common equity after the adjustments is 6.8|% for the test period and that after taxes interest coverage is 2.08 times; that earnings per share per books for the twelve months ended December 3|, |97| amounted to $|.98, and for the twelve months ended April 30, |972 dropped to $|.73.

Mr. John G. Hopping, Vice President-Industrial and Commercial Sales, testified that present rate schedules are different for the Western Division as a result of the merger of Carolina Natural Gas Company into Piedmont Natural Gas Company in |968 and Piedmont's maintaining the old Carolina rate schedule in that service area, but the rates proposed in this case eliminate the disparity and provide the same rates for similar service to North Carolina customers; that the proposed rates have been designed giving consideration to cost of service, value of service, competitive fuel prices, the need to maintain a balanced load growth, the current gas supply situation, and the company's revenue requirements; that Stone and Webster Management Consultants, Inc., conducted a cost of service study which points out that under the current rate residential customers are producing a considerably lower rate of return than commercial or industrial customers and in the proposed rates residential customers bear a larger percentage of the increase; that the company cannot continue to sell gas to industrial and commercial customers if gas is priced at a non-competitive level; that the gas cost per MBTU under the

proposed rates will be lower than competitive fuel costs for customers using Rate Schedules 6, 8, 15, 16, 17, 11a and 13; that Rate 11 is the only rate where competitive fuel is cheaper per MBTU but many of these customers prefer gas because of the convenience, savings in handling, storage and for ecological and pollution abatement purposes, and the company is able to compete there even with a higher price per MBTU.

Mr. Richard S. Johnson, Vice President of Stone and Webster Management Consultants, Inc., testified that Stone and Webster assisted Piedmont in designing the proposed rates and prepared a cost of service study to determine the approximate rate of return which would have been earned by each class of service during the test year had the proposed rates been in effect; that he considered the prospects of a finite gas supply over the next few years which must meet the requirements of the firm sales growth; that Piedmont agreed when it acquired the Western Division to institute uniform rates throughout North Carolina in the next general rate case and the proposed rates should provide this uniformity; that the Applicant's proposed revenue has been apportioned to the particular rate classifications on the basis of several formulae for determining the amount of increase to be derived from a particular change in rate schedules; that the selection of a schedule of rates to spread the burden of service cost becomes a matter of informed judgment, including consideration of cost of service and other factors.

Mr. John E. Daly, Assistant Appraisal Manager for Stone and Webster Engineering Corporation, testified that Stone and Webster developed the value of gas property located in the State of North Carolina, in service as of April 30, 1972; that the appraisal consisted of development of yearly cost indices appropriate for each class of the company's property, calculation of cost trend factors to April 30, 1972 and the application of these factors to the original costs by years of installation, depreciation studies involving field inspection, application of depreciation factors to current costs, and final assembly of the appraisal and supporting data; that the indices are based on a combination of material and labor costs using two sets of labor indices - one for company labor and the other for Building Trades labor; that each yearly index for each class of property is trended from original costs, by years, to the appraisal date; that observed depreciation reserve is also determined, and the procedures are followed through for all plant property; that the current cost of property in, or allocated to, the State of North Carolina is $147,162,522 and the current cost less observed depreciation is $126,858,884.

Mr. Eugene S. Merrill, of Stone and Webster Management Consultants, Inc., testified, regarding Piedmont's finances, capital cost and earnings requirements, that he used three approaches in determining earnings requirements, as follows:

(1) overall return on capital invested by comparable companies, (2) Piedmont's capital structure and the cost of capital, and (3) the investors approach or the financial integrity approach; that the long term debt ratio increased from 60.2% in 1965 to 64.2% by the end of 1971; that the common equity ratio increased from 24.8% in 1965 to 28.1% in 1971 and decreased to 26.5% following the sale of debentures in April, 1972; that the interest coverage after taxes in 1965 was 2.3 times and by 1970 had decreased to less than 2 times; that earnings per share were $1.79 in 1970, $2.02 for twelve months ending June 30, 1971, $1.98 for the calendar year 1971 and $1.73 for the test year; that the average common equity ratio for the 17 comparison companies studied was 39.4% from 1965 to 1971 and was 38.3% at year end 1971, while the common equity ratio of Piedmont has consistently been much thinner averaging only 25.1% from 1965 to 1969, and being 26.5% at the end of the test year; that in the last quarter of 1965 interest rates begin to rise until mid 1970 reaching an all time high in June, 1970; that Piedmont's debt cost is 6.82%, preferred stock cost is 7.93%, making the cost of senior capital at the end of the test period 6.93%; that a return on common equity for the 17 gas distribution companies in the comparison study averaged 12.8% for the three years 1965 through 1967; that as the cost of senior capital has increased since then, the return on common stock has decreased averaging 12.3% since 1967, and 14 of these 17 utilities have sought rate increases; that Piedmont requires a minimum rate of return on invested capital of 9.17% and a minimum rate of 15.4% on common stock capital.

Mr. Merrill further testified that his conclusion under the comparable earnings approach was that that approach could no longer be used to determine the cost of capital for a utility; that the comparable earnings study showed that Piedmont through 1970 and in 1971 maintained a strong position and did better on average than the 17 companies; that the cost of Piedmont's senior capital is considerably higher on average than that of many of the other companies because Piedmont had to raise a substantial amount of capital during a period of higher money cost; that the return on average common equity for Piedmont has been in the 14% range through the seven year period 1965 through 1971; that in 1971 that happy situation started to end; that on balance most corporations in the United States had a decline in earnings in 1970 and 1971, and during that period Piedmont preserved and protected its earnings until mid 1971; that Schedule 3 which shows Piedmont's decline in earnings from 14.3% at December 31, 1971 to 11.6% at April 30, 1972 does not include an adjustment for temperature normalization; that he is familiar with what usually happens to the earnings of gas companies when they have a warm winter but did not adjust the 1972 figures for a temperature normalization and does not know whether Piedmont would have had a decline or not if they had been selling the same volume of gas; that his conclusion from the investor approach showed an indicated cost of capital of 9.17%; that

Piedmont intends that the next capital it seeks will be equity capital and if it earns 14% on the next issue of common equity capital it would increase its times coverage on debt from what it is now; that the earnings on equity in the range of 14% through the past seven years was a good financial record; that he has not considered the economic condition of Piedmont's franchised area although equity investors generally favor companies in strong economic areas, which the South and North Carolina particularly, are at the present time; that utility cost of capital for bonds at least are staying level and competitive with other types of corporate bonds and the other comparison companies studied which have maintained a higher equity ratio have sold equity with earnings on equity in the range of 12 to 12.5%; that he disagreed with Mr. Kent's return on equity exhibit including only a portion of the last debenture sale inasmuch as he apparently did not proform for future commitments.

Mr. Thomas L. Dixon, Commission Staff Pipeline Safety Engineer, testified that he computed the adjustment to operating revenues to annualize and normalize sales for the effects of temperature during the test period; that the temperature normalization portion of this total figure is $500,828 and the balance of the figure is to annualize sales for rates in effect and plant in service at the end of the test period; that the temperature adjustment figure represents a degree day temperature normalization of the sort offered by the Staff in previous natural gas company rate cases for other North Carolina companies, using the same degree day base, the same period of years for testing and other characteristics in the identical fashion as in other studies; that in the previous Piedmont rate case a different base was used for Piedmont as for all other gas companies; that 65 degrees is the standard base representing the temperature at which customers begin to use heat; that he used temperature information from the Western Division, the Charlotte area and the Greensboro-Northern Division; that he determined which interruptible gas would have been sold as firm gas under normal temperature conditions to be Piedmont's Rate 15, which is the lowest price rate and that in the event of customer interruption the gas company would interrupt those interruptible customers at the lowest price rather than the other customers at a higher price; that there is more gas sold at Rate 15 than would be taken up in the increased sales following a drop in temperature.

Mr. Raymond J. Nery, Chief Engineer Gas Division, testified that he computed the adjustment to operating revenues in the amount of $369,623 to increase operating revenues by annualizing sales to Duke Power Company, and a corresponding adjustment to increase the cost of gas in the amount of $265,250; that during Piedmont's last rate case he studied the operational experience of Piedmont and particularly its purchases from Carolina Pipe Line in South Carolina, noting that Piedmont had available from Carolina Pipe Line a volume of gas which it was not purchasing in the

summertime; that for this case he determined that the sales to Duke during the latter part of the test year had increased for the reason that contract changes authorized by this Commission made increased sales possible and that there should be an adjustment to annualize the sales volumes; that he testified that regarding gas available to Piedmont from Carolina Pipe Line, and testified as to the actual purchases by Piedmont of the volume available, that gas was available to Piedmont which it did not purchase, and gas which was purchased by Duke Power Company for use at its Buck steam plant; that the volumes purchased by Duke from Piedmont increased substantially beginning in March, 1972, because on February 28, 1972, the Commission authorized increased rates and increased volume conditions enabling Piedmont to realize a profit and increased the sales of that Carolina Pipe Line gas to Duke Power Company; that the means he used to show the dollar effect of annualizing this increase in sales was to ascertain the amount of No. 2 fuel oil used by Duke and to convert that fuel oil to Mcf gas equivalent; that he obtained Duke's No. 2 fuel oil purchases at the Buck plant from the records of Duke Power Company in his official capacity as a Commission representative.

Mr. Nery testified that he computed an adjustment in the amount of $1,225,944 to increase the cost of purchased gas to proform the increases in cost of gas which occurred during the test period; that he used a computation which was essentially the same as that used by Piedmont except that in Piedmont's computation an assumed 11% curtailment was used whereas the Staff used the actual test period curtailment of 7.62% and that while Piedmont allocated the cost other than commodity cost on the basis of a peak day using a 77.57% figure, the Staff used the average of the three day sustained peak period which was 77.272%.

Mr. Nery computed an adjustment in the amount of $402,042 reducing the cost of gas through the reallocation of demand charges based on weighting of peak and annual sales by states; that this was the same adjustment that he made in the last Piedmont rate case and in the same manner to which he testified at that time; that because Piedmont operates in two states and pays a demand charge on a total company basis it is necessary to allocate the demand charge between North and South Carolina; that if the allocation were based on a peak day, North Carolina operations would pay 77.272% of the demand charge whereas the North Carolina operations sold only 68.42% of the gas on an annual basis; that looking at North Carolina operations as a separate entity with the right to 77.272% of the gas it paid the demand charge on, if it were an individual company which is assumed for rate case jurisdictional purposes, it would then find another sale in North Carolina or would make arrangements to sell this gas to another utility in this state or in another state; that Piedmont maintains essentially the same rates in North Carolina as in South Carolina but would make more money on South Carolina sales because of the North Carolina gross receipts tax; that he also computed a related adjustment of

$69,786 increasing the cost of purchased gas for increased volumes sold resulting from the temperature normalization adjustment.

Mr. Jesse Kent, Jr., Staff Accountant, testified that he made an examination of the books and records of Piedmont Natural Gas Company covering the twelve months' period ended April 30, 1972; he testified that the original cost of Piedmont's plant is $121,969,891, of which the North Carolina portion is $88,965,877, adopting the company's proposed allocation methods as reasonable; that the working capital allowance required by the company is $497,979 based on 1/8 of operation and maintenance expenses including minimum bank balances allocated on the basis of net plant ratio and excluding average tax accruals including the carry-over of accruals from prior years; that operating revenues are adjusted in the amount of $369,623 to proform sales to Duke Power Company and $1,530,651 to annualize sales to year end and to normalize sales for the effect of temperature during the test period as calculated by the Engineering witness; that the cost of purchased gas has been annualized by an adjustment in the amount of $1,158,938, reflecting (1) an increase in cost of gas as annualized in the amount of $1,225,944, (2) a reduction in the cost of gas through reallocation of demand charges based on actual sales by states as computed by the engineering witness in the amount of $402,042 and (3) an increase in the cost of gas for increased volumes resulting from the engineering witness' normalization adjustment in the amount of $69,786, and (4) an increase in the cost of gas as a result of the engineering witness's adjustment to pro form sales of gas to Duke Power Company in the amount of $265,250; that the company's proposed expense adjustment in the amount of $425,873 for annualization of wage adjustment reflects adjustments made outside the test period; that the rate of return on net investment including the working capital allowance after adjustments is 7.60% and after the proposed rate increase would be 10.68%, that the rate of return on common equity capital after adjustments is 9.03% and after the proposed rate increase would be 17.32%.

Based upon the record and such judicial notice as is indicated herein, the Commission makes the following

FINDINGS OF FACT

1. That Piedmont Natural Gas Company, Inc., is a duly created and existing New York corporation authorized to do business, and doing business, in North Carolina as a franchised public utility providing natural gas service in forty-two (42) North Carolina communities, and is properly before the Commission in this proceeding for a determination as to the justness and reasonableness of its proposed rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carclina.

2. That the increases in rates and charges proposed by Piedmont would produce a total of $4,623,655 in additional gross annual revenue.

3. That the test period set by the Commission and utilized by all parties in this proceeding was the twelve months' period ending April 30, 1972.

4. That due to the abnormally warm temperature during the test year Piedmont sold a substantially lesser portion of its gas than normal to its firm customers for heating purposes and received $500,828 less operating revenues than would otherwise have been received in the test period under normal temperature conditions.

5. That normalization of sales to give effect to the temperature normalization, increases in purchased gas expense, and increases in rates due to various "tracking" increases approved by the Commission, require that test year operating revenues be increased upward in the amount of $1,530,651 to annualize revenues, and test year purchased gas expense be adjusted upward in the amount of $1,225,944 to annualize increased costs.

6. That during the test year (on February 28, 1972) this Commission approved a contract between Piedmont and Duke Power Company for the sale of additional volumes of gas to Duke at 58.553 cents per Mcf; subsequently in March, 1972, Duke gas purchases for the Buck plant increased from 265,960 Mcf to 474,360 Mcf and in April, 1972 were 405,900 Mcf; that the March and April sales to Duke, when annualized for the whole test year, produce annualized sales of gas to Duke at the Buck plant of 5,281,560 Mcf or revenues in the amount of $309,251; that based on an annualizing method equating Duke's test year No. 2 oil used to volumes of gas, a reasonable estimate of Piedmont's increased revenue from Buck plant sales to Duke on that current rate for the test year is $369,623: the Commission takes judicial notice of the extension of this contract, at a higher rate, for 1973 and the approval thereof on January 5, 1973.

7. That the increased volume of gas available for sale to Duke entails an increase in purchased gas expense in the amount of $265,250.

8. That the Staff allocation of demand charges to North Carolina in the amount of $8,016,196 understates the demand charge by allocating peaking services to interruptible customers, although such peaking services always reflect peak use; the reasonable demand charge allocation to North Carolina for the test period is $8,054,686.

9. After accounting and pro forma adjustments, including the annualization of rate changes taking place during the test year, Piedmont's test year gross operating revenues were $44,205,993 (North Carolina intrastate). Its reasonable intrastate operating expenses and other revenue

deductions for the test period year were $38,932,851, leaving net operating income of $5,273,142. The foregoing figure was reduced by the sum of $44,698, representing interest on customer's deposits paid during the test period, which the Commission allows as an operating expense, resulting in net operational income as adjusted of $5,228,444. To this figure, the Commission Staff has applied an annualizing adjustment of 1.69% in order to accomplish a year end figure which will be representative of a total year's operation, resulting in an adjusted net income for return of $5,316,805.

10. Under the uniform system of accounts for public utility firms, Account 930 includes miscellaneous general expenses and Account 426 includes charitable and civic contributions and miscellaneous income charges. In analyzing the 930 account, the Commission finds that expenses recorded thereunder in the total sum of $29,596 should be disallowed as representing reasonable operating expenses and in computing the return on equity. In analyzing the 426 account, the Commission has disallowed the classification of the total sum of $37,842 as expenditures which should be borne by the ratepayers, and has charged said expenditures against the company's stockholders in computing the rate of return on equity. This adjustment in no way affects the income tax benefits to Piedmont of the accounting treatment accorded these expenditures by Piedmont. The foregoing adjustments are primarily related to civic club dues and contributions, country club dues, and charitable contributions.

11. As of the end of the test year, Piedmont books of account reflect an original cost of $88,965,877 of plant used and useful in intrastate service; a depreciation reserve of $18,029,352; and contributions in aid of construction in the sum of $352,768. The Commission finds Piedmont's net investment as of the end of the test year in utility plant providing service to the public in North Carolina to be in the sum of $71,070,396 (including working capital).

12. In computing Piedmont's reasonable working capital, the Commission has allowed minimum or compensating bank balances, one-eighth of its test year operating expenses (excluding purchased gas), certain prepayments, materials and supplies, and deducted tax accruals and customer deposits, as reflected in the Staff Audit.

13. That the replacement cost of Piedmont's property in intrastate service as of the end of the test year is $97,900,000.

14. That the fair value of Piedmont's property used and useful in providing service to the public within this State as of the end of the test year, considering the reasonable original cost of the property less that portion consumed by use and recovered by depreciation expense, the replacement

cost of the property, and current operations is $84,486,639 being a fair value of plant in service of $84,000,000, plus the working capital allowance of $486,639.

15. Based upon the Commission's foregoing findings of net income and fair value, the Commission finds Piedmont's rate of return on fair value for the test year to be 6.29% and its rate of return on its actual common equity investment for the test year to be 9.10%. Assuming a common equity structure adjustment to allow for the increment by which fair value exceeds original cost, the rate of return on common equity for the test year would be 5.61%. The Commission finds that such rates of return on fair value and common equity are insufficient to allow the utility by sound management to produce a fair profit to its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

16. Based upon the Commission's foregoing findings on revenues and investment, Piedmont will require additional annual gross revenues of $2,264,489 to achieve the rates of return on fair value and common equity (set forth hereinafter) which are sufficient to allow it by sound management to produce a fair profit to its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms. Said additional revenues will produce a rate of return on fair value of Piedmont's property of 7.56% and a rate of return on actual common equity of 14%, and assuming the "fair value" adjustment to the common equity account, a rate of return on said adjusted common equity of 8.63%. All of said rate of return computations are illustrated in the tables appearing on pages 21 and 22 of this order. [See pages 275, 276, and 277 of this Annual Report.]

17. The Commission finds that the rates requested by Piedmont in this docket to be not just and reasonable, and accordingly has modified Piedmont's proposed rates in order that the additional revenues allowed in this order will be generated upon a schedule of rates which are non-discriminatory and just and reasonable. Said schedule of rates is set forth in Appendix "A" attached to this Order.

Whereupon the Commission reaches the following

CONCLUSIONS

1. Upon consideration of the record herein it has become apparent that Piedmont Natural Gas Company is in need of substantial rate relief, having acquired a significant amount of debt capital during the period 1965 to mid-1970 when interest rates reached an all time high, with further significant debt financing between mid-1970 and the end of the test year and having sustained a decline in earnings since mid-1971. The question becomes not <u>whether</u> Piedmont

should have rate relief but how much. In applying the criteria set forth in G. S. 62-133(b) the Commission must estimate the utility's revenue under the present and proposed rates, and ascertain the utility's reasonable operating expenses, by fixing a test period of twelve months ending as close as practicable before the opening of the hearing.

2. Use of the test year so established is valid, as the Court said in the case of Utilities Commission v. City of Durham, 282 N.C. 308 (1972) "...if, but only if, appropriate pro forma adjustments are made for abnormalities which existed in the test period and for changes in conditions occurring during the test period and, therefore, not in operation throughout its entirety".

3. In the present case both the Applicant and the Staff offered evidence of an adjustment to operating revenues normalizing revenues to reflect the abnormally warm test period temperature. Such a temperature normalization was the subject of extensive analysis by the Supreme Court of North Carolina in the case of Utilities Commission v. City of Durham, supra. In that case the Court said that where temperature was abnormally warmer than usual "to fail to adjust the test period revenues upward would lead to higher rates for service than necessary to yield the return to the company contemplated by G. S. 62-133(b) and would be unjust to the users of gas". Accordingly, we interpret that decision to be a mandate to give effect to substantial and compelling temperature normalization evidence. The Staff computation applied formulae and methodology adopted by the Commission in that case and various other cases; the degree day used appears to be appropriate; the Staff computation gives effect to each of the different climatological regions within the Piedmont franchise area; the mathematical accuracy of the Staff computation has not been seriously questioned; and the Applicant offered no evidence supporting its adjustment. We therefore conclude that the Staff adjustment to normalize temperature by increasing revenues in the amount of $500,828 is reasonable for use in the test year computations, as is the related adjustment of $69,786 increasing the cost of purchased gas.

4. Similarly, we have concluded that proper pro forma adjustments to the test period should include the adjustment of $1,029,823 to annualize increased sales and higher rates due to various tracking increases, and an adjustment to purchased gas expense in the amount of $1,225,944 to annualize Piedmont's cost increases.

5. We further conclude that the test year must be proformed to annualize increased sales to Duke Power Company resulting from the increased rate sought by Piedmont and approved by this Commission on February 28, 1972, two months prior to the close of the test period. The Applicant has contended that such increased sales should not be annualized. The basic premise is, however, that "changes in

conditions occurring during the test period and, therefore, not in operation throughout its entirety" Utilities Commission v. City of Durham, supra, should be proformed. A party urging the Commission to exclude any figures representing changes in conditions during the test period has the burden of showing that they are non-recurring and, therefore, reasonably should be excluded. In pursuing this goal, Piedmont offered the speculation that the contract might not be renewed; the facts existing at the end of the test period, however, indicate otherwise, and we conclude that an adjustment should be made increasing revenues to annualize the volumetric increases in sales to Duke Power Company as a part of the estimate of Piedmont's revenues.

6. Where a utility operates in two or more regulatory jurisdictions it becomes necessary to allocate not only utility plant but also such items as equity capital and various expenses. One of these expenses is the demand charge. Both the Applicant and the Staff offered evidence allocating demand charges to North Carolina. Piedmont purchases its gas supply based on its total operation in North and South Carolina. It gets one single bill from Transco for the demand charge relating to its contract volumes. It is necessary therefore to allocate part of this demand charge to North and South Carolina. Normally this is done on a peak day or the average of a three day sustained peak day basis. Under this method North Carolina would have allocated to it 77.272 percent of the demand charges and South Carolina 22.725 percent. This procedure, considering North Carolina as a separate entity, would entitle North Carolina consumers to 77.272 percent of the daily contract volumes. Piedmont, operating the total system, sells the interruptible volumes to customers who pay the best price for these volumes. In this case it sold 68.42% of the annual volumes in North Carolina and 31.58% of the gas on an annual basis in South Carolina. Under these circumstances North Carolina consumers who were entitled to 77.272% of the gas because they paid the demand charge relating thereto, only received 68.42% on an annual basis. The gas which was shifted to South Carolina was shifted under Piedmont's procedure at the commodity cost. No credit was received by the North Carolina customers because their firm requirements made this gas available and because they paid the demand charges on these volumes. The testimony of the Staff witness in this case allocates the demand charge on an equal basis weighting both the peak day and average day, which we believe is appropriate under the circumstances. We do not believe, considering North Carolina as a separate entity which we are required to do under North Carolina Law, that gas should be shifted from North Carolina to South Carolina with no sharing of the benefits. Under this procedure benefits accrue both to the North Carolina segment of Piedmont's operation and the South Carolina segment of Piedmont's operations in a reasonable and acceptable manner.

7. We conclude that the fair value of Piedmont's property used and useful in providing service to North

Carolina customers as of the end of the test year, considering the reasonable original cost less that portion consumed by use and recovered by depreciation expense, the replacement cost of the property, and current operations, is less than the replacement cost but more than the original cost, and is $84,494,106, consisting of the fair value of plant in service plus a reasonable working capital allowance. Mr. J. E. Daly offered testimony and exhibits for Piedmont to the effect that the reproduction cost of Piedmont's property at April 30, 1972 was $130,230,444. Mr. Daly explained that he determined reproduction cost less depreciation by way of the trended original cost method which involves adjusting actual records of historical construction cost to current cost levels to the application of appropriate index numbers relating to price changes over a period of time. The trend factors are based upon material and labor indices weighted together using an estimated ratio. Mr. Daly testified that, based on a stratified random sampling techniques for Piedmont's mains, a 14% observed depreciation reserve was used to establish the depreciation on trended current costs. The Commission concludes that book depreciation of 20.27% should be used, accounting for $9,519,536 difference between Piedmont's figures and the staff's figures. The Commission concludes that a working capital allowance of $486,639 would be reasonable, as compared to Piedmont's figure of $3,724,328 for a difference of $3,237,689. Mr. Daly testified that a 5% correction factor was applied to the reproduction cost in order to correct such deficiencies as piecemeal construction, new materials and construction techniques and other changes in the arts. Mr. Daly concluded that by applying this correction factor reproduction and replacement cost are for all intents the same. The Commission concludes that evidence of "reproduction cost" by way of trended original cost as presented by Mr. Daly, envisions and is founded upon the premise of a duplication of the plant as is, with inefficiencies and outmoded obsolete design included; in order to trend the original cost to a current one-time replacement of Piedmont's utility plant in accordance with modern design and techniques, such as with higher pressure, coated and wrapped steel mains, such a low correction factor is not credible and persuasive evidence. Mr. Daly's trended original cost methods and the results produced are not fully acceptable as the complete basis for determining replacement cost, and although Mr. Daly's study produces some indication of replacement cost, the net trended cost of Piedmont's plant produced by such trending is an excessively high estimate of replacement cost.

8. Miscellaneous expense items which are nonoperating in nature, including payments or donations for charitable, social or community welfare purposes, civic, political, and related activities, are classified in Account 426 and were not considered an operating revenue deduction for the purpose of ascertaining net operating income by either the staff or Piedmont. (Piedmont charged $37,842 direct to North Carolina operations under Account 426 for the test

period.) This expense should also be eliminated in the computation determining total income before interest charges, in the calculations and tables representing the statement of return on common equity.

9. Actual operating expenses are classified in Account 930 and properly charged to the ratepayers. We have reviewed the Account 930 analysis filed as an exhibit in this proceeding and have concluded that the sub accounts 930.2| and 930.22 consist of expenses which are nonoperating in nature. Accordingly, for rate of return purposes we have reclassified the expenses in those sub accounts into Account 426, amounting to $|2,678 in addition to the adjustment previously made by the Accounting Staff. Such reclassification requires an additional expense elimination in the computations and tables reflecting common equity as discussed above.

|0. We conclude that the rate relief requested herein is excessive inasmuch as it would produce a total of $4,623,655 in additional gross annual revenue, which would, in view of the annualizing and normalizing adjustments found necessary and proper herein, produce a rate of return on fair value of 8.89%, would produce a rate of return on common equity capital as adjusted for fair value of ||.77%, would produce a rate of return on net investment of |0.58%, and would produce a rate of return on test period actual common equity of |9.|0%. Upon considering the record herein, we recognize that Piedmont's long-term debt ratio has increased somewhat in recent years during a time of high interest costs; that the interest coverage and return on common equity has decreased as have earnings per share; that, although Piedmont was able to preserve and protect its earnings and keep its rate of return on average common equity in the |4% range in recent years the earnings and rate of return on common equity began to decline in |97| after the acquisition of its new debt capital at high costs and its earnings for common equity capital have declined to 9.|0% under present rates at the end of the test period; we conclude that the test period rate of return on fair value of 6.29% and on common equity as adjusted for the fair value increment of 5.6|% are insufficient at the present time to allow Piedmont by sound management to produce a fair profit to its stockholders to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

||. We conclude that in order to meet those objectives Piedmont requires a rate of return on fair value of 7.56% and a rate of return of 8.63% on common equity as adjusted for the increment by which fair value exceeds original cost, and that Piedmont will require additional revenues of $2,264,489 based on test year operations to achieve said rates of return on fair value and on adjusted common equity. By obtaining such additional revenues Piedmont will have the opportunity to increase its interest coverage significantly

and its rate of return on test period common equity will be restored to the 14% range.

12. The following tables, based upon the Findings of Fact, illustrate the calculations for the $2,264,489 additional revenue found to be necessary, just and reasonable from the records in this proceeding:

PIEDMONT NATURAL GAS COMPANY, INC.
RATES OF RETURN, AFTER COMMISSION APPROVED ADJUSTMENTS,
BASED ON PRESENT RATES AND ON APPROVED RATES
NORTH CAROLINA ONLY

	Present Rates	Approved Increase	After Approved Increase
Operating Revenues			
Gross operating revenues	$44,205,993	$2,264,489	$46,470,482
Operating Revenue Deductions			
Natural gas purchased	24,072,419		24,072,419
Operation and maint. expenses	6,686,627	5,478	6,692,105
Depreciation expense	2,284,686		2,284,686
Amortization expense	52,758		52,758
Taxes - other than income	4,068,777	135,541	4,204,318
Taxes - state income	265,218	127,408	392,626
Taxes - Federal income	1,528,081	958,110	2,486,191
Investment tax credits normalized	143,407		143,407
Amortization of investment tax credits	(169,122)		(169,122)
Total operating revenue ded.	38,932,851	1,226,537	40,159,388
Net operating income	5,273,142	1,037,952	6,311,094
Less: Interest on customer deposits	44,698		44,698
Plus: Annualization factor (1.69%)	88,361	17,540	105,901
Net operating income for return	$ 5,316,805	$1,055,492	$ 6,372,297

PIEDMONT NATURAL GAS COMPANY, INC.
RATES OF RETURN, AFTER COMMISSION APPROVED ADJUSTMENTS,
BASED ON PRESENT RATES AND ON APPROVED RATES
NORTH CAROLINA ONLY

Investment in Gas Plant			
Gas plant in service	$88,965,877	$	$88,965,877
Less: Depreciation reserve	18,029,352		18,029,352
Less: Contributions in aid of construction	352,768		352,768
Net plant in service	70,583,757		70,583,757
Allowance for Working Capital			
Material and supplies	829,454		829,454
Cash	2,396,816	696	2,397,512
Average tax accruals	(2,739,631)	(206,949)	(2,946,580)
Total working capital allow.	486,639	(206,253)	280,386
Net investment in plant plus working capital	$71,070,396	$ (206,253)	$70,864,143
Rate of return on investment - %	7.48		8.99
Fair value rate base	$84,486,639		$84,280,386
Rate of return on fair value - %	6.29		7.56

PIEDMONT NATURAL GAS COMPANY, INC.
STATEMENTS OF RETURN ON EQUITY AND CAPITAL STRUCTURE

Return on Book Equity	After Pro Forma Adjustments	After Approved Rate Adjustments	After Approved Rates Based on Fair Value Equity
Net operating income for return	$ 5,316,805	$ 6,372,297	$ 6,372,297
Add: Other income net	289,400	289,400	289,400
Income available for fixed charges	5,606,205	6,661,697	6,661,697
Fixed charges	3,226,399	3,226,399	3,226,399
Preferred dividends	418,522	418,522	418,522
Income available for common stockholders	1,961,284	3,016,776	3,016,776
Common equity	21,548,402	21,548,402	34,964,645
Return on common equity - percent	9.10	14.0	8.63

Capital Structure - Per Books - North Carolina	Amount	Percent of Total	Interest Requirements
Long-term debt	$41,465,490	54.86	$2,678,310
Short-term debt	6,797,620	8.99	492,278
Preferred stock	5,344,666	7.07	418,522
Total debt	53,607,776	70.92	3,589,110
Investment tax credit deferred prior to 1971	692,851	.92	
Common equity capital	21,291,544	28.16	
Total capitalization	$75,592,171	100.00	$3,589,110

|3. Piedmont introduced into evidence a cost of service study for the purpose of showing the cost of providing service as between customers, as well as a value of service study as shown by competitive rates for alternate fuels, and also showed the company's rate history as determined by the previous rate structure. The Commission has determined that for the purposes of this case greater weight should be given to historical pricing and the value of service concept than to the cost of service study for the reason that the various changes currently taking place within the pipeline industry as regulated by the Federal Power Commission would tend to make any rates predicated on Transco's purchased gas cost misleading and invalid as the sole basis for pricing at this time.

|4. Due to the current gas supply situation Piedmont has had in effect since early |970 a restrictive sales program approved by this Commission which substantially restricts new sales to residential users only and which prevents Piedmont from expanding its services into communities not now served by it. The Commission concludes that the current natural gas supply will not be substantially alleviated in the future, and that therefore Piedmont, as well as other natural gas distributors in North Carolina, should refrain from engaging in promotional practices or in the use of promotional advertising which would entice and encourage the use of natural gas, and that expenditures for such purposes should not be allowed as reasonable operating expenses in the future until this Commission shall order otherwise. In view of the fact that the Commission has not heretofore instructed the natural gas distributors in North Carolina with regard to these matters, it would not be fair to exclude such expenses as reasonable operating expenses in the determination of this rate proceeding, and accordingly, we have not done so. In further elaboration of these matters, the Commission concludes that educational and informational advertising practices and programs which educate the public as to the appropriate use of natural gas and the conservation of energy are valid and reasonable and should not be discouraged.

|5. Piedmont has certain contract schedules covered by filed tariff which have not been increased except for tracking increases since the contracts were signed in the late |960s. The Commission concludes that in future rate cases that these rates should be subject to review and consideration, along with all of the rate schedules in effect at the time of any general rate proceedings affecting this company.

|6. Chapter |3 of the Commission's Rules and Regulations was promulgated on June 26, |972 in order to comply with requirements of the Price Commission established by Executive Order under authority of the Economic Stabilization Act of |970. Inasmuch as the Price Commission and its reporting and reviewing procedures appear to have been superseded by subsequent Executive action, the

Utilities Commission is currently considering the repeal of our Chapter 13 although we are awaiting clarification of the Price Commission's current posture before doing so. While we have made no Price Commission findings under Chapter 13, we have concluded that the additional revenues approved herein are cost-justified and are necessary under the North Carolina statutory rate-making procedure; we will, accordingly, provide a separate certificate to the Price Commission upon request.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Piedmont Natural Gas Company, Inc., shall file revised tariffs in accordance with Rate Schedules listed in Appendix "A" attached hereto which tariffs shall be made effective on all gas consumed on and after October 10, 1972.

2. Piedmont shall refund all sums collected on its rates charged under its Undertaking since October 10, 1972 to the extent that said rates have resulted in charges in excess of those which would have resulted from and upon the schedule of rates allowed herein and set forth in Appendix "A". In calculating said refunds, Piedmont shall include interest on the excess charges at the rate of 6% per annum. The refund to existing customers shall be accomplished by a credit against the current billing. All other refunds shall be paid in cash; provided, however, that no cash refund shall be required where the amount refunded (including interest) is not in the sum of $1.00 or more.

3. That Piedmont Natural Gas Company, Inc., shall file a report as to the disposition of refunds within 90 days from the date of this order.

4. That when the refunds are made as required herein, the undertaking filed by Piedmont Natural Gas Company, Inc., in this cause be, and is hereby cancelled and terminated.

5. The Commission has provided in past tracking orders that in the event any rate changes occurring in the wholesale rate to Piedmont results in refunds to Piedmont or rate reductions to Piedmont, that these refunds be placed in Account 253 and that any rate reductions be filed on one day's notice. The Commission reaffirms its position in this matter.

6. That Rate Schedules 10 and 10A attached hereto include an amount of $464,761 in tracking increases approved by the Commission in Docket No. G-9, Sub 105 and Sub 109 which permit Piedmont to recoup additional cost of gas to it from Transcontinental Gas Pipe Line Corporation. Said amended schedules marked Appendix "A" are attached to this Order.

7. That Rate Schedule No. 5 as attached hereto corrects a typographical error to change the demand charge from $4.875 to $5.10.

8. That from October 10, 1972 through November 14, 1972 Piedmont Natural Gas Company, Inc., was permitted by Order of this Commission to track increases in cost of gas to it from Transcontinental Gas Pipe Line Corporation and since that time has filed reduced rates to eliminate such increases due to the operation of the Memoranda Account as established by the Commission in Docket No. G-9, Subs 92, 94, 97, 98 and 100 and therefore, Piedmont Natural Gas Company, Inc., is not required to refund any of the funds collected ($68,468) to cover tracking increases during the period October 10, 1972 through November 14, 1972.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

*Commissioner Rhyne resigned on December 28, 1972, and did not participate in the decision. Commissioner Roney did not participate in the decision.

NOTE: See official Order in the Office of the Chief Clerk for Appendix "A" containing Rate Schedules.

DOCKET NO. G-5, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company of N. C., Inc., for an Adjustment of Its Rates and Charges Under G.S. 62-133(f)	))))	ORDER VACATING ORDER OF SUSPENSION AND APPROVING TRACKING INCREASE

BY THE COMMISSION. On September 1, 1972, Public Service Company of North Carolina, Inc., (Public Service) in Docket No. G-5, Sub 86, filed an application with the North Carolina Utilities Commission under G. S. 62-133(f) requesting authority to increase its rates to its customers in order that it might recover increases in the cost of gas to it from its wholesale supplier, Transcontinental Gas Pipe Line Corporation (Transco). In this filing Public Service sought to recover an increase in the cost of gas to it of .8¢ per MCF effective October 1, 1972.

On September 28, 1972, the Commission issued an order suspending the tariffs filed by Public Service in this docket. On October 6, 1972, Public Service filed a Motion in which it requested the Commission to vacate its Order of Suspension. The Motion further requested that the Commission approve the Undertaking filed by Public Service in lieu of a bond as permitted in G. S. 62-135 and further

that the tariffs filed by Public Service be allowed to go into effect on all bills rendered on and after October 31, 1972.

On October 18, 1972, the Commission issued an order denying Public Service's request that the Commission vacate its Order of Suspension issued on September 28, 1972. The order further approved the Undertaking filed by Public Service pursuant to G. S. 62-135 and allowed tariffs filed on one day's notice to become effective on all bills rendered on and after October 31, 1972.

In this filing Public Service is seeking to recover an increase in the cost of gas to it of .8¢ per MCF. This increase of .8¢ per MCF is composed of .2¢ per MCF increase which represents increases in the cost of gas to Transco from its suppliers. Six tenths of a cent per MCF represents unrecovered gas cost which Transco has incurred and which Transco is seeking to recover pursuant to the settlement agreement approved by the Federal Power Commission (FPC) under Docket No. RP71-118. The .6¢ per MCF increase in the cost of gas will be collected for a period of approximately twelve months or until Transco has recovered its unrecovered gas cost of $5,443,902 and at that time the rate to Public Service will be reduced by Transco accordingly.

In Docket No. RP71-118 Transco proposed to reduce its rates due to the elimination of the curtailment tracking increases. This reduction will not affect Public Service's rates until Public Service recovers all increases relating to curtailment as authorized by this Commission in Docket No. G-5, Sub 84, at which time Public Service is required to reduce its rates as required by order of this Commission.

The increase in rates sought by Public Service in this docket is .88¢ per MCF (.8¢ per MCF cost of gas increase plus related gross receipts taxes) and will result in an annual increase in cost of gas to Public Service's customers of $413,525.

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 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 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:

1) Schedules of Public Service's rates and charges presently in effect.

2) Schedule of the rates and charges proposed by Public Service to recover the Transco increase of 0.8¢ per MCF.

3) End of period net investment at May 31, 1972.

4) Statement of present fair value rate base.

5) Statement showing accumulated depreciation balances and depreciation rates.

6) Statement of materials and supplies necessary for operation of the petitioner's business.

7) Statement showing amount of cash working capital which Public Service finds necessary to keep on hand.

8) Statement of net operating income for return for twelve months ended May 31, 1972.

9) Statement showing effect of proposed increase in rates and rates of return.

10) Balance sheet at May 31, 1972, and income statement for the year ended May 31, 1972.

11) Computation of increased cost of purchased gas.

12) Copy of Transco's tariff.

13) Copy of Notice to Public.

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 in this docket was given to the public by Public Service inserting a public notice in various newspapers throughout its service area in North Carolina.

Based on the application as filed and the records of the Commission in this docket, the Commission makes the following

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) The increase in the cost of gas which Public Service is seeking to recover in Docket No. G-5, Sub 86, has been approved by the Federal Power Commission effective October 1, 1972.

3) Public Service filed tariffs to recover this increase in the cost of gas plus related gross receipts taxes which went into effect under the Undertaking on all bills rendered on and after October 31, 1972. All tariffs were increased by .88¢ per MCF.

4) That the rate of return as approved by the Commission in the last general rate case, Docket Nos. 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 listed below:

	Approved in Docket Nos. G-5, Sub 71 and Sub 77 September 30, 1970	Present Filing
On investment	7.99	7.85
On equity	16.5	13.23

The return on end of period investment and return on equity in these proceedings have decreased from that found just and reasonable by the Commission in the last rate of return filing approved by this Commission and made effective May 27, 1971, after the adjustments for the proposed increases as applied for herein.

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 supplier 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 therein, if the Commission concludes from such review and analysis that the filings will not result in an increase in the company's rate of return over that most recently approved by the Commission, that the pass-on of the wholesale increased cost of gas will 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.

The Commission concludes that in this proceeding the rate of return of Public Service has decreased since the last general rate proceeding in Docket Nos. G-5, Sub 71 and Sub 77, which order was issued on May 27, 1971.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by Public Service Company that seeks solely to recover increases in the cost of gas to it from its supplier 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.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1) That the Commission's Order of Suspension issued September 28, 1972, in Docket No. G-5, Sub 86 be, and is hereby, vacated.

2) That the tariffs filed by Public Service Company of North Carolina, Inc., in Docket No. G-5, Sub 86, which went into effect pursuant to the Undertaking on all bills rendered on and after October 31, 1972, be, and are hereby, authorized to become effective as filed.

3) That at such time that the rate to Public Service Company of North Carolina is reduced as a result of Transcontinental Gas Pipe Line Corporation having collected its unrecovered gas cost that Public Service Company of North Carolina, Inc., shall immediately file on one day's notice reduced tariffs reflecting this change plus applicable gross receipts taxes.

4) 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, Public Service Company of North Carolina, Inc., shall immediately file tariffs reflecting corresponding decreases in its tariffs as authorized herein.

5) In the event any refunds are received by Public Service Company of North Carolina, Inc., from Transcontinental Gas Pipe Line Corporation as a result of action by the Federal Power Commission or if producer refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to Public Service Company of North Carolina, Inc., all such refunds, if any, shall be placed in the Restricted Account No. 253 "Other Deferred Credits" and shall be held in said restricted account subject to disposition and direction by the North Carolina Utilities Commission. Information concerning future refunds shall be furnished the Commission not less than 15 days from the date of receipt, the information shall

include the source thereof including the docket numbers and order dates of any proceeding involved in such refunds.

6) 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 17th day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
NOTICE

Upon application by Public Service Company of North Carolina, Inc., the North Carclina Utilities Commission approved increased rates on all bills rendered on and after October 31, 1972. The increase approved results in an increase of .88¢ per MCF on all rate schedules. This increase allows Public Service Company of North Carolina, Inc., to recover only the increase in cost of gas to it from its supplier, Transcontinental Gas Pipe Line Corporation, plus related gross receipts taxes, which increase has been approved by the Federal Power Commission.

DOCKET NO. G-5, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing by Public Service Company of North Carolina, Inc., of a Report Entitled "Report on Depreciation Rates" Based on the Calendar Year 1972	)	ORDER APPROVING DEPRECIATION RATES

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

Pursuant to that rule, Public Service Company of North Carolina, Inc., (Public Service) filed its original study in 1966 and on December 3, 1969, Public Service filed with this Commission its second report entitled "Public Service Company of North Carolina, Inc., Report on Study of Depreciation Rates as of December 31, 1968". On December

20, 1972, Public Service filed its third report entitled "Public Service Company of North Carolina, Inc., Report on Depreciation Rates," based on the calendar year 1972.

Public Service requests that the rates determined by this report as shown on Table 1 under the designation listed "Proposed - Annual Rate - %" column be approved and authorized pursuant to the Commission's Rule R6-80. The report shows an increase in depreciation rates on a composite basis from 2.96 percent to 3.08 percent which results in an annual increase in depreciation expense of $107,031. The major items making up this increase results from increases in six major categories (listed below) because of recent mortality experience and allowance for depreciation of transmission right of way because of the current gas supply situation.

Transmission Plant	
369 Measuring and Regulating Station Equipment	$ 17,302
Distribution Plant	
380 Services	34,589
385 Industrial M & R Station Equipment	15,986
General Plant	
392 Transportation Equipment - Cars	6,825
396 Power Operated Equipment	5,699
365.2 Transmission Right of Way	26,630
Increase in Depreciation Expenses	$107,031

Public Service's proposal further requested that the remaining life of depreciable transmission and distribution plant added during the years of 1973, 1974, and 1975, be decreased for each year of additions so that Public Service will have recovered through depreciation all depreciable plant costs over the next 40 years.

After full consideration of the detailed report and work papers as filed by Public Service Company of North Carolina, Inc., the Commission is of the opinion that the annual depreciation rates as set forth on Table 1 under the column entitled, "Proposed - Annual Rate - %" of the report entitled, "Public Service Company of North Carolina, Inc., Report on Depreciation Rates" filed on December 20, 1972, are reasonable and should be approved and authorized pursuant to the Commission's Rule R6-80.

The Commission is further of the opinion that the proposal by Public Service to change the remaining life of transmission and distribution plant for each year of additions as proposed in their filing should be rejected. Public Service is required under Rule R6-80 to file depreciation studies every third year and Public Service can propose any alterations to these depreciation rates based on conditions existing at the time of the next review and the

Commission will have the opportunity to review and consider same.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

That the depreciation rates set forth on Table I in the column entitled "Proposed - Annual Rate %" of the study entitled "Public Service Company of North Carolina, Inc., Report on Depreciation Rates," filed on December 20, 1972, be and are hereby approved and authorized for use by Public Service Company of North Carolina, Inc., pursuant to Rule R6-80.

That no changes shall be made in depreciation rates approved herein without the approval of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 91

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service Company of)
North Carolina, Inc., for an Adjustment) ORDER APPROVING
of Its Rates and Charges) TRACKING INCREASE

BY THE COMMISSION: On March 1, 1973, Public Service Company of North Carolina, Inc., ("Public Service") filed an alternative Application with the North Carolina Utilities Commission in this Docket No. G-5, Sub 91, in which it seeks to increase its rates to its customers in order that it might recover increases in the cost of gas to it from its wholesale supplier, Transcontinental Gas Pipe Line Corporation (Transco). In its filing with the Federal Power Commission (FPC), Transco is seeking to recover an increase in the cost of gas to it of $.014 per Mcf effective April 1, 1973. This increase of $.014 per Mcf is composed of $.008 per Mcf increase which represents increases in the cost of gas to Transco from its suppliers, while $.006 per Mcf represents unrecovered gas cost which Transco has incurred and which Transco is seeking to recover pursuant to its purchased gas adjustment clause approved by the Federal Power Commission (FPC) under Docket No. RP73-3. The $.014 per Mcf increase in the cost of gas will be collected for a period of approximately six months or until Transco has recovered its unrecovered gas cost and at that time the rate to Public Service will be adjusted to Transco accordingly.

The increase in rates sought by Public Service in this Docket is $.0155 per Mcf ($.014 per Mcf cost of gas increase plus related gross receipts taxes) and will result in an annual increase in cost of gas to Public Service's customers of $715,202.

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 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 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 in this proceeding:

1. Summary of Public Service's present rates and charges as filed with this Commission in Docket No. G-5, Sub 86.

2. Schedules of the proposed rates and charges which Public Service seeks to place in effect on April 1, 1973, in this Docket No. G-5, Sub 91.

3. Statement of net investment at original cost.

4. Statement of present fair value rate base.

5. Statement showing plant balances and accrued depreciation balances and depreciation rates.

6. Statement of materials and supplies necessary for operation of the Applicant's business.

7. Statement showing amount of cash working capital which Applicant finds necessary to keep on hand.

8. Statement of net operating income for return for twelve months ended December 31, 1972.

9. Statement showing effect of proposed increase in rates.

10. Balance sheet and income statement for the year ended December 31, 1972.

11. Statement showing rate of return on rate base.

12. Statement showing rate of return on equity.

13. A copy of the Federal Power Commission Order, under which the wholesale price increase is to be incurred, will be submitted as a late exhibit filed when available.

The additional data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staffs and a report of same submitted to the Commission for its consideration. Staff accounting and pro forma adjustments to the Applicant's figures as filed are indicated in the comparison below:

RATE OF RETURN	APPROVED IN DOCKET NO. G-5, SUBS 71 & 77	PER COMPANY	PER STAFF
On Investment	7.99%	7.64%	8.22%
On Equity	16.50%	13.93%	15.63%

The reasons for the staff's figures being higher than the Company's are as follows:

1. Public Service proposed a reduction in revenue of $1,369,356 to reflect the effect of the proposed Transco curtailment policy. The staff disallowed this entry because the amounts to be curtailed are estimates and at this point in time no one knows what amounts will be curtailed.

2. That Public Service proposed a reduction in cost of gas to cover the estimated additional curtailment. This was disallowed also in accordance with not allowing the revenue adjustment.

3. Public Service proposed an increase in its cost in connection with its operation of the propane-air plant. From the Staff examination of the Company's work papers it appears that the added expense the Company expects to incur is for additional propane. Therefore, the staff disallowed this adjustment of $76,800 inasmuch as an increase in revenues should be sufficient to cover the increased propane consumption.

4. Taxes were adjusted following the preceding adjustments to revenues and expenses.

5. The allowance for working capital was reduced by $1,974,057 to reflect the average tax accruals during the year plus one-sixth of the staff's entries to taxes.

Notice of the proposed filing in this docket was given to the public by Public Service by inserting a public notice in various newspapers throughout its service area in North Carolina.

Based on the application as filed and the records of the Commission in this docket, the Commission makes the following

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 the increase in the cost of gas which Transco is seeking to recover in Docket No. RP73-3, has been approved by the Federal Power Commission effective April 1, 1973.

3. That Public Service filed tariffs to recover this increase in the cost of gas plus related gross receipts taxes to become effective on all bills for gas consumed on and after April 1, 1973. All tariffs will be increased by $.0155 per Mcf.

4. That the rates of return as found to be just and reasonable by the Commission in the Order in Docket No. G-5, Sub 71 and Sub 77 issued on May 27, 1971, for the test period ending Sept. 30, 1970, and those determined by the Commission in this docket are listed below:

	Approved in Docket No. G-5, Subs 71 & 77	After Proposed Tracking Increase
On investment	7.99	8.22
On Equity	16.50	15.63

5. That the rate of return on end-of-period investment after the adjustments for the proposed increases as applied for herein has increased somewhat from that found just and reasonable by the Commission in its general rate case order issued May 27, 1971, and the rate of return on common equity has decreased from that found just and reasonable in said order.

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 supplier 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 therein, if the Commission concludes from such review and analysis that the filings will not result in an increase in the company's rate of return as set forth in subsection (9) thereof, over that most recently approved by the Commission, that the pass-on of the wholesale increased cost of gas will 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.

The Commission concludes that in this proceeding the rate of return on Public Service on common equity has decreased since the last general rate proceeding in Docket No. G-5, Subs 71 and 77, which order was issued on May 27, 1971, although the rate of return on investment has increased as based on figures found hereinabove.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by Public Service that seeks solely to recover increases in the cost of gas to it from its supplier as approved by the Federal Power Commission, insofar as it will not result in an increase in the rate of return on common equity, should be allowed as a filing pursuant to G. S. 62-133(f) and should be permitted to become effective without hearing.

IT IS, THEREFORE, ORDERED, as follows:

1. That the tariffs filed by Public Service as Exhibit No. 2 in this Docket No. G-5, Sub 91, be, and are hereby, authorized to become effective on all bills for gas consumed on and after April 1, 1973.

2. That at such time that the rate to Public Service reduced as a result of Transcontinental Gas Pipe Line Corporation having collected its unrecovered gas cost, Public Service Company of North Carolina, Inc., shall immediately file on one day's notice reduced tariffs reflecting this change plus applicable gross receipts taxes.

3. 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, Public Service shall immediately file tariffs reflecting corresponding decreases in its tariffs as authorized herein.

4. That in the event any refunds are received by Public Service from Transcontinental Gas Pipe Line Corporation as a result of action by the Federal Power Commission or if producer refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to Public Service, all such refunds, if any, shall be placed in the Restricted Account No. 253, "Other Deferred Credits" and

shall be held in said restricted account subject to disposition and direction by the North Carolina Utilities Commission. Information concerning future refunds shall be furnished the Commission not less than 15 days from the date of receipt; the information shall include the source thereof including the docket numbers and order dates of any proceeding involved in such refunds.

5. 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 30th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

Upon application by Public Service Company of North Carolina, Inc., the North Carolina Utilities Commission approved increased rates on all bills for gas consumed on and after April 1, 1973. The increase approved results in an increase of $.0155 per Mcf on all rate schedules. This increase allows Public Service to recover only the increase in cost of gas to it from its supplier, Transcontinental Gas Pipe Line Corporation, which has been approved by the Federal Power Commission, plus related gross receipts taxes.

DOCKET NO. G-5, SUB 94

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service	)	ORDER ESTABLISHING
Company of North Carolina,	)	DEFERRED ACCOUNT FOR
Inc., for an Adjustment of	)	TRACKING UNRECOVERED
Its Rates and Charges	)	GAS COST

BY THE COMMISSION. On September 4, 1973 Public Service Company of North Carolina, Inc. (Public Service) filed a letter petition in which it requested authority to recover increases in the cost of gas to it for the period August 13 - 31, 1973 and the difference between the cost of gas as identified by the rates listed in Appendix A and Appendix B in this Commission's Order of August 16, 1973 from September 1, 1973 by debits or credits to a deferred account. This action is necessary because the Federal Power Commission has not taken any final action on tariffs filed by Transcontinental Gas Pipe Line Corporation (Transco). Transco, however, is authorized under the Natural Gas Act to place in effect on August 13, 1973, Appendix A rates as

shown in this Commission's Order dated August 16, 1973 subject to change or refund. Public Service proposes to record the differences in the cost of gas to a deferred account for future tracking as required.

On August 16, 1973 this Commission issued an order in the above captioned matter in which it approved increased rates for Public Service in order to recover increases in cost of gas to it from Transco as approved by the Federal Power Commission. The rates approved were based on the "Settlement Rates" as filed for by Transco and as listed as Appendix B attached to the order of the Commission dated August 16, 1973. The effective date of the increased rates as approved by this Commission for Public Service was on all gas consumed on and after September 1, 1973 which was the effective date of the "Settlement Rates" in the settlement filing with the Federal Power Commission.

Public Service was advised on August 31, 1973 that the Federal Power Commission had not issued an order with respect to Transco's application in Federal Power Commission Docket No. RP73-69 and RP72-99. Accordingly, Transco will place into effect subject to adjustment and/or refund, the rates which it filed with the Federal Power Commission on May 30, 1973 which rates were attached to this Commission's Order of August 16, 1973 as Appendix A.

The Commission's Order of August 16, 1973 authorized Public Service to file on one day's notice revised tariffs to reflect rates higher or lower than the Transco "Settlement Rates" as approved by the Federal Power Commission. The Federal Power Commission has not issued an order in this matter and in accordance with the Natural Gas Act and the Rules and Regulations of the Federal Power Commission, Transco will begin collecting higher rates than the "Settlement Rates" effective August 13, 1973. It is anticipated that the Federal Power Commission will ultimately approve the "Settlement Rates" and in order to avoid collecting excessive amounts from its customers which Public Service would be required to refund and at the same time permit Public Service to recover only the increased cost of gas to it from August 13, 1973, Public Service request the Commission's approval of the following:

1. Public Service will place into effect the rates approved in Docket No. G-5, Sub 94 effective September 1, 1973.

2. Amounts billed by Transco in excess of the rates included in Appendix B of the Order dated August 16, 1973, in Docket No. G-5, Sub 94, will be charged to a deferred account.

3. Any refund of amounts collected by Transco as ordered by the FPC will be credited to the deferred account.

4. Public Service will file on one day's notice revised rate schedules to reflect any changes in Transco's rates from their proposed "Settlement Rates" as approved by the FPC.

5. The balance, if any, remaining in the deferred account would be transferred to the memo account.

6. Public Service would be authorized to recover or refund the balance in the memo account through an increase or decrease in its rates for such time and in such amount as approved by the Commission.

The Commission is of the opinion that the approval of the action requested by Public Service would permit Public Service to recover only the cost of gas to it as approved by the Federal Power Commission. Public Service will receive no additional net income as a result of this action.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1) That Public Service Company of North Carolina, Inc., be and is hereby authorized to charge to a deferred account amounts collected by Transcontinental Gas Pipe Line Corporation in excess of the rates included in Appendix B of the Commission's order dated August 16, 1973 in Docket No. G-5, Sub 94 from September 1, 1973, until such time as a final order is issued by the Federal Power Commission in FPC Docket No. RP73-69 and RP72-99.

2) That Public Service Company of North Carolina, Inc., be authorized to charge to the deferred account amounts collected by Transcontinental Gas Pipe Line Corporation during the period August 13 - 31, 1973 in excess of the rates in effect on April 1, 1973 as approved by the Federal Power Commission for Transcontinental Gas Pipe Line Corporation.

3) That Public Service Company of North Carolina, Inc., shall credit to the deferred account any refund of amounts collected by Transcontinental Gas Pipe Line Corporation as ordered by the Federal Power Commission.

4) That Public Service Company of North Carolina, Inc., shall file on one day's notice revised rate schedules to reflect any changes in Transcontinental Gas Pipe Line Corporation's rates from its proposed settlement rates as approved by the Federal Power Commission.

5) That Public Service Company of North Carolina, Inc., shall transfer to the memoranda account any balances remaining, if any, in the deferred account.

6) Public Service Company of North Carolina, Inc., shall file a monthly report reflecting the authorization herein granted.

7) That this docket shall remain open for such further orders as are required.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. G-1, SUB 38

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 APPROVING TRACKING INCREASE

BY THE COMMISSION: On March 15, 1973, United Cities Gas Company ("United Cities") filed an Application with the North Carolina Utilities Commission in which it seeks to increase its rates to its customers in order that it might recover increases in the cost of gas to it from its wholesale supplier, Transcontinental Gas Pipe Line Corporation (Transco) in the amount of $.008 per Mcf effective October 1, 1972 and further increases pursuant to Transco's February 13, 1973 filing with the Federal Power Commission (FPC) seeking to recover an increase in the cost of gas to it of $.014 per Mcf effective April 1, 1973. The proposed increase of $.022 per Mcf consists of the $.006 per Mcf increase effective October 1, 1972, plus the $.008 per Mcf increase effective April 1, 1973 which represent increases in the cost of gas to Transco from its suppliers, and the $.008 per Mcf representing unrecovered gas cost which Transco has incurred and which Transco is seeking to recover pursuant to its purchased gas adjustment clause approved by the Federal Power Commission (FPC) under Docket No. RP73-3. The $.008 per Mcf increase in the cost of gas effective April 1, 1973 will be collected for a period of approximately six months or until Transco has recovered its unrecovered gas cost and at that time the rate to United Cities will be adjusted by Transco accordingly.

The increase in rates sought by United Cities in this docket is $.022 per Mcf and will result in an annual increase in cost of gas to United Cities' customers of $23,051.

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 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 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 United Cities filed the following data in this proceeding:

1. Summary of United Cities present rates and charges.

2. Schedules of the proposed rates and charges which United Cities seeks to place into effect on April 15, 1973.

3. Statement of net investment at original cost.

4. Statement showing plant balances and accrued depreciation balances and depreciation rates.

5. Statement of materials and supplies necessary for operation of the Petitioner's business.

6. Statement showing amount of cash working capital which Petitioner finds necessary to keep on hand.

7. Statement of net operating income for return for twelve months ended December 31, 1972.

8. Statement showing effect of proposed increase in rates.

9. Balance sheet and income statement for the year ended December 31, 1972.

10. Statement showing rate of return on rate base.

11. Statement showing rate of return on equity.

12. A copy of the Federal Power Commission order, under which the wholesale price increase effective October 1, 1972, was incurred.

The data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staffs and a report of same submitted to the Commission for its consideration. Staff accounting and pro forma adjustments to the Applicant's figures as filed are indicated in the comparison below:

RATE OF RETURN	APPROVED IN DOCKET NO. G-5, Subs 71 & 77	PER COMPANY	PER STAFF
On Investment	7.99%	7.90%	8.14%
On Equity	12.01%	8.82%	11.74%

The reasons for the staff's figures being higher than the Company's are as follows:

1. The staff made an adjustment to the interest expense allocated to North Carolina which reduced the taxable income.

2. The company used an improper figure in its tax calculations for the surtax exemption for consolidated tax returns and the net difference shows a slight increase in tax expense.

3. The staff developed the investment tax credit amount from the operating reports received here monthly.

4. The staff developed from the monthly reports the average tax accruals deducted from the working capital allowance.

5. The staff used an embedded cost of 7.66% and 6.122% for long-term debt and short-term debt, respectively, while the company used 7.66% for both classes of debt.

The data as filed was reviewed and analyzed by the Commission's Accounting and Engineering Staffs and a report of same submitted to the Commission for its consideration.

Notice of the proposed filing in this docket was given to the public by United Cities by inserting a public notice in a newspaper in general circulation in its service area in North Carolina.

Based on the Petition as filed and the records of the Commission in this docket, the Commission makes the following

FINDINGS OF FACT

1. That United Cities Gas Company is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2. That the increase in the cost of gas which Transco sought to recover in Docket Nos. RP 71-118 became effective October 1, 1972 and the increase which Transco sought to recover in Docket No. RP 73-3, has been approved by the Federal Power Commission effective April 1, 1973.

3. That United Cities filed tariffs to recover these increases in the cost of gas to become effective on all meter readings on and after April 15, 1973. All tariffs will be increased by $.022 per Mcf.

4. That the rates of return as found to be just and reasonable by the Commission in the Order in Docket No. G-1, Sub 30 issued on December 3, 1971 for the test period ending March 31, 1971, and those determined by the Commission in this docket are listed below:

	APPROVED IN DOCKET NO. G-1, SUB 30	AFTER PROPOSED TRACKING INCREASE
On investment	7.99%	8.14%
On equity	12.01%	11.74%

5. That after the adjustments for the proposed increases as applied for herein the rate of return on end of period investment has increased somewhat and the rate of return on equity has decreased from that found just and reasonable by the Commission in its general rate case order issued December 3, 1971.

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 increase in cost of gas to them from their wholesale supplier 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 therein, if the Commission concludes from such review and analysis that the filings will not result in an increase in the company's rate of return over that most recently approved by the Commission, that the pass-on of the wholesale increased cost of gas will 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.

The Commission concludes that in this proceeding the rate of return on common equity of United Cities has decreased since the last general rate proceeding in Docket No. G-1, Sub 30, which order was issued on December 3, 1971.

Based on the foregoing Findings of Fact and Conclusions, the Commission is of the opinion that the rate increase as filed by United Cities that seeks solely to recover

increases in the cost of gas to it from its supplier 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.

IT IS, THEREFORE, ORDERED, as follows:

1. That the tariffs filed by United Cities as Exhibit No. 2 in this Docket No. G-1, Sub 38 be, and are hereby, authorized to become effective on all bills for meters read on and after April 15, 1973.

2. That at such time as the rate to United Cities is reduced as a result of Transcontinental Gas Pipe Line Corporation having collected its unrecovered gas cost, United Cities shall immediately file on one day's notice reduced tariffs reflecting this change.

3. 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, United Cities shall immediately file tariffs reflecting corresponding decreases in its tariffs as authorized herein.

4. That in the event any refunds are received by United Cities from Transcontinental Gas Pipe Line Corporation as a result of action by the Federal Power Commission or if producer refunds flow through to Transcontinental Gas Pipe Line Corporation which are in turn passed on to United Cities, all such refunds, if any, shall be placed in the Restricted Account No. 253 "Other Deferred Credits" and shall be held in said restricted account subject to disposition and direction by the North Carolina Utilities Commission. Information concerning future refunds shall be furnished the Commission not less than 15 days from the date of receipt, the information shall include the source thereof including the docket numbers and order dates of any proceeding involved in such refunds.

5. 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 10th day of April, 1973.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"

Upon application by United Cities Gas Company the North Carolina Utilities Commission approved increased rates on

all bills for meters read on and after April 15, 1973. The increase approved results in an increase of $.022 per Mcf on all rate schedules. This increase allows United Cities Gas Company to recover only the increase in cost of gas to it from its supplier, Transcontinental Gas Pipe Line Corporation, which has been approved by the Federal Power Commission.

DOCKET NO. G-5, SUB 93

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Public Service Company of North Carolina Incorporated -- Application for Authority to Issue and Sell $8,000,000 Principal Amount of Its First Mortgage Bonds, 8% Series I, Due 1998	))))	ORDER GRANTING AUTHORITY TO ISSUE AND SELL FIRST MORTGAGE BONDS

This cause comes before the Commission upon an application of Public Service Company of North Carolina, Incorporated (Company), filed under date of March 14, 1973, through its Counsel, Mullen, Holland & Harrell, P. A., Gastonia, North Carolina, wherein authority of the Commission is sought as follows:

1. To issue and sell $8,000,000 principal amount of First Mortgage Bonds, 8% Series I, due 1998, to institutional investors for cash at 100% of the principal amount thereof, plus accrued interest from April 1, 1973, to the time of delivery of said bonds; and

2. To execute and deliver to a certain Trustee a Ninth Supplemental Indenture dated as of April 1, 1972, to an amended original Indenture of Mortgage dated as of January 1, 1952, to secure payment of said Series I Bonds.

FINDINGS OF FACT

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

2. As of the date of filing of the application, the Company had $6,500,000 principal amount of short-term notes outstanding to banks for money required for construction of lines, systems, services and facilities. During the period from November 1, 1970 and ending December 31, 1972, the

Company expended $|2,609,|33 on the Company's construction program. The entire proceeds of $6,500,000 of said notes were applied toward defraying the cost of said construction, and the balance of such cost was paid from funds generated internally by the Company. The Company proposes to expend $4,500,000 on its |973 construction program.

3. The Company now proposes to issue and sell $8,000,000 principal amount of First Mortgage Bonds, 8% Series I, due |998, (the Series I Bonds) by means of an already negotiated transaction to nine institutional investors, $5,000,000 of the Series I Bonds to be delivered and the purchase thereof consummated on or about April |0, |973, (but not later than April 27, |973) for cash at |00% of the principal amount thereof, plus interest from April |, |973, to the date of delivery, and $3,000,000 of the Series I Bonds to be delivered and the purchase thereof consummated on or about July |0, |973, (but not later than July 3|, |973) for cash at |00% of the principal amount thereof, plus interest from April |, |973, to the date of delivery; and further, in connection with said proposed issuance and sale to execute and enter into with each of the nine institutional purchasers a Bond Purchase Agreement substantially in the form presented with the application as Exhibit C.

4. The Company proposes that the Series I Bonds will be created and issued under the Company's Indenture of Mortgage dated as of January |, |952, by and between the Company and The Marine Midland Trust Company of New York (now Marine Midland Bank - New York), as Trustee, as heretofore amended and supplemented and as to be further amended and supplemented by a Ninth Supplemental Indenture dated as of April |, |973, to be executed and delivered substantially in the form presented with the application as Exhibit B, and to thereby and to the extent as stated therein to pledge its faith, credit, properties, rights, privileges and franchises to secure payment of the Series I Bonds.

5. The Company represents that the Series I Bonds will be substantially in the form and contain the terms and provisions as set forth in said Ninth Supplemental Indenture, will be registered Bonds without coupons of the denomination of $|,000, or any multiple thereof, will be dated as provided in Section 3.05 of the Indenture dated as of January |, |952, will mature April |, |998, and will bear interest at the rate of 8% per annum, payable semiannually on April | and October | in each year.

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

CONCLUSIONS

From a review and study of the application, its supporting data and other information in the Commission's files, the

Commission is of the opinion and so concludes that the transactions herein proposed are:

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

(b) Compatible with the public interest;

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

(d) Reasonably necessary and appropriate for such purposes.

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

1. To issue and sell $8,000,000 principal amount of its First Mortgage Bonds, 8% Series I, due 1998, by means of a negotiated transaction to nine institutional investors at 100% of the principal amount thereof, plus interest from April 1, 1973, to the date of delivery, $5,000,000 of said Series I Bonds to be delivered and the purchase thereof consummated on or about April 1, 1973, (but not later than April 27, 1973) and $3,000,000 of said Series I Bonds to be delivered and the purchase thereof consummated on or about July 10, 1973, (but not later than July 31, 1973).

2. To make, execute and deliver a Ninth Supplemental Indenture in connection with the issuance and sale of said Series I Bonds substantially in the form presented with the application as Exhibit B, and thereby and to the extent as stated therein to pledge its faith, credit, properties, rights, privileges and franchises to secure payment of said Series I Bonds for the benefit of the holders of said Bonds;

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

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

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

6. To file with this Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within

a period of thirty (30) days following the completion of the transactions authorized herein;

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

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

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-311

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Kay Hutcherson Cardwell,) RECOMMENDED ORDER
d/b/a Cardwell Tours, Route 1, Box 199,) GRANTING BROKER'S
Mayodan, North Carolina for a Broker's) LICENSE
License.

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on September 18, 1973.

BEFORE: Hearing Commissioner Ben E. Roney.

APPEARANCES:

For the Applicant:

Mr. David M. Blackwell
Price, Osborne, Johnson and Blackwell
P. O. Box 346, Mayodan, North Carolina 27027

For the Commission Staff:

Mr. Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

No Protestants or Intervenors.

RONEY, HEARING COMMISSIONER. This matter came on for hearing before Commissioner Roney, sitting as a Hearing Commissioner in the Commission's Hearing Room, Raleigh, North Carolina, at 10:00 A.M., September 18, 1973, upon the Application filed June 5, 1973, by Kay Hutcherson Cardwell, d/b/a Cardwell Tours, Mayodan, North Carolina, for a license to engage in the general business of a broker in intrastate operations within the State of North Carolina; that is, to arrange passenger tours by motor vehicle, of passengers and their baggage, in round trip operations, using special charter services, beginning and ending at points in Rockingham County, North Carolina and extending therefrom to any and all points within the boundaries of the State of North Carolina.

Testimony in support of the Application was offered by the Applicant and her witness, Carol Webster, who is acquainted with Applicant's character and fitness and has used Applicant's services. Such testimony tends to show that Applicant is presently unemployed outside the home, where she and her husband operate a poultry business; that they have a net worth of $35,000 to $40,000; that Applicant currently possesses a Broker's License from the Interstate Commerce Commission and is bonded in that capacity; that Applicant has for the preceding four years operated successfully as a tour organizer, director and manager using the franchise of Greyhound Lines, Inc. - East; that she is not now connected with Greyhound in any way as employee or agent and was, during her previous association, an independent contractor; that she severed the previous relationship when she received her license from the Interstate Commerce Commission; that for the past four years she has managed or conducted some three to four tours a year, generally to points outside North Carolina, including Nashville, Georgia and the West Coast; that she has not violated any of the laws or regulations of North Carolina or of the United States with regard to these operations; that she proposes to use only those motor carriers authorized by the Commission to transport passengers as common carriers by motor vehicle in intrastate commerce in North Carolina, including, but not limited to, Greyhound; that sometimes she tries to organize tours herself and sometimes she is requested by groups or previous customers to do so; that Rockingham County has approximately 70,000 residents; that no similar service is available to such residents, and her experience shows a need and demand for such services; that she arranges on all tours for transportation and overnight accommodations, whose charges are fixed by the companies involved and by regulatory agencies including this Commission; that she pays all bills from funds prepaid by passengers and keeps what remains as her profit, which profit includes no commission or other compensation for sale of tickets on the carrier used; that she arranges for special or charter carrier services, not for the sale of tickets; that she is familiar with the North Carolina

Statutes and Rules of this Commission regulating the operations of brokers; that she has never experienced any difficulties of any kind in her previous operations and that she is prepared to post the performance bond required by the Rules of this Commission.

The witness Webster testified substantially as follows: that she has known the Applicant for many years and has been on one tour with her; that the Applicant has an excellent character and reputation; that the Applicant is fit, willing and able to properly perform the proposed service; that her mother and many of her mother's friends have been on all of Applicant's previous tours; that there is no similar service presently offered by anyone else in Rockingham County; that there is an active market and a need and demand for such service in Rockingham County by persons of all ages and occupations; and that, if Applicant's services were not available, almost all of the persons presently using such services would not travel because of the difficulty of making proper arrangements.

After careful consideration of all the evidence favorable to the Application and there being none to the contrary, the Commission is of the opinion and finds and concludes that:

(1) The Applicant is fit, willing and able to properly perform the proposed service and to conform to the statutory provisions and the Rules and Regulations of the Commission pursuant thereto.

(2) The proposed operation will be consistent with the public interest and will effectuate the declared policy set forth in North Carolina General Statutes 62-2 and 62-259.

(3) The Applicant is not a bona fide employee or agent of any motor carrier.

(4) The Applicant proposes to engage only those motor carriers authorized by this Commission to transport passengers as common carriers by motor vehicle in intrastate commerce in North Carolina.

(5) The proposed service is desired and will be used by the public.

IT IS, THEREFORE, ORDERED:

(1) That the Application in Docket No. B-311 be granted and that the Applicant be issued a license to engage in the business of a broker in the following territory: From points and places within Rockingham County, North Carolina, to any and all points within the State of North Carolina and return.

(2) That under the provisions of G. S. 62-263 and Rule R2-66(c) of the Commission, Applicant shall file with the North Carolina Utilities Commission a bond to be approved by

the Commission of not less than $5,000 in such form as will insure the financial responsibility of Applicant as a broker and will further insure the supplying of authorized transportation in accordance with agreements, contracts and arrangements therefor.

(3) That this Order shall become effective and a license issued to Applicant when she has fully complied with the bond provisions listed in the preceding paragraph.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-308

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Dorothy Gough, d/b/a Gough Tours, P. O. Box 5827, Winston-Salem, North Carolina - Application for a Broker's License.	)	ORDER GRANTING BROKER'S LICENSE

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on March 28, 1973, at 2:00 P. M.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Applicant:

Carl D. Downing, Esquire
White & Crumpler
2616 Wachovia Building
Winston-Salem, North Carolina

No Protestants.

WELLS, COMMISSIONER. This matter came on for hearing before Division III of the Commission, Commissioner Wells presiding, upon the application of Dorothy Gough, d/b/a Gough Tours, under the applicable provisions of Chapter 62 of the North Carolina General Statutes for a broker's license to engage in the business of a broker in arranging for the transportation of passengers and their baggage by motor vehicle in intrastate commerce from the Counties of Forsyth, Davidson, Guilford, Stokes, Surry and Rockingham,

to any and all points within the State of North Carolina. The application was set for hearing by Commission Order issued on March 1, 1973, and the original hearing was later rescheduled to the date, time and place, as captioned above, by Commission Order dated March 14, 1973.

No protests were received in response to the application, and no one appeared at the hearing to protest the application.

Mrs. Gough testified in support of her application, revealing in her testimony that she has been in the tour-director business for a considerable period of time, operating under an Interstate Commerce Commission license in arranging interstate tours. She conducts the business herself, arranging the trip itinerary, lodging, and meals in addition to transportation. She formerly was employed with the Greyhound Corporation and is an experienced person in arranging travel accommodations for others. In addition to her testimony, she filed certain exhibits in support of her application, including the affidavit of publication of the hearing of the application.

In addition to Mrs. Gough, Mrs. Diane Richardson of Winston-Salem testified in support of the application, revealing that she is the Youth Activity Supervisor for the City of Winston-Salem Recreation Department, and that she has known Mrs. Gough for a considerable period of time and knows her to be a conscientious and responsible person. Mrs. Richardson indicated that there was a significant demand for the type of service proposed to be offered by Mrs. Gough, and that she would recommend Mrs. Gough very strongly as a responsible and reliable tour director.

In addition to Mrs. Richardson, Mrs. Georgia Rhodes of Winston-Salem testified in support of the application, revealing that she is a member of the Ardmore Senior Citizens Club, and has been on many tours directed by Mrs. Gough, and that she recommends Mrs. Gough very highly. Mrs. Rhodes also testified that in her opinion there was a very great public need for such a tour service in the area which is the subject of this application.

Based upon the record herein, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant seeks a broker's license as described in G. S. 62-263(a) to engage in the business of a broker in intrastate operations within the State of North Carolina.

2. That the Applicant has applied for said license upon the form of application as prescribed by this Commission.

3. That the Applicant gave due notice of this hearing.

4. That the experience of the Applicant established that the Applicant is fit, willing and able to properly perform the proposed service and to conform with the provisions of law and Commission rules and regulations.

5. That the Applicant is neither an employee nor agent of any motor carrier.

6. That the proposed service is desired by the public and will be utilized by the public.

7. That the service as proposed upon the hearing of this matter to be authorized under said license is consistent with the public interest.

Based upon the foregoing Findings of Fact, the Commission CONCLUDES that upon the Applicant's compliance with the Commission's rules and regulations as set forth hereinafter, the license should be approved and granted.

IT IS, THEREFORE, ORDERED:

1. That the Applicant be, and hereby is, granted a broker's license to engage in the business of a broker in intrastate operations within the State of North Carolina in the territory described in Exhibit A attached hereto.

2. That this Order shall constitute said license until such time as a license shall have been issued by this Commission.

3. That prior to commencing operations as a broker in intrastate commerce in this State, that Applicant file with this Commission a Transportation Broker's Surety Bond in the amount of not less than $5,000 pursuant to the provisions of G. S. 62-263 and this Commission's Rule R2-66.

4. That Applicant commence operations under the license herein authorized within thirty (30) days from the date of this Order and comply with all rules and regulations of the Commission applicable to a broker.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-308 Dorothy Gough,
d/b/a Gough Tours
P. O. Box 5827
Winston-Salem, North Carolina

EXHIBIT A

To engage in business as a broker in intrastate commerce in the following territory:

From the Counties of Forsyth, Davidson, Guilford, Stokes, Surry and Rockingham to any and all points within the State of North Carolina.

DOCKET NO. B-275, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Coach Company - Proposed Plan for a New Union Bus Terminal Facility in the City of Elizabeth City, North Carolina	)	RECOMMENDED ORDER AUTHORIZING NEW UNION BUS TERMINAL IN ELIZABETH CITY, NORTH CAROLINA

HEARD IN: The Municipal Building, Elizabeth City, North Carolina, on September 21, 1972, at 9:30 a.m.

BEFORE: John W. McDevitt, Hearing Commissioner

APPEARANCES:

For the Applicant:

Arch T. Allen, III
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina

For the Protestants:

H. T. Mullen, Jr.
Whitehall & Mullen
Attorneys at Law
P. O. Box 304, Elizabeth City, North Carolina
For: Downtown Merchants Association

For the Commission Staff:

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

McDEVITT, COMMISSIONER. Carolina Trailways Company, on May 12, 1972, filed a proposal to construct a new union bus terminal facility in the City of Elizabeth City at the intersection of Hughes Boulevard and Gregory Street. Having received a letter from Counsel for the Businessmen's Association of Elizabeth City protesting the proposed relocation of the present bus terminal and requesting a

hearing, the Commission scheduled and held public hearing as captioned.

Three employees of Carolina Coach Company testified in support of the proposal and five residents of Elizabeth City testified about various aspects of the present and proposed locations and gave their opinions as to the effect of the proposal upon the business community and traveling public.

In summary, the testimony for witnesses of Carolina Coach Company, H. L. Creech, President, A. R. Guthrie, Director of Sales and Service, and J. E. Savin, Operator, tends to show that the present bus terminal located in downtown Elizabeth City at the intersection of Fearing and Poindexter Streets is not large enough and cannot be feasibly renovated to meet present and future needs; that it lacks parking space for customers and extra company equipment; that it lacks inside storage space for express; that it is accessible only via narrow and/or one-way streets which are inadequate and hazardous for the Company's large, intercity buses; that the present terminal is not located on nor conveniently near U. S. Highway 17 bypass which is the most desirable route for intercity schedules which serve Elizabeth City; that Carolina Coach operates eight schedules in each direction through Elizabeth City, all of which are important segments of passenger bus service between Norfolk and points to the north and Raleigh, Wilmington and points to the south; that the location of the present station adversely affects the quality of service to the traveling public which in the main moves through Elizabeth City without utilizing the terminal; that the Company considered various sites over a two-year period during which discussions were held with the City Council, Public Works Subcommittee, City Planning Commission, and representatives of the Urban Renewal Commission before purchasing the proposed site on the basis of judgment that it is favorably located and the price was within the financial limits of economic feasibility; that the Elizabeth City Planning Commission has approved the plans for the new bus terminal and the City Council of Elizabeth City has approved an amendment to permit bus stations in a C-3 district; and that Virginia Dare Transportation Company which utilizes the terminal has approved the proposed terminal site.

With particular reference to the proposed bus terminal, the testimony tends to show that the site is within the city limits, seven-tenths of a mile from the present terminal, on Hughes Boulevard which is U. S. Highway 17 bypass; that the location is four blocks from the intersection of U. S. Highway 158, which is the route utilized by the schedules of Virginia Dare Transportation Company; that Hughes Boulevard is a wide, four-lane street on which motel and restaurant facilities are reasonably accessible; that taxi, police, and fire protection services are provided to the new site; that the Company has purchased the site and will spend approximately $100,000 on the new terminal which will provide adequate accommodations for passenger and express

customers, restrooms, vending machine food service, customer and taxi parking; that taxi fare is 75 cents anywhere within the city limits for two passengers and would not adversely affect any person utilizing that mode of travel within the City; that the proposed site and terminal compare favorably with facilities provided in other cities.

With reference to operating results experienced in Elizabeth City for the year 1971, testimony shows that originating passenger sales amounted to $13,000 and express sales amounted to $17,000; that routing of Carolina's schedules to and from Elizabeth City would be over U. S. Highway 17 bypass via the proposed terminal; that passengers on Virginia Dare Transportation Company's buses traversing U. S. Highway 158 through the City would be allowed to get on and off at any point in downtown Elizabeth City; that the new terminal will as in the past be operated by a commission agent.

Mr. Nelson P. Watkins, Executive Vice President of the Elizabeth City Chamber of Commerce, testified that the Chamber adopted a resolution requesting disapproval of the proposed new terminal site based on the opinion that removal from the central business district would be detrimental to the several businesses that depend on bus service for express shipments, to the segment of the population which depends on bus service for transportation, and to the economy of the City inasmuch as shoppers use bus service into the business district; that in his opinion the area south of the site of the present bus terminal encompasses the lowest income area in the City; that there are 330 members in the Chamber which encompasses Camden and Pasquotank Counties and 100 member-businesses within a four or five block area of the present site; that the entire membership of the Chamber was not canvassed with reference to the resolution; that Belks, Sears, and other member-businesses are located in Southgate Mall Shopping Center and elsewhere outside of the downtown area; that the newspaper which is located across the street from the present terminal and utilizes the bus for express service is the best illustration of a business that would be adversely affected by the proposal; that the present location is convenient to other businesses; that the Chamber is aware of the unsatisfactory conditions at the present terminal; that overnight accommodations for the public in the downtown area consist of two hotels and one tourist home which are admittedly quite old.

Mr. Thomas S. Carter, Assistant to the Chancellor of the Elizabeth City State University, testified that for many University students buses provide the main mode of travel and that a financial hardship would be worked on them by moving the terminal to a more distant (seven-tenths of a mile) proposed location; that the University would like to have a new bus terminal in the City.

Mr. James Harrell, City Zoning Officer, testified that bus stations are allowed in a C-3 district under an amendment to the zoning ordinance adopted by the City.

Mr. J. McNeil Duff, Executive Vice-President of First Union National Bank, President of the Downtown Business Association, and a member of the Board of Trustees of the College of the Albemarle, testified that the College, through a grant, operates buses to Manteo, Chowan, and Bertie Counties, to provide free transportation to its students; that the Downtown Business Association consists of approximately 85 members of the central business district and does not include Southgate Mall Shopping Center; that from a purely banking service, the proposal would not affect the bank's business, but that he was unable to evaluate what effect it would have on their customers; that he had not had a customer complain because of the proposal to relocate the bus terminal.

Mr. L. S. Morrisette, Ford Dealer, testified that the bus station should be moved to a place that is easier to get in and out of with express; that he believes his Company's express constitutes fifteen to twenty per cent of the [97] express revenue of the Company; that he had a business downtown which was quite a problem until he moved to his present location; that the new terminal location is a little farther but easier for him to reach; that the price of property in downtown Elizabeth City on the proposed, four-lane Elizabeth Street, in his opinion, would be prohibitive for bus stations; that a new bus station would be an asset to the City.

Based upon the application of the Company and the evidence offered in public hearing, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Carolina Coach Company holds extensive intrastate common carrier authority over various routes in eastern and central North Carolina including routes and schedules which serve Elizabeth City.

2. Carolina Coach has maintained and operated its present bus terminal in downtown Elizabeth City since the early [930's. The present terminal building is old, out-moded, and completely inadequate to serve the present and future needs of the traveling public and the Company. The present site is entirely too small and the property cannot be feasibly renovated. The present location in downtown Elizabeth City impedes the movement on common carrier passenger and express service and thus adversely affects the over-all quality of service to all other cities, towns, and communities which are also dependent upon the same buses which serve Elizabeth City.

3. There is substantial need for a new, modern, adequate bus terminal at a location which will be reasonably convenient to the using public, economically feasible for the Company, and which will contribute to more efficient movement of intercity passengers and express.

4. The plans, site, and location of the proposed terminal on Hughes Boulevard meet the general requirements imposed by the Commission in Rule R2-54. The proposed location on Hughes Boulevard (U. S. Highway 17 bypass) which is the major north-south traffic artery serving the City and area, is within the city limits.

CONCLUSIONS

G. S. 62-275 authorizes and empowers the North Carolina Utilities Commission to compel any common carrier of passengers by motor vehicle operating under the provisions of the North Carolina Public Utilities Law and serving any municipality to establish and maintain a passenger depot or station for the security, accommodation, and convenience of the traveling public. Accordingly, Carolina Coach Company has maintained and operated a bus passenger terminal facility in Elizabeth City for many years. The evidence is clear and all parties agree that the present bus terminal facility in Elizabeth City is inadequate, out-moded, and should be replaced. The Hearing Commissioner is of the opinion and concludes that the present site is inadequate and cannot be renovated to meet the needs of the Company and the traveling public, and further that the present location adversely affects the operation of common carrier passenger and express service. The new location will be reasonably convenient for the using public and will enable the Company to operate more efficiently while maintaining adequate bus service to Elizabeth City and the other points along this intercity route. The Hearing Commissioner concludes that the Company has borne the burden of proof and the petition should be approved.

IT IS, THEREFORE, ORDERED:

That Carolina Coach Company be, and it is hereby, authorized to proceed with the construction and relocation of the Elizabeth City Bus Terminal, according to plans and provisions contained in its proposal, at the proposed site on Hughes Boulevard in Elizabeth City, North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-275, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Coach Company - Proposed Plan for a New Union Bus Terminal Facility in the City of Elizabeth City, North Carolina	)	ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on May 11, 1973, at 2:00 P. M.

BEFORE: Chairman Marvin R. Wooten (Presiding) and Commissioners Hugh A. Wells and Ben E. Roney.

APPEARANCES:

For the Applicant:

Arch T. Allen, III
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
Raleigh, North Carolina

For the Protestant:

H. T. Mullen, Jr.
White, Hall & Mullen
Attorneys at Law
P. O. Box 304, Elizabeth City, North Carolina
For: Downtown Merchants Association

For the Commission Staff:

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

WOOTEN, CHAIRMAN: The Recommended Order in this proceeding was issued by Commissioner John W. McDevitt on March 16, 1973, following public hearing on the application filed by Carolina Coach Company wherein said company proposed to construct a new union bus terminal facility in the City of Elizabeth City, North Carolina, at the intersection of Hughes Boulevard and Gregory Street. On April 2, 1973, Exceptions to the Recommended Order in this docket and a Petition for Review were filed by Herbert T. Mullen, Jr., Attorney at Law, for and on behalf of parties protestant.

After a careful review of this docket in its entirety, the Petition of Protestant, record of evidence, Bill of Exceptions, and able arguments and statement of counsel, the

Recommended Order and entire record, the Commission is of the opinion:

1. That the evidence and record in this case warrants, justifies and supports all of the Findings of Fact set forth in the Recommended Order by Commissioner McDevitt.

2. That the evidence and record in this case is found to justify, warrant and support all of the Conclusions and Orders set forth in said Recommended Order in this matter by Commissioner John W. McDevitt dated March 16, 1973.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That all of the Exceptions filed by the parties protestant, and each of them, be, and the same are, hereby overruled, and the Findings of Fact, Conclusions and Order to which said Exceptions relate, are hereby, made the Findings, Conclusions and Order of the Commission.

2. That the Recommended Order entered herein on March 16, 1973, be, and the same is, hereby ratified and adopted by the Commission as its Order, effective this date.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-7, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Greyhound Lines, Inc., 1400 West Third Street, Cleveland, Ohio 44113 - Petition for Cancellation of Lease Agreement with Carolina Coach Company, 120 South Blount Street, Raleigh, North Carolina.	))))	RECOMMENDED ORDER DENYING PETITION TO CANCEL LEASE AGREEMENT

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on February 13, 1973, at 3:00 P. M.

BEFORE: Hugh A. Wells, Commissioner

APPEARANCES:

For the Petitioner:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Protestants:

Arch T. Allen & Arch T. Allen, III
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina 27602

WELLS, COMMISSIONER. This matter came on for hearing before Commissioner Wells sitting as Hearing Commissioner at 3:00 P.M., February 13, 1973, at Raleigh, North Carolina, upon the Petition of Greyhound Lines, Inc.

Greyhound seeks the Commission's permission to cancel a Lease Agreement entered into on August 1, 1947, between it and the Carolina Coach Company, wherein Carolina leased to Greyhound certain franchised intrastate operating rights between Lexington and Charlotte, North Carolina.

Upon notification of Greyhound's Petition, Carolina filed its response opposing the relief sought by Greyhound, and requested that the matter be set for hearing. Both parties were present at the hearing and were represented by counsel. Greyhound presented the oral testimony of Mr. Robert L. Wilson, Director of Traffic for Greyhound Lines, East (the operating Division of Greyhound having responsibility for North Carolina operations), and Carolina offered the oral testimony of Mr. Aaron Cruise, Vice President - Traffic, Carolina Coach Company. The testimony of both witnesses was illustrated and supported by exhibits which are a part of the record.

The record herein, the preceding Orders of this Commission affecting the matters under consideration here, together with opinions of the North Carolina Supreme Court interpreting Commission Orders dealing with these matters, disclose the fact necessary to reach a conclusion in this cause. These facts are clearly and succinctly summarized in the Response filed herein by Carolina, and we accordingly, with certain modifications, have adopted them into the Findings of Fact in this Order. The Commission therefore makes the following

FINDINGS OF FACT

1. At the time of and prior to negotiations between Carolina Coach and Greyhound for the Lease Agreement which is the subject matter of this docket, the competitive situation between Greyhound and Carolina Coach with respect

to Charlotte-Raleigh traffic and intermediate points including Lexington can be summarized as follows: Carolina Coach operated between Raleigh and Charlotte over two main routes, the so-called northern route running between Raleigh and Charlotte by way of Durham, Burlington, Greensboro, Lexington, Salisbury and Concord, over U. S. Highways 70 and 29 and the so-called southern route running between the two cities via Sanford, Biscoe and Albemarle, over U. S. Highways 1 and 15 and N. C. Highway 27. Greyhound had franchise authority over U. S. Highway 64 from Raleigh to Lexington via Asheboro; over U. S. Highway 52 from Lexington into Winston-Salem; over U. S. Highways 158 and 64 from Winston-Salem to Statesville and over U. S. Highway 21 and N. C. Highway 115 from Statesville into Charlotte. Carolina Coach was the only carrier having a practical and competitive route between Raleigh and Charlotte and had provided adequate bus service with numerous and convenient schedules between the two cities and to intermediate points for many years. The providing of motor bus service between Charlotte and Raleigh along its franchise routes constituted at that time, as it does at the present, one of the principal operations of Carolina Coach within the State of North Carolina.

2. Some time prior to the execution of the Lease Agreement in question, Greyhound had acquired interstate operating rights between Winston-Salem and Charlotte via Lexington, which placed Greyhound in the position of being able to operate between Winston-Salem and Charlotte via Lexington for interstate traffic, but not for intrastate traffic which had to be routed over the more lengthy route between the points via Statesville. In order that Greyhound would be able to transport its intrastate passengers between Winston-Salem and Charlotte over the Lexington route, Greyhound requested that Carolina Coach lease to it intrastate operating rights over Carolina Coach's franchise route between Lexington and Charlotte. To enable Greyhound to transport its intrastate passengers between Winston-Salem and Charlotte via Lexington in the same buses in which it transported interstate passengers, but at the same time to enable Carolina Coach to continue to handle its same intrastate traffic between Lexington and Charlotte, and Raleigh and Charlotte, Carolina Coach and Greyhound entered into the Lease Agreement, dated August 1, 1947, by which Carolina Coach leased to Greyhound the privilege of transporting over the Lexington route intrastate passengers originating at or moving through Charlotte destined for Winston-Salem and points beyond, and intrastate passengers originating at or moving through Winston-Salem and destined for Charlotte or points beyond. As part of the terms and conditions of the lease, Greyhound covenanted and agreed, among other things, (1) that it would operate with closed doors between Lexington and Charlotte and not pick up or discharge any intrastate passengers at any intermediate points along the route; (2) that it would not operate through service without change of bus between Raleigh and Charlotte via Lexington over the existing Greyhound

franchise route between Raleigh and Lexington via U. S. Highway 64 and over the leased route between Lexington and Charlotte, or compete with Carolina Coach for intrastate traffic moving between Raleigh and Charlotte; (3) that it would not exchange intrastate passengers at Lexington between its schedules operated over its franchise routes into Lexington and any schedules operated over the leased franchise, irrespective of the point of origin or destination of such passenger; and (4) that it would not claim or seek any intrastate franchise right of any kind or nature whatsoever over the franchise route of Carolina Coach between Lexington and Charlotte, other than the rights granted under the Lease Agreement.

3. The Lease Agreement of August 1, 1947, was approved upon the joint petition of both Carolina Coach and Greyhound, by Order of the North Carolina Utilities Commission in Docket No. 4148, dated October 10, 1947.

4. At the request of Greyhound, Carolina Coach and Greyhound entered into an Amendment to the Lease Agreement of August 1, 1947, which extended the term of said Lease Agreement for as long as the certificate of Carolina Coach to operate over the leased route remained in effect. This Amendment, which was dated July 10, 1950, was approved upon joint petition of both Carolina Coach and Greyhound by Order of the North Carolina Utilities Commission entered in Docket No. B-15, Sub 18, on August 8, 1950.

5. Following execution of the Lease Agreement and its approval by this Commission in 1947, Carolina Coach and Greyhound continuously operated under its provisions until September of 1960 when Greyhound advised Carolina Coach that it considered the Lease Agreement no longer valid and requested that it be cancelled by mutual consent. Upon the refusal of Carolina Coach to consent to such cancellation, Greyhound was directed by this Commission to continue to operate under the Lease Agreement. Shortly thereafter, in October of 1960, Greyhound applied to the Commission for additional franchise authority involving operations between Raleigh and Charlotte and Lexington and Charlotte, both of which applications raised the issue of the interpretation and validity of the Lease Agreement.

6. In Docket No. B-7, Sub 56, filed with the Commission on October 5, 1960, Greyhound applied for intrastate franchise authority between Asheboro and Charlotte over Highway 49, to combine such operations with operations then conducted by Greyhound between Asheboro and Raleigh so as to provide through service between Raleigh and Charlotte via Asheboro. Both Carolina Coach and Queen City Coach Company protested that application and Carolina Coach specifically pled the provisions of the Lease Agreement of August 1, 1947, as a bar to any right of Greyhound to seek the franchise authority. Greyhound, on the other hand, contended that the Lease Agreement was in restraint of trade, violated G.S. 75-1 and was void. The Commission

granted the franchise authority sought by Greyhound and vacated and voided the Lease Agreement to the extent that it was in conflict with the granting of the authority. The Order of the Commission was appealed through the Superior Court of Wake County to the North Carolina Supreme Court. In its decision reported in Utilities Commission v. Coach Company, 260 N.C. 43 (1963) the Court affirmed the Order of the Commission, but upheld the validity of the Lease Agreement. As to the modification of the Lease Agreement and the prior Orders of the Commission, the Court stated, inter alia:

"At the time of its execution in 1947, the lease agreement was approved by the Commission at the joint request of Carolina and Greyhound. The law encourages cooperation and agreements between common carriers respecting their service to the public. G.S 62-121.64 (a). But the interest of the public is paramount and the Commission has the authority to supervise and regulate common carriers for the protection of the public interest. G.S. 62-121.48. Contracts between carriers affecting service to the public are subject to the Commission's regulatory authority. Utilities Commission v. Motor Lines, 240 N.C. 166, 81 S.E. 2d 404. A contract between public utilities, when formally approved by the Commission, is in effect an order of the Commission binding on each of the parties. Power Co. v. Membership Corporation, 253 N.C. 596, 603, 117 S.E. 2d 812. An order of the Commission is prima facie just and reasonable. G.S. 62-26.10. This applies to orders approving contracts of public utilities. Utilities Commission v. Casey, 245 N.C. 297, 96 S.E. 2d 8. And the Commission may at any time, upon notice to the public utility affected and after opportunity is afforded the affected utility to be heard, alter or amend any order made by it. G.S. 62-26.5. '...(I)n the absence of statutory authority, and in the absence of any additional evidence or a change in conditions, the Commission has no power to reopen a proceeding and modify or set aside an order theretofore made by it . . .where the order was made in pursuance of an agreement entered into by the parties to the proceeding.' 73 C.J.S., Public Utilities, s. 56 (d), p. 1135. The Commission may not arbitrarily or capriciously rescind its order approving a contract. It must appear that such rescission is made because of a change of circumstances requiring it in the public interest. Chicago Housing Authority v. Illinois Com. Com'n., 169 N.E. 2d 268 (Ill. 1960); Central Northwest B. Men's Ass'n. v. Illinois C. Com'n., 168 N.E. 890 (Ill. 1929)."

"The Commission correctly concluded that the lease agreement is not a bar to the institution and maintenance of this proceeding. The terms and conditions of the lease agreement are relevant matters to be considered upon the question of public convenience and necessity. And Greyhound has the burden of showing that public convenience and necessity require modification and

rescission of the order approving the lease agreement, and the granting of the application for franchise authority." (Emphasis added)

7. In Docket No. B-7, Sub 57, also filed with this Commission on October 5, 1960, Greyhound applied for intrastate franchise authority on the route from Lexington over U. S. Highway 29 to Charlotte which was the same route over which Greyhound was operating under the terms of the Lease Agreement of August 1, 1947. In this proceeding Carolina Coach also specifically pled the provisions of the Lease Agreement as a bar to the seeking of the authority. The Order of the Commission granting the franchise authority sought by Greyhound and, in effect, rescinding the Lease Agreement was appealed to the North Carolina Supreme Court where it was consolidated for opinion with the Greyhound application discussed above. In reversing the Order of the Commission, the Court in Utilities Commission v. Coach Company, supra, held that the evidence did not show, and that the Commission had not found, a change of conditions requiring, in the public interest, a rescission of the Commission's Order approving the Lease Agreement.

8. Except as modified by the Order of the Commission in Docket No. B-7, Sub 56, granting the Asheboro-Charlotte authority to Greyhound, the Lease Agreement of August 1, 1947, as amended, and the Orders of this Commission approving the Agreement have remained in full force and effect and are in full force and effect at the present time.

Based upon the foregoing Findings of Fact, the Commission CONCLUDES that the terms of the original lease and its July 10, 1950, Amendment are still binding upon the parties. According to the terms of the 1950 Amendment, the lease may be terminated only upon cancellation by the Utilities Commission of Carolina's permanent Certificate (franchise) to operate its intrastate routes in North Carolina. This, of course, has not taken place. The Supreme Court stated very clearly in Utilities Commission v. Coach Company, above cited, that this Commission may not approve the cancellation of the subject lease absent a showing of circumstances which require such cancellation in the public interest (emphasis added). We conclude there is no such showing in this record. To the contrary, the evidence leads to the conclusion that the Lease Agreement has over the years had a stabilizing and salutary effect on the overall responsibility and capability of Greyhound and Carolina in providing intrastate bus passenger service in the areas affected by the Lease Agreement.

ACCORDINGLY, IT IS, HEREBY, ORDERED:

That the Petition of Greyhound to cancel and terminate its Lease Agreement of August 1, 1947, as amended July 10, 1950, with Carolina Coach Company, be, and hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-15, SUB 170
DOCKET NO. B-69, SUB 112

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.	)
and	) ORDER APPROVING APPLICATIONS
Queen City Coach Company - Application for authority to operate from Winston-Salem over Interstate Highway 40 to Junction 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 29, 1972, at 10:00 A. M.

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

APPEARANCES:

For the Applicants:

Arch T. Allen
Thomas Steed, Jr.
Allen, Steed & Pullen
P. O. Box 2058, Raleigh, North Carolina 27602
Appearing for: Carolina Coach Company

R. C. Howison, Jr.
Joyner & Howison
Wachovia Bank Building
Raleigh, North Carolina
Appearing for: Queen City Coach Company

For the Protestants:

J. Ruffin Bailey
Bailey, Dixon, Wooten and McDonald
P. O. Box 2246, Raleigh, North Carolina 27602
Appearing for: Greyhound Lines, Inc.

BY THE COMMISSION: By application filed with the Commission on June 2, 1972, Carolina Coach Company, 120 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 with the following restrictions:

1. Service at the junction of Interstate Highway 40 and N. C. Secondary Road 1850 for interchange purposes only with Queen City Coach Company, in the performance of a through bus service between Greensboro and Winston-Salem.

2. No passenger may be transported whose entire ride is between Greensboro and Winston-Salem, or between Winston-Salem and Greensboro.

By application filed with the Commission on June 2, 1972, 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 junction North Carolina Secondary Road 1850 near Colfax, and return over the same route serving no intermediate points with the following restrictions:

1. Service at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 for interchange purposes only with Carolina Coach Company, in the performance of a through bus service between Winston-Salem and Greensboro.

2. No passenger may be transported whose entire ride is between Winston-Salem and Greensboro or between Greensboro and Winston-Salem.

Both of the above described applications were set for hearing in the Commission's Hearing Room, on September 29, 1972, 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 Applicants. 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.

Protests to both applications were timely filed by Greyhound Lines, Inc., 1400 West 3rd Street, Cleveland, Ohio (Greyhound), and intervention allowed by Commission order of September 27, 1972. The applications are otherwise unopposed.

At the call of the hearing, all parties were present and represented by counsel. The two applications were consolidated for hearing over objection from Protestant to such consolidation.

The evidence for Carolina and Queen, hereinafter sometimes referred to as Applicants, tends to show that Applicants presently provide through service between Greensboro and Winston-Salem 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 Greensboro and Winston-Salem is part of their through bus service westward to Asheville and into Tennessee and that the operation between Winston-Salem and Greensboro is part of their through bus service eastward, to Norfolk, to Beaufort and to Wilmington; that Applicants presently operate over all of I-40 that is now open except the segment between Greensboro and Winston-Salem; that the purpose of this application is to acquire authority between Greensboro and Winston-Salem which would permit through bus operations over all of I-40 that has been placed in service; that those buses or schedules that now serve High Point and other intermediate points will remain unchanged; that only those buses presently operating in through bus service will be routed over I-40 between Greensboro and Winston-Salem; that if the application is approved, it is proposed that there would be operated over the I-40 route four schedules from Greensboro to Winston-Salem and five schedules from Winston-Salem to Greensboro and the remaining schedules would remain unchanged; that a traffic survey taken by Applicants for the period June 15 through June 21, 1972, showed a total of 1,986 passengers travelling between Greensboro and Winston-Salem of which 184 were passengers whose entire ride was between the two cities; that these amounts annualized indicate that the total passengers to be transported between the two cities would be 106,649 out of which 9,881 would be passengers whose entire ride would be between Greensboro and Winston-Salem; that a large number of passengers would benefit from the I-40 route between the two cities which is

more direct, faster, safer, gives a more comfortable ride and results in economics in operation as compared to the present route which is not controlled access highways and which was not engineered for today's traffic; that based on the shorter mileage over the I-40 route, Applicants estimate that they would realize an annual savings of $12,308 in operating expenses; that since Applicants will carry no passenger whose entire ride is wholly between Greensboro and Winston-Salem and since the time tables will remain essentially the same, that the competitive position between Applicants and Protestant will remain essentially the same as at present and that the proposed service over I-40 would not endanger or impair the operations of Protestant.

The evidence further tends to show that if the applications are granted that there will be no diminution of service to and from High Point since the schedules now serving High Point will remain unchanged.

Protestant, Greyhound, presented no exhibits, and no witnesses; however, Applicants' Exhibit No. 11 is a portion of Greyhound's intrastate franchise as it appears on Second Revised Page 3-3 Cancels First Page 3-3 and shows 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 toward Kernersville and over I-40 from Winston-Salem to Kernersville, serving all intermediate points and thence over I-40 to Greensboro as an alternate route serving no intermediate points on that portion of I-40.

Briefs were filed.

Upon consideration of the applications, the evidence adduced in this proceeding, all of the exhibits and the briefs filed, the Commission 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 154 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 Highway 421, N. C. Highway 150, U. S. Highway 421, Interstate 40 and/or combinations of said highways, serving all intermediate points except 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 Greensboro and Winston-Salem 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 Greensboro and Winston-Salem 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 generally an east-west operation and the other generally a north-south operation, and because of the restriction that Applicants may not carry any passenger whose entire ride is between Greensboro and Winston-Salem, very few, if any passengers would be diverted from Protestant's to Applicants' buses as a result of being routed over I-40 between Greensboro and Winston-Salem,

(7) That although Applicants do not propose to pick up and discharge passengers between Greensboro and Winston-Salem or to carry any passenger whose entire ride is between the two cities, Applicants do propose to offer service to passengers travelling through one or both of said cities to points east thereof and points west thereof and that a franchise for said service is appropriate since the public convenience and necessity therefor has already been established by the passengers already being transported between Greensboro and Winston-Salem whose origin or destination was beyond Greensboro and Winston-Salem or both,

(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 result from the use of the shorter, safer I-40 route 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 170 and by Queen City Coach Company in Docket No. B-69, Sub 112, subject to the restriction that "Service at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 for interchange purposes only between Carolina and Queen, in the performance of a through bus service between Greensboro and Winston-Salem" and the restriction that "No passenger may be transported whose entire ride is between Greensboro and Winston-Salem, or between Winston-Salem and Greensboro, and

(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.

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 toward 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 toward 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 and most of its authorized routes between the 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 R2-7|, under which rule the matter would have been considered. Authority to deviate from a regular service route under R2-7| does not require a showing of public convenience and necessity. Under the circumstances, however, since the Deviation Rule R2-7| 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 Commission 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."

The Commission concludes that the applications of Carolina Coach Company and Queen City Coach Company herein should be granted with the restrictions as contained in the applications, with the provision that each carrier will be required to maintain reasonable and adequate service over their appurtenant service routes into High Point, North Carolina, and with the further restriction that the authority granted herein except upon authorization of the Commission, shall not be severable by sale or otherwise from the carriers appurtenant underlying service routes into High Point, N. C., all as more fully described in Exhibit A in each carriers docket number attached hereto.

IT IS, THEREFORE, ORDERED:

(1) That Passenger Common Carrier Certificate No. B-15, held by Carolina Coach Company, be, and the same is, hereby amended to include the authority more particularly described in Carolina Coach Company's 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's 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 of this order.

BY ORDER OF THE COMMISSION.

This the 7th day of March, 1973.

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 subject to restrictions contained herein.

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.

RESTRICTIONS:

1. Service at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 for interchange purposes only with Queen City Coach Company in the performance of a through bus service between Greensboro and Winston-Salem.

2. No passenger may be transported whose entire ride is between Greensboro and Winston-Salem or between Winston-Salem and Greensboro.

3. The authority granted herein except upon authorization of the Commission,

shall not be severable by sale or otherwise from the above named carrier's appurtenant underlying service route between Greensboro and High Point, North Carolina over N. C. Secondary Road 1541 to junction of N. C. Highway 68 and thence over N. C. Highway 68 to High Point, described in Certificate No. B-15.

4. Carrier will be required to maintain reasonable and adequate service over the appurtenant service route described above.

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 subject to restrictions contained herein.

EXHIBIT A (2) From Winston-Salem over Interstate Highway 40 to junction North Carolina Secondary Road 1850 near Colfax, and return over the same route serving no intermediate points.

RESTRICTIONS:

1. Service at the junction of Interstate Highway 40 and North Carolina Secondary Road 1850 for interchange purposes only with Carolina Coach Company in the performance of a through bus service between Greensboro and Winston-Salem.

2. No passenger may be transported whose entire ride is between Winston-Salem and Greensboro or between Greensboro and Winston-Salem.

3. The authority granted herein except upon authorization of the Commission shall not be severable by sale or otherwise from above named carrier's appurtenant underlying service route between Winston-Salem and High Point, North Carolina, over U. S. Highway 311 described in Certificate No. B-69.

4. Carrier will be required to maintain reasonable and adequate service over the appurtenant service route described above.

DOCKET NO. B-242, SUB 15

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Charlotte City Coach Lines, Inc., 707 North Brevard Street, Charlotte, North Carolina - Application for Temporary and Permanent Passenger Common Carrier Authority	)	ORDER GRANTING APPLICATION

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on November 1, 1973.

BEFORE: Chairman Marvin R. Wooten (with Commissioners Hugh A. Wells and Ben E. Roney to read the record and participate in the decision)

APPEARANCES:

For the Applicant:

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Allen, Steed and Pullen
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For the Commission Staff:

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John R. Molm
Associate Commission Attorney
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Raleigh, North Carolina

BY THE COMMISSION. On July 3, 1973, Applicant filed with the Commission its application for temporary and permanent authority to transport passengers and their baggage from Charlotte to the South Carolina-North Carolina line at Carowinds Theme Park over Interstate Highway 77 and over North Carolina Highway 49. The proposed operations would be restricted to passengers whose entire ride is between Charlotte and Carowinds and there would be no pickup or discharge of passengers at any intervening point between the Charlotte city limits and Carowinds Theme Park. The entire requested authority is five (5) miles one way over routes presently served by Queen City Coach Company and Carolina Scenic Stages. By Order dated July 11, 1973, the Commission granted the temporary operating authority requested in the Application and set the Application for hearing on October 11, 1973. Notice of the hearing was served on the other

carriers having operating rights in the territory by mailing a copy of the Commission Order. No interventions or protests were received. On October 8, 1973, Applicant moved that the hearing be postponed from October 11, 1973, until a later date because of unavailability of witnesses. By Commission Order dated October 9, 1973, the hearing was continued until November 1, 1973.

At the hearing, testimony was taken from Thomas E. Combs, General Manager of Applicant, concerning the fitness of Applicant to provide the proposed service and the success of the operations conducted under the temporary authority heretofore granted. Several public witnesses, who were in attendance to attest to the need and demand for the proposed service, were tendered to the Commission for questions. The Commission took judicial notice of its records and files concerning Applicant and the proposed operations. No one appeared at the hearing in opposition to the granting of the authority requested herein. Upon consideration of the Application, the evidence adduced at the hearing and the record as a whole, the Commission makes the following

FINDINGS OF FACT

1. Applicant is currently the holder of Certificate No. B-242 issued by this Commission and is rendering service thereunder.

2. Public convenience and necessity require the proposed service in addition to existing authorized transportation service.

3. Charlotte City Coach Lines, Inc. is fit, willing and able to properly perform the proposed service.

4. Service rendered under this new authority will not interfere with, affect or harm, financially or otherwise, the services heretofore rendered by Applicant pursuant to previously granted authority.

5. Charlotte City Coach Lines, Inc. is qualified financially and otherwise to acquire the route sought and to provide adequate service thereon on a continuing basis.

Whereupon the Commission reaches the following

CONCLUSIONS

Based upon the Application, the evidence presented, the record as a whole and the foregoing Findings of Fact, the Commission concludes that the proposed service is in the public interest; that there is a need and demand for such service in addition to existing authorized service, which need can best be met by Applicant; that the proposed service will not unlawfully affect service to the public by other public utilities; that the Applicant is fit, willing and able to perform the proposed service; that the Applicant is

solvent and financially able to furnish adequate service on a continuing basis; and that the Application should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application of Charlotte City Coach Lines, Inc. for additional authority to operate as a motor passenger common carrier as more particularly described in Exhibit A attached hereto and made a part hereof be, and the same is, hereby approved.

2. That Charlotte City Coach Lines, Inc., to the extent that it has not done so, shall file with the Commission evidence of insurance, tariffs of fares, rates and charges, timetable and list of equipment to be used in conjunction with the authority herein granted, 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 this Order is issued.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

CHARLOTTE CITY COACH LINES, INC.
707 North Brevard Street
Charlotte, North Carolina _____ Certificate No. B-242

EXHIBIT A Transportation of passengers and their baggage over the following routes and highways:

(a) From Charlotte over Interstate Highway 77 to North Carolina-South Carolina line, and return.

(b) From Charlotte over N. C. Highway 49 to Carowinds Theme Park, and return.

(Operations over these routes are restricted to passengers whose entire ride is between Charlotte and Carowinds Theme Park and restricted against the pickup or discharge of passengers at any intervening points between the city limits of Charlotte and Carowinds Theme Park.)

DOCKET NO. B-30, SUB 46
DOCKET NO. B-15, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

DOCKET NO. B-30, SUB 46
Application of Southern Coach Company to operate between Raleigh, N. C., and intersection of N. C. 54 and N. C. 55 near Lowes Grove as follows: From Raleigh to Park Plaza (Research Triangle Park, N. C.) over I-40, thence over N. C. 54 to the intersection of N. C. 54 and N. C. 55, near Lowes Grove, and return over same route serving intermediate points. Between Park Plaza (Research Triangle Park, N. C.) and Durham, N. C., over I-40, and return over same route serving intermediate points.) RECOMMENDED ORDER

and

DOCKET NO. B-15, SUB 17
Application of Carolina Coach Company to operate from Durham over the Durham North-South Expressway 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, and Park Plaza Service Area from junction Interstate Highway 40 and Davis Road

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on October 20, 1972, and January 4, 1973

BEFORE: Hearing Commissioner Marvin R. Wooten

APPEARANCES: (DOCKET NO. B-30, SUB 46)

For the Applicant:

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F. Kent Burns
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For the Protestants:

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Post Office Box 2058, Raleigh, North Carolina 27602
For: Carolina Coach Company

For the Respondent:

J. Ruffin Bailey and Ralph McDonald
Attorneys at Law
Post Office Box 2246, Raleigh, North Carolina 27602
For: Greyhound Lines, Inc.

(DOCKET NO. B-15, SUB 171)

For the Applicant:

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For the Protestant:

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Raleigh, North Carolina 27605

F. Kent Burns
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Post Office Box 1406, Raleigh, North Carolina 27602
For: Southern Coach Company

For the Respondent:

J. Ruffin Bailey and Ralph McDonald
Attorneys at Law
Post Office Box 2246, Raleigh, North Carolina 27602
For: Greyhound Lines, Inc.

WOOTEN, HEARING COMMISSIONER: On August 10, 1972, Southern Coach Company filed in Docket No. B-30, Sub 46 application for a common carrier franchise to transport passengers, their baggage, mail and light express over the following routes:

(a) Between Raleigh, N. C. and intersection of N. C. 54 and N. C. 55 near Lowes Grove as follows:

From Raleigh to Park Plaza (Research Triangle Park, N. C.) over I-40, thence over N. C. 54 to the intersection of N. C. 54 and N. C. 55, near Lowes Grove, and return over same route serving intermediate points.

(b) Between Park Plaza (Research Triangle Park, N. C.) and Durham, N. C. over I-40, and return over same route serving intermediate points.

By Order of August 17, 1972, Notice of Application and Hearing was forwarded to Queen City Coach Company, Greyhound Lines, Inc., Southern Coach Company, Carolina Coach Company and Central Buslines of North Carolina.

On August 28, 1972, Carolina Coach Company filed protest and motion to intervene in the application of Southern Coach Company.

In Docket No. B-15, Sub 171, on August 22, 1972, Carolina Coach Company made application to the Commission for a common carrier franchise to transport passengers, their baggage, mail and light express over the following routes:

From Durham over the Durham North-South Expressway 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, and Park Plaza Service Area from junction Interstate Highway 40 and Davis Road.

On August 25, 1972, the Commission issued Notice of Application and Hearing to Carolina Coach Company, Queen City Coach Company, Greyhound Lines, Inc., Southern Coach Company and Central Buslines of North Carolina.

Upon receipt of certain letters treated by the Commission as motions filed by counsel for Carolina Coach Company requesting that the hearings previously set in the two captioned dockets for September 26, 1972, be continued, and by counsel for Southern Coach Company opposing any continuance, the Commission by Order of September 7, 1972, indicated that these applications present issues and questions regarding bus service in the Research Triangle area generally, and the Commission, therefore, ordered that Greyhound Bus Lines, Inc., be made a party-respondent to this matter in order that the Commission could consider the impact of these applications on bus service in the Research Triangle Area. The Commission's Order of September 7, 1972 continued the proceedings until October 20, 1972, and consolidated the two applications for hearing.

This matter was called for hearing on October 20, 1972, at which time certain public witnesses and a representative of Southern Coach Company testified and certain exhibits were filed. The matter was recessed to be reset at a later date.

On December 12, 1972, an Order was issued by the Commission scheduling resumption of hearing for January 4, 1973, at which time the testimony of certain public witnesses and a representative of Carolina Coach Company testified and certain exhibits were introduced.

Upon the record of the proceedings, the parties were allowed thirty (30) days from the date of the mailing of the last transcript within which time to file briefs and proposed findings of fact and conclusions of law. Said briefs, proposed findings and conclusions were filed by the parties.

Based upon the entire record of this proceeding, the Hearing Commissioner makes the following Findings of Fact stated separately with respect to each docket:

FINDINGS OF FACT
DOCKET NO. B-30, SUB 46

(1) The applicant, Southern Coach Company, is a common carrier of passengers by motor vehicle operating over intrastate franchise routes within the State of North Carolina as authorized by Certificate of Public Convenience B-30 issued by this Commission which routes include the franchise route between Durham and Wilmington which runs generally along N. C. Highway 55 between Durham and Newton Grove via Holly Springs and along U. S. Highway 421 between Newton Grove and Wilmington and a franchise route which runs from N. C. Highway 55 at Holly Springs to Raleigh via N. C. Secondary Road 1152 and 1009. In addition to its regular franchise authority Southern Coach holds leased authority from Carolina Coach Company between Raleigh and Fuquay-Varina over U. S. Highway 401.

(2) By this application Southern Coach is seeking authority over two additional franchise routes as follows:

(a) Between Raleigh, N. C. and intersection of N. C. 54 and N. C. 55 near Lowes Grove as follows:

From Raleigh to Park Plaza (Research Triangle Park, N. C.) over I-40, thence over N. C. 54 to the Intersection of N. C. 54 and N. C. 55, near Lowes Grove, and return over same route serving intermediate points.

(b) Between Park Plaza (Research Triangle Park, N. C.) and Durham N. C. over I-40 and return over same route serving intermediate points.

(3) The protestant, Carolina Coach Company is also a common carrier of passengers by motor vehicle operating over intrastate franchise routes within the State of North Carolina as shown on Certificate of Public Convenience No. B-15 issued by this Commission including franchise routes between the cities of Durham and Raleigh, and intermediate points. Included within these routes, Carolina Coach Company has authority over I-40 from Raleigh to its junction with N. C. Secondary Road 1959 near Nelson, and over N. C. Highway 54, which franchise routes are sought to be duplicated by that part of the application of Southern Coach Company described in subparagraph 2 (a) above.

(4) Prior to April 14, 1972, Southern Coach Company and Carolina Coach Company were parties to a Lease of Equipment Agreement by which the companies afforded passengers traveling between Wilmington and points on U. S. 421 east of Raleigh and Durham a through bus service without change of bus via Raleigh, such passengers being carried over the Southern Coach franchise between Wilmington and Raleigh over U. S. Highway 421 and over the Carolina Coach Company franchise between Raleigh and Durham over U. S. Highway 70. This Interchange Agreement also involved a joint operation with Virginia Stage Lines, Inc., over its franchise routes between Durham and Danville, Virginia. The agreement was terminated effective August 14, 1972 as a result of the sale of this latter authority by Virginia Stage Lines, Inc. Although Carolina Coach Company expressed its willingness to continue the interchange arrangement in connection with the Wilmington-Durham operations, Southern Coach elected not to do so and since that date each carrier has operated over its own respective franchise route with no interchange of equipment at Raleigh.

(5) The only evidence of public need for transportation service presented by the applicant, Southern Coach Company, was the testimony of the public witnesses expressing the desire for bus transportation between Wilmington and other points on U. S. Highway 401 and Durham without the necessity of having to change buses. These passengers are now transported by Southern Coach Company over its franchise route on U. S. Highway 421 into Raleigh and delivered to Carolina Coach Company for transportation into Durham over U. S. Highway 70. The through non-change of bus service which these witnesses request can at the present time be provided by Southern Coach Company over its own existing franchise authority via U. S. Highway 401 and N. C. Highway 55 directly into Durham.

(6) The mileage along the Southern Coach Company existing franchise routes between Durham and Holly Springs and between Holly Springs and Raleigh is approximately 42.8 miles requiring a running time of 59 minutes as compared to a mileage of approximately 22.5 miles along the present Carolina Coach Company route between Durham and Raleigh over U. S. Highway 70 which requires a running time of 32 minutes. The Southern Coach Company Durham-Holly Springs-Raleigh route involves roads with many hills, steep inclines, many unbanked curves, many intersections with stop lights and speed limits reflecting 55, 45 and 35 miles per hour. Up until October 16, 1972, four days prior to the hearing in this application, Southern Coach Company operated only one round trip per week over this route. Effective October 16, 1972, Southern Coach commenced operating one round trip daily over the route.

(7) Carolina Coach Company has had franchise authority between the cities of Raleigh and Durham since 1925 and has performed continuous service between the two cities since that time. As new highways have been constructed Carolina

Coach Company has applied for and this Commission has granted additional franchise routes between the cities. At the present time Carolina Coach Company operates eighteen round trips daily, plus additional weekend service, over its various franchise routes between Raleigh and Durham and intermediate points. The volume of passenger traffic traveling between Raleigh and Durham over the Carolina Coach schedules is substantial and this service is an important part of the Carolina Coach Company's overall intrastate operations in North Carolina.

(8) There was no evidence presented at the hearing to show a specific, present need for additional bus service by Southern Coach Company between the cities of Raleigh and Durham or between those cities and any intermediate point including the Research Triangle area. Public witnesses testified to the adequacy of the Carolina Coach Company service between Raleigh and Durham and there was no evidence presented, nor was it contended by Southern Coach Company that Carolina Coach Company is not now providing an adequate service between Raleigh and Durham and to intermediate points including service along the Carolina Coach Company present franchise routes over I-40 and N. C. Highway 54 which are sought to be duplicated by a portion of the Southern Coach Company application.

(DOCKET NO. B-15, SUB 171)

(1) The applicant, Carolina Coach Company, is a common carrier of passengers by motor vehicle operating over intrastate franchise routes within the State of North Carolina under Certificate of Public Convenience No. B-15 issued by this Commission.

(2) Included within the authorized routes of Carolina Coach Company are several routes authorizing it to provide service between Raleigh and Durham, and intermediate points including the Research Triangle area. Carolina Coach Company has applied to this Commission and obtained additional franchise routes from time to time between Raleigh and Durham as new highways have been built and existing highways relocated or improved. The most recent franchise authority granted to Carolina Coach Company in this area was that granted by order of this Commission in Docket No. B-15, Sub 167, which became effective on November 8, 1971, granting authority from Raleigh over relocated North Carolina Highway 54 to its junction with I-40, and thence over I-40 to its junction with N. C. Secondary Road 1959 near Nelson.

(3) By this application, Carolina Coach Company is seeking a new route over the Durham North-South Expressway from Durham to its junction with I-40 within the Research Triangle and then over I-40 to where it joins the Carolina Coach Company existing authority on I-40 at the junction with N. C. Secondary Road 1959 near Nelson. The franchise route applied for when combined with the existing Carolina

Coach Company franchise over I-40 would afford to Carolina Coach Company a new route between Raleigh and Durham via I-40 and the Durham North-South Expressway.

(4) Carolina Coach Company now operates eighteen round trips daily over its various franchise routes between Raleigh and Durham with some additional weekend schedules. Included in the present operations are six daily round trip express schedules which operate non-stop between the bus stations in Raleigh and Durham over U. S. Highway 70. It is proposed that these non-stop schedules would be rerouted over the new route between Raleigh and Durham which would be afforded by the combination of the franchise route applied for and the Carolina Coach Company present route over I-40.

(5) By reason of the rapid development along U. S. Highway 70 including the new Crabtree Valley Shopping Center, the increased traffic congestion, the increased number of traffic lights, and the reduction in the maximum speed limit to 55 miles an hour even in the undeveloped areas, the Carolina Coach Company route over U. S. Highway 70 has become less desirable for through bus operations. The new route between Raleigh and Durham via the Durham North-South Expressway and I-40 over which Carolina Coach Company proposes to reroute its non-stop through bus service is 1.5 miles longer than the present route via U. S. Highway 70 but will enable a shorter running time and will be a more comfortable and safer route for the through bus operation. The rerouting of the through non-stop service to the proposed route will not cause any reduction in the present service of Carolina Coach Company between Raleigh and Durham or to any intermediate points.

(6) There is a continuing and present public need for through bus operations between Raleigh and Durham.

(7) Carolina Coach Company is fit, willing and able to properly perform the proposed service.

(8) Carolina Coach Company is solvent and financially able to furnish the proposed service on a continuing basis.

Based upon the foregoing Findings of Fact, the Hearing Commissioner makes the following

CONCLUSIONS

(DOCKET NO. B-30, SUB 46)

In this application, Southern Coach Company has the burden of proof to satisfy this Commission, among other things, that public convenience and necessity require its proposed service in addition to existing authorized transportation service within the meaning of G. S. 62-262(e) (1). The term "public convenience and necessity" as applied by this Commission in many prior cases and as defined by the North Carolina Supreme Court in Utilities Commission v. Trucking

Company, 223 NC 687, 28 SE 2d 201, involves two primary considerations, i.e. whether there is a substantial public need for the service which could not be met by existing carriers and whether the proposed service would endanger or impair the operations of existing carriers contrary to public interest. From the evidence in this case, the Hearing Commissioner concludes that Southern Coach Company has failed to meet either test.

The only evidence for any public need for bus transportation service offered by Southern Coach Company was the testimony of those witnesses expressing the desire to be able to ride from Wilmington or other points on the Southern Coach Route on U. S. Highway 421 east of Raleigh to Durham without the necessity of having to change buses at Raleigh. The services these witnesses require can obviously now be provided by Southern Coach over its own existing franchise authority via U. S. Highway 401 and N. C. Highway 55. There is no other testimony or evidence in the record which would support the finding that there is a public need for any additional transportation service between Raleigh and Durham or between those cities at intermediate points including the Research Triangle area.

The Southern Coach Company admits and this Commission has previously found in its prior orders including the order in Docket No. B-15, Sub 167, effective on November 8, 1971, that the franchise route of Southern Coach Company between Raleigh and Durham by way of Holly Springs is in no sense competitive with the franchise routes of Carolina Coach Company between Raleigh and Durham. To grant the authority sought would give to Southern Coach Company a direct, competitive route between the two cities and intermediate points which it does not now have and would allow it to institute new service which would materially alter the competitive situation between Southern Coach and Carolina Coach for this traffic. For that reason, the savings in operating costs which would be afforded to Southern Coach Company by operating over the proposed direct route in contrast to its present operations, even if assumed to be correct and realistic, would not justify a finding of public convenience and necessity in this situation. Consideration of operating economy as justification for public convenience and necessity for the granting of new franchise authority, in the absence of the showing of public need for the authority, is proper only where the application is for authority to improve an existing and competitively effective service and where the franchise route applied for will not enable the applicant to institute a new service or materially alter the competitive situation with existing carriers.

Under any theory which Southern Coach Company has advanced to justify its application the ultimate result would be that it would take from Carolina Coach Company passenger traffic which it is now carrying between Raleigh and Durham. Although this traffic is substantial, the evidence shows

that the volume of such traffic has been steadily decreasing in recent years. In order to continue to provide the present service between Raleigh and Durham, Carolina Coach Company must continue to carry its present Raleigh-Durham passengers and any substantial decrease in passenger traffic could result in the curtailment of the present service contrary to public interest.

In this application, the Hearing Commissioner must also consider the provisions of G. S. 62-262(f) which preclude the Commission from the granting of any application to serve a route already served by a previously authorized carrier unless the Commission finds from the evidence that the existing service "is inadequate to meet the requirements for public convenience and necessity". That part of the Southern Coach application described in subparagraph (a) of Finding of Fact No. 2 above seeks to duplicate existing certificated franchise authority of Carolina Coach Company along I-40 and along N. C. Highway 54. This duplication is without any restrictions whatsoever both as to the routes and as to the service which could be offered to the traveling public along the routes. Southern Coach Company did not contend nor is there any evidence in this record upon which this Commission can make a finding that the existing service of Carolina Coach Company along its routes which would be duplicated by this application is inadequate to meet the requirements of public convenience and necessity.

Based upon the findings of fact found from the evidence in this record and the foregoing conclusions, the Hearing Commissioner concludes that the applicant, Southern Coach Company, has failed to meet the burden of proof that G. S. 62-262(e)(1) that public convenience and necessity requires the proposed service in addition to existing authorized transportation service. And that in addition, the provisions of G. S. 62-262(f) further preclude the granting of the application insofar as it duplicates presently existing franchise routes of the protestant, Carolina Coach Company. For these reasons, the application should be denied.

(DOCKET NO. B-15, SUB 171)

Carolina Coach Company has had franchise authority between the cities of Raleigh and Durham since the Company was founded in 1925 and has performed adequate and continuous service between the two cities, and intermediate points since that time. As new highways have been constructed Carolina Coach has sought and received from this Commission additional routes in order to be able to operate over improved highways and to serve additional points. By this application Carolina Coach is seeking to further improve its service between Raleigh and Durham and intermediate points including the Research Triangle area by utilizing the new and vastly improved highway that will become available upon completion of I-40 and the Durham North-South Expressway.

The fact that there is a substantial public need for bus service between Raleigh and Durham has long been well established by the continuous operations of Carolina Coach Company and acknowledged by the many prior orders of this Commission granting additional authority. The public witnesses appearing at the hearing testified to the continued, present need for the service. In addition to this showing of proposed need, it is obvious that the proposed route will provide a fast, comfortable and safer ride for passengers traveling between the cities of Raleigh and Durham to the benefit of both the traveling public and to Carolina Coach Company. Carolina Coach is presently providing all of the transportation service which would be in any way affected by the grant of this authority and its proposed operation over the new route would in no way alter the competitive situation to the detriment of any existing carriers. Southern Coach made no contention or showing that the granting of this authority would in any manner affect or be detrimental to its operations.

Based upon the foregoing findings of fact and conclusions, the Hearing Commissioner concludes that the applicant, Carolina Coach Company, has met the burden of proof in G. S. 62-262 that (1) public convenience and necessity require the proposed service in addition to existing authorized transportation service, (2) Carolina Coach Company is fit, willing and able to properly perform the proposed service, and (3) Carolina Coach Company is solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED, AS FOLLOWS:

(1) That the application of Southern Coach Company in Docket No. B-30, Sub 46 be, and the same hereby is, denied.

(2) That Passenger Common Carrier Certificate No. B-15 held by Carolina Coach Company, be and the same hereby is, amended to include the authority more particularly described in Exhibit A attached hereto and made a part hereof.

(3) That Carolina Coach Company shall comply with the Rules and Regulations of the Commission and institute operations under the authority granted herein within thirty (30) days from the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This 21st day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

EXHIBIT A
CERTIFICATE B-15, CAROLINA COACH COMPANY

To Transport passengers, their baggage, mail and light express over the following routes:

From Durham over the Durham North-South Expressway 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, and Park Plaza Service Area from junction Interstate Highway 40 and Davis Road.

DOCKET NO. B-30, SUB 46
DOCKET NO. B-15, SUB 171

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

DOCKET NO. B-30, SUB 46 Application of Southern Coach Company to operate between Raleigh, N. C., and Intersection of N. C. 54 and N. C. 55 near Loves Grove as follows: From Raleigh to Park Plaza (Research Triangle Park, N. C.) over I-40, thence over N. C. 54 to the intersection of N. C. 54 and N. C. 55, near Loves Grove, and return over same route serving intermediate points. Between Park Plaza (Research Triangle Park, N. C.) and Durham, N. C., over I-40, and return over same route serving intermediate points.	ORDER AFFIRMING AND ADOPTING RECOMMENDED ORDER ISSUED ON MARCH 21, 1973
And	
DOCKET NO. B-15, SUB 171 Application of Carolina Coach Company to operate from Durham over the Durham North-South Expressway 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, and Park Plaza Service Area from junction Interstate Highway 40 and Davis Road	

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on May 11, 1973

BEFORE: Commissioners John W. McDevitt, presiding, Hugh A. Wells, and Ben E. Roney (To read record and participate)

APPEARANCES: (DOCKET NO. B-30, SUB 46)

For the Applicant:

Clarence H. Noah
Attorney at Law
1425 Park Drive
Raleigh, North Carolina 27605

F. Kent Burns
Attorney at Law
Post Office Box 1406, Raleigh, North Carolina 27602

For the Protestant:

Arch T. Allen and Thomas Steed, Jr.
Attorneys at Law
Post Office Box 2058, Raleigh, North Carolina 27602
For: Carolina Coach Company

(DOCKET NO. B-15, SUB 171)

For the Applicant:

Arch T. Allen and Thomas Steed, Jr.
Attorneys at Law
Post Office Box 2058, Raleigh, North Carolina 27602

For the Protestant:

Clarence H. Noah
Attorney at Law
1425 Park Drive
Raleigh, North Carolina 27605

F. Kent Burns
Attorney at Law
Post Office Box 1406, Raleigh, North Carolina 27602
For: Southern Coach Company

BY THE COMMISSION: Upon consideration of the Recommended Order of Chairman Wooten issued on March 21, 1973, the exceptions filed thereto by Southern Coach Company, the Record as a whole, and the oral arguments of all the parties, the Commission concludes that the exception of Southern Coach Company should be denied. Furthermore, after considering Finding of Fact number 4 in Docket No. B-30, Sub 46, the Commission is of the opinion that Southern Coach Company and Carolina Coach Company should reinstate, for the convenience of the traveling public, the Lease of Equipment Agreement which afforded passengers traveling on the Southern Coach franchise from Wilmington to Durham via U. S. 421 east of Raleigh a through bus service without change of bus in Raleigh.

IT IS, THEREFORE, ORDERED:

1. That the Recommended Order issued on March 21, 1973 as modified herein below be, and hereby is, affirmed and adopted as the final Order of the Commission.

2. That Southern Coach Company and Carolina Coach Company shall renegotiate an equitable equipment interchange agreement to provide passengers through service without a change of coaches between Durham and Wilmington, North Carolina over the franchised routes of both carriers and submit the proposed agreement to the Commission for its consideration within thirty (30) days from the date of this order.

3. That the exceptions of Southern Coach Company be, and hereby are, denied.

ISSUED BY ORDER OF THE COMMISSION.

This 29th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-23, SUB 19

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Cape Fear Valley Coaches, Inc. - Application For Authority to Place in Effect an Exact Fare Plan For Passengers Riding Its Buses, Effective August 1, 1973.	)	ORDER GRANTING APPLICATION

BY THE COMMISSION: By a filing dated July 9, 1973, treated as an Application, by Mr. A. T. Watson, President, Cape Fear Valley Coaches, Inc., 426 Mayview Street, Fayetteville, North Carolina 28306, seeking authority to place in effect an exact fare plan for passengers riding its buses in Fayetteville, North Carolina, effective August 1, 1973.

Mr. A. T. Watson advises that his company has had one attempt of robbery and several threats of robberies in Fayetteville, North Carolina, and would like to discourage these attempts by going to the exact fare plan and having all monies dropped in locked fare boxes on buses; that the bus drivers would not be required to carry any cash or to make change, but would issue a passenger a receipt for the amount of cash deposited in the fare box when said amount exceeded the actual cash fare for said passenger, which the holder of said receipt may on any week day during normal working hours receive any change due upon presenting the

receipt to the main office of the bus company, either in person, or by mail, if presented within six months after receiving said receipt, and the Commission is of the opinion that the carrier should notify the public of the change in operation by having a notice of its proposal published in a newspaper having general circulation in the involved area at least five (5) consecutive days prior to August 1, 1973, and that notice of its proposal be posted and remain posted for at least five (5) consecutive days in each of its buses prior to August 1, 1973, with proof of publication required.

Upon consideration of the Application, the circumstances and conditions relied upon and the matter as a whole, the Commission is of the opinion, finds and concludes, that the Application should be granted and Applicant should amend its tariff accordingly.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Application of Cape Fear Valley Coaches, Inc., be, and the same is hereby, granted.

(2) That Applicant give notice of its proposal by the publication of an appropriate notice thereof in the newspaper having general circulation in the area at least five (5) consecutive days prior to August 1, 1973, as well as give notice of its proposal by posting and causing to remain posted in each of its buses an appropriate notice thereof for at least five (5) consecutive days prior to August 1, 1973. Proof of publication is required.

(3) That Applicant be, and same is hereby, authorized to publish a rule in its tariff covering the exact fare plan, which tariff publication is hereby authorized to be made effective August 1, 1973, on one (1) day's notice, but shall in all other respects comply with the tariff publication rules of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of July, 1973.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-105, SUB 33

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Greyhound Lines, Inc. - Suspension and Investigation of Proposed "Next Bus Out" Express Tariff, Scheduled to Become Effective September 17, 1973.	)	ORDER ALLOWING WITHDRAWAL AND CANCELLATION OF PROPOSED TARIFF FILING

BY THE COMMISSION: By Supplemental Order in the captioned docket dated August 29, 1973, the Commission suspended a tariff filing by Greyhound Lines, Inc., received on August 15, 1973, proposing a new "Next Bus Out" express service and rates between Charlotte and Greensboro and between Greensboro and Winston-Salem, North Carolina, said tariff being designated as "Greyhound Lines, Inc., Express Tariff No. 214-I, N.C.U.C. No. 24", instituted an investigation concerning the lawfulness thereof, consolidated this investigation with other matters under investigation in this same docket, and assigned the consolidated proceeding for hearing on September 11, 1973.

The Commission is now in receipt of a Motion by Counsel, J. Ruffin Bailey, Bailey, Dixon, Wooten and McDonald, Attorneys at Law, for and on behalf of Greyhound Lines, Inc., requesting that involved carrier be permitted to cancel and withdraw its Tariff No. 214-I, N.C.U.C. No. 24, insofar as it is proposed to be made applicable to North Carolina intrastate commerce and the Commission is of the opinion that the Motion should be allowed. It is also the opinion that the hearing, insofar as it relates to Greyhound Lines, Inc., Tariff No. 214-I, N.C.U.C. No. 24, should be cancelled and the proceeding, to the extent it relates to this tariff filing, should be discontinued.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Motion by Greyhound Lines, Inc., requesting authority to cancel and withdraw its Tariff Schedule No. 214-I, N.C.U.C. No. 24, insofar as it is proposed to be made applicable to North Carolina intrastate traffic, be, and the same is hereby, allowed.

(2) That Greyhound Lines, Inc., be, and same is hereby, authorized to cancel and withdraw its Tariff No. 214-I, N.C.U.C. 24, proposing "Next Bus Out" service and rates between certain points in North Carolina, by the filing of an appropriate supplement thereto, which filing may be made on one day's notice to the Commission and to the public.

(3) That the hearing now assigned for September 11, 1973, at 10:00 A. M., insofar as it relates to Greyhound Lines, Inc., Tariff No. 214-I, N.C.U.C. No. 24, be, and the same is hereby, cancelled and the proceeding discontinued.

(4) That in all other respects the Order of Investigation in this docket dated May 7, 1973, relating to other matters, shall remain in full force and effect, and the hearing on said matters will be held on Tuesday, September 11, 1973, at 10:00 A. M., as scheduled, unless otherwise ordered by this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-105, SUB 33

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Bus Common Carriers - Suspension and Investigation of Proposed Increases in Intercity Bus Passenger Fares, Bus Package Express Rates and Charges and Charter Coach Rates and Charges, Effective June 1, 1973.	)	ORDER APPROVING INCREASED FARES

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on September 11 and 12, 1973.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioner Ben E. Roney, with Commissioner Hugh A. Wells to Read the Record and Participate in the Decision.

APPEARANCES:

For the Respondents:

R. C. Howison, Jr.
Joyner & Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
Appearing For: Continental Southeastern Lines, Inc., Fort Bragg Coach Company

Arch T. Allen
Allen, Steed & Pullen
Attorneys at Law
Box 2058, Raleigh, North Carolina 27602
Appearing For: Carolina Coach Company

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
Appearing For: Greyhound Lines, Inc.

David L. Ward, Jr.
Ward, Tucker, Ward & Smith, P. A.
Attorneys at Law
310 Broad Street
New Bern, North Carolina 28560
Appearing For: Seashore Transportation Company

Clarence H. Noah
Attorney at Law
1425 Park Drive
Raleigh, North Carolina 27605
Appearing For: Southern Coach Company

For the Commission Staff:

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

BY THE COMMISSION. This matter arose upon the filing with this Commission by Appalachian Coach Company, Incorporated; Carolina Coach Company; Central Buslines of N. C., S. D. Small, d/b/a; Carolina Scenic Stages; Continental Southeastern Lines, Inc.; D. & M. Bus Company, a Corporation; Fort Bragg Coach Company; Gaston-Lincoln Transit, Inc.; Greyhound Lines, Inc.; Piedmont Coach Lines, Inc.; Safety Transit Lines, R. H. Gauldin, d/b/a; Seashore Transportation Company; Silver Fox Lines, a Corporation; Smoky Mountain Stages, Inc.; Southern Coach Company; Suburban Coach Lines, Incorporated; Virginia Dare Transportation Company, Inc.; Wilkes Transportation Company, Inc., and by National Bus Traffic Association, Inc., Agent (NBTA), either individually or by NBTA for and on behalf of its member carriers, of certain tariff schedules pertaining to proposed increase of ten percent (10%) in bus passenger fares with resulting increased fares rounded to end in the next "0" or "5"; proposed increase of five percent (5%) bus express package rates with resulting increase rates also rounded to end in the next "0" or "5"; and a proposed increase in chartered coach rates and charges involving intrastate traffic in North Carolina, scheduled to become effective June 1, 1973, with the proposed passenger, express and charter coach schedules being as enumerated and described herein in Appendix I attached hereto and made a part hereof.

The Commission, being of the opinion that the proposed increase in bus passenger fares and bus package express rates and practices in connection therewith were matters affecting the public interest, concluded that the tariff

schedules hereinabove mentioned should be suspended and an investigation into and concerning same instituted and the matter be assigned for hearing for determining whether said publication is just, reasonable and otherwise lawful. Accordingly, the tariff was suspended to and including May 7, 1973.

Respondents were required to give notice on two separate occasions of the time, place and purpose of the hearing in this matter by publication of a notice in regard thereto as set forth in Appendix II attached hereto and made a part hereof, in newspapers having general circulation in involved areas of North Carolina with said publication to be made not more than fifteen (15) or less than ten (10) days prior to the date of hearing. The Commission further required that the Respondents post notice on their respective buses and in their respective terminals in regard to the application for increase in tariffs.

On September 11, 1973, a hearing was held before Chairman Wooten and Commissioner Roney (with the stipulation that Commissioner Wells read the record), at 10:00 a.m. in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina.

At the public hearing, the Respondents offered into evidence affidavits of publication indicating that the requisite public notice was given in appropriate newspapers and by public display of the proposed tariffs in the respective bus terminals of the Respondents and in the several buses. No one protested the proposed increases, either by letter or by appearance.

At the hearing Respondents prasented the testimonies and exhibits of officials of Seashore Transportation Company, Carolina Coach Company, Greyhound Lines, Inc. - East, and Continental Southeastern Lines, Inc., all Respondents herein.

The Commission Staff presented the testimonies and exhibits of James C. Turner, Staff Accountant, and D. D. Coordes, Assistant Director of Traffic.

Filings of briefs were waived by all parties.

Based on the evidence adduced at this hearing, the Commission finds and concludes that the rates and charges, as set forth in Appendix I as is incorporated into this record, are just and reasonable; that said tariffs are not the means of creating discrimination, preference or prejudice; that said tariffs are otherwise lawful and that the Order of Suspension and Investigation be withdrawn and cancelled and that said tariffs be allowed to become effective upon one day's notice.

Accordingly, IT IS THEREFORE ORDERED

That the Order of Suspension and Investigation in this docket is hereby withdrawn and cancelled and that the tariff increases as set forth in Appendix I, as is incorporated into this Order, are hereby approved and allowed to become effective upon one day's notice.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

APPENDIX I

(1) Carolina Coach Company:
Local Passenger Tariffs Nos. 22-D, N.C.U.C. No. 113 and 23-D, N.C.U.C. No. 115, all changes contained in revised pages thereto resulting in increased fares.

(2) Carolina Scenic Stages:
Local and Interdivisional Passenger Tariff No. 28, N.C.U.C. No. 23, all changes contained in revised pages thereto resulting in increased fares.

(3) Central Buslines of N. C., S. D. Small, d/b/a:
Local Passenger Tariffs Nos. 1-F, N.C.U.C. No. 9, and No. 2-A, N.C.U.C. No. 10, in full.

(4) Continental Southeastern Lines, Inc. (Queen City Coach) (Company)
Local Passenger Tariff No. 143, N.C.U.C. No. 168, all changes contained in revised pages thereto resulting in increased fares.

(5) Fort Bragg Coach Company:
Local Passenger Tariff No. 6, N.C.U.C. No. 6, in full.

(6) Greyhound Lines, Inc:
Local Passenger Tariff No. 193, N.C.U.C. No. 15, all changes in revised pages thereto resulting in increased fares,
Local Passenger Tariff No. 197-C, N.C.U.C. No. 21, in full,
Local Passenger Tariff No. 218-B, N.C.U.C. No. 16, all changes in revised pages thereto resulting in increased fares,
Local Passenger Tariff No. 264-B, N.C.U.C. No. 22, in full,

Local Passenger Tariff No. 265-C, N.C.U.C. No. 23, in full.

(7) Piedmont Coach Lines, Inc.:
Local Passenger Tariff No. 6, N.C.U.C. No. 11, in full.

(8) Safety Transit Lines, R. H. Gauldin, d/b/a:
Local Passenger Tariff No. 1-K, N.C.U.C. No. 16, in full.

(9) Seashore Transportation Company:
Local and Interdivisional Passenger Tariff No. 19-B, N.C.U.C. No. 42, all changes contained in revised pages thereto resulting in increased fares.

(10) Smoky Mountain Stages:
Local Passenger Tariff No. 102, N.C.U.C. No. 56, all changes contained in revised pages thereto resulting in increased fares.

(11) Virginia Dare Transportation Company, Inc.:
Local Passenger Tariffs Nos. 6-I, N.C.U.C. No. 23, and No. 7-D, N.C.U.C. No. 25, in full.

(12) Wilkes Transportation Company:
Local Passenger Tariff No. 5, N.C.U.C. No. 10, in full, Charter Coach Tariff No. 3, N.C.U.C. No. 8, Supplement No. 2, thereto, in full.

(13) National Bus Traffic Association, Inc., Agent:
National Basing Fare Tariff No. A-100, N.C.U.C. No. 4,
Local and Joint Passenger Tariff No. 219-D, N.C.U.C. No. 217,
National Passenger Tariff No. A-1000, N.C.U.C. No. 31,
National Express Tariff No. A-600, N.C.U.C. No. 243,
Carolina Charter Coach Tariff No. A-426, N.C.U.C. No. 199, all changes contained in revised pages to each tariff resulting in increased rates, fares and/or charges.

APPENDIX II
DOCKET NO. B-105, SUB 33

MOTOR BUS COMMON CARRIERS - SUSPENSION AND INVESTIGATION OF PROPOSED INCREASES IN INTER-CITY BUS PASSENGER FARES, BUS PACKAGE EXPRESS RATES AND CHARGES AND CHARTER COACH RATES AND CHARGES, EFFECTIVE JUNE 1, 1973	NOTICE

NOTICE OF PROPOSED INCREASE IN BUS PASSENGER FARES, BUS EXPRESS RATES AND CHARTER COACH RATES.

Notice is hereby given that proposed increases of ten (10%) percent in bus passenger fares and five (5%) percent in bus express package rates and an increase in charter coach rates have been suspended by the North Carolina Utilities Commission and an investigation into and concerning same instituted.

Anyone opposing or feeling aggrieved by the proposed increases may file a protest with the Commission or appear at the hearing which will be conducted in the Courtroom of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Tuesday, September 11, 1973, at 10:00 a.m., when they will be offered an opportunity to place their views on the matter in the official record.

This the 7th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

NOTICE TO PRINTER: Charges to be paid by National Bus Traffic Association, Inc., Agent.

DOCKET NO. B-69, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Queen City Coach Company,)
P. O. Box 2387, Charlotte, North Carolina,) RECOMMENDED
for approval to change its corporate name) ORDER
to Continental Southeastern Lines, Inc.)

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on February 8, 1973, at 2:00 P. M.

BEFORE: Hugh A. Wells, Hearing Commissioner

APPEARANCES:

For the Applicant:

R. C. Howison, Jr., Esquire
Joyner & Howison
Wachovia Bank Building
Raleigh, North Carolina 27602
Appearing for: Queen City Coach Company

John F. Ray, Esquire
P. O. Box 2387
417 W. 5th Street
Charlotte, North Carolina 28201
Appearing for: Queen City Coach Company

For the Commission Staff:

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

HUGH A. WELLS, HEARING COMMISSIONER. This matter came on for hearing by Order of the Commission, pursuant to an application by Queen City Coach Company (Queen) for approval of change of Queen's corporate name from Queen City Coach Company to Continental Southeastern Lines, Inc. The matter was consolidated for hearing with Docket No. B-69, Sub 115.

The evidence may be summarized as follows:

Queen is a North Carolina corporation certificated (Certificate Number B-69) as a common carrier pursuant to the laws and statutes of the State of North Carolina. On September 22, 1966, the majority stock in and control of Queen was acquired by Transcontinental Bus System, Inc. Approval for this change of control was (1) sought and obtained from the Interstate Commerce Commission, which order of approval was extensively litigated in appeals to the Federal Courts and ultimately affirmed and approved; and (2) was not sought nor obtained from this Commission, as required by law. Transcontinental subsequently transferred its stock in Queen (hence control) to Continental Trailways, Inc. Approval for this change of control was (1) sought and obtained from the Interstate Commerce Commission; and (2) was not sought nor obtained from this Commission, as required by law. Continental is now the sole stockholder in Queen. Continental is a wholly-owned subsidiary to TCO Industries, Inc., (formerly Transcontinental Bus System, Inc.). The general accounting functions and bookkeeping records of Queen were transferred from Charlotte, North Carolina, to Dallas, Texas, in April 1971, which transfer was without notice to or approval of this Commission.

FINDINGS OF FACT

1. The proposed change of name applied for herein will not affect the ownership or control of Queen; will not affect Queen's service in North Carolina; is not adverse to the public interest, and should be allowed.

2. Successive ownership and control of Queen has been effected and carried out in violation of the law and statutes of North Carolina and of the Rules of this Commission. Such transfers did not, however, result in a substantial change in the service or operations of Queen in North Carolina, and the other requirements of the statutes and rules have been met or fulfilled.

3. Continental Trailways, Inc., is now the whole owner of the stock of Queen, and Queen's records and books of

account are being kept and maintained at 315 Continental Avenue, Dallas, Texas.

Whereupon, the Commission

CONCLUDES

This record reflects that the proposed change of name is innocuous and should be approved. As a result of the application for change of name, however, it has come to light that the ownership and control of Queen has been effected twice without the prior approval of this Commission, and that Queen's records and books of account were physically removed from this State without notice to or approval by this Commission. These are substantial and serious violations. The whole concept of Public Utility Law is founded in the notion that the right of franchise may be granted only by the sovereign, and once granted, is subject to the sovereign's review, regulation, control, and possible revocation. It is both a valuable right and a profound responsibility, and the recipient of a franchise may not and should never assume to transfer the rights or the responsibilities of franchise without the prior approval of the sovereign from which it emanates.

We are convinced that in this instance, the franchise transfer violations were carried out without malice, and while culpable, were levis culpa, resulting from carelessness or inadvertence. We are constrained, nevertheless, in view of the serious nature of the transgressions, to admonish the present owners of Queen to be quite certain that no such mistakes occur in the future.

IT IS, THEREFORE, ORDERED THAT:

1. The change of name of Queen City Coach Company to Continental Southeastern Lines, Inc., be, and hereby is, approved, and that the records of this Commission shall be revised to reflect said change of name and to reflect that the records and books of account of said Continental Southeastern Lines, Inc., are to be maintained at the address set forth in Ordering Paragraph 2 below.

2. The records and books of account of Continental Southeastern Lines, Inc., as successor corporation to Queen City Coach Company, shall be kept and maintained at 315 Continental Avenue, Dallas, Texas, and shall not be removed therefrom without the prior approval of this Commission.

3. The change of ownership of the capital stock and control of Queen City Coach Company (whose name is now Continental Southeastern Lines, Inc.), as set forth hereinbefore, is approved nunc pro tunc.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-189, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Kannapolis Transit Company, Inc., 625 Main Street, Kannapolis, North Carolina - Joint Petition to Transfer Certain Routes Contained in Passenger Common Carrier Certificate No. B-15 from Carolina Coach Company to Kannapolis Transit Company.	)	RECOMMENDED ORDER APPROVING TRANSFER

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 13, 1973, at 2:00 P.M.

BEFORE: D. D. Coordes, Hearing Examiner

APPEARANCES:

For the Applicants:

Arch T. Allen
Arch T. Allen, III
Allen, Steed and Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina
For: Carolina Coach Company, Transferor

B. S. Brown, Jr.
Alexander and Brown
Attorneys at Law
315 Professional Building
Kannapolis, North Carolina
For: Kannapolis Transit Company, Inc., Transferee

Protestants: None

COORDES, HEARING EXAMINER: By joint application filed with the Commission on October 25, 1972, by Arch T. Allen of the firm Allen, Steed and Pullen, Raleigh, North Carolina, for and on behalf of Carolina Coach Company, 120 South Blount Street, Raleigh, North Carolina, as Transferor, and by B. S. Brown, Jr., of the firm Alexander and Brown, Kannapolis, North Carolina, for and on behalf of Kannapolis Transit Company, Inc., 625 Main Street, Kannapolis, North Carolina, as Transferee, seek approval of the transfer of

certain routes contained in Passenger Common Carrier Certificate No. B-15 from said Transferor to said Transferee as follows:

"(a) In and about Kannapolis as follows: From Main-East Seventh-Lane-Elwood-Venus-Cannon Blvd.-Ridge Avenue. From Main-East F-Centerview-Center Grove Road to Royal Oaks development. From Main-West First-Elm-Eighth-No. Walnut-Eleventh-Kemball-Snipe-Main. From Main-Beth Page Road."

"(b) Between Concord and China Grove as follows: From Concord over U. S. 29A via Kannapolis to China Grove."

The Commission set the application for public hearing and notice thereof, along with a description of the involved routes, and the time and place of the hearing, was given to competing and connecting carriers, as well as Transferor and Transferee, by Order in this Docket dated November 13, 1972. Due to severely inclement weather and upon request from Petitioners the hearing set for January 9, 1973, was canceled and by Order of the Commission dated January 15, 1973, was rescheduled for February 13, 1973.

At the call of the hearing both Transferor, Carolina Coach Company and Transferee, Kannapolis Transit Company, were present and represented by counsel. No one appeared in opposition to the proposed transfer.

The testimony and evidence of record tends to show that Transferee is presently successfully operating the routes sought to be transferred and has been for many years under terms of lease arrangements filed with and approved by the Commission; that an agreement has been entered into by Transferor and Transferee for sale of involved routes; that operations will continue by Transferee in substantially the same manner as have been conducted before and that Transferee is qualified financially and otherwise to acquire the subject routes and provide adequate and continuous service thereon.

Having considered the evidence presented and the record in this proceeding as a whole, the Hearing Examiner makes the following:

FINDINGS OF FACT

(1) That Transferor, Carolina Coach Company, is a motor common carrier of passengers and holder of Certificate No. B-15 encompassing the routes sought to be transferred.

(2) That an agreement has been entered into by Transferor and Transferee for sale of involved routes.

(3) That Transferee, Kannapolis Transit Company, Inc., is presently operating under lease the routes sought to be transferred and has been for many years.

(4) That Kannapolis Transit Company, Inc., is fit, willing and able to properly provide service and that operations will be conducted in substantially the same manner as before.

(5) That Kannapolis Transit Company, Inc., is qualified financially and otherwise to acquire the subject routes and provide adequate and continuous service thereon.

Based upon the foregoing Findings of Fact, The Hearing Examiner makes the following:

CONCLUSIONS

Transferee, Kannapolis Transit Company, Inc., has been operating the routes sought to be transferred for many years under lease from Transferor, Carolina Coach Company and by virtue of this lease operation of long standing the Hearing Examiner is of the opinion that said transfer is in the public interest, will not adversely affect the service to the public over said routes, and will not unlawfully affect the service to the public by other public utilities and that Transferee is fit, willing, and able to perform such service to the public and that the application should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the joint application to transfer certain routes as more particularly described in Exhibit A attached hereto and made a part hereof, from Carolina Coach Company to Kannapolis Transit Company, Inc., be, and the same is hereby, approved.

(2) That Common Carrier Certificate No. B-15 held by Carolina Coach Company be, and the same is hereby, amended by deleting therefrom a portion of Route (2) 2, and Route (2) 16, in its entirety with amended Route (2) 2, to read as follows:

Route (2) 2. Between Charlotte and Concord as follows: From Charlotte over N. C. 2939 via Newell to and over N. C. 49 via Harrisburg to and over N. C. 1157 to Concord.

Between China Grove and junction combined U. S. 70-U.S. 29 and Interstate 85 north of Salisbury as follows: From China Grove over combined U.S. 29-U.S. 70 to junction combined U.S. 29-U.S. 70 and Interstate 85.

BY ORDER OF THE COMMISSION.

This the 19th day of April, 1973.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Kannapolis Transit Company, Inc.
625 Main Street
Kannapolis, North Carolina

EXHIBIT A (1) To transport passengers, baggage, mail and express over the following routes:

(2) Between Concord and China Grove as follows: From Concord over U.S. 601 Business to junction combined U.S. 29-601, thence over combined U.S. 29-601 to junction U.S. 29-A, and thence over U.S. 29-A via Kannapolis to China Grove.

(3) In and about Kannapolis as follows: From Main-East Seventh-Lane-Elwood-Venus-Cannon Blvd.-Ridge Avenue. From Main-East F-Centerview-Center Grove Road to Royal Oaks development. From Main-West First-Elm-Eighth-No. Walnut-Eleventh-Kemball-Snipe-Main. From Main-Beth Page Road.

DOCKET NO. B-189, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Kannapolis Transit Company, Inc., 625 Main Street, Kannapolis, North Carolina - Joint Petition to Transfer Certain Routes Contained in Passenger Common Carrier Certificate No. B-15 From Carolina Coach Company to Kannapolis Transit Company.	)))))	ORDER CORRECTING ERROR

BY THE COMMISSION: It having come to the attention of the Commission that a clerical error exists in the second decretal paragraph of the Order in this Docket dated April 19, 1973, which became the Commission's Final Order on May 9, 1973, said error being the omission of a portion of Route (2) 2, second paragraph thereof as shown on Page 4 of said Order, authorizing service between China Grove, North Carolina, and the junction of U.S. 70-U.S. 29 and Interstate 85 north of Salisbury, North Carclina, and

The Commission being of the opinion that said error should be corrected.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the second paragraph of Route (2) 2, Page 4 be, and the same is hereby, rewritten to read:

> "Between China Grove and junction combined U.S. 70-U.S. 29 and Interstate 85 north of Salisbury as follows: From China Grove over combined U.S. 29-U.S. 601 to Salisbury, and thence over combined U.S. 29-U.S. 70 to junction combined U.S. 29-U.S. 70 and Interstate 85."

(2) That, except as herein amended, the Order of April 19, 1973, which became the Commission's Final Order on May 9, 1973, shall remain in full force and effect.

BY ORDER OF THE COMMISSION.

This the 15th day of May, 1973.

NORTH CARCLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-69, SUB 115

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application for approval to merge Smoky Mountain Stages, Inc., Carolina Scenic Stages, Inc., and Coastal Stages Corporation into Queen City Coach Company, the surviving Corporation.	)))))	RECOMMENDED ORDER GRANTING APPLICATION

HEARD IN: The Commission Hearing Room, One West Morgan Street, Ruffin Building, Raleigh, North Carolina, on February 8, 1973, at 2:00 P. M.

BEFORE: Hearing Commissioner Hugh A. Wells

APPEARANCES:

For the Applicant:

R. C. Howison, Jr., Esquire
Joyner & Howison
Wachovia Bank Building
Raleigh, North Carolina
Appearing for: Queen City Coach Company

John F. Ray, Esquire
P. O. Box 2387
417 West Fifth Street
Charlotte, North Carolina 28201
Appearing for: Queen City Coach Company

For the Commission Staff:

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

WELLS, HEARING COMMISSIONER. This matter came on for hearing by Order of the Commission pursuant to an application filed on December 4, 1972, by Queen City Coach Company (Queen), Smoky Mountain Stages, Inc. (Smoky), Carolina Scenic Stages, Inc. (Scenic), and Coastal Stages Corporation (Coastal), for permission and authority to merge Smoky, Scenic and Coastal into Queen, with that company being the surviving corporation, and with that company as the surviving corporation acquiring all of the assets and liabilities of Smoky, Scenic and Coastal.

Public notice of the application was required by the Commission's Order setting the matter for hearing at the above captioned time and place. The application was unopposed.

Based upon the application and the testimony and evidence presented at the hearing, the Commission makes the following

FINDINGS OF FACT

1. Queen and Smoky are North Carolina corporations, each holding a common carrier certificate to operate as a carrier of passengers, baggage and light express in intrastate operations in North Carolina. Scenic is a South Carolina corporation, holding a common carrier certificate to engage in similar carriage in North Carolina. Coastal is a South Carolina corporation certificated to engage as a common carrier in South Carolina, but does not engage in intrastate operations in North Carolina.

2. Each of the Applicants is owned and controlled directly or indirectly by Continental Trailways, Inc., which has its principal office and place of business at 3115 Continental Avenue, Dallas, Texas, and all are operating units of the Continental Trailways Bus System. Queen, Smoky, and Scenic are wholly-owned subsidiaries of Continental Trailways, Inc., and Coastal is a wholly-owned subsidiary of Scenic.

3. Subject to requisite regulatory consent, Smoky, Scenic and Coastal propose to and would merge into Queen, with Queen being the surviving corporation, and as the

surviving corporation, Queen to acquire all of the assets and liabilities of Smoky, Scenic and Coastal.

4. The proposed merger has been consented to by the holder or holders of all of the outstanding capital stock of each Applicant and has been approved by appropriate resolution of the Boards of Directors of each Applicant.

5. The business of each of the Applicants is managed and supervised in the principal office of Queen located at 417 West Fifth Street, Charlotte, North Carolina. The General Manager, Assistant General Manager, General Counsel, Director of Traffic, Director of Transportation and Director of Sales for Queen have the same titles and perform the same services for Smoky, Scenic and Coastal. The President and other principal officers of Queen are identical and one and the same as the President and principal officers of Smoky, Scenic and Coastal. All of the Applicants do business as "Continental Trailways".

6. All of the Applicants are fully solvent, with assets exceeding liabilities, and the Commission is satisfied that payment of the operating debts and obligations of the carriers being merged into is adequately secured.

7. The merger will not result in any substantial change in the service and operations of any of the Applicant carriers, and will not substantially affect the operations and service of any other motor carrier in North Carolina.

8. The merger of said carriers into Queen is in the public interest, will not adversely affect the service to the public under the franchises owned by the merging corporations, and will not unlawfully affect the service to the public by other public utilities.

9. Queen, as the successor corporation, is fit, willing and able to perform the services to the public under the franchise owned and operated by the other merging corporations, and service under said franchises has been continuously offered to the public up to the time of the filing of the application for merger.

Based upon the foregoing Findings of Fact, the Commission CONCLUDES that the application for merger should be approved.

IT IS, THEREFORE, ORDERED:

That the application for merger of Smoky Mountain Stages, Inc., Carolina Scenic Stages, Inc., and Coastal Stages Corporation into Queen City Coach Company as the surviving and successor corporation be, and hereby is, approved.

IT IS FURTHER ORDERED That the operating rights lease agreement between Southern Coach Company and Carolina Scenic Stages, Inc., in effect and included in the operating rights

of Carolina Scenic Stages, shall be assumed by Queen City Coach Company and shall remain in effect until termination has been authorized by this Commission. Said lease agreement is more particularly described in Exhibit B attached hereto and made a part hereof.

IT IS FURTHER ORDERED That Passenger Common Carrier Certificate No. B-17 heretofore issued to Carolina Scenic Stages and Passenger Common Carrier Certificate No. B-85 heretofore issued to Smoky Mountain Stages, Inc., be, and the same are, hereby retired.

IT IS FURTHER ORDERED That the motor carrier bond or liability insurance coverage of Queen City Coach Company be modified to include all vehicles of the merged corporations.

IT IS FURTHER ORDERED That Queen City Coach Company shall file with the Commission appropriate adoption notices adopting the fares, charges, rates, rules, regulations, traffic agreements, statements of divisions and any other instruments heretofore filed by Carolina Scenic Stages and Smoky Mountain Stages, Inc., and in force and effect on the date of this Order, as provided for in Rule R4-6 of the Rules and Regulations of this Commission, until such time as the tariffs may be amended.

IT IS FURTHER ORDERED That Queen City Coach Company shall institute operations over the franchises herein acquired within thirty (30) days from the effective date of this Order and render reasonably continuous and adequate service to the public pursuant to the provisions of the Public Utilities Act and the Rules and Regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Queen City Coach Company
Charlotte, North Carolina — Certificate No. B-69

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 to the S. C. State Line over N. C. Highway 191 from Asheville via Avery Creek, Mills River to Hendersonville; thence over U. S. Highway

176 via East Flat Rock, Saluda and Tryon to the S. C. State Line.

2. From Chimney Rock, N. C., to Lake Lure, N. C., over N. C. Highway 74; thence to North Carolina-South Carolina State Line over U. S. 74 and N. C. Highway 9 via Mill Springs and return over same route. Docket No. 4121.

3. From Charlotte over the Wilmont Road, designated on the Mecklenburg County Highway Map as Highway 196; to the intersection of said highway with Highway 198; thence over County Highway 198 via Charlotte Municipal Airport to Dixie; thence over County Highway 18 and 25 via Steel Creek Church and Shopton to the S. C. State Line; from the intersection of County Highways 196, 198 and 200 over Highway 200 via Brow Hill to the intersection of said Highway with County Highway 18 near Steel Creek Church; from Brow Hill over an unnumbered county highway to the gate of the Charlotte Municipal Airport. Docket No. 4279.

4. From Supply over U. S. Highway 17 through Shallotte and Grissettown, a distance of about 17 miles, to the intersection of said highway with Brunswick County Highway 1303, with closed doors; thence over said Highway 1303, a distance of about 3.7 miles, to the South Carolina line and return over the same route. Order dated July 27, 1962, in Docket No. B-17, Sub 10.

5. From Wilmington over U. S. Highway 17 via Bolivia to Supply; thence from Supply to Southport over N. C. Highway 211; from the intersection N. C. Highway 87 and N. C. Highway 133, over N. C. Highway 133 to its intersection with U. S. Highway 17 near Wilmington.

6. From Southport over N. C. Highway 211 to the intersection of 211 and 87, thence over 87 to the intersection of 87 and U. S. Highway 17, a distance of about 14 miles. Ref: Order dated December 10, 1962, in Docket No. B-17, Sub 8.

7. From Asheville, N. C. to Lake Junaluska over U. S. Highways 19, 19A, 23 and 23A via Canton; from Lake Junaluska to Dillsboro over U. S. Highways 19A and 23;

from Dillsboro to junction U. S. Highways 19A and 19 over U. S. Hy. 19A and U. S. Highway 441; from junction U. S. Highways 19A and 19 at Lake Junaluska to junction U. S. Highways 19 and 19A at Ela, N. C., over U. S. Hy. 19; from Waynesville to junction N. C. Hy. 284 and U. S. Highway 19 over N. C. Hy. 284; from junction U. S. Hys. 19 and 19A at Ela, N. C. to Topton over U. S. Hy. 19; from Topton to Murphy over U. S. Hys. 19 and 129; from Murphy to Ranger over U. S. Hys. 19 and 64; from Ranger to N. C. - Tenn. State Line over U. S. Hy. 64; from intersection of U. S. Hy. 19 and N. C. Hy. 112 to junction U. S. Hy. 19 and unnumbered highway over N. C. Hy. 112 and unnumbered highway via Candler; and return same routes.

8. From Deal's Gap to Fontana Dam over N. C. Hy. 28 and return.

9. From junction U. S. Hy. 19 and U. S. Hy. 441, via U. S. Hy. 441 to N. C. - Tenn. State Line, and return.

10. From West Asheville, via Sandhill Road, Enka Highway to junction Enka Highway and U. S. Hys. 19 and 23, and return.

11. From Dillsboro, N. C., over U. S. Hy. 23 and U. S. Hy. 441 via Franklin, to N. C. - Ga. State Line and return.

12. From Cherokee to Gateway, a distance of six miles immediately south of Cherokee over U. S. Highway 441.

13. From Ranger to Culberson at the Georgia-North Carolina State Line immediately south and west of Ranger over N.C. Hy. 60.

Queen City Coach Company
Charlotte, North Carolina — Certificate No. B-69

EXHIBIT B - Leases or Operating Agreements

1. Lease Agreement between Carolina Scenic Stages, as lessor, and Southern Coach Company, as lessee, as follows: (See restrictions below)

From Wilmington over U. S. Highway 17 via Bolivia to Supply; thence from Supply to Southport over N. C. Highway 211; from the intersection N. C. Highway 87 and N. C. Highway 133, over N. C. Highway 133 to its

intersection with U. S. Highway 17 near Wilmington.

From Southport over N. C. Highway 211 to the intersection of 211 and 87, thence over 87 to the intersection of 87 and U. S. Highway 17, a distance of about 14 miles.

RESTRICTION: Only local and charter service authorized.

Ref: Order dated December 10, 1962, in Docket No. B-17, Sub 8.

DOCKET NO. B-69, SUB 115

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application for approval to merge Smoky Mountain Stages, Inc., Carolina Scenic Stages, Inc., and Coastal Stages Corporation into Queen City Coach Company, the surviving Corporation.	ERRATA ORDER

WELLS, HEARING COMMISSIONER. Upon review of the Recommended Order dated March 27, 1973, due to become final on April 16, 1973, in the above referred to docket, granting the application, the Hearing Commissioner detected an omission in the Ordering Clauses and concludes that the following should be made a part of said Ordering Clauses to read as follows:

"IT IS FURTHER ORDERED That Queen City Coach Company's Passenger Common Carrier Certificate No. B-69, be, and the same is, hereby modified by including therein the intrastate operating rights embraced in Certificate No. B-17 heretofore issued to Carolina Scenic Stages, and in Certificate No. B-85 heretofore issued to Smoky Mountain Stages, Inc., with duplications of authority, if any, eliminated all as more particularly described in Exhibit A attached to the original Order."

IT IS, THEREFORE, ORDERED:

That the Recommended Order in this docket, dated March 27, 1973, to become final on April 16, 1973, be, and the same is, hereby amended in accordance with the above.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. E-13, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Suburban Coach Lines, Inc. - Application for Authority to Sell and Transfer Stock and Change of Control to Carl Davis, Lucille Davis, Paul Davis and Virginia Davis	)	ORDER APPROVING SALE AND TRANSFER OF STOCK AND CHANGE OF CONTROL

BY THE COMMISSION: By application filed with the Commission on September 4, 1973, Lawrence C. Stoker, Attorney at Law, for and on behalf of Suburban Coach Lines, Inc., Asheville, North Carolina, seeks authority to sell and transfer stock and to change control of Suburban Coach Lines, Inc., including change of control of thirteen (13) buses from Lawrence C. Stoker and Jacqueline W. Stoker, as Transferors, to Carl S. Davis and Lucille Davis and Paul E. Davis and Virginia Davis, as Transferees, and to allow said parties hereto to docket a lien against Certificate No. B-13 in favor of Lawrence C. Stoker and Jacqueline W. Stoker until the obligations and payments as set forth in the Contract of Purchase has been fully fulfilled and discharged.

In its Order in this Docket dated October 3, 1973, the Commission ordered Suburban Coach Lines, Inc., to give notice of its application to sell and transfer stock and change of control by the publication of an appropriate notice thereof, in a newspaper having general circulation in the Asheville, North Carolina, area, herein involved, and same shall be published five (5) consecutive days, the latter publication being no later than October 15, 1973, and that unless a protest to the application by Suburban Coach Lines, Inc., and a request for hearing thereon is received by the Commission on or before October 20, 1973, the Commission will render its decision thereon based upon the filings and records in this matter.

The Commission is now in receipt of an Affidavit of publication from the Asheville Citizen-Times reflecting publication made therein on October 8, 9, 10, 11 and 12, 1973, as required in its Order in this Docket dated October 3, 1973, and has received no protest to the involved application as hereinabove mentioned, nor a request for hearing thereon.

Based upon the application, the representations contained therein, the documentary evidence attached thereto and the Commission's investigation, Lawrence C. Stoker and Jacqueline W. Stoker are the sole stockholders, officers and owners of Suburban Coach Lines, Inc.; that Suburban Coach Lines, Inc., is currently conducting operations under the rights heretofore granted to it by the Commission in Certificate No. B-13; that there are no debts or claims against Transferors of the nature specified in G. S. 62-111(c) and that Transferees are qualified financially and otherwise to meet such reasonable demands as the business may require.

Upon consideration of the record and this matter as a whole, the Commission is of the opinion, finds and concludes, that said sale and transfer of stock and change of control is in the public interest, 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 and that Transferees are fit, willing and able to perform such service to the public under said franchise and that the sale and transfer of stock and change of control is justified by the public convenience and necessity as set forth in G.S. 62-111(a) and that the application should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the sale and transfer of stock and change in control of Suburban Coach Lines, Inc., from Lawrence C. Stoker and Jacqueline W. Stoker to Carl S. Davis and Lucille Davis and Paul E. Davis and Virginia Davis be, and the same is hereby, approved.

(2) That the docketing of a lien by said parties hereto against Certificate No. B-13 in favor of Lawrence C. Stoker and Jacqueline W. Stoker until the obligations and payments as set forth in the Contract of Purchase has been fully fulfilled and discharged be, and the same is hereby, approved.

(3) That Suburban Coach Lines, Inc., shall continue to render service to the public as authorized in Certificate No. B-13 and otherwise comply with the rules and regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-271, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Coach Company, Complainant	)	ORDER
vs.	)	DISMISSING
Southern Coach Company, Defendant	)	PROCEEDING

HEARD IN: The Commission's Hearing Room, Raleigh, North Carolina, on March 6, 1973, at 2:00 P.M.

BEFORE: Chairman Marvin R. Wooten (Presiding) and Commissioners John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Complainant:

Thomas W. Steed
Allen, Steed & Pullen
Attorneys at Law
P. O. Box 2058, Raleigh, North Carolina 27602

For the Defendant:

Clarence H. Noah
Attorney at Law
1425 Park Drive
Raleigh, North Carolina 27605

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina 27602

BY THE COMMISSION: By its Complaint filed herein on December 7, 1972, Carolina Coach Company (hereinafter Carolina) alleged that Southern Coach Company (hereinafter Southern) should be required by the Commission to cease and desist from lifting tickets of Carolina for passengers traveling between Raleigh and Durham and from holding itself out as providing service between said points. Answer to the Complaint was filed by Southern and a Reply to the Answer was filed by Carolina. On February 26, 1973, Southern filed its Motion asking that the proceeding be dismissed on the grounds that the actions complained of are all required to be performed by Rule R2-56 of the Rules and Regulations of the Commission and that the Complaint therefore states no basis for the relief sought.

At the time of hearing all parties were present and represented by Counsel.

After hearing oral argument from both Southern and Carolina on the Motion to Dismiss, the Commission determined that the said Motion should be allowed as a matter of law and the proceeding should be dismissed.

IT IS, THEREFORE, ORDERED:

That the Motion of Southern Coach Company dated February 26, 1973, is allowed and that the Complaint of Carolina Coach Company is dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. EB-509

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Greensboro Youth Baseball, Inc., P. O. Box 9622, Greensboro, North Carolina - Alleged Illegal for Hire Transportation of Passengers.	)	ORDER TO CEASE AND DESIST FROM TRANSPORTING PASSENGERS FOR HIRE

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Friday, June 8, 1973, at 9:30 A.M.

BEFORE: Chairman Marvin R. Wooten (Presiding), Commissioners McDevitt, Wells, and Roney.

APPEARANCES:

For the Respondent:

None.

For the Commission Staff:

W. B. Partin, Jr., Esquire
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

BY THE COMMISSION. On May 17, 1973, the Commission issued an Order (1) requiring that the Greensboro Youth Baseball, Inc. temporarily cease and desist from the transportation

of passengers for anyone other than its own members and (2) requiring that Greensboro Youth Baseball, Inc. appear before the Commission to show cause, if any it has, why it should not obtain appropriate operating authority or in the alternative why the cease and desist Order should not be made permanent.

This matter came on for hearing at the above time and place as set forth in the Commission Order. Mr. R. P. Weiss of High Point, North Carolina, testified that he had initiated the complaint to the Utilities Commission with respect to the Greensboro Youth Baseball, Inc.; that he is with the P.T.A. in High Point, North Carolina, which operates an activity bus; that he has observed the Greensboro Youth Baseball, Inc. carrying charter passengers to athletic and other events, which he has reported to the Commission.

Mr. Sam S. Moore, Salisbury, North Carolina, President of Moore Brothers Transportation Company, testified that he is in the motor transportation business and engages in charter service; that he has observed Greensboro Youth Baseball, Inc. carrying charter groups to various events and has reported these activities to the Commission on several occasions; that in years past, he has performed charter services for Guilford College but has not been called on to do so in recent years.

Mr. Bill White of Greensboro, North Carolina, testified on behalf of Greensboro Youth Baseball, Inc.; he stated that he is the General Manager of Greensboro Youth Baseball, Inc., which is a nonprofit organization sponsoring baseball teams for young people in the Greensboro area. In 1966 Greensboro Youth Baseball, Inc. purchased a Greyhound bus for $15,000 for use in the transportation of its teams; that at the present time Greensboro Youth Baseball, Inc. holds no operating certificate, exemption or otherwise, but on June 4, 1973, Greensboro Youth Baseball, Inc. did file with the Commission an Application for an exemption certificate; that Greensboro Youth Baseball, Inc. transports athletic teams and other groups for Guilford College, and Page and Grimsley High Schools in Greensboro, and for other organizations, including the Elks Lodge and the Red Cross; that Greensboro Youth Baseball, Inc. has never charged these institutions for the transportation of their passengers but has accepted donations from them; for example, in 1973 to date, Greensboro Youth Baseball, Inc. has received $1,500 from Guilford College; that these donations are based upon recommendations from Greensboro Youth Baseball, Inc. as to its financial needs and that Guilford College has followed the recommendations of Greensboro Youth Baseball, Inc. in every case; that the same arrangements have been followed with Page and Grimsley High Schools; that Greensboro Youth Baseball, Inc. does not consider these donations a rental arrangement; that Greensboro Youth Baseball, Inc. would, in his opinion, continue to carry these groups even if the donations were stopped; that Greensboro Youth Baseball, Inc.

also used the dormitories and playing fields of Guilford College as part of the arrangement with the college; that Greensboro Youth Baseball, Inc. still owes $5,000 on its activity bus.

FINDINGS OF FACT

1. Greensboro Youth Baseball, Inc. is a nonprofit organization located in Greensboro, North Carolina; the organization supports and sponsors baseball teams in the Greensboro area and has purchased a bus for use in the transportation of its members.

2. Greensboro Youth Baseball, Inc. holds no operating certificate, exemption or otherwise, from the Utilities Commission.

3. In the past several years, Greensboro Youth Baseball, Inc. has engaged in the transportation of passengers for Guilford College, as well as Page and Grimsley High Schools in Greensboro and other organizations; that Greensboro Youth Baseball, Inc. has received cash donations from Guilford College and the other institutions in exchange for the transportation of their passengers; that these donations have been based upon the recommendations of Greensboro Youth Baseball, Inc. as to its financial needs, which recommendations Guilford College and the other schools have followed; that Greensboro Youth Baseball, Inc. has no operating authority from the Utilities Commission to transport these passengers.

4. Greensboro Youth Baseball, Inc. has applied to the Utilities Commission for an exemption certificate but has not yet complied with the Rules and Regulations of the Utilities Commission with respect, inter alia, to the certification of insurance coverage for the protection of the public.

5. That G. S. 62-260 (a) (6), as amended in 1971, provides:

Exemptions from regulations.

"(a) Nothing in this chapter shall be construed to include persons and vehicles engaged in one or more of the following services by motor vehicle if not engaged at the time in the transportation of other passengers or other property by motor vehicle for compensation:

"(6) Transportation by motor vehicles used exclusively for the transportation of passengers to or from religious services or transportation of pupils and employees to and from private or parochial schools or transportation to and from functions for students and employees of private or parochial schools."

CONCLUSIONS

It is apparent from the evidence adduced at the Show Cause hearing that the Respondent Greensboro Youth Baseball, Inc., has engaged in the transportation of passengers other than its members in violation of the Public Utilities laws of North Carolina. It further appears that the Respondent has unlawfully engaged in the transportation of these passengers for hire; the donations received from Guilford College and the other institutions constitute consideration to the Respondent for its services in transporting their passengers. Accordingly, the Commission concludes that the Respondent should cease and desist permanently from the transportation of any passengers other than its members until such time as the Respondent has obtained an appropriate operating certificate, exemption or otherwise, from this Commission. The Commission takes notice of the evidence and its records that the Respondent has applied for an exemption certificate but has not yet filed certification that it has the proper insurance coverage required by law. Upon compliance with the Rules of the Commission with respect to the issuance of an exemption certificate, such certificate will be issued to the Respondent.

IT IS, THEREFORE, ORDERED as follows:

1. That the Respondent Greensboro Youth Baseball, Inc., be, and the same hereby is, required to cease and desist permanently from the transportation of passengers other than its members until such time as it has obtained appropriate operating authority from the Commission.

2. That in the event the Respondent violates the terms or conditions of this Order, the Commission shall consider the institution of further and appropriate proceedings.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of July, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. B-245, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Suburban Coach Company, Incorporated, P. O. Box 7291, Asheville, North Carolina - Petition to Reduce Bus Service.	)	ORDER TO SURRENDER FRANCHISE

BY THE COMMISSION: Suburban Coach Company, Incorporated, filed a Petition on November 24, 1972, requesting approval of this Commission to adopt its Timetable No. 3 and to cancel Timetable No. 2 alleging as justification for the reduction of service that the Petitioner was then suffering a daily operating loss of $39.18.

Upon consideration of the petition and upon taking notice of previous recent reduction in service by this carrier, to wit: elimination of the 5:20 a.m. and 4:20 p.m. schedules from Morganton to Oak Hill, the 5:50 a.m. and 4:50 p.m. schedules from Oak Hill to Morganton, effective June 17, 1972, and elimination of the 5:40 p.m. Tiptop schedule, the 12:08 p.m. Valdese schedule and the 10:00 a.m. Lake James-Oak Hill schedule (after October 10, 1972) effective July 10, 1972, the Commission concluded that further reduction in service by the Petitioner in the Morganton area should not be allowed except as the justification might be established in a full public hearing, including evidence of public need and an examination of the books and records of the Petitioner. The Commission therefore suspended the effective date of the proposed Timetable and set the matter for public hearing in Morganton, North Carolina for Friday, January 19, 1973.

On December 14, 1972 the Commission received a letter from Mr. Lawrence C. Stoker, Counsel for the Applicant-carrier advising that Suburban Coach Company, Incorporated, would not operate on or after January 3, 1973.

North Carolina Utilities Commission Rule R2-47 provides that no common carrier shall abandon service without obtaining written permission from the Commission and that the petition to discontinue shall be filed ten days prior to discontinuance of the service. N.C.U.C. Rule R2-47 further provides that discontinuance without written consent of the Commission shall be considered good cause for cancellation of the franchise. In N.C.U.C. Rule R2-47 the Commission has adopted the sanction of cancellation of the certificate for discontinuance of service without prior approval of the Commission.

Pursuant to N.C.U.C. Rule R2-47 the Commission finds that Suburban Coach Company, Incorporated, has discontinued service without prior written consent of the Commission and concludes that the certificate should immediately be surrendered by Suburban Coach Company, Incorporated, and that said certificate should be cancelled.

IT IS, THEREFORE, ORDERED:

1. That Suburban Coach Company, Incorporated, shall surrender its franchise to operate as a motor common carrier passengers as contained in common carrier Certificate No. B-245 and said certificate shall thereupon be cancelled.

2. That the hearing previously scheduled for 10:00 a.m. Friday, January 19, 1973 be, and hereby is, cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This 15th day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-284, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
D & D Trucking Company, P.O. Box 755,	)	ORDER
Conover, North Carolina 28613 -	)	APPROVING
Application for Approval of Transfer	)	STOCK
of Ownership through Stock Transfer	)	TRANSFER

BY THE COMMISSION. By joint application filed with this Commission on March 1, 1973, George Ray DeHart of Catawba County, North Carolina, holder of all outstanding capital stock of D & D Trucking Company, (hereinafter sometimes referred to as Transferor) and Fred Alvin Murrow of Guilford County, North Carolina, (hereinafter sometimes referred to as Transferee) seek approval of the Commission nunc pro tunc for the transfer of all of the issued and outstanding capital stock of D & D Trucking Company from said Transferor to said Transferee, thereby transferring ownership and control of Common Carrier Certificate No. C-147, inter alia, to Fred Alvin Murrow.

Notice of the application containing a description of the involved authority was published in the Commission's Calendar of Hearings issued March 15, 1973. Said notice provided that if no protests were filed by 5:00 P.M., Wednesday, April 4, 1973, the case would be decided on the basis of the application, the documentary evidence attached thereto, and the records of the Commission and no hearing would be held.

No protests were filed and the application is unopposed.

Applicants represent that operations are currently being conducted under the operating rights contained in Common Carrier Certificate No. C-147 and have been continuously offered to the public up to the filing of this application; that Fred Alvin Murrow owns no interest in any other carrier holding either North Carolina Intrastate Operating Authority or Interstate Authority granted by the Interstate Commerce Commission.

IT IS FURTHER REPRESENTED, that the proposed Transferee is experienced in the management of trucking operations, having been President of P & B Truck Line, Inc. until May 31, 1972; that transferee enjoys a good reputation in the community and in the trade, both with suppliers and customers, and is well qualified to operate the business of D & D Trucking Company.

IT IS FURTHER REPRESENTED, that through inadvertence and through lack of knowledge and misinformation, Transferor and Transferee were unaware of the necessity of obtaining the approval of the Utilities Commission prior to the transfer of the stock; that said transfer was consummated on June 1, 1972; and therefore, applicants request the approval of the stock transfer as described herein, nunc pro tunc, June 1, 1972.

From a review and study of the application, its supporting data and other information contained in the Commission's files, the Commission is of the opinion and so finds that the transaction herein proposed is in the public interest, 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 and that transferee is fit, willing and able to perform such service to the public under said franchise.

IT IS FURTHER ORDERED, that the transfer of the entire outstanding capital stock of D & D Trucking Company, from George Ray DeHart to Fred Alvin Murrow, be, and the same is, hereby approved nunc pro tunc, June 1, 1972.

IT IS FURTHER ORDERED, that Fred Alvin Murrow shall render reasonably adequate and continuous service to the public under the franchise of D & D Trucking Company and comply with the rules and regulations of this Commission.

BY ORDER OF THE COMMISSION.

This the 24th day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1652

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of T I S C Corporation, P.O. Box 5233, States- ville Road, Charlotte, North Carolina 28205 - Application for approval of transfer of Common Carrier Certificate No. C-485 from Bruce Johnson Trucking Company, through stock transfer and merger of Bruce Johnson Trucking Company into TISC Corporation	ORDER APPROVING TRANSFER

BY THE COMMISSION. By joint application filed with the Commission on May 3, 1973, Bruce Johnson Trucking Company, as Transferor, and TISC Corporation, as Transferee, seek approval of the sale and transfer of all of the issued and outstanding capital stock in Bruce Johnson Trucking Company, from said Transferor to said Transferee. Petitioners also seek approval of the merger of Bruce Johnson Trucking Company into TISC Corporation with the surviving corporation being TISC Corporation.

Notice of the application, together with the description of the involved authority, was published in the Commission's Calendar of Hearings issued June 11, 1973. The notice contained the provision that if no protests were filed by 4:30 P.M., Monday, July 2, 1973, the Commission would decide the case on the record; and if protests were filed within the time specified, the Commission would set the matter for hearing.

No protests were filed and the application is unopposed.

It appears from the application, the representations contained therein, the documentary evidence attached and our investigation that Bruce Johnson Trucking Company is a corporation duly organized and existing under the laws of the State of North Carolina; that Bruce Johnson Trucking Company is currently conducting operations under the rights heretofore granted to it by this Commission in Common Carrier Certificate No. C-485; that there are no debts or claims against Transferor of the nature specified in G.S. 62-111, except those currently due in the normal course of business, which will be assumed by Transferor; that on December 29, 1972, TISC Corporation (a North Carolina corporation) purchased all of the issued and outstanding capital stock of Bruce Johnson Trucking Company; that since that date, Bruce Johnson Trucking Company has operated as a wholly owned subsidiary of TISC Corporation; that the proposed corporate merger will enable TISC Corporation, as the surviving corporation, to carry on all operations formerly conducted by Bruce Johnson Trucking Company; that the management and personnel of Bruce Johnson Trucking Company have remained intact since TISC Corporation became the owner of the outstanding capital stock of said company and that Transferee is qualified financially and otherwise

to assume ownership of the common carrier authority contained in Certificate No. C-485 and provide adequate and continuing service thereunder.

Upon consideration thereof, the Commission is of the opinion and finds that the sale of stock from Transferor to Transferee and the merger of Bruce Johnson Trucking Company into TISC Corporation is in the public interest; will not adversely affect the service to the public under said franchise; will not unduly affect the service to the public by other public utilities; that TISC Corporation is fit, willing and able to assume ownership of the authority held by Bruce Johnson Trucking Company and to perform such service to the public under said franchise; that service under said franchise has been continuously offered to the public up to the time of the filing of the application herein; that the change of control through stock transfer and merger 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:

(1) That the change of control of Bruce Johnson Trucking Company through the sale and transfer of all of the issued and outstanding shares of capital stock in said company from said Transferor to said Transferee and the merger of Bruce Johnson Trucking Company into TISC Corporation, as the surviving corporation, be, and the same is hereby, approved.

(2) That the transfer of Common Carrier Certificate No. C-485, together with the operating rights described in Exhibit B attached hereto and made a part hereof, from Bruce Johnson Trucking Company to TISC Corporation, be, and the same is hereby, approved.

(3) That TISC Corporation file with the Commission appropriate evidence of insurance, lists of equipment, tariff of rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of August, 1973.

NORTH CARCLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1652 TISC Corporation
P.O. Box 5233
Statesville Road
Charlotte, North Carolina 28205

EXHIBIT B

Irregular Route Common Carrier Authority

(1) Transportation of foodstuffs from Mecklenburg County to points throughout the State.

(2) Transportation of petroleum products, except those requiring special equipment, from Wilmington to Charlotte.

(3) Transportation of general commodities, except those requiring special equipment:

(a) Between points and places in Mecklenburg County.

(b) From points and places in Mecklenburg County to points and places in the counties of Forsyth, Guilford, Cabarrus, Buncombe, Surry, Catawba, Cleveland, Rowan, Wilson, Durham, Washington, Davidson, Caldwell, Union, Stanly, Rutherford, Henderson, Haywood, Jackson, Swain, Macon, Cherokee, Wilkes, Burke, McDowell, Wake, Cumberland and New Hanover.

(c) From points and places in the counties above named to points and places in Mecklenburg County.

(4) Commodities requiring refrigerated equipment:

(a) Between points and places in Mecklenburg County.

(b) From points and places in Mecklenburg County to points and places in the counties of Wake, Cleveland, Catawba, Cabarrus, Rowan, Forsyth, Guilford, Durham, Wilson, Nash and Edgecombe.

(c) From points and places in the counties above named to points and places in Mecklenburg County.

(5) Transportation of general commodities, except those requiring special equipment, over irregular routes, from Charlotte to points and places within the following counties: Cherokee, Transylvania, Buncombe, Henderson, McDowell, Rutherford, Caldwell, Burke, Cleveland, Wilkes, Alexander, Catawba, Lincoln, Gaston, Iredell, Mecklenburg, Surry, Yadkin, Davie, Rowan, Cabarrus, Union, Forysth, Davidson, Stanly, Anson, Montgomery, Richmond, Moore, Scotland, Lee, Robeson, Harnett, Cumberland, Columbus, Sampson, New Hanover, Wake, Durham, Orange, Alamance, Guilford, Rockingham, Vance and Halifax.

DOCKET NO. T-188, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tappan Carriers, Inc., P.O. Box 780, Clinton, North Carolina - Application for Approval to Acquire Motor Carrier through Acquisition of Outstanding Capital Stock	)	ORDER APPROVING ACQUISITION

BY THE COMMISSION. By joint application filed with the Commission on March 29, 1973, L. W. Tappan and J. R. Hubbard, P. O. Box 780, Clinton, North Carolina, as Sellers; and John O. McNairy and his wife, Leigh H. McNairy, 1602 Euclid Road, Durham, North Carolina, as Purchasers, seek approval of this Commission for the sale and transfer of all the outstanding capital stock of Tappan Carriers, Inc., from said Sellers to said Purchasers, thereby transferring, inter alia, the management and control of Common Carrier Certificate No. C-134.

Notice of the application containing a description of the involved authority was published in the Commission's Calendar of Hearings issued May 16, 1973. Said notice provided that if no protests were filed by 4:30 P.M., Tuesday, June 5, 1973, the case would be decided on the basis of the application, the documentary evidence attached thereto, and the records of the Commission and no hearing would be held.

No protests were filed and the application is unopposed.

Applicants in their joint application make the following representations:

1. That Tappan Carriers, Inc., is presently conducting common carrier operations under its franchise,

2. That John O. McNairy and Leigh H. McNairy have entered into an agreement to purchase all of the issued and outstanding capital stock of Tappan Carriers, Inc., from L. W. Tappan and J. R. Hubbard;

3. That L. W. Tappan and J. R. Hubbard will be retained for a period of three years for the purpose of continuing the development of Tappan Carriers, Inc., and

4. That Tappan Carriers, Inc., will continue to provide service to the public under its franchise.

From a review and study of the application, its supporting data and other information contained in the Commission's files, the Commission is of the opinion and so finds that the transaction herein proposed is in the public interest, 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, and that the Purchasers are fit, willing and able to perform such service to the public under Common Carrier Certificate No. C-134.

IT IS, THEREFORE, ORDERED: That the sale and transfer of the entire outstanding capital stock of Tappan Carriers, Inc., from L. W. Tappan and J. R. Hubbard to John O. McNairy and his wife, Leigh H. McNairy, be, and the same is, hereby approved.

IT IS FURTHER ORDERED: That Tappan Carriers, Inc., shall render reasonably adequate and continuous service to the public under Common Carrier Certificate No. C-134 and comply with the rules and regulations of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-521, SUB 9
DOCKET NO. T-521, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, 1030 Hammell Drive, Raleigh, North Carolina - Extension - Contract Carrier Authority	)))	RECOMMENDED ORDER DENYING APPLICATIONS

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Wednesday, September 20, 1972, at 2:00 P.M., and on Wednesday, October 11, 1972, at 2:00 P.M.

BEFORE: Hugh A. Wells, Hearing Commissioner

APPEARANCES:

For the Applicant:

Vaughan S. Winborne, Esquire
1108 Capital Club Building
Raleigh, North Carolina 27602

For the Protestants:

Ralph McDonald, Esquire
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Observer Transportation Company

John D. Xanthos, Esquire
507 North Carolina National Bank Building
Burlington, North Carolina 27215
For: Mid-State Delivery Service, Inc.

T. D. Bunn, Esquire
Hatch, Little, Bunn, Jones & Few
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina
For: Estes Express Lines

WELLS, COMMISSIONER. By application filed with the Commission on April 26, 1972, in Docket No. T-521, Sub 9, Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, 1030 Hammell Drive, Raleigh, North Carolina (hereinafter sometimes referred to as Harper), seeks to amend his Permit No. P-31 by adding Wilmington Hospital Supply, Inc., Wilmington, North Carolina, as a new contracting party for the purpose of transporting drugs, medicines, and such merchandise as is customarily sold by wholesale and retail drug stores within 150 air miles of Raleigh; and by application filed with the Commission on May 23, 1972, in Docket No. T-521, Sub 10, Harper seeks to further amend its Permit No. P-31 by adding General Parts, Inc., Raleigh, North Carolina, as a new contracting party for the purpose of transporting automotive parts, supplies and accessories within 150 air miles of Raleigh, North Carolina, all as more particularly set forth in the applications in this proceedings.

Both of these dockets were noticed in the May 31, 1972, Commission's Calendar of Hearings. Said notices gave a description of the authority applied for and set the

applications for hearing on September 20, 1972, at the place captioned.

Protest was timely filed to the application in Sub 9 by Estes Express Lines and additionally a protest to the application in Sub 9 was filed by Observer Transportation Company on September 15, 1972, and the Commission having considered the protest of Observer Transportation Company and its Motion to be Allowed to Intervene, in its discretion and by Order dated September 20, 1972, allowed Observer Transportation Company to enter its protest and intervene in these proceedings.

Protest to Sub 10 was timely filed by Mid-State Delivery Service, Inc., and similarly Observer Transportation Company filed its protest and Motion to Intervene in this docket on September 15, 1972, and by Order of September 20, 1972, the Commission in its discretion allowed the protest and intervention.

The Hearing Commissioner consolidated these two dockets for the purpose of hearing after counsel for the respective parties stipulated that this procedure was acceptable to them.

The Applicant offered the testimony of three witnesses, Mr. Thomas Oliver Harper, Jr., Mr. John Lynch and Mr. Hamilton Sloan.

Mr. Harper's evidence tended to show that he is engaged in the business of a contract carrier of freight under Permit No. P-31 which involves the transportation of drugs and automotive parts, supplies and equipment within 150 air miles of Raleigh, North Carolina; that he offers a specialized service to shippers, picks up shipments in the afternoon and evening, assembles the shipments in his Raleigh warehouse and guarantees delivery to customers the next day; that he presently has contracts with W. H. King Drug Company, Raleigh, North Carolina; Mutual Wholesale Drug Company, Durham, North Carolina; Raleigh Surgical Supply Company, Raleigh, North Carolina; Scott Drug Company, Charlotte, North Carolina; Justice Drug Company, Greensboro, North Carolina; McKesson and Robbins Drug Company, Charlotte, North Carolina; and automotive contracts with Jobbers Automotive Supply Company, Rocky Mount, North Carolina; Target Tire and Automotive, Jacksonville, North Carolina; and Eastern Carolina Warehouse, Goldsboro, North Carolina; that his personnel is trained to handle the delivery of drugs and automotive parts and accessories; that he has one freight terminal in Raleigh and does not propose to add other terminal facilities; that he has handled shipments for Murchison Drug Company, Wilmington, North Carolina, and Bellamy Drug Company, Wilmington, North Carolina, without having obtained authority to do so from this Commission; that he has handled and is handling shipments for O'Hanlon-Watson Drug Company, Winston-Salem, North Carolina, without having obtained authority from this

Commission to perform this service; that he has delivered and is presently delivering shipments for W. H. King Drug Company to a customer in Boykins, Virginia, without first having obtained appropriate authority from the Interstate Commerce Commission to perform such service; that he has delivered shipments to Morganton which is beyond his scope of operations; that as sole owner and sole managing officer of his trucking operation, he is responsible for all executive decisions of the business and that he has or can obtain the necessary equipment to serve the proposed new shippers.

Mr. John Lynch, Applicant's supporting shipper witness, testified that his employer, Wilmington Hospital Supply Company, ships medical and surgical supplies and equipment normally used in hospitals, nursing homes and doctor's offices to approximately 3/4 of North Carolina: that his company has been shipping by Estes, Overnite, Thurston and Pilot; that his company has not been entirely satisfied with the service of the common carriers; that he desires to use the services of Harper Trucking Company because of faster service and lower rates and guaranteed next day delivery and that he supports Applicant's application in this case; that he has never used the services of Observer, Mid-State, Fredrickson, or Standard. Mr. Lynch also stated that one of his competitors in Raleigh, Carolina Surgical, was using the services of Harper. Carolina Surgical is not one of Harper's contracting shippers.

Mr. Hamilton Sloan, Applicant's supporting shipper witness, testified that his employer, General Parts, Incorporated, of which he is Treasurer and Operations Manager, is engaged in the operation of a wholesale automotive parts warehouse stocking some 41,000 part numbers representing sixty (60) manufacturers; that his company needs next day delivery service in order to compete with other similar firms and in order to satisfy customers; that his firm has been using common carriers to make deliveries; that they have experienced difficulties in getting deliveries to certain points by Mid-State; that Harper has agreed to pay all claims within seven (7) days; that General Parts, Incorporated, has signed a contract with Harper and would use his services to certain points if the Commission should approve the application.

At the close of Applicant's evidence, counsel for Estes Express Lines moved that the application in relation to the proposed service to Wilmington Hospital Supply, Inc. (Sub 9), be dismissed. This Motion was joined in and supported by Observer Transportation Company. Observer also moved the dismissal of the application as to the proposed service for General Parts, Inc. (Sub 10), which Motion was joined in and supported by Mid-State Delivery Service, Inc. Counsel argued that (1) the Applicant had not carried the burden of proof sufficiently to establish a prima facie case of need; (2) that Applicant's own testimony indicated the shippers proposed to be served were interested more in reduced rates

than service; (3) that Applicant's own testimony revealed he was proposing to furnish service at rates below those charged by common carriers for the same service; and (4) that Applicant was already serving the maximum number of shippers allowed under the Commission's Rule (7) and had not shown any reason why the rule should be waived to allow him to serve additional shippers.

The Hearing Commissioner allowed the Motion in Sub 10, to which Applicant Excepted; and denied the Motion in Sub 9, to which Protestants Excepted.

The Protestants, Estes Express Lines and Observer Transportation Company, presented two witnesses, who are employees of said company, Joe W. Sherrill and Joe Randovanic, respectively. The evidence of the Protestants tended to indicate that they are fit, willing and able to supply the transportation needs of Wilmington Hospital Supply, Inc., and General Parts, Inc., testifying as to the extent of their operations, authority, equipment, and experience, and their evidence further tended to show that they, and each of them, had equipment available and trained personnel sufficient to comply with all of the reasonable needs of Wilmington Hospital Supply, Inc., and General Parts, Inc.

From the evidence presented, a portion of which is set out briefly above, and from other information in the Commission's files, the Hearing Commissioner is of the opinion and finds the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier.

2. That the proposed operations will not unreasonably impair the use of the highways by the general public.

3. That the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates in this State.

4. That there is available efficient public service offered by carriers in this State operating under certificates granted by this Commission available to the supporting shippers in these proceedings, which said service is available and offered at reasonable rates established by this Commission.

5. That the Applicant is not fit to perform motor carrier service to additional shippers.

6. That the contract carrier service proposed is inconsistent with the public policy declared by the General Statutes of North Carolina.

CONCLUSIONS

Applicant's proposed service to Wilmington Hospital Supply, Inc., was dealt with in Docket T-52|, Sub 7, heard before a Division of the Commission. Applicant presented similar testimony in that docket to his testimony in this docket, and the Commission concluded as the result of that docket that Applicant's pursuit of common carrier authority to provide service for Wilmington Hospital Supply, Inc.

The evidence in this case indicates that the principal desire for Applicant's service on the part of General Parts, Inc., is to enable that company to better meet its competition in the automobile parts business. It is the conclusion of the Hearing Commissioner that this is not the criteria contemplated under the law for the permitting of contract service, and in view of these circumstances, and in view of the convincing evidence of the Protestants, that common carrier service is available to General Parts, Inc., to enable it to accomplish its shipping needs, we conclude that the application in that respect should be denied and dismissed.

The evidence as to Wilmington Hospital Supply, Inc., indicates that it is in need of a type of transportation service which may not be met by common carriers, and in this respect, this docket presents a more difficult question. Our conclusion to deny Harper's application for this service should therefore not be construed to be absolutely determinative of the needs of Wilmington Hospital Supply, Inc., to accomplish its service to its customers. Our conclusion, however, is that Harper has not conducted his present contract carrier operations in a manner which would indicate that he is able to take on and properly conduct additional contract carrier authority. It would appear from this record that Harper has been unable to conduct his operations in a manner consistent with the law and rules affecting contract carriers. Whether his inability to do so is by design or inadvertence is not absolutely clear from this record, and for this reason we do not carry this record beyond the additional authority sought herein with respect to Harper's fitness and ability. There are sufficient indications in the record, however, that Harper is operating in violation of the law and the rules to caution him most strongly to bring his present operations into strict compliance with the statutory requirements contained in Chapter 62 and with the Rules of this Commission. Our ordering clauses will deal further with this aspect of these dockets.

In consideration of the entire record and of the record and Order in Docket No. T-52|, Sub 7, we conclude that the applications in each of these dockets should be denied and dismissed.

IT IS, THEREFORE, ORDERED:

1. That the applications of Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, 1030 Hammell Drive, Raleigh, North Carolina, seeking to add two new shippers to his contract carrier authority, be, and the same are, hereby denied and dismissed.

2. That Thomas Oliver Harper, Jr., make certification to the Commission through his attorney that he has ceased all illegal transportation, said certification to be made within sixty (60) days from the date of this Order, and failure to do so will result in the issuance of an Order for Harper to Show Cause why his contract carrier Permit No. P-31 should not be revoked.

3. That the Director of the Division of Motor Transportation shall cause the operations of Harper Trucking Company to be constantly monitored and closely supervised for a period of not less than six months from the date of the effective date of this Order, and that any violations found shall be promptly reported to the Commission in writing.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1642

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Hubert Joseph Keith, Route 1, Creedmoor, North Carolina - Contract Carrier Application) RECOMMENDED ORDER) DENYING APPLICATION

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on March 27, 1973, at 10:00 A.M.

BEFORE: Hugh A. Wells, Hearing Commissioner

APPEARANCES:

For the Applicant:

Jane P. Harris
Harris & Harris
Attorneys at Law

206 E. Jones Avenue
Wake Forest, North Carolina 27587

For the Protestants:

Eugene C. Brooks, III
Attorney at Law
P. O. Box 1130, Durham, North Carolina
For: Eastern Oil Transport, Inc.
Kenan Transport Company

WELLS, HEARING COMMISSIONER. This matter came on for hearing before Commissioner Wells sitting as a Hearing Commissioner in Raleigh, North Carolina, in the Commission's Hearing Room at 10:00 A. M., March 27, 1973, upon the application of Hubert Joseph Keith, Creedmoor, North Carolina, for a contract carrier permit to haul Group 3, Petroleum and Petroleum Products within a 100-mile radius of Creedmoor. The application was appropriately noticed and protests to the application were filed by Eastern Oil Transport, Inc., and Kenan Transport Company, which protests were allowed.

Applicant presented the testimony of himself and that of Mr. Wilbur Spence Davis, Manager for Creedmoor Fuel Services, Inc., the proposed contracting party. The Applicant's testimony reveals that he holds no transportation certificates or permits and has no experience in the furnishing of public transportation service. He indicated that one of the principal officers of Creedmoor Fuel Services, Inc., had expressed an interest in the need for some hauling of petroleum products from either Friendship or Selma to Creedmoor, particularly during the tobacco season.

The Protestants presented the testimony of Mr. E. M. Cameron, President of Eastern Oil Transport, Inc., and Mr. Lee Shaffer, Executive Vice President of Kenan Transport Company. Their testimony generally consisted of statements to the effect that they were prepared to offer transportation service being discussed and that they had idle equipment during the tobacco growing season which they needed to put to effective and productive use.

Based upon the evidence presented at the hearing, the Commission makes the following

FINDINGS OF FACT

1. The proposed operation conforms with the definition of a contract carrier as set forth in Chapter 62 of the General Statutes.

2. The proposed operation would unreasonably impair the efficient public service of common carriers operating under certificates furnishing the same type service proposed in the application.

3. The Applicant is willing and able to properly perform the proposed service, but his fitness and ability to do so has not been established.

4. The proposed operations would not be consistent with the public interest and the public policy declared in Chapter 62 of the General Statutes.

Based upon the foregoing Findings of Fact, the Commission CONCLUDES that the application should be denied.

ACCORDINGLY, IT IS, THEREFORE, ORDERED:

That the application be, and hereby is, denied and this docket closed and dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1659

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Randleman's City Pick-Up & Delivery Service, Inc. - Application for Irregular Route Common Carrier Authority to Transport General Commodities and Certain Specified Commodities Between Certain Points in North Carolina	) RECOMMENDED ORDER DENYING APPLICATION

HEARD IN: The Hearing Room of the Commission on September 21, 1973, at 10:00 a.m.

BEFORE: Ben E. Roney, Commissioner

APPEARANCES:

For the Applicant:

W. Hugh Thompson
Emanuel and Thompson
Attorneys at Law
1406 Branch Bank Building
Raleigh, North Carolina
and
Robert M. Ward
Attorney at Law
Box 1231, Burlington, North Carolina

For the Protestants:

T. D. Bunn, and
David H. Permar
Hatch, Little, Bunn, Jones & Few
Attorneys at Law
Box 527, Raleigh, North Carolina
Appearing For: Overnite Transportation Company, Burris Express, Inc., Thurston Motor Lines, Inc., Fredrickson Motor Express Corporation, Standard Trucking Company, Central Motor Lines, Inc., Estes Express Lines, Old Dominion Freight Lines

Ralph McDonald
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
Appearing For: M. L. Hatcher Pick-Up & Delivery Services, Inc., State Motor Lines, Inc.

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER. Application was filed with the Commission on June 13, 1973, by Randleman's City Pick-Up & Delivery Service, Inc., 1800 E. Bessemer Avenue, Greensboro, North Carolina, for common carrier authority for the transportation of Group I, General Commodities; Group 16, Furniture Factory Goods and Supplies; Group 17, Textile Mill Goods and Supplies, over irregular routes within a defined territory without respect to particular highways between points and places within and from Greensboro, North Carolina, to points and places within the State.

Notice of Hearing containing a description of the authority applied for was given in the Commission's Calendar of Hearings issued July 13, 1973.

Protests and Motions for Intervention were filed by Overnite Transportation Company, Richmond, Virginia; Burris Express, Inc., Albemarle, North Carolina; Thurston Motor Lines, Charlotte, North Carolina; Fredrickson Motor Express Corporation, Charlotte, North Carolina; Standard Trucking Company, Charlotte, North Carolina; Central Motor Lines, Inc., Charlotte, North Carolina; Estes Express Lines, Richmond, Virginia; Old Dominion Freight Lines, High Point, North Carolina; M. L. Hatcher Pick-Up & Delivery Service, Inc., Greensboro, North Carolina; and State Motor Lines, Inc., Hickory, North Carolina.

Affidavits in support of the application were filed September 10, 1973, by Mr. John B. Bridgers, P. O. Box 1968, Wilson, North Carolina; Mr. Daniel B. Shepherd, P. O. Box 3429, Kinston, North Carolina; and Mr. W. N. Butler, 2013 Castle Street, Wilmington, North Carolina; with notice from Applicant's Attorney, Mr. Hugh Thompson, that Affiants would not be called to testify orally at the hearing or be subject to cross-examination unless Protestants or the Commission demanded the right of cross-examination by notice mailed or delivered to Applicant prior to or during the hearing. Counsel for Protestants objected to the admission of the affidavits of Mr. John B. Bridgers, Mr. Daniel B. Shepherd, and Mr. W. N. Butler, unless they were present at the hearing and available for cross-examination.

The Applicant testified that he was fit and financially able to provide the necessary services if given a Certificate of Public Convenience and Necessity pursuant to G. S. 62-110. Applicant further testified that there seemed to be a need for additional services.

Testimony was offered that Applicant was presently supplying services in these requested areas under a leasing agreement with Wall Trucking Company, Inc. Under this lease agreement, Applicant solicits the business, employs and controls the drivers, buys the licenses and pays the insurance. This leasing agreement has received no written confirmation from the North Carolina Utilities Commission.

Applicant further testified that while operating under the leasing agreement he delivered property to Henderson (Vance County), Smithfield (Johnston County), Lillington (Harnett County), Williamston (Martin County) and Elizabethtown (Bladen County). At this time Protestants moved to have Walls's operating authority incorporated into the record.

Applicant offered as witnesses Billy E. Young, H. B. Fuller Industries; Pete Oldham, Electrical Manufacturer's Agent; Authur L. Evans, Barber-Ayers Company; Ralph Shelton, Public Storage Warehouse, Inc.; and Thomas Clinton Duncan, Casard Warehouse. Each of the witnesses testified that there seemed to be a public demand and need for the proposed service in addition to the existing authorized service. Mr. Young also testified that Applicant had transported commodities to Henderson for him. Applicant offered no further evidence or witnesses.

Mr. Shelton testified that Mr. Randleman had handled some interstate pool shipments for him.

The Protestants moved that the application be dismissed at the close of Applicant's testimony on the grounds that the Applicant had not sustained the burden of proof required under North Carolina Utilities Commission Rule R2-15:

(a) that the public demand and need exists for the proposed service in addition to existing authorized service;

(b) that Applicant is fit to perform these services properly.

Protestants argued that Applicant is not properly fit to perform these services due to the fact that through his own testimony he had admitted to operating illegally by an improper leasing agreement and operating beyond the authority granted Wall Trucking Company by this Commission.

The Protestants offered testimony of Thurston Hollar, State Motor Lines, Inc.; Austin Hatcher, Jr., M. L. Hatcher Pick-Up & Delivery Services, Inc.; John V. Luckadoo, Thurston Motor Lines, Inc.; Joe W. Sherrill, Estes Express Lines; John Burton, Overnite Transportation Company; and Carl Leslie, Burris Express, Inc. These witnesses testified that if Applicant was granted the requested authority it would permit unnecessary duplication of service, decrease prospective tariffs to the Protestants, tend to increase cost to the shippers and result in unprofitable operations. The following witnesses were tendered and their exhibits put into the record by reference:

(1) Loy Foster - Fredrickson Motor Express Corporation
(2) Ed Fulk - Central Motor Lines, Inc.
(3) Bob Jordan - Standard Trucking Company
(4) Jasper Weathers - Standard Trucking Company
(5) Tom Coon - Old Dominion Freight Lines

Following Protestants' evidence, the motion to dismiss the application was renewed.

Upon consideration of the application, the record in this case, the testimony and exhibits presented and the evidence adduced, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant, Thomas W. Randleman, through his evidence and personal appearance at the hearing of this matter has demonstrated himself to be willing and able to perform the proposed service and solvent and financially able to enter into the trucking business.

2. That the public convenience and necessity do not require the proposed service in addition to existing authorized transportation service.

3. That the Applicant has been transporting pool shipments which may have been of an interstate nature.

4. That if Applicant is entitled to any authority at all, it would probably be as a contract carrier due to the limited scope of his operations.

5. That the Applicant is operating under a lease agreement that is in violation of North Carolina Utilities Commission Rule R1-12 and R2-6.

6. That lessee, Wall Trucking Company, as a common carrier operating under the authority of the Commission has failed to file a report with the Commission covering all rented and leased vehicles pursuant to North Carolina Utilities Commission Rule R2-7.

7. That Applicant, pursuant to a leasing agreement with Wall Trucking Company, has transported commodities to points and places that are not within Wall Trucking Company's operating authority.

8. That Applicant should cease and desist from further violations of North Carolina Public Utilities Law.

Whereupon, the Commissioner reaches the following

CONCLUSIONS

The determination in this proceeding is governed by G.S. 62-262, North Carolina General Statutes, and by applicable Commission rules, including North Carolina Utilities Commission Rule R2-15(a), R1-12, R2-6, R2-7. The testimony of the witnesses, the financial statement and the verified application received as evidence establish that Thomas W. Randleman, d/b/a Randleman City Pick-Up & Delivery Service, Inc., is willing and able to enter into a new business providing the proposed service and is solvent and financially able to do so, and would probably be able to furnish adequate service on a continuing basis were he engaged in this business. The contested issue in this matter is whether public convenience and necessity require the proposed service in addition to existing authorized transportation service.

G.S. 62-262(e) North Carolina General Statutes provides the following:

> "If the application is for a certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission: (1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service ..."

Mr. Randleman's and his witnesses's testimonies relate to some difficulty in getting proper service from the other motor carriers. The evidence tended to show there were some delays in delivery but that each witness was generally satisfied with the service they were receiving at the present time.

From Applicant's own testimony it appears that he is in violation of the North Carolina Utilities Commission rules

in regard to his transporting authority and the validity of his leasing agreement. These violations could reflect on the fitness of the Applicant.

The existing law which governs the actions of this Commission as cited above requires not only that applicants offer evidence to show their fitness and a need for the proposed service, but that they must carry the burden of proof in doing so, thus proving their case in an adversary proceeding over the objections and evidence of the protestants. This the Applicant has failed to do. Accordingly, the application for common carrier authority must be denied.

IT IS, THEREFORE, ORDERED

1. That the application for common carrier authority be, and hereby is, denied.

2. That Randleman City Pick-Up & Delivery Service, Inc., either bring their leasing agreement into compliance with the North Carolina Utilities Commission rules and regulations or cease and desist from operating under said leasing agreement.

3. That further operation by Randleman City Pick-Up & Delivery and Wall Trucking Company under the present leasing agreement will be considered prima facie evidence that such action is in willful and wanton violation of North Carolina Utilities Commission rules and regulations.

4. That the Applicant cease and desist from delivering property to points and places not encompassed within the operating authority of Wall Trucking Company and that any such further violation will be considered wanton and willful and will be dealt with appropriately by the North Carolina Utilities Commission pursuant to G. S. 62-325, North Carolina General Statutes.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1504, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Beasley Transport, Inc., Colerain, North Carolina, for Contract Carrier Permit to Transport Group 3, Petroleum and Petroleum Products, in Bulk, in Tank Trucks and Motor Oil and Grease in Drums or Cases, Intrastate, North Carolina	) FINAL ORDER APPROVING APPLICATION

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on December 18, 1972, at 2:00 P. M.

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

APPEARANCES:

For the Applicant:

W. L. Cooke, Esquire
Pritchett, Cooke & Burch
P. O. Box 9, Windsor, North Carolina

For the Protestants:

J. Ruffin Bailey, Esquire
Bailey, Dixon, Wooten & McDonald
P. O. Box 2246, Raleigh, North Carolina
For: Kenan Transport Company
O'Boyle Tank Lines, Inc.

WELLS, COMMISSIONER. Recommended Order in this docket was entered by Chairman Marvin R. Wooten on November 13, 1972, denying the application. Subsequently thereto, and in apt time, Exceptions to the Recommended Order were filed by counsel for Applicant. Said Exceptions were set for Oral Argument at the above captioned time and place.

The matter came on for hearing before Commissioners Wells, McDevitt and Rhyne, with Commissioner Wells presiding. At the opening of the Oral Argument, the parties, through their respective counsel, stipulated that the authority applied for would be amended to delete any proposed authority to engage in the transportation of LP gas or propane gas (as described in the second and third paragraph of Applicant's Exhibit A attached to its application). Upon the entering of said stipulation and its acceptance by the presiding Commissioner, Protestants, Kenan Transport Company and O'Boyle Tank Lines, Inc., through their counsel of record, withdrew their protest and requested to be excused from further participation in this docket, but further requested that they be furnished with a copy of the Commission's Order

herein. Protestants' request and motion to withdraw was allowed.

Upon the record herein, the consideration of the Exceptions to the Recommended Order, and argument of counsel, the Commission makes the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier.

2. That the proposed operations will not unreasonably impair the use of the highways by the general public.

3. That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

4. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates in this State.

5. That the public service offered by common carriers in this State operating under certificates granted by this Commission available to the Applicant is not sufficient to meet the needs of the shippers with whom Applicant has contracted to serve.

6. That the proposed operations are not inconsistent with the public interest and the public policy declared by the General Statutes of North Carolina.

Upon the foregoing Findings of Fact, the Commission

CONCLUDES

That the Applicant has satisfied the burden of proof required for the granting of the authority sought as described in its application and that the application as herein filed should be approved and granted.

IT IS, THEREFORE, ORDERED:

That the application of Beasley Transport, Inc., as amended, seeking contract carrier permit to engage in the transportation of petroleum and petroleum products, liquid, in bulk, in tank trucks, and in the transportation of motor oil and grease in drums or cases by trucks, as described in Exhibit A (as amended) to the application, and as described in Exhibit A as attached hereto, be, and the same hereby is, approved and granted, and the Recommended Order originally entered herein hereby is overruled.

IT IS FURTHER ORDERED that Beasley Transport, Inc., file evidence of liability insurance, schedule of minimum rates and charges, list of equipment, designation of process agent and otherwise comply with the rules and regulations of the

Commission and institute operations under the authority herein acquired within thirty (30) days from the date of this Order.

BY ORDER OF THE COMMISSION.

This the 2nd day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1504, SUB 1 — Beasley Transport, Inc.
Colerain
North Carolina

EXHIBIT A — Contract Carrier Authority

Transportation of petroleum and petroleum products, liquid, in bulk in tank trucks, as set forth in Group 3 of the Commission's Rule R2-37 from the oil terminals in Selma, North Carolina, to the bulk plants of C. W. Beasley Oil Company, Inc., in Colerain, North Carolina, Windsor Oil Company, Inc., in Windsor, North Carolina, and Plymouth Oil Company of Washington County, Inc., in Plymouth, North Carolina, and also to other petroleum distribution facilities operated by C. W. Beasley Oil Company, Inc., Windsor Oil Company, Inc., and Plymouth Oil Company of Washington County, Inc., in Martin, Hertford, Bertie, Washington, Tyrrell, and Dare Counties, North Carolina, under bilateral contracts.

Transportation of motor oil and grease in drums or cases by trucks from points and places in the State of North Carolina to the bulk plants of C. W. Beasley Oil Company, Inc., in Windsor, North Carolina, and Plymouth Oil Company of Washington County, Inc., in Plymouth, North Carolina, and also to other petroleum distribution facilities operated by C. W. Beasley Oil Company, Inc., Windsor Oil

Company, Inc., and Plymouth Oil Company of Washington County, Inc., in Martin, Hertford, Bertie, Washington, Tyrrell and Dare Counties, North Carolina, under bilateral contracts.

DOCKET NO. T-1638

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Builders Transport, Inc., P.O. Box 7057, Savannah, Georgia 31408 - Application for Contract Carrier Authority	) RECOMMENDED) ORDER GRANTING) AUTHORITY

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on Wednesday, February 14, 1973, at 10:00 P.M.

BEFORE: W. G. English, Jr., Examiner

APPEARANCES:

For the Applicant:

Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestant:

F. Kent Burns
Boyce, Mitchell, Burns & Smith
Attorneys at Law
P. O. Box 1406, Raleigh, North Carolina 27602
Appearing for: Burton Lines, Inc.

ENGLISH, EXAMINER: By application filed with the Commission on December 29, 1972, in Docket No. T-1638, Builders Transport, Inc., P. O. Box 7057, Savannah, Georgia 31408 (hereinafter sometimes referred to as Builders) seeks authority to engage in the transportation of commodities under Group 21, as follows: Plastic pipe and materials and supplies necessary for the installation thereof from the plantsite of Johns-Manville Corporation in Butner, North Carolina to call points in North Carolina as a contract carrier under an individual written contract with the shipper, Johns-Manville Corporation, a Delaware corporation.

Notice of the application showing the time and place of hearing, was given in the Commission's Calendar of Hearings issued January 4, 1973.

Protest to the application was timely filed by Burton Lines, Inc., of Durham, North Carolina.

All parties were either present at the hearing or represented by counsel.

SUMMARY OF EVIDENCE

The Applicant offered the testimony of two witnesses, Mr. Charles C. Gay and Mr. Harold S. Ray.

Mr. Gay's evidence tended to show that he is President of and the sole stockholder of Builders Transport, Inc., a Georgia corporation with its principal office and place of business in Savannah, Georgia; that the primary business of the corporation is that of a contract carrier by motor vehicle operating in several states in interstate commerce under authority issued by the Interstate Commerce Commission and operating in the intrastate commerce in the states of Alabama and Georgia; that the corporation has been engaged in the business of a motor freight carrier since 1963 presently utilizing the services of approximately 200 employees; that Applicant has transportation contracts with the Johns-Manville Corporation as well as several other shippers; that Applicant's recent balance sheet and income statement, Exhibits 3 and 4 respectively, show that it is in sound financial condition; that Applicant proposes to purchase five tractors and ten 45-foot trailers to be dedicated to the use of Johns-Manville Corporation and stationed at its Butner, North Carolina plant, said trailers to be equipped with boxes or compartments underneath the floor in which to carry pipe couplings and fittings; that Applicant has entered into a contract with Johns-Manville Corporation to serve its plant at Butner, North Carolina; said contract guaranteeing Applicant not less than 3,600,000 pounds of freight annually; that Applicant has not negotiated rates and charges with Johns-Manville Corporation, but that the transportation rates shall be equal to the prevailing rates of North Carolina common carriers engaged in similar transportation.

Mr. Harold S. Ray, Applicant's supporting shipper witness, testified that he is employed by Johns-Manville Corporation as Traffic Manager of its Trucking Division with corporate general headquarters in Denver, Colorado and stated that his company is constructing a plant in Butner, North Carolina for the purpose of manufacturing plastic pipe; that the plant should be in operation in September or October; that the plastic pipe will be made in diameters from one to fifteen inches; that the various sizes of pipe are used for sewer lines, to bury telephone lines and for golf courses and home sprinkler systems, etc.; that the anticipated annual production will be approximately 32 million pounds annually or 1600 truck loads of which 250 to 300 truck loads will be shipped to points within the State of North Carolina; that the plastic pipe is sold to local telephone companies, to Western Electric Company, to sewerage

contractors, to distributors, to contractors and to distributors who sell piping in small quantities; that about 90 percent of the pipe goes to a job site where the material is unloaded from the truck and put in or laid alongside a trench; that the needs of Johns-Manville's North Carolina customers are presently being supplied from its plants located in Manville, New Jersey; Franklin, Pennsylvania and Green Cove Springs, Florida; that almost every order delivered to a customer has some sort of special instruction relative to its delivery; that Johns-Manville has fourteen private carriage vehicles in Savannah that it uses to transport pipe from the Green Cove Springs area to the North Carolina area; that Johns-Manville's pipe is delivered and sold in truckload amounts only; that the pipe is produced in twenty-foot lengths plus another foot or foot-and-a-half for the "bell end", are unitized for shipment and loaded in two twenty-foot sections on a flat bed trailer; that from experience Johns-Manville has found that the best method is to transport the pipe on 45-foot flat bed trailers in order to allow some space between the lengths of pipe so that the pipe ends do not come in contact during transit possibly resulting in damage to the ends of the pipe; that Johns-Manville is selling a product and selling a service; that the time of delivery is very important since the contractor may have a work crew at the job site waiting to install the pipe; that Johns-Manville does not plan to rely solely on the dedicated equipment of a contract carrier but will use common carriers during peak periods; that a portion of the shipments from Butner will involve several stop-offs for unloading a part of the load for different consignees; that no business is presently being tendered to North Carolina common carriers from the Butner plant since it is not yet in production; that Johns-Manville has used the services of Builders Transport in shipping from other plants and has been well-satisfied with the service; that should this Commission fail to grant the requested contract carrier authority to Builders Transport that Johns-Manville will resort to private carriage to ship the production of the Butner plant; that Johns-Manville uses an irregular route common carrier to transport pipe from the Green Cove Springs, Florida plant; and that several North Carolina common carriers, including the protestant, Burton Lines, Inc., discussed with Johns-Manville the possibility of handling shipments from the Butner plant.

Protestant, Burton Lines, Inc., Durham, North Carolina, offered the testimony of its Vice President, G. E. Martin, Jr., who testified that his company holds interstate operating authority from the Interstate Commerce Commission and Common Carrier Certificate No. C-33 from the North Carolina Utilities Commission authorizing the transportation of general commodities in seventy-seven (77) counties in North Carolina and the transportation of building materials between all points and places within the State of North Carolina; that his company's Durham terminal is located about fifteen miles from the Johns-Manville plant at Butner; that Burton Lines, Inc., owns 61 tractors and has leased 49

tractors; owns 10 flat bed trailers and has leased 33 flat bed trailers; that some of the tractors have compartments underneath for carrying side racks used in hauling tobacco which would accommodate the pipe fittings, such as are shipped by Johns-Manville; that Burton Lines, Inc., has been engaged in the business of hauling building materials such as lumber and clay pipe and routinely drops off supplies at construction sites; that Burton Lines, Inc., stands ready, willing, and able to handle the intrastate business of Johns-Manville; that it has actively solicited the business of Johns-Manville and if necessary, would purchase or lease any additional equipment needed to accommodate the shipments from Johns-Manville's Butner plant.

From the evidence offered, a portion of which is set above, the Hearing Examiner makes the following

FINDINGS OF FACT

(1) That Applicant, Builders Transport, Inc., is a Georgia corporation holding authority from the Interstate Commerce Commission to operate in interstate commerce and holding intrastate authority authorizing operations in intrastate commerce in the States of Alabama and Georgia, but holds no intrastate authority for operations within the State of North Carolina.

(2) That the Applicant proposes to engage in the transportation of plastic pipe together with materials and supplies necessary for the installation thereof from the plantsite of Johns-Manville Corporation in Butner, North Carolina, to all points in North Carolina as a contract carrier under individual written contract with one shipper, Johns-Manville Corporation.

(3) That the plastic pipe is used primarily for water pressure pipe, sewer lines, underground telephone lines, and underground sprinkler systems; and that the pipe and fittings are usually delivered to a job site where the material is unloaded and put in or laid alongside a trench.

(4) That the proposed operations conform with the definition of a contract carrier in the Public Utilities Act.

(5) That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

(6) That the proposed service will not unreasonably impair the use of the highways by the general public.

(7) That the Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier.

(8) That the proposed operations will be consistent with the public interest and the policy declared in the Public Utilities Act.

(9) That the Applicant owns or can acquire the equipment necessary to serve the Butner plant of the Johns-Manville Corporation.

(10) That Protestant, Burton Lines, Inc., holds North Carolina Common Carrier Certificate No. C-33 authorizing the transportation of general commodities in seventy-seven (77) counties in North Carolina and the transportation of building materials between all points and places within the State of North Carolina.

(11) That Burton Lines, Inc., desires to perform the intrastate transportation service from Johns-Manville's Butner plant.

CONCLUSIONS

The Hearing Examiner concludes that the bulk of the pipe produced by Johns-Manville at its Butner plant could not be transported in intrastate commerce in North Carolina under building materials authority since shipper witness, Harold S. Ray, testified that: "the pipe is used for water pressure pipe, for sewer, gravity sewer lines, to bury telephone lines, for golf courses, for home sprinkler systems. It is generally made to be buried in the ground." and, "...but it is about 90 percent of the business goes to a job site where the material is unloaded from the truck and put in the trench or laid alongside the trench." This clearly indicates that the majority of the plastic pipe is not intended for use as a part of a building; and therefore, could not be transported under building materials authority.

Burton Lines, Inc., does not hold general commodities authority in twenty-three North Carolina counties; and hence, could not offer Johns-Manville Corporation service in the transportation of plastic pipe to twenty-three counties.

Johns-Manville Corporation desires the services of Builders Transport, Inc., and Applicant stands ready, willing, and able to serve the shipper.

Builders Transport, Inc., has satisfied the burden of proof required for the granting of the authority sought as a contract carrier.

THEREFORE, IT IS ORDERED:

1. That Builders Transport, Inc., P. O. Box 7057, Savannah, Georgia, be, and it is hereby, granted a contract carrier permit in accordance with Exhibit A attached hereto and made a part hereof.

2. That the operations herein approved be commenced when Applicant has filed with the Commission its schedule of minimum rates and charges, evidence of appropriate liability insurance coverage, lists of equipment, designation of process agent, and otherwise complied with the rules and

regulations of the North Carolina Utilities Commission, all within thirty (30) days from the date of this Order.

3. That the authorization herein set forth shall constitute a permit until a formal permit shall have been issued and transmitted to the Applicant authorizing the transportation herein described.

ISSUED BY ORDER OF THE COMMISSION.

This 20th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1638	Builders Transport, Inc. Contract Carrier of Property Savannah, Georgia
EXHIBIT A	Transportation of Group 21, Plastic pipe and materials and supplies necessary for the installation thereof, from the plantsite of Johns-Manville Corporation in Butner, North Carolina, under a bilateral written contract with the Johns-Manville Corporation.

DOCKET NO. T-1638

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Builders Transport, Inc., P. O. Box 7057, Savannah, Georgia 31408 - Application for Contract Carrier Authority	)	ORDER CORRECTING ERROR

BY THE COMMISSION. It having come to the attention of the Commission that a clerical error exists in Exhibit A attached to the Order in this Docket dated June 20, 1973, which became a final Order of the Commission on July 10, 1973, said error being the omission of the destination points to be served by Builders Transport, Inc., as shown on Exhibit A of said Order, and

The Commission being of the opinion that said error should be corrected.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Operating Authority description as shown in Exhibit A of said Order be, and the same is hereby, rewritten to read:

"Transportation of Group 21, Other Specific Commodities, viz: Plastic pipe and materials and supplies necessary for the installation thereof, under a bilateral written contract with the Johns-Manville Corporation, from the plantsite of Johns-Manville Corporation in Butner, North Carolina, to all points and places in North Carolina."

(2) That, except as herein amended, the Order of June 20, 1973, which became a final Order of the Commission on July 10, 1973, shall remain in full force and effect.

BY ORDER OF THE COMMISSION.

This the 24th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1362, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Commercial and Package Delivery Service, Inc., for Contract Carrier Permit to Transport Materials and Supplies between Wilmington and Points and Places in North Carolina under Bilateral Contract with E. I. du Pont de Nemours and Company, Intrastate, North Carolina.	) RECOMMENDED ORDER GRANTING CONTRACT CARRIER AUTHORITY

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on March 7, 1973, at 10:00 A.M.

BEFORE: Commissioner Hugh A. Wells

APPEARANCES:

For the Applicant:

James L. Nelson, Esquire
101 South Fifth Avenue
P. O. Box 1506, Wilmington, North Carolina

WELLS, HEARING COMMISSIONER. This matter came on for hearing before Commissioner Wells sitting as a Hearing Commissioner upon the application referred to in the heading above.

At the outset of the hearing it appeared to the Hearing Commissioner that the Applicant had submitted an amendment to its application which would have the effect of

restricting the authority applied for, the application requesting in effect to have the authority to be as follows:

> "To transport materials and supplies used by E. I. du Pont de Nemours Company between the plant site at Cape Fear and points in North Carolina."

The application to amend was allowed.

Applicant presented the testimony of its President, Mr. Jerry Williams and of Mr. Roy W. Matthews, Purchasing Agent at the du Pont Cape Fear Plant. Mr. Williams testified as to his company's background and experience in providing local pickup and delivery service as a contract carrier, citing that he is presently providing a service similar to that applied for in this docket to du Pont's Kinston, North Carolina, plant. Mr. Matthews testified as to the need for du Pont to have a local contract carrier provide service to deliver materials and supplies to the du Pont Cape Fear facility to be used in connection with its manufacturing processes at said plant.

Based upon the information contained in the application and the evidence presented at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the proposed operations conform with the definition of a contract carrier.

2. That the proposed operations will not unreasonably impair the use of the highways by the general public.

3. That the Applicant is fit, willing and able to properly perform the services proposed as a contract carrier.

4. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates in this State.

5. That the public service offered by common carriers in this State operating under certificates granted by this Commission available to the Cape Fear Plant of du Pont de Nemours Company is not sufficient to meet the needs of said shipper, which Applicant has contracted to serve.

6. That the proposed operations are not inconsistent with the public interest and the public policy declared by the General Assembly of North Carolina.

Upon the foregoing Findings of Fact, the Commission

CONCLUDES

That the Applicant has satisfied the burden of proof required for the granting of the authority sought as described in its application and as amended, and that the application as filed and amended should be approved and granted.

IT IS, THEREFORE, ORDERED:

That the application of Commercial and Package Delivery Service, Inc., as amended, seeking contract carrier permit to engage in the transportation of materials and supplies for use and on behalf of du Pont de Nemours and Company at its Cape Fear Plant in New Hanover County, North Carolina, and other points and places in the State of North Carolina and as described in Exhibit A as attached hereto, be, and the same hereby is, approved and granted.

IT IS FURTHER ORDERED That Commercial and Package Delivery Service, Inc., file evidence of liability insurance, schedule of minimum rates and charges, list of equipment, designation of process agent and otherwise comply with the rules and regulations of the Commission, and that it institute operations under the authority herein granted within thirty (30) days from the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1362, Sub 5

Commercial and Package Delivery Service, Inc.
Route 6, Box 53-A
Wilmington, North Carolina

EXHIBIT A

Contract Carrier Authority

To transport Group 21, materials and supplies used by E. I. du Pont de Nemours Company between the plant site at Cape Fear and points and places in North Carolina.

DOCKET NO. T-1672

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Contract Transporter, Inc., 320 Northside Drive,) ORDER
Lexington, Davidson County, North Carolina 27292) GRANTING
Application for a Contract Carrier Permit) PERMIT

HEARD IN: Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 25, 1973, at 2:00 P. M.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

Thomas W. Steed
Allen, Steed, and Pullen
P. O. Box 2058, Raleigh, North Carolina 27602

For the Commission:

John R. Molm
Associate Commission Attorney
North Carolina Utilities Commission
One West Morgan Street
Ruffin Building
Raleigh, North Carolina 27602

Protestants: None

RONEY, HEARING COMMISSIONER: By Application filed with the Commission on August 31, 1973, Contract Transporter, Inc., 320 Northside Drive, Lexington, North Carolina, seeks authority to operate as a contract carrier under a bilateral contract with Joseph Schlitz Brewing Company, transporting as follows:

Group 21: Bottles to be transported from the Owens-Illinois plant at Midway, North Carolina, to the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina; rejected bottles, tier sheets, pallets, frames and miscellaneous packing materials to be transported from the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina to the Owens-Illinois plant at Midway, North Carolina.

Upon the call of this matter for hearing at the captioned time and place, Applicant was present and represented by counsel. No one gave notice or appeared at the hearing in granting of the contract carrier authority sought herein.

The Applicant offered the testimony of its President, Mr. James B. Swing, and Mr. Perle H. Crary, Traffic Research Analyst, Joseph Schlitz Brewing Company, Milwaukee, Wisconsin. Mr. Swing testified that his experience in the trucking business includes 23 years with Maybelle Transport. The Applicant described the operation of the specialized equipment he has ordered and expects to be delivered December 10, 1973. The Applicant introduced as evidence the contract between Joseph Schlitz Brewing Company and Contract Transporter, Inc., setting forth the specialized transportation service he will render to Joseph Schlitz Brewing Company. He also explained that he had adequate financing for the equipment.

Mr. Crary testified that he had been engaged in the transportation industry for 31 years. He testified that he had made an investigation into other possible carriers with respect to whether they could render the required service. He also testified with respect to the specialized service and equipment.

A copy of the contract was filed at the time of the hearing.

FINDINGS OF FACT

Upon consideration of the Application and the evidence adduced, the Commission finds as follows:

1. That the Applicant is experienced in the trucking business.

2. That the Applicant has contracted to perform a specialized transportation service.

3. That the Applicant plans to use specialized equipment in providing this service.

4. That the Applicant is financially able to furnish adequate service on a continuing basis.

5. That no other carrier appeared able to perform the specialized transportation service.

CONCLUSION

The Hearing Commissioner thus concludes that the Applicant has met the burden of proof and shown satisfactorily:

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

2. That the Applicant is fit, willing and able to properly perform the proposed service, and

3. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Contract Transporter, Inc., is hereby granted a contract carrier permit to transport bottles, rejected bottles, tier sheets, pallets, frames and miscellaneous packing materials between the Owens-Illinois plant at Midway, North Carolina, and the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina, as set forth in the Application.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1672

Contract Transporter, Inc.
320 Northside Drive
Lexington, North Carolina

EXHIBIT A

Contract Carrier Authority

Transportation of Group 21, Other Specific Commodities, viz: Bottles to be transported from the Owens-Illinois plant at Midway, North Carolina, to the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina; rejected bottles, tier sheets, pallets, frames and miscellaneous packing materials to be transported from the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina, to the Owens-Illinois plant at Midway, North Carolina.

DOCKET NO. T-1672

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Contract Transporter, Inc., 320 Northside Drive, Lexington, Davidson County, North Carolina 27292 - Application for a Contract Carrier Permit) ERRATA) ORDER

BY THE COMMISSION. It having come to the attention of the Commission that certain clerical errors exist in the Order in this docket dated October 26, 1973, said errors being (1)

the omission to name the contracting parties in Exhibit "A" of said order; (2) the omission to designate the origin and destination points in the decretal paragraph, as set forth in Exhibit "A", and (3) the omission of decretal paragraph number two advising Contract Transporter, Inc., with respect to filing requirements.

The Commission, being of the opinion, finds and concludes that said errors should be corrected:

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Exhibit "A" of said order be, and the same hereby is, rewritten as shown on the attached Exhibit "A".

2. That the decretal paragraph of said order be, and the same hereby is, rewritten to read as follows:

> "That Contract Transporter, Inc., is hereby granted a contract carrier permit to transport bottles from the Owens-Illinois plant at Midway, North Carolina to the Joseph Schlitz Brewing Company brewery and warehouse on and near Winston-Salem, North Carolina; and to transport rejected bottles, tier sheets, pallets, frames and miscellaneous packing materials from the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina, to the Owens-Illinois plant at Midway, North Carolina."

3. That decretal paragraph number two is hereby added to read as follows:

> "2. That Contract Transporter, Inc., file with the Commission evidence of the required insurance, lists of equipment, schedule of minimum rates and charges, designation of process agent and otherwise comply with the rules and regulations of the Commission, and institute operations under the authority herein acquired within thirty (30) days from the date of this Order."

ISSUED BY ORDER OF THE COMMISSION.

This 1st day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1672 Contract Transporter, Inc.
320 Northside Drive
Lexington, North Carolina

EXHIBIT A

Contract Carrier Authority

Transportation of Group 21, other specific commodities - bottles from the Owens-Illinois plant at Midway, North Carolina, to the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina, and rejected bottles, tier sheets, pallets, frames and miscellaneous packing materials from the Joseph Schlitz Brewing Company brewery and warehouse in and near Winston-Salem, North Carolina, to the Owens-Illinois plant at Midway, North Carolina under bilateral contract with the Joseph Schlitz Brewing Company.

DOCKET NO. T-1662

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
C. W. Currin, Middleburg, North Carolina; Application to Transport Group 21, Mobile Homes, New and Used in the North Carolina Counties of Warren, Vance, Granville, Franklin, Halifax, Wake, Johnston, Nash, Wilson, Pitt, Edgecombe, Northampton and Person	) RECOMMENDED ORDER GRANTING OPERATING AUTHORITY

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Thursday, September 20, 1973, at 10:00 A. M.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

Mr. Charles F. Blackburn
Perry, Kittrell, Blackburn and Blackburn
Post Office Box 139
Henderson, North Carolina 27536

For the Commission Staff:

Mr. Jerry B. Fruitt
Assistant Commission Attorney
North Carolina Utilities Commission
Post Office Box 991
Raleigh, North Carolina 27602

For the Protestants:

Mr. Thomas S. Harrington
Harrington and Stultz
Post Office Box 535, Eden, North Carolina
Appearing for: Morgan Drive Away, Inc.

Mr. John P. Williamson
Yarborough, Jolly, and Williamson
Post Office Box 96, Louisburg, North Carolina
Appearing for: Jones Mobile Homes of Louisburg

RONEY, HEARING COMMISSIONER: By Application filed on June 18, 1973, C. W. Currin seeks authority to operate as a common carrier in the transportation of Group 21, mobile homes, new and used, between all points and places in the North Carolina Counties of Warren, Vance, Granville, Franklin, Halifax, Wake, Johnston, Nash, Wilson, Pitt, Edgecombe, Northampton, and Person.

Notice was published in the Calendar of Hearings issued July 13, 1973, setting the matter for hearing on September 20, 1973, in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina.

Mr. Thomas S. Harrington appeared for the Protestant, Morgan Drive Away, Inc., and Mr. John P. Williamson appeared for the Protestant, Jones Mobile Homes of Louisburg. Both Protestants agreed to withdraw their protests if the Applicant would agree to amend his Application to include only the Counties of Warren, Vance, Halifax, Northampton, and Edgecombe, and to exclude the hauling of homes from or for manufacturers but not otherwise. The Applicant agreed to so amend his Application. The Applicant then proceeded to offer his testimony and the testimony of three witnesses who would like to use the proposed service, Mr. B. G. Stephenson, Mr. Robert D. Drinkard, and Mr. Thomas Oglesby.

Based upon the evidence of record, the Hearing Commissioner makes the following

FINDINGS OF FACT

(1) That the Applicant is solvent and is financially fit, willing, and able to properly perform the proposed transportation service, based upon his present management experience and his experience in the mobile home industry.

(2) That there presently exists a need for the transportation service proposed.

Whereupon the Hearing Commissioner reaches the following

CONCLUSIONS

Based upon the evidence presented, the Findings of Fact reflecting that evidence and the applicable law, the

Applicant should be granted the requested operating rights forthwith.

IT IS, THEREFORE, ORDERED:

(1) That a Common Carrier Certificate be issued to C. W. Currin, in accordance with Exhibit B attached hereto.

(2) That C. W. Currin shall comply with the laws of this State and the Rules and Regulations of this Commission and 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 a formal Certificate shall have been transmitted to the Applicant authorizing the transportation set forth in Exhibit B.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1662 — C. W. Currin, Middleburg, North Carolina

EXHIBIT B — Irregular Route Common Carrier Authority

Transportation of Group 21, mobile homes, new and used, between all points and places in the North Carolina Counties of Warren, Vance, Halifax, Northampton, and Edgecombe and to exclude the hauling of mobile homes in these Counties from or for manufacturers but not otherwise.

DOCKET NO. T-681, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Helms Motor Express, Inc., P. O. Drawer 700, Albemarle, North Carolina 28001) ORDER

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, at 10:00 A.M., Friday, February 2, 1973.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioners John W. McDevitt and Ben Roney.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

WOOTEN, CHAIRMAN.. This matter arises upon the application filed by Helms Motor Express, Inc., P. O. Drawer 700, Albemarle, North Carolina 28001, for common carrier authority to transport Group 21, flat glass and glass glazing units over irregular routes, in the territory, as amended, described as from points and places in Sampson County and Scotland County, to points and places throughout the State of North Carolina, and the return of racks, containers or other devices used in the handling and movement of flat glass and glass glazing units to point of origin. Said application was filed with the Commission on November 17, 1972.

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 Calendar of Hearings issued on December 6, 1972.

Protest was filed with the Commission by Superior Trucking Company of Atlanta, Georgia, which said protest was withdrawn by said Protestant in writing on the date of the hearing. No other protests were received by the Commission and no one appeared at the hearing to protest the granting of the application sought herein.

Upon the call of this matter for hearing, the Applicant moved the Commission to amend its application in such a manner as to apply for authority for the movement of flat glass and glass glazing units in a territory described as from points and places in Sampson County and Scotland County, North Carolina, to all points and places in North Carolina, and the return of racks, containers or other devices used in the handling and movement of flat glass and glass glazing units to the point of origin.

Upon the call of this matter for hearing, Mr. Vallon L. Burris, President of Helms Motor Express, Inc., testified regarding the need for the transportation services, authority for which his company was seeking in this application, and the fitness, willingness and ability of Helms Motor Express, Inc., to properly perform such services. Also testifying for and on behalf of the Applicant was Mr. Paul L. Wendt, who is the Assistant Director of Traffic for Libby-Owens-Ford Company and is in charge of the shipping for said company. Mr. Wendt

testified regarding the need of his company for the services herein applied for and the need of the general public, contractors and others for the movement of the materials which his company produces in both intra- and interstate.

From the evidence offered, a portion of which is summarized 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 and applied for in the application, as amended.

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 handling thereof for which authorization is sought.

3. That the Applicant is now engaged in limited movements of the products here sought in a limited territory in this State under its general commodities 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 services as proposed in this amended application and to continue such services as long as the need therefor exists.

5. That the public convenience and necessity requires the services of the Applicant for the hauling of Group 21, flat glass and glass glazing units, as specified, in addition to other existing transportation services in the territory described as from points and places in Sampson County and Scotland County, North Carolina, to all points and places in North Carolina, and the return of racks, containers or other devices used in the handling and movement of flat glass and glass glazing units to the point of origin.

It appears from the evidence that the need for transporting the commodities herein involved in the territory requested is substantial and will probably increase.

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 amended, and as specified herein should be granted.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Helms Motor Express, Inc., P. O. Drawer 700, Albemarle, North Carolina 28001, be, and it is, hereby granted authority as an irregular route common carrier to

transport Group 2| 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, and has otherwise complied with the rules and regulations of this Commission, all of which is to 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 the transportation herein set out.

LSSUED BY ORDER OF THE COMMISSION.

This the 8th day of February, |973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-68| SUB 37

Helms Motor Express, Inc.
P. O. Drawer 700
Albemarle, North Carolina 2800|

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of Group 2|, flat glass and glass glazing units over irregular routes in the territory described as from points and places in Sampson County and Scotland County, North Carolina, to all points and places throughout the State of North Carolina, and the return of racks, containers, or other devices used in the handling and movement of flat glass and glass glazing units to the point of origin.

DOCKET NO. T-68|, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Helms Motor Express, Inc., P. O. Drawer 700, Albemarle, North Carolina 2800|.) SUPPLEMENTAL ORDER

BY THE COMMISSION. This Commission issued its Order in the above-entitled docket on February 8, |973, and said Order did not refer to the fact that the Applicant, Helms

Motor Express, Inc., also was seeking a certificate of registration under the provisions of Section 206 (a) (6) of the Interstate Commerce Act, as amended. However evidence of said fact was presented to the Commission and notice of such filing was properly filed with the Interstate Commerce Commission and appeared in the Federal Register as by law provided.

That said findings of fact and the ordering paragraphs shall be supplemented as follows: Findings of Fact, enumerated as paragraph no. 5 is amended so as to read as follows:

"5. That the public convenience and necessity requires the service of the Applicant for the hauling of Group 21, flat glass and glass glazing units, as specified, in addition to other existing transportation services in the territory described as from points and places in Sampson County and Scotland County, North Carolina, to all points and places in North Carolina, and the return of racks, containers or other devices used in the handling and movement of flat glass and glass glazing units to the point of origin.

"This need exists to the extent above referred to, both in interstate and intrastate commerce, and it appears from the evidence that the need for transporting the commodities herein involved in the territory requested is substantial and will probably increase.

"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 amended, and as specified herein should be granted both in interstate and in intrastate commerce and they should be permitted to file a copy of this Order as evidence for a certificate of registration with the Interstate Commerce Commission."

IT IS, THEREFORE, ORDERED AS FOLLOWS:

That the Order of February 8, 1973, shall be amended so that decretal Paragraphs 1, 2, and 3 shall read as follows:

"1. That Helms Motor Express, Inc., P. O. Drawer 700, Albemarle, North Carolina 28001, 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, both in interstate and intrastate commerce.

"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, and has otherwise complied with the rules and regulations of this Commission, all of which is to be done within thirty (30) days from the date of this Order and a copy of this Order may be filed with the Interstate Commerce Commission,

pursuant to the provisions of Section 206 (a) (6) of the Interstate Commerce Act, as amended, as evidence for a certificate of registration.

"3. That the authorization herein shall constitute a certificate until a formal certificate shall have been transmitted to the Applicant authorizing the transportation herein set out and shall be used as evidence of such certificate for the purposes set out in 2 above."

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-681, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Helms Motor Express, Inc., Application for Authority to Transport Group 1 General Commodities over the Territory Set Forth in said Application	) ORDER GRANTING) ADDITIONAL) OPERATING) AUTHORITY

HEARD: Commission Hearing Room, Raleigh, North Carolina, on March 1, 2, and 15, 1973

BEFORE: Chairman Marvin R. Wooten, Presiding, Commissioners John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Applicant:

J. Ruffin Bailey and Ralph McDonald
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

T. D. Bunn and David H. Permar
Hatch, Little, Bunn, Jones & Few
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina 27602
Appearing for: Overnite Transportation Company, Thurston Motor Lines, Inc., and Lloyd Motor Express, Inc.

For the Commission Staff:

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

BY THE COMMISSION. On December 8, 1972, the applicant Helms Motor Express, Inc. (hereinafter called "Helms"), filed Application for additional operating authority to transport Group 1, general commodities, over routes set forth in the Application and the maps attached thereto consisting of the following:

A. From the junction of U. S. Highway 74 and N. C. Highway 381 near Hamlet, North Carolina, over N. C. Highway 381 to Gibson, North Carolina, thence over N. C. Highway 79 to Laurinburg, North Carolina, and return over the same route serving all intermediate points.

B. From Laurinburg, North Carolina, over U. S. Highway 501 to Rowland, North Carolina, thence over U. S. Highway 301 to Lumberton, North Carolina, and return over the same route serving all intermediate points.

C. Between Maxton, North Carolina, and Raemon, North Carolina, over N. C. Highway 130 serving all intermediate points.

D. Between Rowland, North Carolina, and Whiteville, North Carolina, over N. C. Highway 130 serving all intermediate points.

E. From the junction of N. C. Highway 130 and N. C. Highway 904 over N. C. Highway 904 to Fair Bluff, North Carolina, thence over U. S. Highway 76 to Chadbourn, North Carolina, and return over the same route serving all intermediate points and serving Cerro Gordo, North Carolina, as an off-route point.

F. From Fair Bluff, North Carolina, over N. C. Highway 904 to Tabor City, North Carolina, thence over U. S. Highway 701 to its junction with N. C. Higway 130 and return over the same route serving all intermediate points.

G. Between Chadbourn, North Carolina, and Tabor City, North Carolina, over N. C. Highway 410 serving all intermediate points.

H. Between Lumberton, North Carolina, and Fairmont, North Carolina, over N. C. Highway 41 serving all intermediate points.

On December 8, 1972, Helms filed with the Commission notice of filing of Application for publication in the Federal Register under Section 206 (a) (6) of the Interstate

Commerce Commission Act, as amended, which notice was forwarded to the Interstate Commerce Commission, Washington, D. C., on January 4, 1973. Thereafter, notice of filing of motor carrier intrastate application, dated January 12, 1973, and setting forth the instant application, appeared in Volume 38, No. 11, of the Federal Register of Wednesday, January 17, 1973, on page 1683, which said notice gave the date of hearing as February 15, 1973, at 10:00 A. M., at the Hearing Room, North Carolina Utilities Commission, Ruffin Building, Raleigh, N. C. A corrected republication of the aforesaid notice appeared in Volume 38, No. 20, of the Federal Register of Wednesday, January 31, 1973, on page 3025.

Joint Protest and Motion for Intervention was filed on February 2, 1973, by Overnite Transportation Company and Thurston Motor Lines, Inc., and Protest and Motion for Intervention was filed on February 21, 1973, by Lloyd Motor Express.

The Application was set for hearing and notice published in the Truck Calendar, and the case came on for hearing on March 1, 1973, in accordance with said notice.

The applicant offered the testimony of the following witnesses:

Vallon L. Burris, President, Helms, testified regarding the proposed operations under the Application; that Helms owns 189 trailers and leases 33 trailers, and owns its tractors in sufficient capacity to serve the territory applied for; that Helms had purchased land for a new Fayetteville terminal which could serve the routes applied for; that Helms' operating ratio for 1972 calendar year was 92.81%, with net income of $163,000; and that Helms had improved its loss and damage claims handling and had added a new safety supervisor.

Carl Mears, general mercantile business, Fair Bluff, N. C., testified that the additional service would provide quicker truck shipments than the present service.

Frank Tyndall, mercantile business, Z. V. Pate, Inc., Gibson, N. C., testified that existing carriers did not allow adequate service to Gibson and that shipments incurred delays.

Paul Rogers, Jr., President, F. W. Cox Supply Company, Tabor City, N. C., testified that the service of existing motor carriers was slow and that the Helms terminal at Whiteville would provide better service under the proposed Application.

Robert Soles, owner-operator of R. C. Soles Company, Tabor City, N. C., testified that service of existing carriers was slow, requiring 2 to 16 days, and further testified in support of the Application as Mayor of Tabor City.

Leonard Proctor, Manager of Columbus Motor Company, Whiteville, N. C., testified in support of the Application.

Anne W. Small, Executive Secretary, Greater Whiteville Chamber of Commerce, Whiteville, N. C., testified in support of the Application.

John Thompson, Vice President, Columbus Supply Company, Whiteville, N. C., testified in support of the Application.

Howard A. Jones, City Manager of Whiteville, N. C. testified in support of the Application.

Col. Joe L. Dietzel, Town Manager, Fairmont, N. C., testified that service of existing motor carriers was slow, and further testified in support of the Application.

James L. Fowler, Supervisor of contract shipping and receiving for Blue Jeans Corporation, Whiteville, N. C., testified in support of the Application.

Robert Gore, Gore's Used Parts, Hallsboro, N. C., testified in support of the Application.

Stephen F. Karandy, Senior Vice President, Western Car Loading Company (freight forwarders), Atlanta, Ga., testified in support of the Application.

Lyle Sparrow, Assistant to Vice President of the Southeastern States Carloading and Distributing Company (freight forwarders), Atlanta, Ga., testified in support of the Application.

S. E. Fulk, Assistant Traffic Manager-Commerce, Central Motor Lines, Inc., Charlotte, N. C., testified that the interline transfers with Helms were rapid and testified in support of the Application.

The protestants offered the testimony of the following witnesses:

John V. Luckadoo, Traffic Manager, Thurston Motor Lines, Inc., testified that Thurston Motor Lines presently operates in the area applied for by Helms out of their Fayetteville terminal and that they have runs into the area on a daily basis.

Robert L. Bolich, Manager of Lloyd Motor Express, Charlotte, N. C., testified that Lloyd Motor Express serves the area described in Helms' Application, and that they also make daily runs into the area; that Lloyd Motor Express is afraid that they will lose what business they have if Helms is granted the Application.

John C. Burton, Jr., Assistant Director of Traffic and Commerce, Overnite Transportation Company, Richmond, Va., testified in detail regarding the authority of Overnite

Transportation Company and the service being furnished by it on its routes for which Helms requests authority.

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

FINDINGS OF FACT

1. That applicant is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, with its principal place of business in Albemarle, Stanly County, North Carolina; that it has been engaged in the business of transporting commodities by motor vehicle for many years; that it holds authority under Certificate No. C-3, as a regular route common carrier, for transportation of general commodities between points and places on many routes within the State of North Carolina as shown on said certificate; that it now seeks authority for the transportation of general commodities over eight additional routes within the state.

2. That applicant owns and operates terminals in a large area in Piedmont and Eastern North Carolina and has many pieces of equipment, including tractors and trailers; that they are of a type suitable for transporting general commodities over the routes applied for herein; that applicant has been operating with net income of $163,000 for 1972; that applicant has the necessary equipment and is financially able to perform the operation for which the authority is sought.

3. That the service of existing authorized motor carriers over the routes applied for is slow and the shippers and receivers at said points need the additional service of the applicant to secure adequate service over said routes; that the presently available motor freight service to transport normal mercantile needs on said routes is not sufficient to meet the respective demands of the shippers in said territory; that there is a need for the type of service here sought by the applicant in addition to the existing authorized transportation services offered by certificated carriers.

4. That applicant is fit, willing and financially and otherwise able to properly perform adequate service over the additional routes as proposed in this Application.

5. That public convenience and necessity requires the services of applicant for the transportation, as a regular route carrier over the eight routes involved in this Application, of general commodities, as described under Group 1 of Rule R2-37 of the Commission's Rules.

6. That applicant further seeks by this application authority to engage in transportation of general commodities, except those requiring special equipment, in interstate and foreign commerce within the limits of the

intrastate authority herein sought, under the provisions of Section 206 (a) (6) of the Interstate Commerce Act, as amended October 15, 1962 [49 USCA 306 (a) (6)]; that notice to any person, firm or corporation which might be interested in this application was given through publication in the Federal Register, as hereinbefore set out, of the filing of the application; that reasonable opportunity was afforded any persons who might be interested to be heard; that this Commission has duly considered the question of the proposed interstate and foreign operations and finds that public convenience and necessity require that the applicant should also be authorized to engage in operations in interstate and foreign commerce within the limits which do not exceed the scope of the intrastate operations sought to be conducted under this application.

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

CONCLUSIONS

Applicant in this case is engaged in the business of transporting commodities by motor vehicle in intrastate commerce, as a regular route common carrier, under authority contained in Certificate No. C-3. Here it seeks authority to transport the same commodities over eight additional routes. It has offered shipper witnesses to show the needs of their respective businesses for transportation in addition to that which they are now being furnished by certificated carriers over each respective route. Each witness offered testified to these facts. The testimony shows a need for extending the service of applicant over the additional routes sought, and further shows that this need is in addition to the existing transportation service offered by presently certificated carriers. The testimony further shows that the applicant is qualified to render this public service and to contribute materially to meeting the public need. The Commission further concludes that public convenience and necessity require that the applicant also be authorized to engage in operations in interstate and foreign commerce within the limits which do not exceed the scope of the intrastate operations authorized herein. [49 USCA 306 (a) (6)].

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Helms Motor Express, Inc., Albemarle, North Carolina, be, and it hereby is, authorized to operate as a common carrier over the eight additional regular routes in the manner and within the territory set forth in Exhibit A hereto attached.

2. That the authorization herein shall constitute a certificate until a formal certificate shall have been transmitted to the applicant authorizing transportation as herein set out.

3. That operations hereunder be commenced only when applicant has filed tariff schedules for the service applied for, and has complied with the rules and regulations of this Commission, all of which must be done not later than thirty (30) days from the date of this Order.

4. That applicant be, and it hereby is, authorized to file with the Interstate Commerce Commission a copy of this Order as evidence for a certificate of registration to engage in operations in interstate and foreign commerce within the limits which do not exceed the scope of the intrastate operations authorized to be conducted under this Order, as set out in Exhibit A hereto attached, in accordance with the provisions of Section 206 (a) (6) of the Interstate Commerce Act, as amended [49 USCA 306 (a) (6)].

ISSUED BY ORDER OF THE COMMISSION.

This 15th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Docket No. T-681, Sub 38

Helms Motor Express, Inc.
P. O. Drawer 700
Albemarle, N. C. 2801

EXHIBIT A

Transportation of Group 1, General Commodities, viz: Property the transportation of which does not require special vehicles or special equipment for hauling, loading, or unloading or any special or unusual service in connection therewith,

Over the following routes:

A. From the junction of U. S. Highway 74 and N. C. Highway 381 near Hamlet, North Carolina, over N. C. Highway 381 to Gibson, North Carolina, thence over N. C. Highway 79 to Laurinburg, North Carolina, and return over the same route serving all intermediate points.

B. From Laurinburg, North Carolina, over U. S. Highway 501 to Rowland, North Carolina, thence over U. S. Highway 301 to Lumberton, North Carolina, and return over the same route serving all intermediate points.

C. Between Maxton, North Carolina, and Raemon, North Carolina, over N. C. Highway 130 serving all intermediate points.

D. Between Rowland, North Carolina, and Whiteville, North Carolina, over N. C. Highway 130 serving all intermediate points.

E. From the junction of N. C. Highway 130 and N. C. Highway 904 over N. C. Highway 904 to Fair Bluff, North Carolina, thence over U. S. Highway 76 to Chadbourn, North Carolina, and return over the same route serving all intermediate points and serving Cerro Gordo, North Carolina, as an off-route point.

F. From Fair Bluff, North Carolina, over N. C. Highway 904 to Tabor City, North Carolina, thence over U. S. Highway 701 to its junction with N. C. Highway 130 and return over the same route serving all intermediate points.

G. Between Chadbourn, North Carolina, and Tabor City, North Carolina, over N. C. Highway 410 serving all intermediate points.

H. Between Lumberton, North Carolina, and Fairmont, North Carolina, over N. C. Highway 41 serving all intermediate points.

DOCKET NO. T-1670

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of E. L. Burns, t/a Hickory Merchants Delivery, 626 8th Street, S. W., Hickory, North Carolina 28601 - Application for Contract Carrier Permit.	) RECOMMENDED) ORDER) GRANTING) PERMIT

HEARD IN: City Council Chamber, City Hall, 30 Third Street, N. W., Hickory, North Carolina, on August 8, 1973, at 11:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

E. Murray Tate, Jr.
Tate, Weathers & Young
P. O. Drawer 2428
Hickory, North Carolina 28601

No Protestants.

WOOTEN, HEARING COMMISSIONER. By application filed with the Commission on July 16, 1973, E. L. Burns, t/a Hickory Merchants Delivery, Hickory, North Carolina (Applicant), seeks a Contract Carrier Permit to transport Group 15,

Retail Store Delivery Service, and Group 2|, Other Specific Commodities, to wit: data processing cards, payroll data, payroll records, data processing cards, financial records, production records, sales invoices and records, copies of orders and other such inter-company and intra-company records to and from manufacturing plants and data processing centers and offices of manufacturing plants; and to transport clothing and other items for sale in retail stores from one branch or office of a retail store to another branch or office of the same retail store in the territory described as within, throughout and between points and places in the Counties of Caldwell, Burke, Alexander, Catawba, Iredell, Lincoln and Cleveland or carriage of data processing cards and other such items; within the City of Hickory only for Group |5 and intra-store carriage, the involved territory to be under contract between the Applicant and various contracting parties of record and subsequently to be filed.

Notice of the application was given in the Commission's Calendar of Hearings issued on July |7, |973. No protests were filed in this case and no one appeared at the hearing upon the call of the matter in opposition to the granting of the contract carrier permit herein sought.

The Applicant offered the testimony of himself, Mr. Jack Spainhour and Mr. Harry L. Schmulling. Mr. Burns offered testimony that the service he proposed to offer under individual bilateral contracts with Shuford Mills, Incorporated, Hickory Springs Manufacturing Company and Homespun Hosiery Mill, Inc., and others, is a specialized service delivering the items set forth in his application herein within the territory and under the circumstances specified in the record; that he owns sufficient vehicular equipment, has the trained personnel and the knowledge and know-how to engage in this operation and that he owns the equipment, is financially able and has the experience necessary to provide the service applied for in this case on a continuing basis; the Applicant further testified that he would subsequently submit contracts from Shuford Data Processing Center, Claremont Manufacturing Company, Catawba Valley Computer Center, Carolina Mills, and others for the performance of the specialized service specified in the application herein.

Mr. Jack Spainhour and Mr. Harry Schmulling, prominent and active businessmen in the territory herein applied for, testified in support of the application, the fitness and ability of the Applicant to perform the service, the need for this service by the businesses represented by them, as well as others in the community involved in the application herein.

From the evidence presented and the record in this matter as a whole, the Hearing Commissioner 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 the 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 14 individual businesses 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 operations 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.

The Commission further concludes that the uncorroborated evidence in this case supports the public need for the granting of the authority herein under bilateral contract with Shuford Mills, Incorporated, Hickory Springs Manufacturing Company, and Homespun Hosiery Mill, Inc., and in addition thereto 11 separate additional business organizations, and that said contracts in the total number of 14 should be filed with the Commission at such time as the same are entered into and finalized between the Applicant and the contracting parties. The Commission concludes that the advanced approval of the 14 individual bilateral contracts herein is appropriate in view of the similarity of the operations proposed herein with those proposed and approved in Docket Nos. T-1445; T-1077, Sub 6; and T-1462, Sub 2.

IT IS, THEREFORE, ORDERED:

1. That E. L. Burns, t/a Hickory Merchants Delivery, 626 8th Street, S. W., Hickory, 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 filed with the Commission his schedule of minimum rates and charges and complied with all the rules and regulations of the North Carolina Utilities Commission, all of which shall be done within thirty (30) days from the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1670

E. L. Burns
t/a Hickory Merchants Delivery
626 8th Street, S. W.
Hickory, North Carolina 28601

Contract Carrier Authority

EXHIBIT A

Transportation of Group 15, Retail Store Delivery Service, and Group 21, Other Specific Commodities, to wit: data processing cards, payroll data, payroll records, data processing cards, financial records, production records, sales invoices and records, copies of orders and other such inter-company and intra-company records to and from manufacturing plants and data processing centers and offices of manufacturing plants; to transport clothing and other items for sale in retail stores from one branch or office of the same retail store in the territory described as within, throughout and between points and places in the Counties of Caldwell, Burke, Alexander, Catawba, Iredell, Lincoln and Cleveland or carriage of data processing cards and other such items; within the City of Hickory only for Group 15 and intra-store carriage, under 14 individual and separate bilateral contracts to be filed with the Commission immediately upon the consummation of the same.

DOCKET NO. T-1534, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Charles C. Laughinghouse, d/b/a Charles C. Laughinghouse Mobile Home Movers, 802 Howell Road, New Bern, North Carolina -- Application for authority to transport Group 21, Mobile Homes) RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Raleigh, North Carolina, on March 28, 1973

BEFORE: John W. McDevitt, Commissioner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey
Bailey, Dixon, Wooten, and McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina

For the Protestants:

Thomas S. Harrington
Harrington and Stultz
Attorneys at Law
P. O. Box 535, Eden, North Carolina
For: Morgan Drive Away, Inc.

Charles B. Morris, Jr.
Jordan, Morris, and Hoke
Attorneys at Law
P. O. Box 709, Raleigh, North Carolina 27602
For: National Trailer Convoy, Inc.

Vaughan S. Winborne
Attorney at Law
Capital Club Building
Raleigh, North Carolina
For: Transit Homes

MCDEVITT, COMMISSIONER. Charles C. Laughinghouse, d/b/a Charles C. Laughinghouse Mobile Home Movers, 802 Howell Road, New Bern, North Carolina, filed application on January 31, 1973, for irregular route common carrier authority to transport Group 21, Mobile Homes, "(1) from points within a 50 mile radius of Morehead City to all points within the State; (2) from all points within the State to points within a 50 mile radius of Morehead City."

Protests were filed by Morgan Drive Away, Inc., Transit Homes, Inc., and National Trailer Convoy, all of which are holders of certificates authorizing statewide transportation

of mobile homes. Public hearing was held as captioned in accordance with notice published in the Calendar of Hearings on February 21, 1973.

The Applicant is the holder of North Carolina Utilities Commission Certificate C-967, issued in October, 1971, authorizing irregular route common carrier transportation of Group 21, Mobile Homes, within a 50 mile radius of Morehead City which would include all of Carteret County plus a radius of approximately 20 miles in the southwest portion of Onslow County and approximately 20 miles in the northwest portion of Craven County. The Applicant seeks in the application in this proceeding to transport mobile homes from within the area for which it has had authority to points and places throughout North Carolina, and from points and places throughout North Carolina into the geographical area in which it has operated as an irregular route common carrier since October, 1971.

In support of the Application, the Applicant offered his testimony and the testimony of various witnesses as set out below.

Representative Christopher S. Barker of New Bern who represents Pamlico, Craven, Lenoir and Jones Counties in the North Carolina General Assembly testified regarding the quality of service heretofore provided by the Applicant and regarding the growth in mobile home factories and the proliferation of mobile homes within the area. Senator B. L. Stallings who represents Craven, Carteret and Pamlico Counties in the North Carolina General Assembly testified regarding the need for additional carriers based on his familiarity with the mobile home moving business based upon his insurance business in which he has written policies insuring mobile homes and based upon his experience as Chairman of the County Board of Commissioners of Craven County dealing with county regulation of mobile home parks and the problems involved in setting up mobile homes properly in the Coastal area.

The Applicant Charles C. Laughinghouse testified regarding requests he has received for transportation service beyond the limits of his present franchised authority and regarding a particular need for movers who will "set up" mobile homes properly and who have the capacity to give prompt service during the peak summer season.

Mr. John Stone who repossesses mobile homes for major banks, finance companies and insurance companies under the name of J. W. Stone and Associates, testified regarding his difficulties in arranging transportation of mobile homes upon repossession in order to prevent vandalism or unauthorized dwelling, with particular emphasis on the need for prompt service and delivery from the coastal area to Rocky Mount or other points; he testified regarding the difficulties in getting Morgan Drive Away and Transit Homes by placing calls to their terminals which are actually

private residences and then getting prompt service, and regarding particular difficulty where the homes he repossesses are in "lower grade" mobile home parks which present substantial difficulty in extricating the homes from wooded or otherwise inaccessible areas.

Mr. George M. Smith, who is employed by Havelock Homes, Incorporated, a manufacturer of mobile homes, testified regarding the need for transportation from that business manufacturing plant by common carriers during the peak season. Mr. Earl Laughinghouse, who operates a mobile home park, testified regarding attempts to secure transportation for people moving into or out of his mobile home park.

Mrs. Doris Lundy of Havelock, who operates Lundy Trailer Park, testified regarding her tenants having to wait for a driver longer than they were expecting to wait for them and regarding their difficulties in obtaining "set up" or "block up" service once the mobile homes are in the park; when a tenant is going to move, she has the electricity and the water and sewer lines disconnected, with the mobile home mover occasionally coming several days after the tenant's utility services were cut off.

Ms. Frances Willis, who lives in New Bern in a mobile home park, testified regarding the difficulty of getting set up service from Morgan Drive Away and National for her move from Elizabeth City to New Bern. Mrs. Joy Rawles, who lives in a mobile home park in New Bern, N. C., testified regarding difficulties in moving from Southport to New Bern promptly, reciting that Morgan Drive Away and National were unable to make the move during the desired time period.

Mr. J. V. Rice, who operates a mobile home moving service under a franchise providing for service within twenty-six counties in the southern part of North Carolina, testified regarding the increasing demand and the need for the additional service proposed by Mr. Laughinghouse, particularly during the peak summertime season when he has been unable to satisfy peak demands.

The protestant Transit Homes, Inc., offered the testimony of Mr. Ray Aebischer of Newport News, Virginia, who is District Manager for North Carolina, Virginia, Maryland and Delaware; he testified that his company stands willing and able to serve the area through its terminal manager, Mrs. Barbara Plant in Jacksonville, although he does not know whether or not his corporation has a Certificate of Authority on file with the Secretary of State of North Carolina; the contract basis upon which drivers and their equipment are provided to Transit does not assure that a particular driver will accept all moving jobs obtained by the terminal agent.

The protestant Morgan Drive Away, Inc., offered the testimony of Mr. Jack Kent who is District Manager for Morgan Drive Away, Inc., including North and South Carolina.

He testified regarding service provided by his company out of Jacksonville, North Carolina, through the terminal manager there, Mrs. Ardelia Butts and four drivers in that area. He testified that his company does not decline any business; that it blocks and unblocks as needed and that he attempts to see that his drivers do not refuse to block or unblock mobile homes; that his drivers are not operating at full capacity and that in his opinion, additional service is not needed and would be injurious to his company's revenues; that a twenty-four hour waiting period is all that is needed under normal conditions; that his company originated a very small number of intrastate trips at New Bern, N. C., last year but he does not have the exact number of shipments, neither does he know how many shipments were originated at points other than Mr. Laughinghouse's area to be delivered within that area but that it was a very small number.

The protestant, Morgan Drive Away, Inc., moved that the matter remain open for further evidence regarding the transaction that allegedly took place between the Applicant and the Jacksonville terminal manager for Morgan Drive Away, regarding Mr. Laughinghouse's asserted telephone solicitation, in the event the testimony would be inconsistent with the testimony of Mr. Laughinghouse. The ruling on this Motion was deferred pending the Commissioner's reading the transcript to determine the relevance and materiality of the controversy to the Application as a whole.

Based upon the evidence adduced, the Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant currently provides mobile home moving service within a fifty mile radius of Morehead City, N. C., under Certificate No. C-967; he is fit, willing, solvent and able to perform the proposed service, financially and otherwise, on an adequate and continuing basis.

2. That there has recently been and there is currently, a substantial growth in the number of persons residing in mobile homes and firms manufacturing them within his certificated area, requiring transportation within and without that area; that the "existing authorized transportation service" includes service currently provided by the Applicant's supporting witness Mr. J. V. Rice and the service provided by the protestants who are carriers holding statewide (and interstate) authority.

3. That a need exists for additional carrier or carriers to move mobile homes in addition to existing transportation service, as herein proposed by Mr. Laughinghouse.

Whereupon the Commissioner reaches the following

CONCLUSION

The Applicant has presented sufficient evidence of a public need for his proposed transportation service in addition to the existing authorized transportation service. Accordingly, the Applicant's Common Carrier Certificate should be amended to indicate an authorization to perform the service requested in this application.

IT IS, THEREFORE, ORDERED:

1. That the Common Carrier Certificate of Mr. Charles D. Laughinghouse be modified by an extension thereof in accordance with Exhibit B attached hereto.

2. That the Applicant shall comply with the laws of this State and the Rules and Regulations of this Commission and 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.

4. That the motion of Morgan Drive Away, Inc., for an additional hearing in which to rebut certain testimony of Mr. Laughinghouse be, and hereby is, denied for the reason that the direct testimony of Mr. Laughinghouse which is the subject of said motion is not material to the decision herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of July, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1534, SUB 2

Charles C. Laughinghouse, d/b/a
Charles C. Laughinghouse Mobile
Home Movers
802 Howell Road
New Bern, North Carolina

EXHIBIT B

Irregular Route Common Carrier Authority

Transportation of Group 21, mobile homes as a common carrier over irregular routes as follows:

From points within a 50 mile radius of Morehead City to all points within the State; and from all points within the State to points within a 50 mile radius of Morehead City.

DOCKET NO. T-1632

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Richard F. Moore, DBA Moore Delivery Service, Route 9, Box 152X, Charlotte, North Carolina 28208 - Application for Contract Carrier Permit.) RECOMMENDED ORDER GRANTING PERMIT

HEARD IN: The Superior Courtroom, Alamance County Courthouse, Graham, North Carolina, on Wednesday, February 14, 1973, at 2:00 P. M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner.

APPEARANCES:

For the Applicant:

R. Frank Moore
Route 9, Box 152X
Charlotte, North Carolina 28208
(Appearing for Himself)

No Protestants.

WOOTEN, HEARING COMMISSIONER. By application filed with the Commission on September 21, 1972, Richard F. Moore, DBA Moore Delivery Service, Route 9, Box 152X, Charlotte, North Carolina 28208 (Applicant), seeks a contract carrier permit to transport Group 21, Other Specific Commodities, to wit: Automotive parts, supplies and accessories, in the territory described as from Asheville to points and places within a 100 mile radius of Asheville, North Carolina.

The involved territory would be under contract between the Applicant and Genuine Parts Company, 4101 Wilkinson Boulevard, Charlotte, North Carolina 28208.

Notice of the application was given in the Commission's Calendar of Hearings issued on October 10, 1972. In apt time a protest was filed by Carolina Delivery Service Company, Inc., Charlotte, North Carolina (Protestant). Protestant, by a letter dated January 10, 1973, from its Counsel, H. Morrison Johnson, of the law firm of McCleneghan, Miller, Creasy & Johnson, Attorneys at Law, Charlotte, North Carolina, withdrew its protest in this matter.

Upon the call of this matter for hearing at the captioned time and place, the Applicant was present and represented himself. No one appeared at the hearing in opposition to the granting of the contract carrier permit sought herein.

The Applicant offered the testimony of himself, Richard Frank Moore, and William Schrimscher. Mr. Moore offered testimony that the service he proposes to offer under the individual contract with Genuine Parts Company is a specialized service delivering automotive parts, supplies and accessories and picking up same at times specifically designated by the shipper; that he has one truck which will be engaged in this operation and that he plans to drive this truck himself; that he owns the equipment, is financially able, and has the experience necessary to provide the service in this case.

Mr. William Schrimscher, Genuine Parts Company, 4101 Wilkinson Boulevard, Charlotte, North Carolina, testified that his company has and does deliver their own freight to all of the customers; that his company will carry the freight to Asheville at which point Applicant will pick it up and make delivery thereof within the territory sought; that the common carrier service does not meet his need; that his company will utilize the services of Applicant if he is granted a permit and supports the application in this case.

From the evidence presented, the record in this matter as a whole, the Hearing Commissioner 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 Genuine Parts Company for the commodities and in the territory described in Exhibit A, attached hereto and made a part hereof, will be consistent with the public interest.

6. That the proposed operation will tend to effectuate the declared policy of the applicable law.

CONCLUSIONS

The Commission concludes that the Applicant has satisfied the burden of proof required for the granting of the authority sought as described in Exhibit A, hereto attached and made a part hereof, and that the application as therein set forth should be approved and the authority granted.

IT IS, THEREFORE, ORDERED:

1. That Richard F. Moore, DBA Moore Delivery Service, Route 9, Box 152X, Charlotte, North Carolina 28208, 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 Applicant has filed with the Commission his schedule of minimum rates and charges and complied with all the rules and regulations of the North Carolina Utilities Commission, all of which shall be done within thirty (30) days from the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1632

Richard F. Moore
DBA Moore Delivery Service
Route 9, Box 152X
Charlotte, North Carolina 28208

Contract Carrier Authority

EXHIBIT A

Transportation of Group 21, Other Specific Commodities, to wit: Automotive parts, supplies and accessories, under bilateral contract with Genuine Parts Company, from Asheville, to points and places within a 100 mile radius of Asheville, North Carolina.

DOCKET NO. T-208, SUB 3|

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Overnite Transportation Company, ||00 Commerce Road, Richmond, Virginia 23224, for Common Carrier Authority.	) ORDER) APPROVING) APPLICATION

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, Friday, May |8, |973, at |0:00 A. M.

BEFORE: Chairman Marvin R. Wooten (Presiding) and Commissioners John W. McDevitt and Ben E. Roney.

APPEARANCES:

For the Applicant:

T. D. Bunn
Hatch, Little, Bunn, Jones & Few
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina

David Permar
Hatch, Little, Bunn, Jones & Few
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina

WOOTEN, CHAIRMAN: This matter arises upon the application filed by Overnite Transportation Company, ||00 Commerce Road, Richmond, Virginia, seeking regular route common carrier authority to transport Group |, General Commodities, in the territory described as serving the plant site of Square D Company at or near Knightdale, North Carolina, as an off-route point in connection with present authorized regular route operations. Said application was filed with the Commission on April |0, |973.

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 Calendar of Hearings dated April ||, |973.

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 Applicant presented two witnesses, Mr. Clarence H. Swanson, of Richmond, Virginia, Director of Traffic and Commerce for the Applicant corporation, and Cyril Dyke Page, Group Traffic Manager for Square D 3 Plant Complex located in North and South Carolina.

The evidence for the Applicant clearly indicated the public need for the transportation service applied for in addition to existing transportation service available, and the fitness and ability of the Applicant to perform such service on a continuing basis.

From the evidence presented and from the Commission's records and record in this matter, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, Overnite Transportation Company, is a corporation properly organized and existing and is authorized to operate in the State of North Carolina, and is a duly authorized regular route common carrier of general commodities under its Certificate No. C-6 issued by this Commission and is subject to regulation by and under the jurisdiction of this Commission and is presently before this Commission with reference to matters over which this Commission has appropriate jurisdiction.

2. That the Applicant owns the necessary equipment for the movement of commodities in the territory described and applied for and that its employees are experienced in the movement of said commodities.

3. That the public convenience and necessity requires the service by the Applicant for the hauling of general commodities in the territory as applied for, in addition to other existing authorized transportation service.

CONCLUSIONS

1. G. S. 62-262 (e) requires the Applicant to carry the burden of proof to show to the satisfaction of the Commission that:

(1) Public convenience and necessity 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.

2. The doctrine of convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with.

Necessity means reasonably necessary and not absolutely imperative.

3. Any service or improvement which is desirable for the public welfare and highly important to the public convenience may be properly regarded as necessary. State v. Carolina Coach Co., 206 N. C. 43, (1963).

G. S. 62-259 provides:

"...it is declared the policy of the State of North Carolina to preserve and continue all motor carrier transportation services now afforded this State; and to provide fair and impartial regulations of motor carriers in the use of the public highways in such a manner as to promote, in the interest of the public, the inherent advantages of highway transportation; to promote and preserve adequate economical and efficient service to all the communities of the State by motor carriers; to encourage and promote harmony among all carriers and to prevent discrimination, undue preferences or advantages, or unfair or destructive competitive practices between all carriers; to foster a coordinated State-wide motor carrier service; and to conform with the national transportation policy and the federal motor carriers acts insofar as the same may be practical and adequate for application to intrastate commerce."

4. That the Applicant has sustained and carried the burden of proof placed upon it by the provisions of G. S. 62-262(e).

5. That the declared policy of the State of North Carolina to preserve and continue all motor carrier transportation services now afforded this State is in accord with, and requires or calls for, the granting of the authority here sought.

6. We finally conclude that public convenience and necessity requires and sustains the approval of the application herein as filed and the granting of a certificate in accordance therewith.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application in this docket be, and it is, hereby approved and the Applicant, Overnite Transportation Company, 1100 Commerce Road, Richmond, Virginia, be, and it is, hereby granted additional motor freight common carrier authority in accordance with Exhibit A hereto attached.

2. That this Order shall operate as all necessary evidence of the authority herein granted pending the amendment of the Applicant's certificate by the Chief Clerk of this Commission pursuant thereto.

3. That operations shall begin under this authority when the Applicant has filed with the North Carolina Utilities Commission tariff schedules and has otherwise complied with

the rules and regulations of this Commission, all of which shall be done within 30 days from the date of this Order.

ISSUED BY ORDER OF THIS COMMISSION.

This the 29th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-208 Sub 31 — Overnite Transportation Company, 1100 Commerce Road, Richmond, Virginia 23224

Regular Route Common Carrier Authority

EXHIBIT A

Transportation of Group 1, General Commodities, except those requiring special equipment in the territory described as:

Serving the plant site of Square D Company at or near Knightdale, North Carolina, as an off-route point in connection with present authorized regular route operations, including inbound and outbound shipment of said commodities.

DOCKET NO. T-1077, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Purolator Courier Corp., 2 Nevada Drive, Lake Success, New York 11040 - Application for Contract Carrier Permit) RECOMMENDED ORDER GRANTING PERMIT

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on November 14, 1973, at 10:00 A.M.

BEFORE: D. D. Coordes, Hearing Examiner

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr.
Allen, Steed and Pullen
P. O. Box 2058, Raleigh, North Carolina 27602

For the Protestants:

H. Morrison Johnston
McCleneghan, Miller, Creasy & Johnston
923 Law Building
Charlotte, North Carolina 28202

For the Staff:

Jerry B. Fruitt, Associate Commission Attorney
Ruffin Building, Raleigh, North Carolina 27602

COORDES, HEARING EXAMINER: By application filed with the Commission on August 2, 1973, Purolator Courier Corp., 2 Nevada Drive, Lake Success, New York 11040, seeks authority to operate as a contract carrier under separate bilateral contracts with Xerox Corporation and Terminal Communications, Inc., transporting as follows:

Group 21: The following commodities are to be added to the existing contract carrier authority in Permit No. P-131:

1. Critical replacement parts
2. Dye (as used in the textile industry)
3. Paint, coatings and resins.
4. Hospital supplies and surgical instruments.
5. Swatches of cloth as used for testing and research purposes

RESTRICTIONS: No one shipment to exceed 50 pounds nor more than 100 pounds in the aggregate from any one consignor to any one consignee in any one day.

Notice of said Application, along with the time and place of the hearing, together with a brief description of the authority sought, was published in the Commission's Calendar of Hearings issued August 15, 1973. A subsequent order changing the date of the hearing from September 18, 1973 to November 14, 1973 was issued on September 11, 1973. Protests thereto were timely filed by Carolina Delivery Service Company, Inc., 5010 Hovis Road, Charlotte, North Carolina.

Upon call of the case the applicant moved to amend its application to delete the Group 21 specific commodity description numbered 2, 3, 4 and 5. There were no objections to this amendment.

The applicant offered the testimony of its Regional Vice President, Mr. John W. Moore. Mr. Moore testified that the applicant operates in forty (40) states providing expeditious over night door to door service of time critical items, and that the financial condition of the applicant is sound. The applicant agreed to offer under contractual arrangements with shippers the specialized delivery service of time critical replacement parts. No one shipment to

exceed 50 pounds, nor more than 100 pounds in the aggregate from any one consignor to any one consignee in any one day. The specialized service will include over night door to door service without the need for an employee of shipper to be on the premises at the time of pick-up and delivery.

Mr. James E. Womble, Representative of Terminal Communications, Inc., testified that his company has an unfulfilled need for the specialized service offered by applicant. He further stated that because of the critical time element involved in the repair of equipment in this industry that the proposed service is essential to provide efficient service to customers. Mr. Womble further testified that he had not been able to secure similar service from any existing carriers with which he had checked and that Terminal Communications, Inc., will utilize the services of applicant if it is granted the authority sought.

Mr. George F. Smith, Field Representative for Xerox Corporation, also testified in support of the application of Purolator Courier Corp. Mr. Smith testified that the peculiar nature of his industry made it essential to have emergency delivery service of critical replacement parts between all points and places within the State of North Carolina. He further testified that he had not been able to secure similar service from any existing carriers with which he had checked and that Xerox Corporation will utilize the services of the applicant if it is granted the authority sought.

Copies of the contracts between applicant and shippers were filed at the time of the hearing.

The applicant at the close of the testimony asked to amend his application to read:

Group 21: Critical replacement parts (excluding automobile parts)

RESTRICTIONS: No one shipment to exceed 50 pounds, nor more than 100 pounds in the aggregate from any one consignor to any one consignee in any one day.

Territory Description: Between all points and places within the State of North Carolina.

With this amendment the Protestant stated that they had no objections to the Application as presently worded.

Upon consideration of the application, and the evidence adduced the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the proposed operations conform to 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 public.

4. That the Applicant is fit, willing and able to provide 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.

CONCLUSIONS

Based upon the record, the evidence presented 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 AS FOLLOWS:

1. That Purolator Courier Corp., 2 Nevada Drive, Lake Success, New York 11040, be, and it is hereby, granted a contract carrier permit in accordance with Exhibit B attached hereto and made a part hereof.

2. That Purolator Courier Corp. file with the Commission the required material 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 that this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.

This 30th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1077 SUB 11

Purolator Courier Corp.
2 Nevada Drive
Lake Success, New York 11040

EXHIBIT B

Contract Carrier Authority

Transportation of Group 21 critical replacement parts (excluding automobile parts) under bilateral contracts with Xerox Corporation and Terminal Communication, Inc., between all points and places within the State of North Carolina.

RESTRICTIONS: No one shipment to exceed 50 pounds, nor more than 100 pounds in the aggregate from any one consignor to any one consignee in any one day.

DOCKET NO. T-1665

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Junius Auten Tiddy, T/A Shelby Mobile Home Movers, 1309 Wesson Road, Shelby, North Carolina - Application for Authority to Transport Group 21, Mobile Homes) RECOMMENDED ORDER GRANTING OPERATING RIGHTS

HEARD IN: County Office Building, 130 South Post Road, Shelby, North Carolina, on August 13, 1973, at 11:00 A.M.

BEFORE: Hugh A. Wells, Commissioner

APPEARANCES:

For the Applicant:

N. Dixon Lackey, Jr.
Whisnant & Lackey
Attorneys at Law
P. O. Box 145, Shelby, North Carolina 28150

No Protestants. (Protest filed by Morgan Drive Away, Inc., was abandoned.)

WELLS, HEARING COMMISSIONER. Junius A. Tiddy, T/A Shelby Mobile Home Movers, 1309 Wesson Road, Shelby, North Carolina, filed application on June 29, 1973, for irregular route common carrier authority to transport Group 21, Mobile Homes, "between all points in Cleveland County; from all points in Cleveland County to all points in the State and from all points in the State to Cleveland County."

A protest was filed by Morgan Drive Away, Inc., but was abandoned. Public hearing was held as captioned in accordance with notice published in the Calendar of Hearings on July 17, 1973.

In support of the application, the Applicant offered his testimony and the testimony of various witnesses as set out below:

1. Carson Hamrick, Route 8, Shelby, North Carolina, operates a mobile home retail sales outlet in Cleveland County; has been in business for six to seven years; has many requests from the public to assist in the moving of mobile homes from one location to another; knows of only one

other certificated mobile home carrier located in Cleveland County; there is a public need for one or more additional certified carriers to provide movement within Cleveland County and from Cleveland County to and from other portions of North Carolina. He sells between 100 - 150 mobile units per year; there are seven other dealers in Cleveland County; there have been many complaints about inadequate service for the movement of mobile homes in and out of Cleveland County and within the county; he makes many sales outside of the county, involving the movement of new units to the points of sale and the movement of trade-ins back to his place of business, necessitating frequent need of the help of common carriers of mobile homes.

2. Gerald Peppers, Route 2, Kings Mountain, North Carolina, is employed by Fiber Industries, Inc., at Earl, North Carolina; operates a mobile home park in Mooresboro, North Carolina; has had a good deal of difficulty finding certified movers in Cleveland County, and has had to use carriers located outside the county. He has never heard of Morgan Drive Away, Inc., and feels that there is a definite public need for more service within Cleveland County and from Cleveland County into and from the rest of the State.

3. Warren Reynolds, 120 York Road, Kings Mountain, North Carolina, is President of Cleveland County Mobile Home Association; operates mobile home parks in Cleveland County; there are 10 to 12 mobile home retail sales outlets in the county; he used to have his own tow trucks, but sold them; he gets two to three calls a week for assistance to move others; there are many unauthorized moves being made in the county and into and out of the county, and there is a very definite public need for additional service within Cleveland County into and from Cleveland County.

4. John German, Shelby, North Carolina, operates mobile home-farm equipment sales outlets in Shelby and Granite Falls; has mobile home parks and also sells mobile home parts and service. He has mobile home parks in Burke, Catawba, Caldwell, Wilkes and Cleveland Counties; sells 200 units per year from his Shelby outlet, and could use the service of a common carrier in accommodating to the needs of his varied operations in the mobile home field. He receives frequent requests from the members of the public to assist them in moving mobile homes in all of the areas in which he operates, and feels that there is a strong public need for additional service within Cleveland County and to and from Cleveland County from other points in the State.

5. James Butler, Shelby, North Carolina, is Ad valorem Tax Assistant for Cleveland County and maintains the tax records which would give an indication of the number of mobile homes owned in Cleveland County. His records indicate that since 1966 or 1967 the growth of the number of mobile homes in Cleveland County has been very strong on an annual basis, and he estimates that at the present there are approximately 2,400 individual mobile homes owned in the

county. The records of his office also indicate that there is a strong movement of mobile homes into and out of the county.

6. Wayne Winfield, Route 8, Shelby, North Carolina, is employed as a driver by Bost Bakery, Shelby, North Carolina, and follows part-time employment as a driver of a mobile home tow truck. He gets many requests to move mobile homes to and from Cleveland County, and knows of no local carrier to meet the need. There is a definite public need in his opinion for an additional certified carrier in Cleveland County to make moves within the county and to and from the county.

7. Junius Tiddy, 1309 Wesson Road, Shelby, North Carolina, is in the general real estate business renting housing including mobile homes, and has a difficult time arranging mobile home moves into and from Cleveland County. The present service is insufficient to meet the public need. He is prepared to provide common carrier service and has the financial resources to obtain the necessary equipment to provide a common carrier service. His exhibits filed with the application indicate that he is financially sound and is in a position to provide the service as common carrier to transport mobile homes.

Based upon the evidence adduced, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is fit, willing, solvent and able to perform the proposed service, financially and otherwise, on an adequate and continuing basis.

2. That there has recently been and there is currently, a substantial growth in the number of persons residing in mobile homes within Cleveland County requiring transportation within the county and throughout the State.

3. That a need exists for additional carrier or carriers to move mobile homes in addition to existing transportation service, as herein proposed by the Applicant.

Whereupon the Hearing Commissioner reaches the following

CONCLUSIONS

The Applicant has presented sufficient evidence of a public need for his proposed transportation service in addition to the existing authorized transportation service. Accordingly, the Applicant should be granted operating rights to perform the service requested in this application.

IT IS, THEREFORE, ORDERED:

(1) That Mr. Junius Auten Tiddy, T/A Shelby Mobile Home Movers, be, and is hereby, granted irregular route common carrier operating rights in accordance with Exhibit B attached hereto.

(2) That the Applicant shall comply with the laws of this State and the Rules and Regulations of this Commission and 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 30th day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1665 — Junius Auten Tiddy, T/A
Shelby Mobile Home Movers
1309 Wesson Road
Shelby, North Carolina

EXHIBIT B — Irregular Route Common Carrier Authority

Transportation of Group 21, mobile homes as a common carrier over irregular routes as follows:

Between all points in Cleveland County; from all points in Cleveland County to all points in the State and from all points in the State to Cleveland County.

DOCKET NO. T-1072, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sugar Transport, Inc., P. O. Box 4073, Port Wentworth, Georgia 31407, Application for contract carrier authority to transport Group 21, Molasses and mixtures of molasses and feed supplements in bulk, in tank vehicles from Wilmington, N. C., to all points in North Carolina under continuing contract with Savannah Foods and Industries, Inc.) RECOMMENDED ORDER GRANTING OPERATING RIGHTS

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina October 19, 1972 at 10:00 a. m.

BEFORE: William E. Anderson, Hearing Examiner

APPEARANCES:

For the Applicant:

F. Kent Burns, Esq.
Boyce, Mitchell, Burns & Smith
Attorneys at Law
Box 1406, Raleigh, North Carolina 27602

For the Protestant:

Vaughan S. Winborne, Esq.
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina
Appearing for: Cromartie Transport Company

ANDERSON, HEARING EXAMINER: This matter arose upon the filing of an Application by Sugar Transport, Inc., on September 8, 1972 in which the Applicant seeks contract carrier authority in accordance with the following commodity and territory description:

"Group 21, molasses and mixtures of molasses and feed supplements in bulk, in tank vehicles from Wilmington, North Carolina to all points in North Carolina under continuing contract with Savannah Foods and Industries, Inc."

The Application was advertised in the Commission's Calendar of Hearings issued September 19, 1972 to be heard on October 19, 1972. Protests were subsequently filed on behalf of Cromartie Transport Company and Central Transport, Inc.

The matter was called for hearing at the time and place designated by order. Central Transport, Inc., did not appear, having indicated to the Chief Clerk by telephone that it wished to withdraw its protest, and it did indicate such an intent in writing by letter received on October 24, 1972.

Upon the call of the matter for hearing, the Applicant moved to amend its commodity and territory description by inserting the language "for animals" such that the amended description reads as follows:

"Group 21, molasses and mixtures of molasses and feed supplements, for animals, in bulk, in tank vehicles from Wilmington, North Carolina, to all points in North

Carolina under continuing contract with Savannah Foods and Industries, Inc."

The Applicant, Sugar Transport, Inc., offered the testimony and exhibits of Mr. Fred C. Williams, Jr., P. O. Box 4063, Port Wentworth, Georgia, President of Sugar Transport, Inc.; Mr. Ed Millard, Jr., P. O. Box 339, Savannah, Georgia, Traffic Manager of Savannah Foods and Industries, Inc.; Mr. Patrick Cummins, District Manager, Molasses and Feed Supplement Sale and Procurement, Savannah Foods and Industries, Inc.; and Mr. J. B. Kittrell, Jr., a sugar broker for Dixie Crystals from Greenville, North Carolina. The Protestant presented the testimony of Mr. L. M. Cromartie.

The Parties indicated a desire to file briefs thirty (30) days from the mailing of the transcript. The Applicant and Protestant filed briefs on December 19 and December 21, respectively, their briefs containing well-reasoned arguments and a complete recapitulation and analysis of the testimony and other evidence of record. Both the briefs and transcript of the hearing are on file.

Based upon the record herein the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant, Sugar Transport, Inc., currently conducts intrastate transportation operations in accordance with Contract Carrier Permit No. P-130.

2. That the Protestant Cromartie Transport Company provides intrastate common carrier service over irregular routes transporting, among other products, "molasses in bulk in tank trucks" under its Certificate C-140.

3. That "molasses" as used herein is understood to be "dark to light brown viscid syrup that is separated from raw sugar in sugar manufacture." Websters Seventh New Collegiate Dictionary, 1970.

4. That the Protestant Cromartie Transport Company does not have authority to haul "mixtures of molasses and feed supplements for animals"; there is no evidence of record that any common carrier presently has specific authority to haul this commodity.

5. That the Applicant operates as an "arm" or department of Savannah Foods, with its offices on the latter's property, using Savannah's telephone switchboard, bearing the name "Dixie Crystals" on its trailers, being on call twenty-four hours a day, having its drivers take orders for the shipper, and providing other services of record.

6. That the shipper herein, Savannah Foods and Industries, Inc., has a need for a specific type of service

not otherwise available by existing means of transportation and has entered into and filed with the Commission a written contract with the Applicant for said service, which contract provides for rates higher than those charged by common carriers for similar service; accordingly, the proposed operations conform with the definition of a contract carrier.

7. The proposed operations will not unreasonably impair the effective public service of carriers operating under certificates or rail carriers.

8. That the proposed service will not unreasonably impair the use of the highways by the general public.

9. That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

10. That the proposed operations will be consistent with the public interest and the policy declared in Chapter 62.

Whereupon the Hearing Examiner reaches the following

CONCLUSIONS

The Protestant has failed to establish that it has authority to haul "mixtures of molasses and feed supplements..." whether for animals or otherwise; the controversy then boils down to whether the Applicant should be denied contract carrier authority for the few "molasses" shipments which the Protestant might wish to handle.

Upon consideration of the evidence of record, in light of the criteria set forth in G. S. 62-262 (l) the Hearing Examiner concludes that the Applicant has borne the burden of proof in establishing the need for a specific type of service not otherwise available by existing means of transportation and of transportation for "Group 2, molasses and mixtures of molasses and feed supplements, for animals, in bulk, in tank vehicles from Wilmington, North Carolina and all points in North Carolina under continuing contract with Savannah Foods and Industries, Inc..." Accordingly, the authority sought herein should be granted.

IT IS, THEREFORE, ORDERED:

1. That the contract carrier permit heretofore issued to Sugar Transport, Inc., be, and hereby is, amended to include the authorization set forth in Exhibit A attached hereto.

2. That the Applicant shall file any requisite contracts or tariffs not filed heretofore, and shall otherwise comply with the applicable rules and regulations of this Commission and begin operations under the authority granted herein within thirty (30) days of the effective date of this order.

ISSUED BY ORDER OF THE COMMISSION.

This 23rd day of January, |973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-|072 SUB 4 — Sugar Transport, Inc.
P. O. Box 4073
Port Wentworth, Georgia 3|407

Contract Carrier Authority

EXHIBIT A — Group 2|, molasses and mixtures of molasses and feed supplements in bulk, in tank vehicles from Wilmington, North Carolina to all points in North Carolina under continuing contract with Savannah Foods and Industries, Inc.

DOCKET NO. T-|072, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sugar Transport, Inc., P. O. Box 4073, Port Wentworth, Georgia 3|407, Application for contract carrier authority to transport Group 2|, Molasses and mixtures of molasses and feed supplements in bulk, in tank vehicles from Wilmington, N. C., to all points in North Carolina under continuing contract with Savannah Foods and Industries, Inc.) FINAL ORDER

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 23, |973, at |:30 P. M.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Applicant:

F. Kent Burns, Esquire
Boyce, Mitchell, Burns & Smith
Attorneys at Law
Box |406, Raleigh, North Carolina 27602

For the Protestant:

Vaughan S. Winborne, Esquire
||08 Capital Club Building
Raleigh, North Carolina 27602
Appearing for: Cromartie Transport Company

WELLS, COMMISSIONER. This matter is before the Commission upon Exceptions to the Recommended Order entered by Hearing Examiner Anderson and the Oral Argument of counsel heard on February 23, 1973.

Based upon the record, the Recommended Order of the Hearing Examiner, and the Oral Arguments of counsel, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, Sugar Transport, Inc., currently conducts intrastate transportation operations in accordance with Contract Carrier Permit No. P-130.

2. That the Protestant, Cromartie Transport Company, provides intrastate common carrier service over irregular routes transporting, among other products, "molasses in bulk in tank trucks" under its Certificate C-140.

3. That the Applicant operates as an "arm" or department of Savannah Foods, with its offices on the latter's property, using Savannah's telephone switchboard, bearing the name "Dixie Crystals" on its trailers, being on call 24 hours a day, having its drivers take orders for the shipper, and providing other services of record.

4. That the shipper herein, Savannah Foods and Industries, Inc., has a need for a specific type of service not otherwise available by existing means of transportation and has entered into and filed with the Commission a written contract with the Applicant for said service, which contract provides for rates higher than those charged by common carriers for similar service; accordingly, the proposed operations conform with the definition of a contract carrier.

5. The proposed operations will not unreasonably impair the effective public service of carriers operating under certificates or rail carriers.

6. That the proposed service will not unreasonably impair the use of the highways by the general public.

7. That the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier.

8. That the proposed operations will be consistent with the public interest and the policy declared in Chapter 62.

Whereupon the Commission reaches the following

CONCLUSIONS

Upon the foregoing Findings of Fact and the record in its entirety, the Commission concludes that Applicant has borne the burden of proof in establishing the need for a specific

type of service not otherwise available to it by existing means of transportation for the commodity applied for herein, and accordingly the Commission concludes that the authority should be granted.

IT IS, THEREFORE, ORDERED:

(1) That the contract carrier permit heretofore issued to Sugar Transport, Inc., be, and hereby is, amended to include the authorization set forth in Exhibit A attached hereto.

(2) That the Applicant shall file any requisite contracts or tariffs not filed heretofore, and shall otherwise comply with the applicable rules and regulations of this Commission and begin operations under the authority granted herein within thirty (30) days of the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1072, SUB 4 — Sugar Transport, Inc.
P. O. Box 4073
Port Wentworth, Georgia 31407

Contract Carrier Authority

EXHIBIT A — Group 21, molasses and mixtures of molasses and feed supplements in bulk, in tank vehicles from Wilmington, North Carolina to all points in North Carolina under continuing contract with Savannah Foods and Industries, Inc.

DOCKET NO. T-1674

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Jack D. Wood, d/b/a Wood Mobile Home Movers, Pass Street, Hayesville, North Carolina 28904 - Application for Authority for Group 21, Mobile Homes, Between All Points and Places in the Counties of Clay, Cherokee and Graham) RECOMMENDED ORDER GRANTING APPLICATION IN PART

HEARD IN: The Hearing Room of the Commission, Raleigh, North Carolina, on Tuesday, November 6, 1973, at 10:00 A. M.

BEFORE: D. D. Coordes, Hearing Examiner

APPEARANCES:

For the Applicant:

Ward Purrington and Edwin Hatch
Purrington, Hatch & Purrington
Attorneys at Law
P. O. Box 466, Raleigh, North Carolina

For the Protestant:

Ben Oshel Bridgers
Holt & Haire, P. A.
Attorneys at Law
P. O. Box 248, Sylva, North Carolina
Appearing For: James Woodrow Frady

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina

COORDES, HEARING EXAMINER. This matter arose by application filed with the North Carolina Utilities Commission on September 4, 1973, by Jack D. Wood, d/b/a Wood Mobile Home Movers, Pass Street, Hayesville, North Carolina, seeking authority to operate in intrastate commerce in North Carolina as a common carrier of property transporting the following:

Group 21: Mobile Homes, between all points and places in the Counties of Clay, Cherokee and Graham.

Application, along with time and place of hearing, together with a brief description of authority sought, was published in the Commission's Calendar of Hearings issued October 1, 1973, and hearing was set for November 6, 1973, at 10:00 A.M.

Protest to the application was filed by Mr. R. Philip Haire, Holt & Haire, Attorneys at Law, Sylva, North Carolina, for and on behalf of James Woodrow Frady, d/b/a Frady's Mobile Home Towing Service. Motion was also filed by Mr. Haire for a continuance of hearing, but was denied by the Commission by Order dated October 23, 1973.

The Applicant, Wood Mobile Home Movers, offered the testimony and exhibits of Mr. Jack Wood, d/b/a Wood Mobile Home Movers, Mr. Carl Moses, Real Estate Broker and Appraiser, and Mr. W. P. Bradley, a land developer. Mr. Wood testified that he runs a service station, has a wrecker service, and has had some experience in moving mobile homes.

He further testified that he is financially able to maintain the requested service if he is granted operating authority and that he will be able to procure insurance and additional equipment to properly maintain this service. Testimony was also offered by Mr. Wood that numerous people had telephoned at various times trying to get mobile homes moved but were unable to do so because there was no carrier in the area to render this type service. Also Mr. Wood states that Gibson Mobile Homes in Hayesville has stated that he has a need for this additional service, since there is no carrier domiciled in the county authorized to move mobile homes, and the closest vehicle is located in Murphy, Cherokee County, North Carolina, which is twenty (20) miles away.

Mr. Moses and Mr. Bradley corroborated Mr. Wood's testimony that there seemed to be a general need for this type service in Clay County. Neither Mr. Moses nor Mr. Bradley knew, from their own personal knowledge, what the needs were in the Counties of Cherokee and Graham.

The Protestant chose to offer no evidence.

Based upon the testimony offered, the evidence adduced and the exhibits herein, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant is fit, willing and able to properly perform the proposed service.

2. That the Applicant is financially able and otherwise qualified to furnish adequate service on a continuing basis.

3. That public convenience and necessity require that the proposed service, in addition to existing authorized transportation services in Clay County.

4. That the Applicant has not shown a public need for these services in Cherokee and Graham County.

CONCLUSIONS

The Applicant offered testimony that he was willing and financially able to render the proposed services. He further offered testimony that there seemed to be some need in the three requested counties. This testimony was only corroborated in regard to Clay County.

The record is silent concerning whether any service is currently being offered to the public in Clay County to satisfy the need there existing as established by Applicant.

Based upon the evidence presented, the foregoing Findings of Fact, the Hearing Examiner is of the opinion that the proposed service is in the public interest, will not unlawfully affect the service to the public by other public

utilities, that the Applicant is fit, willing and able to perform the service proposed, and that the application, except for service proposed in Cherokee and Graham Counties should be approved.

IT IS, THEREFORE, ORDERED:

1. That a common carrier certificate be issued to Jack Wood, d/b/a Wood Mobile Home Movers in accordance with Exhibit B attached hereto and made a part hereof, but that in all other respects the application is denied.

2. That Jack Wood, d/b/a Wood Mobile Home Movers, file with the Commission evidence of the required insurance, list of equipment, tariff of rates and charges, designation of process agent, and otherwise comply with the rules and regulations of the North Carolina Utilities Commission.

3. That the authorization herein shall constitute a certificate until the formal certificate shall have been transmitted to the Applicant authorizing the transportation set forth in Exhibit B.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO T-1674

Jack D. Wood, d/b/a
Wood Mobile Home Movers
Pass Street
Hayesville, North Carolina 28904

Irregular Route Common Carrier

EXHIBIT B

Transportation of Group 21, Mobile Homes, Between all points and places in Clay County.

DOCKET NO. T-521, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company. Investigation of Increase in Rates and Charges) RECOMMENDED ORDER APPROVING SCHEDULE OF MINIMUM RATES N.C.U.C. NO. 10 AND SUPPLEMENT NO. 1

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June 27, 1973

BEFORE: Commissioner Wells

APPEARANCES:

For the Respondent:

Vaughan S. Winborne
Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina

For the Protestant:

John D. Xanthos
Attorney at Law
507 NCNB Building
Burlington, North Carolina 27215

For the Commission Staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER: On February 19, 1973, Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, filed with this Commission Schedule of Minimum Rates and Charges N.C.U.C. No. 9 which would cancel Harper's N.C.U.C. Nos. 5 and 8; the Schedule was to become effective March 26, 1973. On March 21, 1973, Mid-State Delivery Service, Inc., a common carrier holding Certificate No. C-536, filed a complaint to the Schedule N.C.U.C. No. 9 and requested a hearing in the matter; in its complaint Mid-State alleged that the Schedule of Minimum Rates and Charges under which Harper was now operating and under which Harper proposed to operate were less than the rates and charges approved by the Commission for common carriers performing similar services; Mid-State further alleged that it was prepared to prove that the proposed rates of Harper were lower than those of Mid-State. On March 23, 1973, the Commission, being of the opinion that Harper's proposed Schedule N.C.U.C. No. 9 was a matter affecting the public interest, issued an order which suspended N.C.U.C. No. 9, instituted a general investigation into the lawfulness of the proposed Schedule, and set the matter for hearing.

On April 12, 1973, Thomas Oliver Harper, d/b/a Harper Trucking Company, formally withdrew tariff Schedule N.C.U.C. No. 9 and sought authority to substitute therefor Schedule of Minimum Rates and Charges N.C.U.C. No. 10, which proposed to cancel N.C.U.C. Nos. 5, 8 and 9, effective May 14, 1973. By order issued April 26, 1973, the Commission issued a supplemental order authorizing the cancellation and withdrawal of suspended tariff Schedule N.C.U.C. No. 9 and

allowing N.C.U.C. No. 10 to become effective on May 14, 1973. This order further provided that the matter was to be set for hearing on Wednesday, June 27, 1973, that Mid-State's complaint of March 21, 1973, should be treated as a complaint against N.C.U.C. No. 10, and that Mid-State was to be made a party-intervenor to the proceeding. By telegram received in the Commission on May 9, 1973, Mid-State protested the Commission's order allowing Harper's Schedule N.C.U.C. No. 10 to become effective on May 14, 1973. The Commission on May 11, 1973, issued a second supplemental order denying Mid-State's request that Harper's Schedule N.C.U.C. No. 10 be suspended; the order also allowed Harper to file Supplement No. 1 to his Schedule of Minimum Rates and Charges N.C.U.C. No. 10.

The matter was called for hearing on June 27, 1973. The Respondent Harper Trucking Company and the Protestant Mid-State Delivery Service, Inc. were present and were represented by attorneys.

The Protestant Mid-State Delivery Service, Inc. offered no evidence at the hearing.

Mr. James L. Rose, Rate Specialist III in the Traffic Division of the Commission, presented testimony and exhibits comparing the rates in Harper's N.C.U.C. No. 10 and Supplement No. 1 with Harper's N.C.U.C. Nos. 5 and 8 and with the rates of other motor carriers for the transportation of similar traffic, including Mid-State Delivery Service, Inc. Mr. Rose testified that N.C.U.C. No. 10 cancelled all of Harper's existing tariffs and established or clarified the rules governing the operation of Harper's service. The new rules proposed by Harper's N.C.U.C. No. 10 and Supplement No. 1 included the following:

Additional Charges;

(a) 25 cents additional charge any minimum shipment exceeding 100 pounds in weight;

(b) 25 cents additional charge any minimum shipment exceeding 100 air miles from point of origin to point of destination;

(c) 100 cents additional special handling charge any single parcel or package exceeding 100 pounds in weight;

(d) 100 cents additional charge on all nonbusiness or residence deliveries;

(e) 150 cents charge for collecting and remitting C.O.D. shipments;

(f) 25 cents additional charge on all shipments on freight charges NOT prepaid;

(g) 200 cents additional charge per shipment on any redelivery not the fault of the carrier; and,

(h) 10 cents per $100.00 liability or fraction thereof additional charge on shipments over $1,000.00 shipper declared liability.

Mr. Rose further testified that the adjustment and rates under N.C.U.C. No. 10 provided for a more uniform scale of rates. Mr. Rose then stated that Harper's N.C.U.C. No. 10 and Supplement No. 1 contained rates and charges which were in some instances lower than, the same as, or higher than the rates and charges of North Carolina intrastate common carriers, including those of Mid-State Delivery Service, Inc. For example, Mr. Rose pointed out that Harper's N.C.U.C. No. 10 rate for "Class A" commodities (certain auto parts and drugs) were lower than its prior rates on shipments moving a distance of 50 miles and were higher on shipments transported for distances of 100, 150, 200 and 210 miles; that the proposed rate for the same commodity for 210 miles was higher than the rate of Mid-State. Rose's Exhibit No. 3 showed that Harper's N.C.U.C. No. 10 rates on "Class B" commodities, which included tires, were lower than previous rates on shipments for 50 miles and higher for shipments moving 100, 150, 200 and 210 miles; and that the rates were higher than those applicable for Mid-State and higher than rates published by the Southern Motor Carrier Rate Conference with the exception of 100 and 150 miles. N.C.U.C. No. 10 rates for "Class C" commodities, which included auto doors, were higher than Harper's prior rate, but lower than those of Mid-State or the "S.M.C.R.C." common carriers. Rose's Exhibit No. 4 compared Harper's N.C.U.C. No. 10 and prior minimum charge in cents per shipment with the minimum charges in cents per shipment of other carriers, including Mid-State; Mr. Rose testified that this exhibit showed that Harper's N.C.U.C. No. 10 minimum charges per shipment may be lower than, the same as, or higher than those of the other carriers shown therein, the charges varying according to the weight and type of the commodity and the distance. Rose's Exhibit No. 7 entitled "Charges for Single Package Shipments" compared Harper's present charges for single package shipments with charges for similar shipments by Carolina Delivery Service, Inc., Observer Transportation Co., and United Parcel Service, Inc.; Harper's charges were higher than those of the other named carriers.

Thomas Oliver Harper, Jr. presented evidence in support of Harper Trucking Company's request for increase in rates and charges. Mr. Harper testified that he had been in the trucking business since 1968 and that his contract carrier authority now covered an area of 150 air miles from Raleigh with 9 contracting parties in the drug and automotive distribution fields. He testified that his company had always tried to keep basic minimum charges as low as possible in order to compete with the post office, United Parcel Service, bus lines and private carriers. He said

that rates should represent the available costs of pickup, handling and delivery; that any artificially harsh minimum charge would result in a loss of small shipments. He said that 90% of his business consisted of shipments under 100 pounds, with 75% of this figure under 50 pounds.

Mr. Harper further testified with respect to the need for additional revenues sought in the tariff Schedule N.C.U.C. No. 10, which would produce an estimated overall increase in revenue of about 5% or 6%. He stated that fuel costs have risen from 26.9 cents per gallon in January of 1973 to 32.9 cents per gallon in May of 1973 and that at times he has had to buy premium gasoline at 35.9 cents per gallon as a result of the unavailability of regular gas. He has had to raise wages paid to workers and supervisors by 5% to 10% in the past 9 months. Moreover, Harper has purchased one diesel truck, ordered another, and has begun the conversion of his 11 gas units to LP Gas as a result of the gasoline shortage.

Mr. Harper further testified that the operating ratios of Harper Trucking Company were as follows:

83.6% for the 6 months ending June 20, 1972;
85.1% for the year ending December 31, 1972;
87.6% for the 5 months ending May 31, 1973.

Mr. Harper qualified the use of the operating ratios by stating that the ratios did not make any allowance for salaries either to himself or to his wife, both of whom are involved in the operation of the business.

FINDINGS OF FACT

1. The Respondent Thomas Oliver Harper, Jr., d/b/a Harper Trucking Company, is a contract carrier of property by motor vehicle in North Carolina intrastate commerce, holding Certificate No. P-31, issued by this Commission, and is subject to the jurisdiction of this Commission with respect to the regulation of its rates and services.

2. The Respondent Harper Trucking Company is experiencing increased expenses in its operations, largely as a result of the increase in gasoline prices during 1973; Harper has also had to raise wages paid to workers and supervisory personnel during the past nine months.

3. Harper's Schedule of Minimum Rates and Charges N.C.U.C. No. 10 and Supplement No. 1, which became effective on May 14, 1973, pursuant to Commission order, will result in an estimated annual increase in revenues of around 5% to 6%.

4. The minimum rates and charges set out in N.C.U.C. No. 10 and Supplement No. 1 are found to be just and reasonable and should be allowed to remain in effect. The rates and charges may be lower than, the same as, or higher than those of other carriers subject to regulation under N.C.G.S. Ch.

62, depending upon the type of commodity, its weight, and the distance carried; however, it is further found as a fact that this will not give Harper any unreasonable advantage or preference over such other carriers, including Mid-State Delivery Service, Inc.

CONCLUSIONS

The rates and charges in Harper's Schedule of Minimum Rates and Charges N.C.U.C. No. 10 and Supplement No. 1, are concluded to be just and reasonable. The fact that the schedule of rates and charges are in varying instances lower than, the same as, or higher than the rates and charges of other carriers subject to Commission regulation under N.C.G.S. Ch. 62 does not give Harper any unreasonable advantage or preference over such other carriers, including the Protestant Mid-State Delivery Service, Inc.

It is further concluded that the rates and charges set out in N.C.U.C. No. 10 and Supplement No. 1 provide for a more uniform scale of rates and will enable Harper Trucking Company to provide efficient management and service.

IT IS, THEREFORE, ORDERED:

That the Schedule of Minimum Rates and Charges N.C.U.C. No. 10 and Supplement No. 1 be, and the same hereby is, allowed to remain in effect and that the docket in this matter is to be closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-825, SUB 163

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges on Petroleum and Petroleum Products, Scheduled to Become Effective November 6, 1972.	) ORDER) DENYING) RATE) INCREASES

HEARD IN: The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on January 16, 1973, and February 2, 1973.

BEFORE: Chairman Marvin R. Wooten (Presiding) and Commissioners John W. McDevitt, Hugh A. Wells and Ben E. Roney.

APPEARANCES:

For the Respondents:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina
For: Motor Carriers Participating in N.C. Motor Carriers Association Tariff No. 5-M.

For the Commission Staff:

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

BY THE COMMISSION. This cause arises upon Order of this Commission dated October 31, 1972, wherein the Commission suspended and ordered an investigation of the filing with this Commission by North Carolina Motor Carriers Association, Inc., Agent, P. O. Box 2977, Raleigh, North Carolina, for and on behalf of certain of its member carriers of a tariff schedule proposing increased rates and charges applicable to North Carolina intrastate shipments of petroleum and petroleum products, this proposed increase providing for a 5% increase on Liquified Petroleum Gas; 5% increase on Residual Fuel Oils to points which are over 150 miles apart; increases ranging from .29% to 16.6% on Gasoline, Kerosene, Fuel Oils 1, 2, 3 and Solvents to certain specified points; 2 cents per 100 pounds increase on Drumming Charges; the addition of a C.O.D. rule providing for charges of $1.50 or $5.00 per shipment; and for establishing mileage and rates to points not heretofore included in said tariff, scheduled to become effective November 6, 1972, and designated as follows:

Supplement No. 8 to North Carolina Motor Carriers Association, Inc., Agent, Motor Freight Tariff No. 5-M, N.C.U.C. No. 95; those items containing changes resulting in increases as enumerated and described therein, only.

The matter came on for hearing at the time and place specified in the Commission's Order dated October 31, 1972.

L. E. Forrest, Traffic Manager, North Carolina Motor Carriers Association, testified substantially as follows: As Traffic Manager, he prepares the filings for the Association and the participants in Tariff No. 5-M relating to petroleum and petroleum products. Three meetings were held with shippers and following the third meeting, adjusted or negotiated rates were approved by certain shippers as well as the carriers. He prepared Supplement No. 8, which is the subject of this proceeding, and explained the proposed increases. Mr. Forrest stated that he did not make

any independent determination of revenue need on the part of any single carrier or group of carriers.

Michael Grimm, General Traffic Manager, O'Boyle Tank Lines Incorporated, testified substantially as follows: He has been with O'Boyle Tank Lines since January 1970, and that O'Boyle participates in the tariff which is the subject of this proceeding. He indicated that he was not personally present at the meetings before the rate committee of the North Carolina Motor Carriers Association. He indicated that O'Boyle Tank Lines has operated M & M Tank Lines since October 1, 1972, and is operating it currently under temporary authority from the Interstate Commerce Commission. He stated that he puts limitations on his testimony in connection with M & M Tank Lines because O'Boyle has not been able to obtain all of M & M's underlying documents, shipping papers and financial papers. He indicated certain returns per round trip mile for certain points with respect to M & M Tank Lines. He stated that his figures were based only upon the period October and November 1972. He stated that O'Boyle has had experience in hauling propane between certain points and that propane requires more expensive equipment to haul than other types of movements and that propane is hauled approximately six months of the year. He indicated that O'Boyle, prior to its control of M & M, was not extensively involved in heavy oil or residual oil traffic. Nevertheless, he stated his conclusion that with respect to residual or black oil, the operations of O'Boyle and M & M could not make a profit for businesses over 150 miles at the present scale of rates. He further testified that prior to his employment with O'Boyle he attended college in Pennsylvania and received a degree in English. He stated that O'Boyle did very little residual hauling in intrastate North Carolina traffic prior to October 1, 1972, and did not indicate what hauling O'Boyle has done under 150 miles with respect to petroleum products. He indicated that he could not give a realistic annualized figure for M & M with respect to what percentage of total M & M operating revenues have been derived from the tariff under consideration but that he had some information for October and November 1972; however, he could not state that the figures derived from those time periods would be representative. He could not give an intrastate operating ratio for M & M although he stated that the systems operating ratio was 92.06 year to date - January to November, 1972. He could not give the petroleum intrastate operating ratio for M & M North Carolina operations. He could not state O'Boyle's intrastate operating ratio or O'Boyle's petroleum operating ratio as compared with its other intrastate business. He testified that Systems, Inc., a company providing computer services, did the work about which he was testifying and produced information which was supplied to Mr. Turner of the Commission Staff with respect to O'Boyle, but not M & M, and that he supervised the computer operations to some extent in that he told the company what O'Boyle needed and went over it with a company representative.

Lee P. Shaffer, Executive Vice President and Chief Operating Officer of Kenan Transport, Company, Inc., testified substantially as follows: He indicated certain earnings per round trip mile under the proposed rates between certain points. He testified that his company's intrastate operating ratio for 1971 was 85 and stated that an operating ratio of 85 is a good operating ratio.

James A. Simpson, Operations Specialist for the Exxon Oil Company, USA, formerly Humble Oil and Refining Company, testified substantially as follows: He stated that his company participated in negotiations which gave rise to the proposed tariff changes and indicated certain characteristics of movements in Southeastern North Carolina regarding fuels and solvents and other petroleum products. He indicated that he could not give any operating ratios of any carriers transporting petroleum products and further stated that approximately 70% of Exxon's intrastate transportation under Tariff 5-M is transported under 150 miles in distance.

Charles G. Harris, President of Carolina Carriers, Inc., testified substantially as follows: His company recently added an LP gas unit for the first time and in seeking to obtain insurance coverage found that insurance rates on LPG units are higher than on units for light petroleum products because LPG is a more volatile and, therefore, more dangerous product. He stated his carrier is a Class III carrier with under $200,000 revenue on an annual basis. Approximately one-sixth of his company's annual revenues for the preceding year were attributable to LP revenues. He stated that his company's North Carolina intrastate petroleum ratio for 1971 was 112 and for 1972 was 94. He indicated that his company hauled very little in excess of 150 miles and does not haul any residual oil.

Mr. James L. Rose, Rate Specialist III, of the Traffic Division, North Carolina Utilities Commission, was offered as a staff witness and testified and presented exhibits explaining the proposed increases and tariff changes herein sought; Mr. Rose offered exhibits in explanation of the tariff showing: (1) present and proposed motor truck rate shown in Item No. 57-A, (Drumming Terms, Conditions and Charges) Supplement No. 8 to N.C.M.C.A. Tariff No. 5-M, N.C.U.C. 95 proposing to increase the rate 2 cents per 100 pounds to 4 cents per 100 pounds and to require the consignee to make one individual available to assist the driver in conducting the drumming operation; (2) terms, conditions and charges proposed in Item No. 59, (C.O.D. [Collect on Delivery] Shipments) of said tariff, which is a new item establishing a rule applying on shipments tendered to the carriers on a collect on delivery basis, providing a charge of $1.50 per collection on all checks accepted made payable to the shipper and $5.00 per collection on all collections made payable to the carrier which the carrier must in turn remit to the shipper; (3) present and proposed rates and charges between Wilmington and certain points

shown in Section I in Supplement No. 8 of said tariff, which proposes to increase certain rates applying on commodities described in Item 40 (Gasoline, Kerosene, Fuel Oils and Solvents) up to the level of rates shown in the present scale rate providing rate increases to these points ranging from .29% to 16.6%; (4) Section I in Supplement No. 8 also proposes to establish as new point-to-point rates between Wilmington and Conway, Jamestown, Lincolnton and Waynesville based upon the presently established scale rate which are rates resulting in neither an increase nor decrease in the present rates; (5) Section I in Supplement No. 8 also proposes to establish a point-to-point rate of 9.6 cents per 100 pounds in lieu of the present rate of 8.1 cents per 100 pounds resulting in a 11.6% increase; (6) present and proposed increased rates providing for 5% increase on residual fuel oils to points which are over 150 miles apart; (7) present and proposed increased rates providing for 5% increase on point-to-point and mileage scale rates covering liquified petroleum gas; (8) Section 10 in Supplement No. 8 proposes to establish mileages from and to new points on the same basis as mileages are established from and to other points shown in the tariff resulting in neither an increase nor a decrease in rates and charges; and (9) exhibits showing present and proposed earnings of certain carriers based on the proposed increases.

James C. Turner, Commission Staff Accountant, testified substantially as follows: His testimony was based on data contained in the petroleum carriers' annual reports to the North Carolina Utilities Commission and data received from the nine petroleum carriers responding to his requests, both written and oral.

Those carriers operating in North Carolina and earning their total operating revenues from North Carolina Utilities Commission-controlled tariffs realized actual net profit of 4.71% from each intrastate revenue dollar earned in 1969 and 7.63% actual net profit from each intrastate operating revenue dollar earned in 1971.

The nine petroleum carriers realized North Carolina intrastate petroleum operating ratios as follows:

1969	1970	1971	First 6 months of 1972
94.29%	95.71%	89.63%	90.63%

The three carriers earning gross revenues from both ICC regulated tariffs and North Carolina Utilities Commission regulated tariffs realized North Carolina intrastate petroleum operating ratios as follows:

1969	1970	1971	First 6 months of 1972
95.62%	95.20%	87.69%	89.97%

The six carriers earning their gross revenues solely from North Carolina intrastate transportation realized North Carolina petroleum operating ratios as follows:

1969	1970	1971	First 6 months of 1972
93.24%	96.14%	91.45%	91.13%

The proposed revenue increases would be approximately $53,000 annually when based on 1971 actual North Carolina petroleum revenues for the nine carriers used in Mr. Turner's testimony (taken from those furnishing usable data). Net North Carolina intrastate petroleum operating revenues will be increased by approximately $50,000. The proposed increase would produce a proposed 1971 North Carolina intrastate petroleum operating ratio of 88.65% for the nine carriers as opposed to an actual composite North Carolina intrastate petroleum operating ratio of 89.63%.

The carriers are requesting additional net operating North Carolina intrastate petroleum revenues while they have realized net North Carolina intrastate petroleum operating revenues as follows:

1969	1970	1971	First 6 months of 1972
$213,005	$169,231	$480,197	$243,333

Upon request from counsel for the respondent carriers, time was permitted within which to file brief, and such brief was filed within the time allowed.

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

FINDINGS OF FACT

1. That the motor carriers authorized to participate in Tariff No. 5-M, Supplement 8, which is under suspension in this proceeding, are subject to regulation by this Commission and are properly before the Commission with respect to such rates and charges through the representation of the North Carolina Motor Carriers Association and counsel.

2. Approximately seventy-five motor carriers are authorized to participate in Tariff No. 5-M.

3. O'Boyle Tank Lines, Incorporated, has operated M & M Tank Lines since October 1, 1972, and prior to that time, O'Boyle was not extensively involved in heavy oil or residual oil traffic. O'Boyle has been unable to obtain complete company records of M & M and figures have been presented for October and November 1972 with respect to M & M. While Witness Michael Grimm on behalf of M & M indicated a systems (interstate and intrastate combined) operating ratio of 92.06, he did not offer either an intrastate operating ratio or an intrastate petroleum operating ratio with respect to either O'Boyle or M & M.

4. The evidence of Kenan Transport Company reflects certain round trip per mile revenues under the proposed

rates between certain points. The intrastate operating ratio for Kenan for 1971 was 85.

5. Carolina Carriers, Inc., is a Class III motor carrier with annual revenues of less than $200,000. Carolina Carriers, Inc., hauls very little in excess of 150 miles and does not haul any residual oil and that company's intrastate petroleum ratio for 1971 was 112 and for 1972 was 94.

6. The Commission finds that the evidence presented by the motor carriers in this proceeding is not of sufficient probative force to support or justify approval of any increase in rates and charges in this case.

7. The motor carriers in this proceeding have failed to carry their statutory burden of proof to show with material and substantial evidence that their present rates and charges now in effect under Tariff No. 5-M on intrastate movements are not sufficient to permit them to continue to offer adequate and efficient transportation service to the public under said tariff.

8. The Commission finds that the proposed C.O.D. rule (Item 59) is justified under the evidence of record in this proceeding as well as the establishment of new point-to-point rates not heretofore included in Tariff No. 5-M between Wilmington and Conway, Jamestown, Lincolnton and Waynesville, which does not have the effect of increasing rates, as well as the establishment of mileages from and to certain new points on the same basis as mileages are established from and to other points shown in the tariff, which also does not result in an increase in rates.

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

CONCLUSIONS

G. S. 62-146(g) provides that in any proceeding to determine the justness and reasonableness of any rates for motor carriers, such shall be fixed and approved, subject to the provisions of G. S. 62-146(h), on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues. Necessarily, the carriers are required in the presentation of their case under G. S. 62-134(c) and 62-75 to carry and sustain the burden of proof in showing the justness and reasonableness of the proposed rates and charges by showing their intrastate operating ratios. Under G. S. 62-132, the existing rates and charges are deemed by law to be just and reasonable until the contrary is shown by the carriers by material and substantial evidence.

Mr. Forrest, Traffic Manager of the North Carolina Motor Carriers Association, did not make any independent determination of revenue need on the part of any single

carrier or group of carriers. He simply prepared Supplement 8 to Tariff No. 5-M at the request of the carriers.

Mr. Michael Grimm, General Traffic Manager of O'Boyle Tank Lines, Incorporated, which, since October 1, 1972, has operated M & M Tank Lines, indicated a systems operating ratio of 92.06 with respect to M & M. The figures presented were based on October and November 1972, and the reliability of such figures is subject to qualification by Mr. Grimm. Prior to operating M & M, O'Boyle was not extensively involved in heavy oil or residual oil traffic and, therefore, has limited operating experience in regard thereto. Mr. Grimm did not present any intrastate operating ratio or any intrastate petroleum operating ratio for either M & M or O'Boyle.

Mr. Lee P. Shaffer of Kenan Transport Company, Inc., did give an intrastate operating ratio for his company, however, such operating ratio for 1971 was 85 which, by any standard, and by his own admission, is a good operating ratio for motor carriers. We have, heretofore, held that an operating ratio of 93 or better is an appropriate and reasonable operating ratio for motor carriers.

Mr. James A. Simpson, Operations Specialist for the Exxon Oil Company, USA, appeared as a shipper witness apparently in support of the tariff. However, he had no knowledge of any operating ratio of any carrier transporting petroleum products and further stated that 70% of Exxon's intrastate transportation under Tariff No. 5-M is transported under 150 miles in distance.

Mr. Charles G. Harris, President of Carolina Carriers, Inc., was offered as a rebuttal witness and, relatively speaking, his company is a small motor carrier; namely, a Class III carrier with under $200,000 annual revenue. He stated that his company hauls very little in excess of 150 miles and does not haul any residual oil. Without reflecting the method and derivation of his figures, Mr. Harris indicated that his company's North Carolina intrastate petroleum ratio for 1971 was 112 and for 1972 was 94. He gave no reason for the improvement experienced in the operating ratio for his company. Such improvement occurred under existing rates.

The testimony of Mr. Forrest reflects that there are approximately 75 carriers that are authorized to participate in Tariff No. 5-M. While the record does not show which of those 75 carriers actually do participate in the hauling of involved commodities, it is readily apparent that the carrier's testimony presented in this proceeding, taken in its entirety, is insufficient to show such representative nature to justify increasing the rates and charges for all carriers participating in the tariff. Such weight cannot be given to the testimony of the witness of Carolina Carriers, Inc., to justify increases for all 75 authorized participants in the tariff, given the relative size of that

carrier and its relatively limited operations under Tariff No. 5-M. Mr. Shaffer's testimony for Kenan Transport Company cannot be used to demonstrate revenue need because he indicated an intrastate operating ratio for 1971 of 85 which is good, if not excellent, and, of itself, cannot be the basis for increasing rates and charges in this tariff for all participating carriers. The only other carrier witness, Mr. Grimm, without substantial operating experience of O'Boyle or adequate company records for M & M, could not and did not give any intrastate operating ratio or any intrastate petroleum operating ratio for M & M or O'Boyle.

In Docket No. T-825, Sub 143, page 8, Conclusion No. 4 of the Commission's Order dated January 19, 1971, the Commission admonished the carriers in that proceeding (common carriers) to improve their presentations in their cases, stating:

> "4. We do not conclude that the formula and method used in making the separation in this case reflect to a certainty, accurate results, and we advise and enjoin the respondents herein to continue their efforts for improvement in this area..."

This admonition was also observed in Docket No. T-825, Sub 150 wherein denial by the Commission of proposed increases was upheld by the North Carolina Court of Appeals in 16 NC App. 515 (1972).

In Docket No. T-825, Sub 153 as reflected on page 7, Conclusion No. 6 of the Commission's Order dated June 26, 1972, the Commission (although allowing increases in rates) again admonished the carriers (common carriers, bulk commodities):

> "...to improve the probative force and effect of their evidence concerning the derivation of intrastate operating ratios as required by statute; and we further conclude that a failure to develop improved, more accurate and equitable separations methods will, of necessity, result in negative findings in the future and we advise and enjoin the carriers to develop and present several improved such methods of separations in future cases upon which this Commission may make more enlightened findings and determinations."

Substantially the same admonition was again made by the Commission in Docket No. T-825, Sub 157 (common carriers, unmanufactured tobacco and accessories) as reflected in the Commission's Order of June 26, 1972, at page 6, Conclusion No. 5, although increases in rates were allowed.

In short, the Commission has heretofore on numerous occasions admonished the carriers to improve the presentation of their cases with the recognition that <u>they have</u> the statutory burden of proving the justness and reasonableness of any increase in rates and charges. The

presentation of evidence in this case falls far short of improved presentation which the Commission regards is required by law before increases in rates and charges can be authorized. To simply allege that the proposed increase in this proceeding is a small increase and that no shippers have protested heretofore is insufficient to constitute a basis for approval of the increases in rates and charges.

The carriers have not shown herein that those carriers represented through certain witnesses at the hearing are representative of the carriers actually transporting petroleum products under Tariff No. 5-M. Additionally, the carriers have not shown intrastate operating ratios or intrastate petroleum operating ratios (even if the carriers' testimony were representative of the other carriers involved in this tariff) sufficient to justify approval of increased rates and charges. If there is a need for such increases, such need has not been demonstrated on this record. By not taking seriously their responsibility under the law with respect to burden of proof, the motor carriers are doing themselves, shippers and receivers, other members of the public and the Commission a disservice, for if a revenue need exists, it should be met in the interest of an adequate and efficient transportation service to the public.

Accordingly, we have fully considered all evidence of record and conclude that such evidence is insufficient and unconvincing to demonstrate a need with respect to carriers participating in Tariff No. 5-M, Proposed Supplement 8, and we further conclude in that regard that the carriers have failed to sustain and carry their statutory burden of proof to show any need for increases under Tariff No. 5-M. The Commission, however, in this docket will authorize the C.O.D. charge because the record indicates that customers are requesting such service and further will authorize the proposed change to establish point-to-point rates between Wilmington and Conway, Jamestown, Lincolnton, and Waynesville, as well as establishment of mileages from and to certain new points. The two latter changes are authorized herein because neither results in an increase in rates and the proposed changes have the effect of simplifying the tariff.

IT IS, THEREFORE, ORDERED:

1. That the increases proposed by the respondent motor carriers be, and the same hereby are, denied for the reason that the carriers have failed to sustain the burden of proof under G. S. 62-134(c) and G. S. 62-75 to show that the proposed rates and charges are just and reasonable as required by law.

2. That respondent motor carriers be, and the same hereby are, required to issue appropriate new tariff schedules cancelling the tariff filing under suspension in this proceeding.

3. That the respondents be, and the same hereby are, authorized to issue appropriate new tariff schedules implementing the C.O.D. charge (Item 59) as well as the establishment of point-to-point rates between Wilmington and Conway, Jamestown, Lincolnton and Waynesville, and the establishment of mileages to certain new points as originally proposed in the supplement under suspension herein.

4. That the Order of Suspension and Investigation issued in this docket be, and the same is, hereby vacated and set aside.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-825, SUB 168

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges Applicable on Shipments of General Commodities Scheduled to Become Effective July 23, and August 13, 1973.	)))))	ORDER APPROVING INCREASE IN RATES AND CHARGES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 30 and 31, 1973.

BEFORE: Commissioner Hugh A. Wells, Presiding; and Commissioner Ben E. Roney, and Chairman Marvin R. Wooten.

APPEARANCES:

For the Respondents:

Thomas D. Bunn, Esq.
David H. Permar, Esq.
Hatch, Little, Bunn, Jones & Few
P. O. Box 527, Raleigh, North Carolina 27602

Robert E. Born, Esq.
Arnall, Golden & Gregory
1000 Fulton Federal Building
Atlanta, Georgia 30303
Appearing for:
Motor Common Carriers of General Commodities.

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

E. Gregory Stott, Esq.
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION. On June 8, 1973, the Motor Carriers Traffic Association, Inc., the North Carolina Motor Carriers Association, Inc., and the Southern Motor Carriers Rate Conference, filed with this Commission tariff schedules on behalf of their member carriers, proposing an increase in rates and charges, including minimum charges, applicable to North Carolina intrastate shipments of general commodities. These tariff schedules were to become effective July 23, 1973, and were designated as follows:

(1) Motor Carriers Traffic Association, Inc., Agent: Motor Freight Tariff No. 3-G, N.C.U.C. No. 40, Supplements Nos. 32 and 33;

(2) North Carolina Motor Carriers Association, Inc., Agent: Motor Freight Tariff No. 10-E, N.C.U.C. No. 91, Supplement No. 46;

(3) Southern Motor Carriers Rate Conference, Agent: Motor Freight Tariff No. 137-I, N.C.U.C. No. 38, Supplement No. 15.

The proposed increases were as follows:

(1) The minimum charge to be increased by $1.00.

(2) LTL and AQ shipments weighing less than 5,000 pounds to be increased by 10%.

(3) LTL shipments weighing 5,000 pounds or more to be increased by 3%.

(4) Volume and truckload shipments to be increased by 3%.

These proposed tariff schedules were suspended by Order of June 19, 1973. The Commission, recognizing that the proposed tariffs affected the public interest, ordered an

investigation into the lawfulness of the tariffs and set the matter for public hearing on appropriate notice; all carriers participating in the proposed tariffs were made respondents in the docket and ordered to be prepared to offer testimony and exibits in support of their case. The respondents were ordered to file their testimony at least 60 days prior to the scheduled date of the hearing, which was October 30, 1973; the testimony of the Staff was to be filed at least 20 days prior to October 30, 1973.

On September 25, 1973, the Commission extended the time for filing Staff testimony to December 3, 1973, and set the Staff testimony for hearing on December 13, 1973. Thereafter, on October 3, 1973, the respondents, through their attorneys of record, filed a Petition seeking immediate interim rate relief, alleging, inter alia, the acute need of the respondents for immediate revenue relief on North Carolina intrastate general commodity traffic. The Commission granted the Petition for interim rate relief to the following extent:

(a) The minimum charge per shipment was increased to $5.00.

(b) The rates on shipments weighing less than 5,000 pounds were increased by 5 percent.

(c) The rates on LTL shipments weighing 5,000 pounds or more were increased by 2 percent.

(d) The rates on volume or truckload shipments were increased by 2 percent with a one (1) cent minimum.

The matter came on for hearing on October 30, 1973, at the Commission Hearing Room in Raleigh. The respondents presented the testimony and exhibits of the following witnesses: Robert A. Hopkins, Secretary of the Rate Committee of the North Carolina Intrastate Regular Route General Commodity Carriers; Dr. W. Edwards Deming, Consulting Statistician; R. L. Steed, Secretary of the Southern Motor Carriers Rate Conference, Inc.; Vallon L. Burris, Chairman and President of Burris Express, Inc.; W. D. Snavely, Vice President and Traffic Manager of Standard Trucking Company; E. W. Roughton, Comptroller of Pilot Freight Carriers, Inc.; J. R. Farish, Vice President - Traffic, Overnite Transportation Company; Loy J. Foster, Traffic Manager, Fredrickson Motor Express Corporation; Jerry K. Neal, Vice President - Secretary of State Motor Lines, Inc.; Homer M. Curry, Traffic Manager, Billings Transfer Corporation; John V. Luckadoo, Traffic Manager of Thurston Motor Lines, Inc.; R. E. Fitzgerald, Vice President-Traffic, Estes Express Lines; and Charles W. Guthrie, General Traffic Manager, Burlington Industries, Inc.

There were no Protestants.

In its Order in the previous Commission rate case, Docket No. T-825, Sub 150, wherein the proposed rate increases were denied in toto, the Commission concluded that:

". . .if the methods and formulae used by the Respondents herein are to be accepted, they must be substantially strengthened through the selection of a more appropriate test period, the enlargement of such period, and supported by additional methods and formulae; . . ."

The Commission notes with approval the improvements that have been made by the Respondents in the presentation of its case in this docket; for example, the Respondents based their cost-revenue comparison upon a full year's traffic study rather than the five-day study that had been used in previous dockets. However, the Commission continues to maintain the greatest concern for further improvements in the quality of proof in the future. And improvements are still needed. The following examples are noted by way of illustration: the audit process involved in the statistical sampling methods; the itemization of each carrier's individual intrastate cost revenue comparisons; detailed explanation of the computer program used in the cost-revenue computation for the Continuing Traffic Study; the itemization and explanation of such items as wage allocation.

Effective and responsible regulation requires that factual, substantial, material and relevant evidence be presented to the Commission to assist it in its decisions. This Commission will continue to insist that the Respondents, as well as the Commission's Staff, work to meet these requirements.

Based on the evidence adduced at the hearing, the Commission finds and concludes that the rates and charges set forth in the aforesaid proposed tariff schedules are just and reasonable; that these tariffs are not the means of creating discrimination, preference or prejudice; that the tariffs are otherwise lawful; and that the Order of Suspension and Investigation, as amended, should be withdrawn and cancelled; and the aforesaid tariffs be allowed to become effective, after appropriate publication, upon one (1) day's notice.

IT IS, THEREFORE, ORDERED:

(1) That the Order of Suspension and Investigation in this docket, as amended, is hereby withdrawn and cancelled, and that the tariff increases are hereby approved and allowed to become effective, after appropriate publication, upon one (1) day's notice.

(2) That the hearing scheduled for December 13, 1973, for the purpose of presenting the Staff testimony be, and the same hereby is, cancelled.

(3) That this docket be, and the same hereby is, closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-681, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Sale and Transfer of Common Carrier Certificate No. C-178 from Julius M. Fox, d/b/a Fox Transfer Company, 613 South Oakland Street, Box 3625, Gastonia, N. C. 28052, to Helms Motor Express, Inc., P. O. Drawer 700, Albemarle, N. C. 28001	RECOMMENDED ORDER GRANTING APPROVAL OF TRANSFER

HEARD: Commission Hearing Room, Raleigh, North Carolina

DATE: October 17, 1972

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

APPEARANCES:

For the Applicants:

J. Ruffin Bailey
Bailey, Dixon, Wooten & McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Helms Motor Express, Inc., and Julius M. Fox, d/b/a Fox Transfer Company

For the Protestant:

Francis O. Clarkson, Jr.
Craighill, Rendleman & Clarkson
Attorneys at Law
914 American Building
Charlotte, North Carolina 28202
For: Lloyd Motor Express, Ltd.

For the Commission Staff:

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

McDEVITT AND WELLS, COMMISSIONERS. By Application filed with the North Carolina Utilities Commission on June 19, 1972, the joint applicants Julius M. Fox, d/b/a Fox Transfer Company, Gastonia, North Carolina, (hereinafter called "FOX TRANSFER"), as transferor, and Helms Motor Express, Inc., Albemarle, North Carolina, (hereinafter called "HELMS"), as transferee, seek approval of the sale and transfer of Common Carrier Certificate No. C-178 from Fox Transfer to Helms. The authority sought to be transferred as contained in said Certificate No. C-178 is as follows:

"(1) Transportation of general commodities, except those requiring special equipment, over irregular routes, between points and places in the counties of Halifax, Rockingham, Guilford, Alamance, Scotland, Davidson, Stanly, Rowan, Cabarrus, Iredell, Mecklenburg, Alexander, Catawba, Lincoln, Gaston, Caldwell, Cleveland and Rutherford.

"(2) Transportation of yarn from points in Gaston County to Winston-Salem, Valdese, and Mount Airy, and waste bagging from points in Gaston County to Henderson.

"NOTE: Under decision of Supreme Court in UTILITIES COMMISSION -v- FOX, 239 N.C. 253, the foregoing authority includes the right to interchange intrastate and interstate traffic with other carriers. See order dated February 15, 1954, in Docket No. T-16, Sub 1."

Public notice of the Application for sale and transfer was given in the Commission's Calendar of Truck Hearings issued July 18, 1972, setting public hearing on said Application for October 11, 1972. The hearing was subsequently continued by Order of the Commission to October 16, 1972.

On October 2, 1972, Lloyd Motor Express, Ltd., filed a Protest and Petition to Intervene.

The hearing was duly called on October 17, 1972, and heard by Commissioners McDevitt, Wells and Rhyne. Commissioner Rhyne, having resigned from the Commission December 28, 1972, took no part in the decision on the Application.

Testimony was offered at the hearing from the following witnesses:

Vallon L. Burris, President of Helms, offered testimony as to the financial condition of Helms, the present operation of Helms under its existing common carrier certificate, the financial resources for acquisition of the Fox certificate, and proposals by Helms for operation of the Fox authority by Helms.

Julius M. Fox, owner of Fox Transfer, testified as to the operations of Fox Transfer, the terms of the agreement for

sale of the Fox common carrier certificate to Helms, and the extent of operation of the Fox Transfer certificate.

Reid W. Childress, member of the Town Council, Wagram, North Carolina, testified that he supported the Application on behalf of the Town of Wagram in order to secure additional transportation by Helms to Wagram.

James Blanton, Kenansville, Traffic Manager, Reeves Brothers, Comfy Division, testified and supported the Application in order to improve the service which would be provided by Helms through the Fox Transfer territory, in order to secure more direct single line shipments.

By stipulation of the parties and order of the Hearing Commissioners, Fox Transfer filed late-filed Exhibits listing the shipments handled by Fox Transfer for the period of operation prior to filing the Application.

Based upon the evidence adduced at the hearing, the Hearing Commissioners make the following

FINDINGS OF FACT

1. That the applicant Helms, transferee, holds authority as an intrastate motor common carrier in North Carolina under Certificate of Public Convenience and Necessity issued by the Commission under Certificate No. C-3, and presently operates 16 terminals in North Carolina, operating 79 tractors, 211 trailers, 74 straight trucks, and 10 company cars; that Helms operates 83 routes serving 550 points in North Carolina with freight revenues in August 1972 of $400,741.

2. That the applicant Fox Transfer, the proposed transferor, is a proprietorship owned by Julius M. Fox which holds operating authority from the Utilities Commission as set forth in common carrier Certificate No. C-178; that Julius M. Fox has entered into written contract for the sale of the operating authority contained in said Certificate No. C-178 as hereinabove set out to Helms and interstate authority as owned by Fox Transfer for the sum of $60,000, plus an additional $15,000 for equipment described therein, subject to approval of the Utilities Commission.

3. That Helms is fit, willing and able to operate the additional authority proposed to be purchased from Fox Transfer and has a satisfactory financial proposal for the operation of said additional authority.

4. That Fox Transfer has held itself out to serve the public under its common carrier Certificate No. C-178 since the issuance of said Certificate as an original Grandfather rights Certificate to Julius M. Fox on November 3, 1950; that Fox Transfer has at all times maintained insurance for the protection of the public and has maintained listings of its service in telephone directories and has maintained

equipment and has served the public when service was requested; that the owner, Julius M. Fox, is 65 years of age and has sustained a heart attack and his health does not warrant his full operation and participation in the operation of said Fox Transfer, and he desires to sell said Fox Transfer because of poor health and to go out of business, and the Commission finds that the operating authority contained in said Certificate No. C-178 is not dormant.

5. That the franchise held by the transferor has been actively operated and, accordingly, transfer thereof is justified by the public convenience and necessity.

6. That the proposed transfer of operating authority is in the public interest.

7. That the proposed transfer will not adversely affect the service of the public under the said franchise inasmuch as the evidence indicates, and the Commission finds, that the proposed transferee is capable of rendering service equal to that of the proposed transferor.

8. That said transfer will not unlawfully affect the services to the public by any other public utility.

9. That the proposed transferee is fit, willing and able to perform service to the public under the proposed franchise transfer.

10. That Fox Transfer has continuously offered service under its franchise to the public up until the filing of the Application; that service has been rendered to points where service was requested; that any diminution in the shipments and revenue of Fox Transfer during recent months is considered by the Commission under G.S. 62-112(c) to be attributable to the age and health of the sole proprietor Julius M. Fox, and any reduction of actual shipments into any portions of said franchise during said period is found by the Commission in its discretion to be attributable to said age and health of Julius M. Fox, and are not grounds for cancellation of said Certificate for dormancy, nor for denial of transfer thereof on grounds of dormancy.

Whereupon, the Hearing Commissioners make the following

CONCLUSIONS

The provisions of G.S. 62-111(a) to the effect that the Commission's approval of the sale and transfer of motor carrier rights shall be given even "if justified by the public convenience and necessity" were enacted in 1963 and have been observed by the Commission in cases involving transfer of motor carrier authority.

From the evidence before the Commission, the Commission finds that Fox Transfer has been actively operating the

authority it seeks to sell on a reasonable basis since a Certificate was issued in 1950, considering that recent diminution of freight transported is attributable to the age and poor health of Julius M. Fox, sole proprietor. Fox Transfer has held itself out to be public in all respects as being continuously able to provide service, including the maintenance of insurance, equipment and appropriate public telephone listings, and Fox Transfer has transported actual business in substantial volume, although in diminishing amount, up to the time of the filing of the Application.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Application for the sale and transfer of operating authority set forth in Common Carrier Certificate No. C-178 from Julius M. Fox, d/b/a Fox Transfer Company, to Helms Motor Express, Inc., is hereby approved.

2. That any authority contained in said Certificate No. C-178 which authorizes transportation which could be performed by Helms under its present Certificate No. C-3 shall be and hereby is construed to be merged into said Certificate No. C-3 so that there will be no continued duplication of authority within said authority of Helms, and that there shall be only one authority for the enlarged certificate of Helms, including the authority of Fox Transfer.

3. That the Certificate No. C-3 held by Helms be, and hereby is, amended to include the authority set forth in Exhibit B attached hereto.

4. That Helms shall file report with the Commission upon consummation of the purchase and acquisition of the authority set forth in Certificate No. C-178, and shall amend its tariff publications to show service to said additional territory.

ISSUED BY ORDER OF THE COMMISSION.

This 5th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "B"

DOCKET NO. T-681 SUB 36

Helms Motor Express, Inc. C-3
V. L. Burris, President
P. O. Drawer 700, Albemarle, N. C.

EXHIBIT B

(1) Transportation of general commodities, except those requiring special equipment, over irregular routes, between points

and places in the counties of Halifax, Rockingham, Guilford, Alamance, Scotland, Davidson, Stanly, Rowan, Cabarrus, Iredell, Mecklenburg, Alexander, Catawba, Lincoln, Gaston, Caldwell, Cleveland and Rutherford.

(2) Transportation of yarn from points in Gaston County to Winston-Salem, Valdese, and Mount Airy, and waste bagging from points in Gaston County to Henderson.

NOTE: Under decision of Supreme Court in UTILITIES COMMISSION -v- FOX, 239 N.C. 253, the foregoing authority includes the right to interchange intrastate and interstate traffic with other carriers. See order dated February 15, 1954, in Docket No. T-16, Sub 1.

DOCKET NO. T-1649

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sale and Transfer of Common Carrier Certificate No. C-138 from Lloyd Motor Express, Ltd., P. O. Box 26622, Charlotte, North Carolina, to Watkins-Carolina Express, Inc., P. O. Box 10188, Federal Station, Greenville, South Carolina 29603.) ORDER

HEARD IN: Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, September 19, 1973, at 10:00 A.M.

BEFORE: Commissioner Ben E. Roney, Presiding, With Chairman Marvin R. Wooten and Commissioner Hugh A. Wells to Read the Record and Participate in Decision.

APPEARANCES:

For the Applicants:

J. Ruffin Bailey
Bailey, Dixon, Wooten, McDonald & Fountain
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602
For: Watkins-Carolina Express, Inc.

Francis O. Clarkson, Jr.
Craighill, Rendleman & Clarkson
Attorneys at Law
914 American Building
Charlotte, North Carolina 28202
For: Lloyd Motor Express, Ltd.

For the Protestants:

David H. Permar and
T. D. Bunn
Hatch, Little, Bunn, Jones & Few
Attorneys at Law
P. O. Box 527, Raleigh, North Carolina
For: Overnite Transportation Company, Thurston Motor Lines, Inc., Fredrickson Motor Express Corporation, Burris Express, Inc., Old Dominion Freight Line

For the Commission Staff:

John R. Molm
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina

RONEY, COMMISSIONER. By application filed with the North Carolina Utilities Commission on March 30, 1973, the joint Applicants, Lloyd Motor Express, Ltd., P. O. Box 26622, Charlotte, North Carolina (hereinafter called "Lloyd"), as Transferor, and Watkins-Carolina Express, Inc., P. O. Box 10188, Federal Station, Greenville, South Carolina 29603 (hereinafter called "Watkins-Carolina"), as Transferee, seek approval of the sale and transfer of Common Carrier Certificate No. C-138 from Lloyd to Watkins-Carolina. The authority sought to be transferred, as contained in said Certificate No. C-138, is as follows:

"Transportation of general commodities, except those requiring special equipment and except leaf tobacco in hogsheads, sheets and baskets, over irregular routes from and to points and places on and within the territory bounded as follows:

"On the east, from the North Carolina-Virginia State Line over U.S. Highway 1 to its intersection with U.S. Highway 158, thence over U. S. Highway 158 to Warrenton, thence over N. C. Highway 58 to Wilson, thence over U.S. Highway 301 to its intersection with U. S. Highway 117, thence over U. S. Highway 117 to Wilmington, thence over U. S. Highway 421 to Fort Fisher; and on the west, from the North Carolina-Tennessee State Line over U. S. Highway 25 to the North Carolina-South Carolina State Line."

Public notice of the application for sale and transfer was given in the Commission's Calendar of Truck Hearings issued June 11, 1973, with the following note:

"If no protests are filed by 4:30 p.m., Monday, July 2, 1973, the Commission will decide the case on the record; and if protests are filed within the time specified, the Commission will set the matter for hearing."

Thereafter, on July 2, 1973, protests were filed on behalf of Fredrickson Motor Express Corporation, of Charlotte, North Carolina; Helms Motor Express (now Burris), of Albemarle, North Carolina; Old Dominion Freight Line, of High Point, North Carolina; Overnite Transportation Company, of Richmond, Virginia; and Thurston Motor Lines, Inc., of Charlotte, North Carolina.

Thereafter, notice of hearing in said docket was given in Calendar of Truck Hearings issued July 13, 1973, setting the hearing for Wednesday, September 19, 1973, at 10:00 a.m.

The hearing was duly called on September 19, 1973, and all parties present stipulated that the Commissioners not present could read the record and participate in the making of the decision on the application and that the Order to be entered would be an Order of the full Commission.

Testimony was offered at the hearing from the following witnesses:

Bobby Johnson, Executive Vice-President of Watkins-Carolina Express, Inc., offered testimony as to his experience and the experience of Watkins-Carolina in interstate commerce in North Carolina and in interstate commerce in other states, as well as the fact that his Company operated in intrastate commerce in other states. He testified as to the equipment presently operated by Watkins-Carolina in the State of North Carolina and to the effect that his Company would use that same equipment in servicing the territory embraced by the intrastate certificate sought to be transferred in this docket. He further testified as to the facilities of his Company in North Carolina and to its familiarity with the regulations in intrastate commerce and its duties and obligations in connection therewith.

William A. Freeman, also of Watkins-Carolina, testified as to the financial condition of the Applicant, Watkins-Carolina, and presented certain exhibits supporting the financial solvency of the Transferee.

David Lloyd, President and sole stockholder of Lloyd Motor Express, Ltd., testified as to the operations of Lloyd, the terms of the agreement for sale and the extent of operations of Lloyd's certificate.

Loy J. Foster, Traffic Manager of one of the Protestants, Fredrickson Motor Express Corporation, presented the only evidence for the Protestants in the form of several exhibits, which consisted of analyses of the abstract of shipments of Lloyd and of certain abstracts of shipments of Fredrickson Motor Express Corporation in the territory

involved, as well as certain representations of the scope of its operations.

At the close of Mr. Foster's testimony, it was stipulated by the Attorneys for the Protestants that the testimony of the other protestant witnesses would be similar to that of Mr. Foster; that the operation of Lloyd had been shown to be larger than they had anticipated; and that they would not call them for testimony, but offered certain operating information by reference.

Based upon the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, Watkins-Carolina, Transferee, holds authority as an interstate motor common carrier doing business in North Carolina under a Certificate of Public Convenience and Necessity issued by the Interstate Commerce Commission and presently operates within the scope of that authority in the State of North Carolina, with certain equipment and terminals.

2. That Watkins-Carolina is familiar with the requirements of the North Carolina Public Utilities Law and with the Rules and Regulations of the North Carolina Utilities Commission.

3. That Watkins-Carolina is financially and otherwise, in all respects, fit, willing and able to provide service under the terms of the certificate sought to be transferred in this docket in intrastate commerce in North Carolina.

4. That the Applicant, Lloyd, the proposed Transferor, has held Certificate No. C-138 and has operated the same in intrastate commerce in North Carolina.

5. That on the 1st day of March, 1973, Lloyd, as Transferor, and Watkins-Carolina, as Transferee, entered into an agreement for the transfer of said Certificate No. C-138.

6. That Lloyd has held itself out to serve the public under its Common Carrier Certificate No. C-138 since the issuance of said Certificate.

7. That Lloyd has at all times maintained insurance for the protection of the public; has maintained listings of its service in certain trade journals; and has actively solicited and transported shipments of general commodities under the terms of its Certificate throughout the scope of its territory as described in said Certificate.

8. That said franchise is not dormant; that it has been actively operated and, accordingly, transfer thereof is justified by the public convenience and necessity.

9. That the proposed transfer of operating authority is in the public interest.

10. That the proposed transfer will not adversely affect the service of the public under the said franchise, inasmuch as the evidence indicates and the Commission finds that the proposed Transferee is capable of rendering service equal to that of the proposed Transferor.

11. That said transfer will not unlawfully affect the services to the public by any other public utility.

12. That the proposed Transferee is fit, willing and able to perform service to the public under the proposed franchise transfer.

13. That Lloyd has continuously offered service under its franchise to the public up until the filing of the application; that service has been rendered to points where service was requested; that said Applicant has never refused a shipment when called upon to make said shipment; that there are no grounds for cancellation of said Certificate for dormancy nor for denial of transfer thereof on grounds of dormancy.

Whereupon, the Commission makes the following

CONCLUSIONS

The provisions of G.S. 62-111(a) to the effect that the Commission's approval of the sale and transfer of motor carrier rights shall be given "if justified by the public convenience and necessity" were enacted in 1963 by the General Assembly and have been observed by the Commission in cases involving transfer of motor carrier authority.

From the evidence before the Commission, the Commission finds that Lloyd has been actively operating the authority it seeks to sell on a reasonable basis since a Certificate was issued to it; that it has held itself out to the public in all respects as being continuously able to provide service, including the maintenance of insurance, equipment and appropriate public telephone listings, as well as sales representatives and sales efforts throughout its entire territory; that said authority, as described in the Certificate, is not dormant, and its transfer would be in the public interest and would not adversely affect the service to the public under said franchise and would not unlawfully affect the service to the public by other public utilities.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application for the sale and transfer of operating authority set forth in Common Carrier Certificate No. C-138 from Lloyd Motor Express, Ltd., to Watkins-Carolina Express, Inc., is hereby approved.

2. That Certificate should be issued to Watkins-Carolina Express, Inc., assigning the commodity description and territory description contained in Certificate No. C-138 as set forth in Exhibit B attached hereto and made a part hereof.

3. That Watkins-Carolina shall file report with the Commission upon consummation of the purchase and acquisition of the authority as set forth in Certificate No. C-138, shall amend its tariff publications to show service to said additional territory and shall be permitted to continue to operate under the Order of the Commission heretofore issued in this cause granting temporary authority to operate under lease pending approval of said transfer until approval by the Interstate Commerce Commission of the transfer of the interstate authority as described in the agreement submitted herewith.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. T-1649

Watkins-Carolina Express, Inc.
P. O. Box 10188, Federal Station
Greenville, South Carolina

Irregular Route Common Carrier Authority

EXHIBIT B

Transportation of general commodities, except those requiring special equipment and except leaf tobacco in hogsheads, sheets and baskets, over irregular routes from and to points and places on and within the territory bounded as follows:

On the east, from the North Carolina-Virginia State line over U. S. Highway 1 to its intersection with U. S. Highway 158, thence over U. S. Highway 158 to Warrenton, thence over N. C. Highway 58 to Wilson, thence over U. S. Highway 301 to its intersection with U.S. Highway 117, thence over U. S. Highway 117 to Wilmington, thence over U.S. Highway 421 to Fort Fisher; and on the west, from the North Carolina-Tennessee State line over U.S. Highway 25 to the North Carolina-South Carolina State line.

DOCKET NO. T-1330

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Home Transportation Company, Inc.,) PERMANENT ORDER TO
1425 Franklin Road, S. E.,) CEASE AND DESIST
Marietta, Georgia - Transportation) FROM TRANSPORTING
of Mobile Homes Without Authority) MOBILE HOMES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 12, 1973, at 10:00 A. M.

BEFORE: Donald D. Coordes, Hearing Examiner

APPEARANCES:

For the Respondent: None

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
North Carolina Utilities Commission
One West Morgan Street
Raleigh, North Carolina 27602

COORDES, EXAMINER: This cause arises from the Order of the Commission in this Docket dated November 9, 1972, to Home Transportation Company, Inc., requiring it to temporarily cease and desist from the transportation of mobile homes in North Carolina intrastate commerce and to appear before the Commission and show cause, if any it had, why the cease and desist order should not be made permanent; why it should not be subject to the penalties prescribed in North Carolina General Statute 62-325 and further why its operating authority under North Carolina Common Carrier Certificate No. C-896 should not be revoked pursuant to the provisions of North Carolina G. S. 62-112 for willful violation of the terms of its franchise and Rule R2-21 and other applicable rules and regulations of the Commission.

The Order to Cease and Desist and Show Cause was received by Home Transportation Company, Inc., through its Agent Mattie Buckney as evidenced by the Return Receipt indicating service by Certified Mail.

On January 10, 1973, two days prior to the hearing, a letter explaining Respondent's position was filed by Counsel for Respondent. Counsel stated in his letter that the transportation of mobile homes was undertaken by Respondent through a mistaken belief by the manager of Respondent's Mobile Home Division that an individual tariff issued in September of 1970 was duly on file with the Commission. He indicated further that a change of personnel and

misplacement of the file caused the new general manager to overlook the fact that this tariff had been rejected and returned and that as soon as the Commission's Order in this Docket was received Respondent immediately discontinued intrastate transportation of mobile homes in North Carolina.

This letter was accepted by the Examiner at the hearing, in lieu of Respondent's or Counsel's appearance, as a stipulation by Counsel for Respondent that Respondent had, in fact, engaged in the unlawful transportation of mobile homes in violation of its North Carolina Common Carrier Certificate No. C-896, and that Respondent would not now or in the future engage in such transportation under its present authority.

Upon consideration of stipulation by Counsel for Respondent and the record in this proceeding as a whole, the Hearing Examiner makes the following:

FINDINGS OF FACT

(1) That the Respondent is the holder of North Carolina Common Carrier Certificate No. C-896 and is subject to the jurisdiction of this Commission for the enforcement of the North Carolina Public Utilities Act.

(2) That Respondent has engaged in the transportation of mobile homes in North Carolina intrastate commerce without first having obtained from this Commission a Certificate of Public Convenience authorizing such transportation.

(3) That such unauthorized transportation was not willful in nature.

CONCLUSIONS

Rule R2-2| of the Commission's Rules and Regulations provides that no carrier shall engage in transportation in intrastate commerce for compensation in North Carolina until and unless such carrier shall have applied to and obtained from the North Carolina Utilities Commission appropriate authority to so operate. Respondent did, by admission engage in such unauthorized transportation but did so through a mistaken belief that the movements were proper which was occasioned by a lack of communication during a change of management personnel in Respondent's Mobile Home Division.

Upon the aforesaid findings and the applicable Rule, the Hearing Examiner concludes that Respondent has violated Rule R2-2| of the Commission's Rules and Regulations, albeit inadvertently, and that Respondent should be permanently enjoined from such transportation under its present certificate by the issuance of a permanent Order to Cease and Desist.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That Home Transportation Company, Inc., 1425 Franklin Road, S. E., Marietta, Georgia, be, and the same is hereby, directed to permanently cease and desist from the transportation of mobile homes in intrastate commerce in North Carolina under its present authority as set forth in Certificate No. C-896.

(2) That this Order remain in full force and effect until changed or canceled by further Order of the Commission.

(3) That a copy of this Order be served upon Respondent by Certified Mail, Return Receipt Requested and that the Receipt, upon its return to the Commission be made a permanent part of the Commission's official docket file in the Chief Clerk's office.

(4) That any violation of this Order by Respondent will be prima facie evidence of willfulness and subject Respondent to penalties prescribed in G.S. 62-325 and revocation of certificate pursuant to G.S. 62-112.

BY ORDER OF THE COMMISSION.

This the 9th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-1622, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Eastern Mobile Homes, Inc.,	)
P. O. Box 372, Garner,	) ORDER REGISTERING
North Carolina - Pledge of Common	) PLEDGE OF COMMON
Carrier Certificate No. C-1021	) CARRIER CERTIFICATE

BY THE COMMISSION: Upon consideration of the filing of a certain Agreement dated June 14, 1973, and between Eastern Mobile Homes, Inc., a North Carolina corporation, first party and J. L. Williams of Wake County, North Carolina, second party, and

IT APPEARING, That first party has executed to second party a Promissory Note in the amount of Two Thousand Dollars ($2,000) and in connection therewith first party has pledged to second party the operating rights contained in Common Carrier Certificate No. C-1021 as security for payment of said note;

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the pledge of Common Carrier Certificate No. C-102 shall be registered in accordance with G. S. 25-9-302(5), and that the following notation shall be made upon Exhibit B attached to Common Carrier Certificate No. C-102 in the book of common carrier certificates in the office of the Commission:

First Lien: $2,000 (Amount) Pledge (Kind) June 14, 1973 (Date)

J. L. Williams
(Lienholder)

602 Grovemont Road
Raleigh, North Carolina
(Address of Lienholder)

Katherine M. Peele 7-26-73
(Signature of Commission's Chief Clerk)

First Lien Released
(Date)

(Lienholder)

(Signature of Commission's Chief Clerk)

(2) That nothing in this order shall be construed as establishing in J. L. Williams the right to sell the certificate described herein to any person unless that person shall have obtained approval to acquire said certificate under G. S. 62-111.

(3) That immediately upon final payment of the amount due J. L. Williams, Eastern Mobile Homes, Inc., shall secure and forward to this Commission a receipt or conformed copy thereof, whereupon the Commission's Chief Clerk shall certify on the above described notation that the first lien has been released; and

(4) That nothing herein shall be construed to imply any guarantee or obligation as to the payment of said note on the part of the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of July, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. T-|6|5, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of C. D. Elks, d/b/a C. D. Elks Truck Line, Route |, Box 638, Chocowinity, North Carolina - Application for Approval of Issuance of Note and to Execute a Chattel Mortgage on Certificate No. C-|37.	)	ORDER APPROVING ISSUANCE OF NOTE AND CHATTEL MORTGAGE

This cause comes before the Commission upon an application of C. D. Elks, d/b/a C. D. Elks Truck Line, Route |, Box 638, Chocowinity, North Carolina, filed under date of March |9, |973, through its Counsel, LeRoy Scott, Washington, North Carolina, wherein authority of the Commission is sought as follows:

|. To borrow $||,|06.72 from the First-Citizens Bank & Trust Company of Washington, N. C., and to evidence such indebtedness by the issuance of his 9.96% note; and

2. To execute and deliver to the First-Citizens Bank & Trust Company a Chattel Mortgage on Common Carrier Certificate No. C-|37 to secure payment of the loan.

Petitioner is a common carrier operating in intrastate commerce in this State under those operating rights described in Exhibit B to Common Carrier Certificate No. C-|37 issued in Docket No. T-|6|5 and Docket No. T-|6|5, Sub | and operating in interstate commerce under authority granted by the Interstate Commerce Commission in ICC MC-32083.

Petitioner represents that he has made arrangements to borrow from the First-Citizens Bank & Trust Company of Washington, North Carolina, the sum of $||,|06.72 with interest from date at 9.96%, which shall be payable to said bank in twenty-four (24) installments of $462.79 each; that said bank has agreed to take a lien on the above described Certificate No. C-|37 to secure said loan.

Petitioner further represents that the proceeds from the loan will be applied to repairing his vehicles and to the purchase of an additional truck which is needed in his business.

Petitioner further represents that in the event he should default on the payment of the said loan, that the said bank may sell Certificate No. C-|37 for cash, apply the proceeds to extinguishing the debt and interest and the balance, if any, to C. D. Elks.

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 transaction proposed herein is:

a. For some lawful object within the corporate purposes of the public utility,

b. Compatible with the public interest,

c. Necessary or appropriate for or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service, and

d. Reasonably necessary and appropriate for such purpose.

THEREFORE:

IT IS ORDERED, That C. D. Elks, d/b/a C. D. Elks Truck Line be, and is hereby, authorized, empowered and permitted under the terms and conditions set forth in the application:

1. To borrow $11,106.72 from the First-Citizens Bank & Trust Company of Washington, North Carolina and to evidence such indebtedness by the issuance of his 9.96% Note; and

2. To execute and deliver to the First-Citizens Bank & Trust Company a Chattel Mortgage on Common Carrier Certificate No. C-137 to secure payment of the loan.

IT IS FURTHER ORDERED, That the proceeds to be derived from the loan shall be devoted to the purposes set forth in the application.

IT IS FURTHER ORDERED, That the Petitioner's stipulation to "transfer and convey to First Citizens Bank & Trust Company Certificate No. C-137 . . ." be, and hereby is, and shall be, construed as meaning merely the "transfer" and "conveyance" of the Petitioner's copy of said Certificate to said bank incidental to the "pledge" of said Certificate under G.S. 62-111(a); by which said bank shall acquire under the Chattel Mortgage of said certificate, but said "transfer" and "conveyance" as used in said Chattel Mortgage and in this paragraph does not and shall not constitute a G.S. 62-111(a) conveyance or transfer of the certificate or the operating rights held pursuant to said certificate.

IT IS FURTHER ORDERED, That nothing in this order shall be construed as establishing in said bank the right to sell the certificate herein to any person unless that person shall have obtained approval to acquire said certificate under G.S. 62-111.

IT IS FURTHER ORDERED, That said Chattel Mortgage shall be registered in accordance with G. S. 25-9-302 (5), and that the following notation shall be made upon Exhibit B attached

to Common Carrier Certificate No. C-137 in the files of the Commission:

First Lien: $11,106.72 (Amount) Chattel Mtg. (Kind) _____ (Date)

First-Citizens National Bank & Trust Company
(Lienholder)

Washington, North Carolina
(Address of Lienholder)

_____
(Signature of Commission's Chief Clerk)

First Lien Released_____
(Date)

_____
(Lienholder)

_____
(Signature of Commission's Chief Clerk)

IT IS FURTHER ORDERED, That immediately upon final payment of the amount due First-Citizens Bank & Trust Company, C. D. Elks shall secure and forward to this Commission a receipt or conformed copy thereof, whereupon the Commission's Chief Clerk shall certify on the above described notation that the first lien has been released.

IT IS FURTHER ORDERED, That nothing herein shall be construed to imply any guarantee or obligation as to the payment of said note on the part of the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-22, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application for Change of Control of Graham County Railroad Company and Bear Creek Junction, Inc., from Existing Owners and Stockholders to Thomas R. Ebright and Associates, and for Certificate of Public Convenience and Necessity	) ORDER APPROVING) CHANGE OF CON-) TROL AND GRANT-) ING CERTIFICATE) OF PUBLIC CON-) VENIENCE AND) NECESSITY

HEARD: Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on May 25, 1973.

BEFORE: Chairman Marvin R. Wooten, Commissioners John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Applicants:

Murray C. Greason, Esq. and
John L. W. Garrou, Esq.
Womble, Carlyle, Sandridge & Rice
Attorneys at Law
P. O. Box 84, Winston-Salem, North Carolina 27102

For the Commission:

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

BY THE COMMISSION: On April 24, 1973, the joint applicants Bear Creek Junction, Inc., (hereinafter "Bear Creek") and Graham County Railroad Company (hereinafter "Graham RR") transferors, and Thomas R. Ebright and other members of an investment group, transferees, filed application for approval of change of control from existing owners and stockholders of Bear Creek and Graham RR, to Mr. Ebright and other members of an investment group and for issuance of a Certificate of Public Convenience and Necessity to the transferees.

The Commission by Order of May 2, 1973 set the joint application for public hearing and required the joint applicants to publish the Notice of Hearing attached to the Commission's Order.

This matter was called for hearing at the time and place specified in the Commission's Order of May 2, 1973.

Notice of Application was published in accordance with the Commission's Order in the Graham Star, a newspaper having general circulation in the area affected by the Application.

At the commencement of the hearing counsel for the joint applicants and Commission counsel stipulated that: (1) The joint applicants would comply with whatever minimum safety requirements might be established by the Commission to correct certain existing conditions relating to safety of the track and to comply with the Federal Railroad Administration's Track Safety Standards, (2) That the joint applicants were willing to receive approval, if the Commission so desired, of the change of control and issuance of the Certificate of Public Convenience and Necessity and operate on an interim basis until such time as the minimum requirements for safety standards are met, and (3) Should any complaint arise in connection with smokestack emissions with respect to the Shay Locomotive which the transferees propose to use in connection with the scenic railroad corporation, Bear Creek, the joint applicants would be willing to comply with North Carolina law, except that the joint applicants reserved the right to review the applicability of Chapter 113A-9 in such event.

Testimony was presented on behalf of the joint applicants by John Veach, Jr., President of the existing Bear Creek and Graham RR Corporations; Thomas Robert Ebright who testified on behalf of himself and other members of the investment group which proposes to consummate the change of ownership through stock transfers; Ralph Ranger, locomotive expert; James Smith Howell, Vice President and Executive Officer of the Robbinsville Branch of Wachovia Bank, and Arthur Davis, Traffic Manager of Burlington House Furniture, a division of Burlington Industries. The Commission Staff offered the testimony of Donald D. Coordes, Assistant Director of Traffic, who testified in connection with his inspection of the conditions of the track in a portion of the area in question and the report filed by him which was introduced into evidence. Additionally, Mr. Bruce Strickland, Financial Consultant, Office of Industrial and Tourist Resources of the North Carolina Department of Natural and Economics Resources presented a statement on behalf of that agency with respect to the application.

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

FINDINGS OF FACT

1. Graham County Railroad Company is a corporation created, organized and existing under the laws of the State of North Carolina and has operated as a public utility railroad company providing freight service for a distance of approximately 12 miles between Robbinsville, Graham County, North Carolina, and Topton, North Carolina, a junction point with the Southern Railway Company in Cherokee County.

2. Bear Creek Junction, Inc., is a corporation created, organized and existing under the laws of the State of North Carolina and has operated an approximate three-mile passenger excursion trip as a tourist attraction and scenic railroad utilizing certain property adjacent to the track of the Graham RR at Bear Creek station from said Bear Creek junction property to the Nantahala Gorge Lookout on the Graham County Railroad tracks. By Order of June 23, 1966 in Docket No. R-70, the Commission at that time held that no Certificate of Public Convenience and Necessity would be required for the Bear Creek scenic railroad operations which were operated by a separate corporation from Graham RR.

3. That because of deficits and unprofitable operations both Bear Creek Junction, Inc., and Graham County Railroad Company ceased operations in late 1970 and Graham RR obtained authorization from the Interstate Commerce Commission to abandon its rail freight operations September 16, 1970 in Finance Docket No. 26237, however, no application has been made to, or approved by, this Commission for abandonment of said operations.

4. Both Graham RR and Bear Creek are presently insolvent, having liabilities in excess of assets as reflected on the Pro Forma Financial Statements in this record.

5. The assets, including trackage and rolling stock of Bear Creek and Graham RR have fallen into disrepair because of nonuse and lack of maintenance and extensive expenditures will be necessary to bring the condition of said assets up to acceptable standards for safe and efficient operations. The transferees have entered into a proposed Lease-Purchase Agreement with the other joint applicants. The owners of virtually all of the shares of Graham RR have agreed to surrender their shares to the Trustee, the Merchants National Bank of Mobile, for the purpose of transferring said shares to the purchasers. The Trustee, being the sole shareholder of Bear Creek has agreed to collect the shares of Graham RR for the purpose of transferring said shares along with the assets associated with the operation of the Graham RR. The transferees have obligated themselves to institute and maintain freight service over the Graham County Railroad Company line within one year of the date of the sale of the Bear Creek Junction shares and assets and the lease of the Graham County Railroad Company assets and real property. The transferees will institute and maintain such freight service of the Graham RR and will operate both the Graham RR and Bear Creek scenic operations conjunctively as a single operation, with motive power, labor and other facilities being interchangeable to the greatest extent feasible.

6. Public Convenience and Necessity requires, or will require, restoration of freight service over the Graham RR line and such service will benefit the citizens of Graham County in that it will enable the products produced in

Graham County to reach markets more readily and with greater economic efficiency and will be an aid in attracting industry to Graham County and otherwise be beneficial to the economy of Graham County. The Lee's Carpet Plant in Robbinsville which was built and designed for rail service has been reactivated by Burlington House Furniture, a Division of Burlington Industries, Inc., and it is apparent that this factor alone will cause the proposed operation by the transferees to realize approximately $60,000 to $65,000 in gross annual revenues. Additionally, the lumber operations of Bemis Hardwoods Division of Whitewater, Inc., located in the area in question have been recently reopened. The operations of Bear Creek as a scenic railroad and its potential as a unique tourist attraction will be beneficial to the economy of Graham County.

7. The total consideration paid by the transferees as purchasers of Graham RR and Bear Creek is $270,000 and the various items of rolling stock, trackage and real property included in said purchase price are described in this record.

8. Mr. Thomas Robert Ebright, Mr. H. L. Clark, III, Dr. Albert Foltz, Mr. Louis Ulleian and Mr. Charles Fletcher are the principals in the investment group who are the transferees in this proceeding. While there are other persons involved, these persons will own controlling interest in the outstanding stock of Graham RR and Bear Creek. Mr. Ebright will have primary responsibility for operations and is in the process of moving to North Carolina to establish a permanent residence in North Carolina for such purpose. The educational background and business experience of Mr. Ebright, the details of which are of record in this proceeding, clearly indicate that he possesses more than adequate capability to assist the transferees in the operation of Graham RR and Bear Creek on a continuing basis. The financial data attached to the application and the financial information of record clearly indicates sufficient assets to afford the transferees a reasonably sound financial basis for the proposed freight and scenic rail operations. Accordingly, the Commission finds that the transferees are fit, willing and able to provide adequate and efficient rail freight and scenic rail passenger service.

9. Existing conditions of safety associated with the trackage in the area which is the subject of this proceeding are substantially inadequate and in many respects unsafe. The transferees have stipulated to certain minimum requirements in connection with track sections; Section A (Bear Creek to Nantahala Gorge); (the scenic rail passenger portion), Section B (Nantahala Gorge to Topton Junction), and Section C (Robbinsville to Bear Creek) which are set forth in the joint applicants' Exhibit "I" and set forth in Appendix "A" attached hereto, and further that the transferees will comply with the requirements of the Federal Railroad Administration. The Commission finds that

compliance with such requirements is necessary and essential prior to the commencement of the freight and scenic railroad operations.

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

CONCLUSIONS

The Commission concludes that the proposed change of control both with respect to Graham RR rail freight operations and the Bear Creek scenic rail operations is justified by public convenience and necessity. The Commission further concludes that inasmuch as the freight and scenic rail operations will be operated with motive power and labor and other facilities interchangeable between Graham RR and Bear Creek, a Certificate of Public Convenience and Necessity should be issued to the transferees with respect to both the freight and scenic rail operations.

The transferees, through the assistance of Mr. Ebright, who will have substantial responsibility for the operation and maintenance of both the freight and scenic rail operations are fit, willing and able to provide adequate and efficient rail freight and scenic passenger service on a continuing basis.

The Commission further concludes that compliance with the minimum requirements set forth herein pertaining to the safety of the track to be utilized in both the freight and scenic rail operations must be met prior to the commencement of either of such operations and accordingly is of the opinion that the transferees should be required to file a written verified statement regarding compliance with such minimum requirements as well as a written report by the Federal Railroad Administration indicating compliance with the requirements of that agency.

IT IS, THEREFORE, ORDERED:

1. That the change of control, and the manner and form thereof, of Bear Creek Junction, Inc., and Graham County Railroad Company as proposed and set forth in the application be, and the same hereby is, approved.

2. That a Certificate of Public Convenience and necessity be, and the same hereby is, issued to both Graham County Railroad Company, and Bear Creek Junction, Inc.

3. That this Order shall constitute said Certificate of Public Convenience and Necessity.

4. That compliance both with the minimum requirements contained in Appendix "A" attached hereto and the minimum requirements set forth by the Federal Railroad Administration (Track Safety Standards originally published

in the Federal Register, October 20, 1971 as amended) shall be met by the transferees prior to the commencement of either the rail freight or scenic rail passenger operations.

5. That the transferees shall not commence either the scenic rail passenger service or the rail freight service until there has been filed with the Commission a written verified statement (a) indicating that compliance with the minimum requirements attached hereto as Appendix "A" have been met and (b) the minimum requirements of the Federal Railroad Administration have been met. In the event the transferees shall meet such requirements earlier with respect to either the freight or rail scenic passenger operations, the transferees may commence operations on that portion of the operation for which the minimum requirements have been met and the required written statements have been filed with the Commission.

6. That the transferees shall not begin operation of any locomotive in either the scenic rail passenger service or the rail freight service until written approval of said locomotives by the Federal Railroad Administration has been filed with the Commission.

7. That the transferees prior to commencement of operations shall file rates and tariffs setting forth rates and charges to cover the proposed rail freight and rail scenic operations.

ISSUED BY ORDER OF THE COMMISSION.

This 6th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. R-22, SUB 3
GRAHAM COUNTY RAILROAD COMPANY AND BEAR CREEK JUNCTION, INC.

MINIMUM REQUIREMENTS FOR WHICH COMPLIANCE IS NECESSARY PRIOR TO COMMENCEMENT OF OPERATIONS.

1. Section A (Bear Creek to Nantahala Gorge)

Length: Two miles

Requirements:

1) Ditch both sides of ROW to restore drainage
2) Install 1,500 Relay Ties and Plates
3) Repair all Joints
4) Line & Surface All Rail
5) Re-Ballast ROW

2. Section B (Nantahala Gorge to Topton Junction)

Length: One mile

Requirements:

1) Ditch both sides of ROW to restore drainage
2) Install 1,500 Relay Ties & Plates
3) Install Replacement 80# Rail over Entire Section
4) Line & Surface All Rail
5) Re-Ballast ROW

3. Section C (Robbinsville to Bear Creek)

Length: Nine miles

Requirements:

1) Ditch both sides of ROW to restore drainage
2) Re-Bottom Four Sections of Track covering 1/2 miles
3) Install 7,000 Relay Ties & Plates
4) Install Replacement 60# Rail Where Necessary
5) Repair all joints
6) Line & Surface All Rail
7) Re-Ballast ROW

DOCKET NO. R-71, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Seaboard Coast Line Railroad Company - Application For Authority to Eliminate One of Two Mobile Agents Now Operating Under the Mobile Agency Concept in the Wilson, North Carolina, Area	)) ORDER) APPROVING) APPLICATION)

HEARD IN: District Courtroom, Wilson County Courthouse, Wilson, North Carolina, on June 6, 1973, at 10:00 A.M.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Applicant:

Charles M. Rosenberger
Assistant General Attorney
Seaboard Coast Line Railroad Company
3600 West Broad Street
Richmond, Virginia 23230

William R. Rand
Lucas, Rand, Rose, Meyers, Jones & Orcutt
Attorneys at Law
P. O. Box 2008, Wilson, North Carolina 27893

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

No Protestants

BY THE COMMISSION: On April 24, 1973, Seaboard Coast Line Railroad Company (Applicant) filed with the Commission an application seeking authority to eliminate one of the two mobile agents presently operating under the mobile agency concept from the base station at Wilson, North Carolina. The Commission being of the opinion that the interest of the public was involved, assigned the matter for hearing on June 6, 1973, by its Order in this Docket dated May 4, 1973. By the same Order, Applicant was required to give notice to the public of the time, place and purpose of the hearing by having an appropriate notice thereof published in newspapers having general circulation in the area served by the Wilson Mobile Agency Concept approximately ten (10) days prior to June 6, 1973.

The Commission did not receive any protests as a result of the reguired notice being published.

Hearing in this matter was held at the captioned time and place with Applicant being present and represented by counsel. There were no protestants. The Applicant presented the testimony of Mr. J. H. Ingoldsby, Superintendent Station Operations; Mr. Marvin Webb, Kaiser Agric. Chemical; Mr. Ted Bissett, F. D. Bissett & Sons, and Honorable Gilbert Whitley, Mayor, Town of Kenly.

Applicant offered Affidavit of Publication by Spring Hope Enterprise, Spring Hope, North Carolina; The Wilson Daily Times, Wilson, North Carolina; Evening & Sunday Telegram, Rocky Mount, North Carolina, and The Nashville Graphic, Nashville, North Carolina.

Mr. Ingoldsby testified and presented exhibits as to the mobile agency concept's applicability and to the proposed area of service and to the technical details of the mobile agency concept. He further testified that while his company offered service from the base station at Wilson thirteen (13) hours per day, 7:00 A.M. to 8:00 P.M., six days per week, the base station at Wilson was open twenty-four (24) hours per day and that its patrons herein involved could actually call in and receive service therefrom if they desired; that the mobile agent would normally work eight

hours per day, excluding his lunch hour, but would be subject to call and work during the thirteen (13) hours per day, 7:00 A.M. to 8:00 P.M., if the need arose, six days per week; that toll-free telephone service, the Telex tracing service and the operation at the base station will remain the same, and that public need and demand does not require more than one mobile agent to perform the services demanded in the Wilson Mobile Agency Concept.

The testimony of Messrs. Marvin Webb and Ted Bissett and Honorable Gilbert Whitley was in support of the proposed action of Applicant if it will continue to provide the level of service it is now providing.

All testimony and exhibits of all witnesses is a matter of record in this proceeding.

Having considered all evidence presented and the 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 the State of North Carolina as a franchised common carrier by rail; 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 in this matter, over which this Commission has appropriate jurisdiction.

(2) That Applicant is hereby requesting authority to eliminate one of the two mobile agents presently operating under the mobile agency concept from the base station at Wilson, North Carolina.

(3) That Applicant will continue to provide the same level of service with the one mobile agent that it is presently providing with the two mobile agents currently operating under the Mobile Agency Concept from the base station at Wilson, North Carolina.

(4) That the mobile agency concept will offer service through the base station at Wilson thirteen (13) hours per day - 7:00 A.M. to 8:00 P.M., six days per week.

CONCLUSIONS

The Commission concludes that Seaboard Coast Line Railroad Company 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 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-|3|(b).

The Commission further concludes that approval of the elimination of one of the mobile agents of the "Mobile Agency Concept" as applied for should be granted, subject to the supervision of this Commission, but Applicant shall continue to provide the same level of service with the one mobile agent it is presently providing with the two mobile agents under this "Mobile Agency Concept" from the base station at Wilson. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(|) That the Applicant be, and it is hereby, granted authority to eliminate one of the two mobile agents presently operating under the "Mobile Agency Concept" from the base station at Wilson, North Carolina, effective within thirty (30) days after the effective date of this Order.

(2) That said "Mobile Agency" operation shall be in accord with Applicant's proposal and as above described and shall be subject to supervision, inspection and investigation by the Commission and its staff.

BY ORDER OF THE COMMISSION.

This the |2th day of June, |973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Seaboard Coast Line Railroad Company For Authority to Implement the Mobile Agency Concept in the Fayetteville, North Carolina, Area, on A Permanent Basis and to Close or Otherwise Alter the Station Buildings at Dunn, Benson and Four Oaks, North Carolina	))))))
	RECOMMENDED ORDER APPROVING APPLICATION

HEARD IN: Courtroom, Municipal Building, Dunn, North Carolina, on March 8, 1973 at 9:30 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

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For the Commission's Staff:

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

No Protestants

WOOTEN, HEARING COMMISSIONER: On October 27, 1972, Seaboard Coast Line Railroad Company (Applicant) filed with the Commission an application seeking authority to implement a Mobile Agency Concept in the Fayetteville, North Carolina, area, on a permanent basis, and to close, dismantle, lease, occupy or otherwise alter as good management dictates the physical station buildings at Dunn, Benson and Four Oaks, North Carolina. The Commission, being of the opinion that the interest of the public was involved, assigned the matter for hearing on January 11, 1973, by its Order in this Docket dated November 6, 1972, subsequently to February 15, 1973, thence to March 8, 1973, by Orders dated January 12, 1973, and January 25, 1973, respectively. The first continuance

of the hearing was due to adverse weather conditions, and the second continuance was at the request of Counsel for Applicant. By the Order dated November 6, 1972, Applicant was required to give notice to the public of the time, place and purpose of the hearing by having an appropriate notice thereof published in newspapers having general circulation in the area in which it proposed to provide mobile agency service fifteen (15) days prior to date of hearing.

The required notice of publication was made and the Commission did not receive any protest to Applicant's proposal.

Hearing in the matter was held at the captioned time and place with Applicant being present and represented by counsel. No protestants appeared at the hearing in opposition to Applicant's proposal. The Applicant presented the testimony of Mr. J. H. Ingoldsby, Superintendent Station Operations, and several shipper witnesses, to wit: Mr. Earl C. Page, Jr., Purdie Brothers Wholesale, Dunn; Ms. Mary Tart Fowler, Tart & Tart, Inc., Wade; Mr. Rodney Barwick, Barwick Farm Supplies, Roseboro; Mr. Curtis Adams, Royster Company Warehouse, Roseboro; Mr. Gordon Love, formerly with Hanes Pulpwood Yard, Fayetteville; and Mr. Robert Faison Butler, Roseboro Borne Clay Products Company, Roseboro. Also Honorable William P. Elmore, Mayor, City of Dunn, Dunn, North Carolina, offered testimony.

Applicant offered Affidavit of Publication by The Benson Review, Benson, North Carolina; The Smithfield Herald, Smithfield, North Carolina; and the Dunn Dispatch, Dunn, North Carolina, which reflected publication was made with respect to the hearing in this matter which was held on March 8, 1973, also.

Mr. J. H. Ingoldsby offered testimony as to the Mobile Agency Concept generally with regard to its applicability to the proposed area of service and to his company's experience with the Mobile Agency Concept in this State and other states. Mr. Ingoldsby further testified that the base station, Fayetteville, would be open thirteen (13) hours per day, six days per week, with the customers served by the mobile agent being able to call Fayetteville, the base station, toll-free by telephone; that the agents involved in the Mobile Agency Concept prepare approximately 1,500 waybills per year; that the Mobile Agent will be required to drive approximately 80 miles per day; that the agent will have ample time to handle the necessary documents and afford the public in the affected territory the agency services it requires, and that the station buildings at Dunn, Benson and Four Oaks will be abandoned and completely dismantled and removed from his company's line.

Each of the shipper witnesses offered testimony in support of the application.

Honorable William P. Elmore, Mayor, City of Dunn, Dunn, North Carolina, appeared as Mayor and on behalf of the Dunn City Council in support of Applicant's proposal. He further stated that. . . "we would welcome the removal or improvement of the building at the present depot, and also, the removal of the buildings between Cumberland Street and Divine Street known to us as the Fertilizer Warehouses."

The entire testimony of all of the witnesses is a matter of record in this proceeding.

Having considered all of the evidence presented and the record as a whole, the Hearing Commissioner 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 jurisdiction.

(2) That Applicant is hereby requesting permanent authority to implement a mobile agency service in the Fayetteville, North Carolina, area, to operate from a base station at Fayetteville and to serve the following agency and nonagency stations:

AGENCY STATIONS	NONAGENCY STATIONS
Dunn	Wade
Benson	Godwin
Four Oaks	Purdie
	Mingo

(3) That Applicant seeks to abandon, dismantle and remove the station buildings at Dunn, Benson and Four Oaks from its line.

(4) That in addition to the above, the proposed Mobile Agency Concept involves the following:

(a) 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 the involved area may phone the agency without cost.

(b) The mobile agent will use a two-way radio equipped mobile van containing necessary agency supplies.

(c) The mobile agent will be expected to perform the usual duties of a railroad agent, including checking of tracks at each 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 per week; whereas the present stations are open only five days per week.

(f) There will be a reduction of agents, but these agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

(5) The proposed implementation of the Mobile Agency Concept in the Fayetteville area provides that the mobile agent would operate from Fayetteville to Dunn, thence to Benson, thence to Four Oaks and return to the base station, with service being provided to the points, Mingo, Purdie, Godwin and Wade.

(6) Applicant proposes to close the fixed agency stations at the various locations and to substitute therefor a mobile agency station, and to abandon, dismantle and remove the involved station buildings from its line.

(7) That the implementation of the mobile agency service will result in substantially the same or improved service with respect to: (a) there will be no reduction in freight train service at any of the involved stations; (b) the agent will call on customers at the customers' place of business; (c) four stations previously classified as nonagency stations will be upgraded to agency stations and will receive agency service; (d) stations now receiving five days per week agency service will receive six days per week agency service; (e) toll-free telephone service will be available to customers; and (f) closer coordination between local freight train service and the agent for the benefit of the shipping and receiving public.

(8) 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 Company 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 to 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-|3|(b).

G.S. 62-||8 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. We, therefore, conclude that this is not an "abandonment or reduction in service" as is contemplated by G.S. 62-||8, 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 Commission further concludes that approval for the implementation of the "Mobile Agency Concept" as applied for should be granted, subject to the supervision of this Commission; that the present physical station buildings may be abandoned, dismantled and removed; that as long as Applicant retains ownership of the present station buildings it should either maintain them in a reasonable state of repair or proceed with dismantlement and removal thereof; that Applicant should advise the Commission of its actions in connection with the various involved station buildings, and that the number of mobile agencies, telephone lines, and other facilities should keep pace with the needs and demands for service.

G.S. 62-32(b) provides: "The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish." G.S. 62-42(a) provides: "Whenever the Commission, . . . finds . . ., (3) That . . . changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, . . . ought reasonably to be made . . . the Commission shall enter and serve an order directing that such . . . changes shall be made . . ." G.S. 62-30 provides: "The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties." We conclude that the above statutes empower this Commission to approve the "Mobile Agency Concept" and to supervise its operation with the view to ordering such changes, additions and/or deletions as may be indicated by circumstances from time to time.

G.S. 62-245 deals with the railroads' duty to receive and forward freight tendered and provides a penalty for the unlawful refusal to receive and forward such freight. It is the conclusion of the Commission that such duty to receive and forward tendered freight remains unaltered by the approval and implementation of the "Mobile Agency Concept".

The Commission finally concludes that the Mobile Agency Concept will be expected to provide all agency services heretofore provided by the three fixed agents as well as providing comparable service for the four nonagency stations. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Applicant be, and it is, hereby granted 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 as long as Applicant retains ownership of the station buildings involved in this Mobile Agency Concept, it should either maintain them in a reasonable state of repair or dismantle and remove them.

(3) 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 21st day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Seaboard Coast Line Railroad Company - Application For Authority to Implement the Mobile Agency Concept in the Chadbourn, North Carolina, Area, on a Permanent Basis and to Dispose of the Station Buildings at Bladenboro, Clarkton, Whiteville, Hallsboro, Lake Waccamaw, Tabor City and Fair Bluff, North Carolina	RECOMMENDED ORDER GRANTING APPLICATION

HEARD IN: Grand Jury Room, Columbus County Courthouse, Courthouse Square, Whiteville, North Carolina, on March 8, 1973, at 2:00 P.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

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For the Protestant:

Edward L. Williamson
Williamson & Walton
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136 Washington Street
Whiteville, North Carolina 28472
For: Whiteville Plywood Company
Waccamaw Veneer Company

For the Commission's Staff:

William E. Anderson
Assistant Commission Attorney
Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: On November 24, 1972, Seaboard Coast Line Railroad Company (Applicant) filed with the Commission an application seeking authority to implement a Mobile Agency Concept in the Chadbourn, North Carolina, area, on a permanent basis, and to dispose of the station buildings at Bladenboro, Clarkton, Whiteville, Hallsboro, Lake Waccamaw, Tabor City and Fair Bluff, North Carolina, as good management dictates. The Commission, being of the opinion that the interest of the public was involved, assigned the matter for hearing on January 11, 1973, by its Order in this Docket dated December 6, 1972, subsequently to February 15, 1973, thence to March 8, 1973, by Orders dated January 12, 1973 and January 24, 1973, respectively.

The first continuance of the hearing was due to adverse weather conditions, and the second continuance was at the request of Counsel for Applicant. By the Order dated December 6, 1972, Applicant was required to give notice to the public of the time, place and purpose of the hearing by having an appropriate notice thereof published in newspapers having general circulation in the area in which it proposed to provide mobile agency service fifteen (15) days prior to date of hearing.

The required notice of publication was made and the Commission did receive letters of opposition to Applicant's proposal, from Mr. Chesley M. Sanford, Associate-Andrews Mortuary, Wilmington, North Carolina; Mr. Jimmy Howard, Hampstead, North Carolina; Mr. Willie Ray Howard, Jr., Wilmington, North Carolina; Mr. Darryl Edens, Hampstead, North Carolina; Mr. David Musser, Wilmington, North Carolina; Mrs. Hattie L. Musser, Wilmington, North Carolina; Miss Betty Jo Fryar, Surf City, North Carolina; Mrs. Martha H. Ames, Wilmington, North Carolina; Mr. Thomas R. Ames, Jr., Wrightsville Beach, North Carolina; Ms. Christine B. Fales, Wrightsville Beach, North Carolina, and Miss S.

Frances Thompson, Hampstead, North Carolina, neither of which ship or receive rail freight shipments in North Carolina. The Commission also received a letter from Mr. William L. Hennessee, Jr., General Manager, Charles F. Cates & Sons, Inc., Faison, North Carolina, a receiver of rail freight shipments, supporting Applicant's proposal.

Hearing in the matter was held at the captioned time and place with Applicant being present and represented by counsel. Protestants Whiteville Plywood, Inc., and Waccamaw Veneer Company, were present and represented by counsel. Protestant David Musser was present and represented himself.

The Applicant presented the testimony of Mr. J. H. Ingoldsby, Superintendent Station Operations and several shipper witnesses, to wit: Mr. Woodard Dale, Mount Olive Pickle Company, Mount Olive, North Carolina; Mr. Morris Herring, Boling Chair Company, Mount Olive, North Carolina; Mr. Robert R. Richardson, Federal Paperboard Corporation, Inc., Bolton, North Carolina, and Mr. Locke Byrd, Georgia Pacific Corporation, Whiteville, North Carolina. The protestant presented the testimony of Mr. John Maultsby, Waccamaw Veneer Company, Whiteville, North Carolina, and Mr. Dan Maultsby, Whiteville Plywood Company, Whiteville, North Carolina. Also, Mr. David Musser, Protestant, offered testimony in opposition to the proposal by Applicant.

Applicant offered Affidavit of Publication by the Star-News News-papers, Inc., Wilmington, North Carolina; The Robesonian, Lumberton, North Carolina; The Southeastern Times, Clarkton, North Carolina; the Columbus County News, Chadbourn, North Carolina; the Tabor City Tribune, Tabor City, North Carolina, and The News Reporter, Whiteville, North Carolina.

Mr. J. H. Ingoldsby offered testimony as to the Mobile Agency Concept generally with regard to its applicability to the proposed area of service and to his company's experience with the Mobile Agency Concept in this State and other states. Mr. Ingoldsby further testified that the base station, Chadbourn, would be open eleven (11) hours per day, Monday through Friday, and nine (9) hours per day on Saturday, with customers served by the mobile agent being able to call Chadbourn, the base station, toll-free by telephone; that the Mobile Agent would operate from Chadbourn to Fair Bluff, thence to Bladenboro; thence to Clarkton, Lake Waccamaw, Hallsboro, Whiteville, Tabor City; thence return to Chadbourn with service being provided to the points of Butters, Abbottsburg, Rosindale, Bolton, Wananish, Clarendon, Cerro Gordo and Jones; that the Mobile Agent would be required to drive approximately 129 miles per day; that the agents involved in the Mobile Agency Concept prepare approximately 5,975 waybills per year; that the agent will have ample time to handle the necessary documents and afford the public in the affected territory the agency services it requires; that the station buildings at Tabor City, Lake Waccamaw, Hallsboro and Clarkton will be

abandoned and completely dismantled and removed from his company's line; that the station buildings at Whiteville and Fair Bluff are presently under lease and will continue to be leased, and that the station building at Bladenboro will be leased to the Town of Bladenboro.

Each of the shipper witnesses offered testimony in support of Applicant's proposal.

Counsel for Protestants, Whiteville Plywood Company and Waccamaw Veneer Company, Mr. Edward L. Williamson, stated that there are certain characteristics and services which they feel the fixed agent is rendering that the mobile agent will not be able to render, and that from the records it appears that Whiteville and Tabor City have about the same number of customers.

Mr. John Maultsby, Protestant, offered testimony tending to show that the Mobile Agency Concept would not work in the Whiteville area.

Mr. Dan Maultsby, Protestant, offered testimony tending to show that the local agent can and will render a much better service in the Whiteville area than the Mobile Agent, relative to getting empty cars and particularly empty cars that are equipped with proper materials for shipment, tracing of cars, placing of cars, and the handling of waybills.

Mr. David Lee Musser, Protestant, offered testimony tending to show that his primary interest in this proceeding is the extent or effect that the abandoning or dismantling of the involved agency station buildings might have on the deterrent or improvement of rail passenger service in the future.

The entire testimony of all of the witnesses is a matter of record in this proceeding.

Having considered all of the evidence presented and the record as a whole, the Hearing Commissioner 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 jurisdiction.

(2) That Applicant is hereby requesting permanent authority to implement a mobile agency service in the

Chadbourn, North Carolina, area, to operate from a base station at Chadbourn and to serve the following agency and nonagency stations:

AGENCY STATIONS	NONAGENCY STATIONS	
Bladenboro	Bolton	Wananish
Clarkton	Butters	Clarendon
Whiteville	Abbottsburg	Cerro Gordo
*Hallsboro-Lake Waccamaw	Rosindale	Jones
Tabor City		
Fair Bluff		

* These stations are presently dualized.

(3) That Applicant seeks to abandon, dismantle and remove the station buildings at Tabor City, Lake Waccamaw, Hallsboro and Clarkton from its line; that the station buildings at Whiteville and Fair Bluff are presently leased and will continue to be leased, and that the station building at Bladenboro will be leased to the Town of Bladenboro.

(4) That in addition to the above, the proposed Mobile Agency Concept involves the following:

(a) A central office will be established at Chadbourn and said office will be equipped with a telephonic service over which all of its customers in the involved area may phone the agency without cost.

(b) The mobile agent will use a two-way radio equipped mobile van containing necessary agency supplies.

(c) The mobile agent will be expected to perform the usual duties of a railroad agent, including checking of tracks at each 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 per week; whereas the present stations are open only five days per week.

(f) There will be a reduction of agents, but these agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

(5) The proposed implementation of the Mobile Agency Concept in the Chadbourn area provides that the mobile agent would operate from Chadbourn to Fair Bluff, thence to Bladenboro; thence to Clarkton, Lake Waccamaw, Hallsboro, Whiteville, Tabor City; thence return to Chadbourn, with service being provided to the points Butters, Abbottsburg, Rosindale, Bolton, Wananish, Clarendon, Cerro Gordo and Jones.

(6) Applicant proposes to close the fixed agency stations at the various locations and to substitute therefor a mobile agency station, and to abandon, dismantle and remove certain of the involved station buildings from its line and to lease certain of the involved station buildings as hereinbefore mentioned.

(7) That the implementation of the mobile agency service will result in substantially the same or improved service with respect to: (a) there will be no reduction in freight train service at any of the involved stations; (b) the agent will call on customers at the customers' places of business; (c) eight stations previously classified as nonagency stations will be upgraded to agency stations and will receive agency service; (d) stations now receiving five days per week agency service will receive six days per week agency service; (e) toll-free telephone service will be available to customers; and (f) closer coordination between local freight train service and the agent for the benefit of the shipping and receiving public.

(8) 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, except that the Whiteville and Tabor City operations shall be for a six-month trial period.

CONCLUSIONS

The Commission concludes that the Seaboard Coast Line Railroad Company 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 to 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-|3|(b).

G.S. 62-||8 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. We, therefore, conclude that this is not an "abandonment or reduction in service" as is contemplated by G.S. 62-||8, 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 subject to the exception as noted 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 Commission further concludes that approval for the implementation of the "Mobile Agency Concept" as applied for should be granted, subject to the exception as noted and subject to the supervision of this Commission; that the present physical station buildings may be abandoned, dismantled and removed except as noted above; that as long as Applicant retains ownership of the present station buildings it should either maintain them in a reasonable state of repair or proceed with dismantlement and removal thereof except as noted above; that Applicant should advise the Commission of its actions in connection with the various involved station buildings, 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" with the Whiteville and Tabor City portion thereof being on a six-month trial period in lieu of on a permanent basis, 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, including the exception as noted above, and implementation of the "Mobile Agency Concept".

The Commission finally concludes that the Mobile Agency Concept will be expected to provide all agency services heretofore provided by the seven fixed agents as well as providing comparable service for the eight nonagency stations. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Applicant be, and it is, hereby granted 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 the Mobile Agency Concept and Plan as approved herein insofar as it relates to the stations at Whiteville and Tabor City is for a six-month trial period in lieu of on a permanent basis, and the station building at Tabor City may be closed but not dismantled and removed unless otherwise authorized by the Commission.

(3) That as long as Applicant retains ownership of the station buildings involved in this Mobile Agency Concept, it should either maintain them in a reasonable state of repair or dismantle and remove them, except as otherwise provided herein.

(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 2nd day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 195

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company--Application for Authority to Implement Mobile Agency Service in Bryson City, North Carolina, and to serve Andrews, Marble, Murphy, Almond, Hewitt, Nantahala, Topton, Tomotla, and Regal, North Carolina	)	RECOMMENDED ORDER APPROVING APPLICATION

HEARD IN: Swain County Courthouse, Bryson City, North Carolina, on February 13, 1973

BEFORE: John W. McDevitt, Hearing Commissioner

APPEARANCES:

For the Applicant:

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C. Clark Crampton
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For the Commission Staff:

Edward B. Hipp
Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

No Protestants.

McDEVITT, COMMISSIONER. On November 17, 1972, (and amended on November 29, 1972), Southern Railway Company

(Applicant) filed application for authority to implement mobile agency service in Bryson City, North Carolina, to serve Andrews, Marble, Murphy, Almond, Hewitt, Nantahala, Topton, Tomotla, and Regal, North Carolina. Public hearing was scheduled and held as captioned February 13, 1973, by order issued December 6, 1972, which required publication of proper public notice. No protests were filed and no one appeared at the hearing in opposition to the proposal.

Applicant presented testimony of Mr. T. H. Noles, Senior Coordinator of Stations and Terminals; Mr. R. A. Robb, Commerce Statistician; Mr. Marshall S. Lynch, Communication and Signal Traffic Engineer, and Mr. N. B. Wittrock, Labor Relations Officer.

Mr. T. H. Noles testified that the Company intends to modify and improve service at the agency and non-agency stations, which will be closed and dismantled, by providing a mobile agent on a five-day per week basis to traverse the highway route daily between the base station, Bryson City, and all other stations; that the mobile agent will, in person or by telephone, call on each customer and provide all services heretofore provided by the agency station and agent; that the mobile agent will be operating a vehicle equipped with two-way mobile radio by which he will maintain communications with Bryson City and the train serving the area; that customers will have toll-free telephone access to the base agency station in Bryson City to facilitate communication between the mobile agent and customers; that the Company is successfully operating twenty-eight similar services in other locations; that the Company will effect substantial savings by use of the mobile agent; that Andrews, Marble, and Murphy will appear in tariffs as open stations with a notation they are served by mobile agent based at Bryson City, North Carolina; that displaced personnel are assured other positions within the system; that the workload can be readily handled by the mobile agent; that for all stations the total number of inbound and outbound shipments per month averaged 311, or approximately fifteen shipments per day, based on a five-day week; that the mobile agent will personally call on all customers at each point, sign bills of lading, check yards and sidetracks, make damage inspections, prepare switch lists, notify customers of freight en route, and handle any other service now performed by a resident agent; that the station buildings at Andrews, Marble, and Murphy are in bad need of repair and that the Company plans to dismantle and remove them upon approval of the Commission.

Mr. R. A. Robb testified that the actual cost of operations of the Andrews, Marble, and Murphy, North Carolina, agencies was $36,953 for the twelve months ending October 31, 1972; that estimated annual cost to operate the mobile agency route is $17, 979; that estimated savings per year amount to $18,974.

Mr. Marshall S. Lynch gave testimony about the handling of communications in the mobile agency service. He testified that the mobile agent would call the base station by phone from Andrews, Marble, and Murphy, and from other points along the way, when necessary, to assure constant communications between the mobile agent and the base agency station at Bryson City; that the mobile agent will contact the local freight train by two-way radio to receive and give information useful in placing and switching cars.

Mr. N. B. Wittrock gave testimony tending to show that employees who may be displaced have sufficient seniority to assure other employment within the system.

Considering testimony and exhibits of all witnesses and the record in this proceeding, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That Applicant, Southern Railway Company, is a corporation authorized to operate in the State of North Carolina as a franchised common carrier by rail, in both interstate and intrastate commerce; that with regard to intrastate operations, Applicant is subject to the jurisdiction of and regulation by the North Carolina Utilities Commission.

2. That Applicant is requesting permanent authority to implement mobile agency service from a base station at Bryson City, North Carolina, to serve the following agency and non-agency stations:

Agency Stations	Non-Agency Stations	
Andrews	Almond	Topton
Marble	Hewitt	Tomotla
Murphy	Nantahala	Regal

3. That toll-free telephone service will connect the Bryson City agency station and all customer locations throughout the areas served by the mobile agent; that full agency service will be provided by the mobile agent; that the mobile agent will visit the place of business of each customer to perform agency services; that two-way mobile radio service will be maintained between the mobile agent, the Bryson City agency station and the local freight train; that the mobile agency service will operate five days per week; that displaced employees have sufficient seniority to assure other employment.

4. That the proposed mobile agency service provides that the mobile agent will operate from the base station of Bryson City to Andrews, Marble, and Murphy and return to Bryson City serving Almond, Hewitt, Nantahala, Topton, Tomotla, and Regal, en route.

5. That Applicant contemplates closing, dismantling, and removing the present station buildings at Andrews, Marble, and Murphy.

6. That implementation of the mobile agency service will result in the same or improved service; there will be no reduction in freight train service at any involved station; the agent will call on customers at the customers' places of business; six stations, previously classified as non-agency stations, will be upgraded to agency stations and will receive agency service; all stations will continue to receive agency service five days per week; toll-free telephone service will be available to customers; and there will be closer coordination between the agent and the shippers and receivers of freight.

7. That the proposed changes in the present method of operation and in existing plant, equipment, apparatus, facilities, and other physical property, are reasonable and should be made.

8. 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 Hearing Commissioner concludes that this is not an "abandonment or reduction in service" as is contemplated by G.S. 62-118, and that said statute is not determinative; that any inconvenience brought about by the operation of the mobile agency service will be minimal in comparison to the savings to the railroad and the improvement and extension of service; that the operation of the mobile agency service is in the public interest and implementation should be allowed; and that the station buildings at Andrews, Marble, and Murphy, should be closed, dismantled, and removed.

IT IS, THEREFORE, ORDERED

1. That the Applicant be, and is hereby, granted approval and authority to implement mobile agency service in Bryson City, North Carolina, to serve Andrews, Marble, Murphy, Almond, Hewitt, Nantahala, Topton, Tomotla, and Regal, North Carolina, within thirty days after the effective date of this order.

2. That Applicant notify the Commission the date it begins operation of the mobile agency service and the date it dismantles and removes the station buildings.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 196

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company - Application, as Amended, For Authority to Implement the Mobile Agency Concept in the Burlington, North Carolina, Area, and to Use the Station Buildings at Graham, Haw River, Mebane, Hillsborough and Carrboro, as the Railroad Deems Advisable.	) RECOMMENDED ORDER APPROVING APPLICATION AS AMENDED

HEARD IN: Superior Courtroom, Alamance County Courthouse, Graham, North Carolina, on February 14, 1973, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

W. T. Joyner, Jr.
Joyner and Howison
Attorneys at Law
900 Wachovia Bank Building
Raleigh, North Carolina 27602

G. Clark Crampton
Joyner and Howison
Attorneys at Law
900 Wachovia Bank Building
Raleigh, North Carolina 27602

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building
One West Morgan Street
Raleigh, North Carolina

No Protestants.

WOOTEN, HEARING COMMISSIONER: On November 24, 1972, as amended on November 29, 1972, Southern Railway Company (Applicant) filed with the Commission an application seeking

authority to implement a Mobile Agency Concept in the Burlington, North Carolina, area, and to use the station buildings at Graham, Haw River, Mebane, Hillsborough and Carrboro as it might deem advisable. The Commission, being of the opinion that the interest of the public was involved, assigned the matter for hearing on February 14, 1973, by its Order in this docket dated December 7, 1972. By the same Order, Applicant was required to give notice to the public of the time, place and purpose of the hearing by having an appropriate notice thereof published in newspapers having general circulation in the area in which it proposed to provide mobile agency service approximately fifteen (15) days prior to the date of hearing.

The required notice of publication was made and the Commission received letters of protest from Mr. Jim Grizzle, Grizzle Woodyard, Mebane, North Carolina 27302; Mr. R. E. Ellington, Swift Agricultural Chemical Corp., Graham, North Carolina 27253; and Mr. Gurney Pickard, 130 Cheek Lane, Graham, North Carolina.

Hearing in this matter was held at the captioned time and place with Applicant being present and represented by counsel. No protestants appeared at the hearing in opposition to Applicant's proposal. The Applicant presented the testimony of Mr. T. H. Noles, Senior Coordinator of Stations and Terminals; Mr. R. A. Robb, Commerce Statistician; Mr. C. T. Melton, Train Master; Mr. Marshall S. Lynch, Communication and Signal Traffic Engineer and Mr. N. B. Wittrock, Labor Relations Officer.

Applicant offered Affidavit of Publication by The Daily Times-News, Burlington, North Carolina; Greensboro Daily News, Greensboro, North Carolina; and the Durham Morning Herald, Durham, North Carolina.

Mr. T. H. Noles offered testimony as to the Mobile Agency concept generally with regard to its applicability to the proposed area of service and to his company's experience with the Mobile Agency Concept in this State and other states. Mr. Noles further testified that the average per month total transactions at all of the stations on the proposed route, including the base station, were 558 or 22 per day based on six days per week, and that a transaction was considered either one inbound or one outbound revenue car.

Mr. R. A. Robb offered testimony tending to show that the present actual annual cost of operations of the Graham, Haw River, Mebane, Hillsborough and Carrboro, North Carolina, agencies were $62,304, with estimated annual cost to operate the Mobile Agency Route to be $19,671, producing estimated savings per year in the amount of $42,633.

Mr. C. T. Melton offered testimony as to the operation of the trains, the condition and proposed disposition of the involved station buildings.

Mr. Marshall S. Lynch offered testimony generally relative to communications concerning the Mobile Agency Concept.

Mr. N. B. Wittrock offered testimony generally concerning jobs of rail employees involved in the proposed Mobile Agency Concept.

A stipulation by counsel was entered concerning the maintenance of Applicant's station buildings involved in this proposed mobile agency.

The entire testimony of all of the witnesses is a matter of record in this proceeding.

Having considered all of the evidence presented and the record as a whole, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant, Southern Railway 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 jurisdiction.

2. That Applicant is hereby requesting permanent authority to implement a mobile agency service in the Burlington, North Carolina, area, to operate from a base station at Burlington and to serve the following agency and nonagency stations:

AGENCY STATIONS	NONAGENCY STATIONS
Graham	Miles
Haw River	Efland
Mebane	Oconeechee
Hillsborough	
Carrboro	

3. That Applicant seeks to use the station buildings at Graham, Haw River, Mebane, Hillsborough and Carrboro as it deems advisable.

4. That in addition to the above, the proposed Mobile Agency Concept involves the following:

(a) A central office will be established at Burlington and said office will be equipped with a telephonic service over which all of its customers in the involved area may phone the agency without cost.

(b) The mobile agent will use a two-way radio equipped station wagon containing necessary agency supplies.

(c) The mobile agent will be expected to perform the usual duties of a railroad agent, including checking of tracks at each 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 per week; whereas the present stations are open only five days per week.

(f) There will be a reduction of agents, but these agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

5. That the applicant will make a monetary savings in operating expense by the establishment of this mobile agency.

6. The proposed implementation of the Mobile Agency Concept in the Burlington area provides that the mobile agent would operate from Burlington to Graham, thence to Haw River and return to the base station at approximately 10:30 A.M. He will proceed to Carrboro arriving thereat, at approximately 2:40 P.M., thence to Hillsborough, and Mebane and return to the base station, Burlington, with service being provided to the points, Miles, Efland and Oconeechee.

7. Applicant proposes to close the fixed agency stations at the various locations and to substitute therefor a mobile agency station, with it maintaining, leasing, or otherwise utilizing the involved station buildings.

8. That the implementation of the mobile agency service will result in substantially the same or improved service with respect to: (a) there will be no reduction in freight train service at any of the involved stations; (b) the agent will call on customers at the customers' places of business; (c) three stations previously classified as nonagency stations will be upgraded to agency stations and will receive agency service; (d) stations now receiving five days per week agency service will receive six days per week agency service; (e) toll-free telephone service will be available to customers; and (f) closer coordination between local freight train service and the agent for the benefit of the shipping and receiving public.

9. 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.

10. 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 Southern Railway Company 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. 62-13(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. 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 Commission further concludes that approval for the implementation of the "Mobile Agency Concept" as applied for should be granted, subject to the supervision of this Commission; that the present physical station buildings may be maintained, leased, occupied or otherwise utilized; that as long as Applicant retains ownership of the present station buildings it should either maintain them in a reasonable state of repair or make appropriate application for disposition thereof; that Applicant should advise the Commission of its actions in connection with the various involved station buildings, and that the number of mobile agencies, telephone lines, and other facilities should keep pace with the needs and demands for service.

G.S. 62-32(b) provides: "The Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish." G.S. 62-42(a) provides: "Whenever the Commission, . . . finds . . . (3) That . . . changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, . . . ought reasonably to be made . . . the Commission shall enter and serve an order directing that such . . . changes shall be made . . ." G.S. 62-30 provides: "The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties." We conclude that the above statutes empower this Commission to approve the "Mobile Agency Concept" and to supervise its operation with the view to ordering such changes, additions and/or deletions as may be indicated by circumstances from time to time.

G.S. 62-245 deals with the railroads' duty to receive and forward freight tendered and provides a penalty for the unlawful refusal to receive and forward such freight. It is the conclusion of the Commission that such duty to receive and forward tendered freight remains unaltered by the approval and implementation of the "Mobile Agency Concept".

The Commission finally concludes that the Mobile Agency Concept will be expected to provide all agency services heretofore provided by the five fixed agents as well as providing comparable service for the three nonagency stations. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant be, and it is, hereby granted 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 as long as Applicant retains ownership of the station buildings involved in this Mobile Agency Concept, it should either maintain them in a reasonable state of repair or seek appropriate authority to dismantle and remove them.

3. 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 27th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 199

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Southern Railway Company - Application for Authority to Implement a Mobile Agency Concept in the Mocksville, North Carolina, Area, and Retire the Station Buildings at Mooresville, Huntersville and Woodleaf, North Carolina.	))))))	RECOMMENDED ORDER APPROVING APPLICATION ON SIX-MONTH TRIAL PERIOD

HEARD IN: Courtroom, Mooresville Municipal Building, Mooresville, North Carolina, on May 15, 1973, at 11:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

G. Clark Crampton
Joyner and Howison
Attorneys at Law
900 Wachovia Bank Building
Raleigh, North Carolina 27602

For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
Ruffin Building, One West Morgan Street
Raleigh, North Carolina 27602

For Protestants:

Joe Gilley, President
Mooresville Flour Mill, Inc.
P. O. Box 358, Mooresville, North Carolina 28115
(Appearing for himself)

WOOTEN, HEARING COMMISSIONER: On March 8, 1973, Southern Railway Company (Applicant) filed with the Commission an application seeking authority to implement a Mobile Agency Concept in the Mocksville, North Carolina, area, on a permanent basis. The Commission, being of the opinion that the interest of the public was involved, assigned the matter for hearing on May 15, 1973, by its Order in this docket dated March 14, 1973. By the same Order, Applicant was required to give notice to the public of the time, place and purpose of the hearing by having an appropriate notice thereof published in newspapers having general circulation in the area in which it proposed to provide mobile agency service approximately fifteen (15) days prior to May 15, 1973.

The required notice of publication was made and the Commission received a letter of protest from Mr. Joe Gilley, President, Mooresville Flour Mill, Inc., P. O. Box 358, Mooresville, North Carolina 28115.

Hearing in this matter was held at the captioned time and place with Applicant being present and represented by counsel. One protestant, Mr. Joe Gilley, appeared for himself at the hearing in opposition to Applicant's proposal. The Applicant presented the testimony of Mr. T. H. Noles, Senior Coordinator of Stations and Terminals; Mr. Charles N. Loughery, Commerce Statistician, Mr. G. Max Swing, Train Master and Mr. Marshall S. Lynch, Communication and Signal Traffic Engineer.

Applicant offered Affidavit of Publication by The Charlotte Observer, Charlotte, North Carolina, Davie County Enterprise-Record, Mocksville, North Carolina; and the Mooresville Tribune, Mooresville, North Carolina.

Mr. T. H. Noles offered testimony as to the Mobile Agency concept generally with regard to its applicability to the proposed area of service and to his company's experience with the Mobile Agency Concept in this State and other states. Mr. Noles further testified that the average per month total transactions at all of the stations on the proposed route, including the base station, were 869 or 39 per day based on five days per week, and that a transaction

was considered either one inbound or one outbound revenue car; that the mobile agent will travel approximately 94 miles per day; that toll free telephone service to the base station at Mocksville will be available to its customers from each of the involved points served by the Mocksville Mobile Agent; that Applicant seeks to retire each of the station buildings at Mooresville, Huntersville and Woodleaf; and that there are places on the route where the Mobile Agent's radio will not be able to be in contact with the base station, but that the Mobile Agent is required to contact the base station by telephone each hour and to contact the base station at each station it serves before moving on to the next station.

Mr. Charles N. Loughery offered testimony tending to show that the present actual annual cost of operations of the Mooresville, Huntersville, and Woodleaf, North Carolina, agencies were $38,771, with estimated annual cost to operate the Mobile Agency Route to be $17,945, producing estimated savings per year in the amount of $20,826.

Mr. G. Max Swing offered testimony as to the operation of the trains, the condition and proposed disposition of the involved station buildings.

Mr. Marshall S. Lynch offered testimony generally relative to communications concerning the Mobile Agency Concept. His testimony tends to show that the base station radio coverage extends approximately twelve (12) to fifteen (15) miles; that the radio receiver at the station at Barber will be able to receive information from base station at Mocksville and to pass it along to the Mobile Agent, but that portion of the route from near Mooresville south to Huntersville and those points of Barium Springs and Troutman the Mobile Agent will not be in contact with the base station at Mocksville via radio, but only through or by telephone service.

The entire testimony of all of the witnesses is a matter of record in this proceeding.

Having considered all of the evidence presented and the record as a whole, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant, Southern Railway 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 jurisdiction.

2. That Applicant is hereby requesting permanent authority to implement a mobile agency service in the Mocksville, North Carolina, area, to operate from a base station at Mocksville and to serve the following agency and nonagency stations:

AGENCY STATIONS	NONAGENCY STATIONS	
Mooresville	Cooleemee	Bear Poplar
Huntersville	Cooleemee Junction	Mt. Ulla
Woodleaf	Barium Springs	Cornelius
	Troutman	Caldwell
	Mt. Mourne	Davidson

3. That Applicant seeks to retire each of the station buildings at Mooresville, Huntersville and Woodleaf.

4. That in addition to the above, the proposed Mobile Agency Concept involves the following:

(a) A central office will be established at Mocksville and said office will be equipped with a telephone service over which all of its customers in the involved area may phone the agency without cost.

(b) The mobile agent will use a two-way radio equipped station wagon containing necessary agency supplies.

(c) The mobile agent will be expected to perform the usual duties of a railroad agent, including checking of tracks at each 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 five days per week.

(f) There will be a reduction of agents, but these agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

5. That the Applicant will make a monetary savings in operating expense by the establishment of this mobile agency.

6. The proposed implementation of the Mobile Agency Concept in the Mocksville area provides that the mobile agent would operate from Mocksville at 10:15 A.M. to Woodleaf and return to Mocksville at approximately 11:15 A.M. He would depart Mocksville for Barber at 1:00 P.M., arriving at Barber at 1:20, thence to Mooresville, thence

Davidson, Cornelius and Huntersville, thence return to the base station, Mocksville, with service being provided to the other involved points.

7. Applicant proposes to close the fixed agency stations at the various locations and to substitute therefor a mobile agency station, and to retire the involved station buildings.

8. That the implementation of the mobile agency service will result in substantially the same or improved service with respect to: (a) there will be no reduction in freight train service at any of the involved stations; (b) the agent will call on customers at the customers' place of business; (c) ten stations previously classified as nonagency stations will be upgraded to agency stations and will receive agency service; (d) stations now receiving five days per week agency service will continue to receive five days per week agency service; (e) toll-free telephone service will be available to customers; and (f) closer coordination between local freight train service and the agent for the benefit of the shipping and receiving public.

9. The changes in the present method of operation as proposed ought reasonably to be made on a six (6) months' trial period, and Applicant shall not retire and remove its station buildings at Mooresville, Huntersville and Woodleaf until further order of the Commission.

10. 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 Southern Railway Company 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-|3| (b).

G.S. 62-||8 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 area. We, therefore, conclude that this is not an "abandonment or reduction in service" as is contemplated by G.S. 62-||8, 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 on a six months' trial period 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 Commission further concludes that approval for the implementation of the "Mobile Agency Concept" as applied for should be granted, on a six-month trial period, subject to the supervision of this Commission; that during this six-month trial period, Applicant should close, but not retire, the present station buildings and to maintain them in a reasonable state of repair pending further order of the Commission; that Applicant should advise the Commission of any problems occurring in connection with the operations of this mobile agency during this six-month trial period and its 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" on a six-month trial period and to supervise its operation with the view to ordering such changes, additions and/or deletions as may be indicated by circumstances.

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" on a six-month trial period.

The Commission further concludes that the Mobile Agency Concept will be expected to provide all agency services heretofore provided by the three fixed agents as well as providing comparable service for the ten nonagency stations. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant and consider extending the trial period.

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 initiate its Mobile Agency Concept and Plan on a six-month trial period in the area and manner hereinabove described, effective within thirty (30) days after the effective date of this order.

2. That Applicant shall not retire and remove the station buildings involved in this Mobile Agency Concept during this six-month trial period, but should maintain them in a reasonable state of repair pending further order of the Commission.

3. 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.

4. That 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 same, and take appropriate action.

5. 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 25th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 200

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company - Application for Authority to Implement a Mobile Agency Concept in the Belmont, North Carolina, Area, and Dispose of the Station Buildings at China Grove, Landis and Kings Mountain, North Carolina.	) RECOMMENDED) ORDER) APPROVING) APPLICATION) ON SIX-MONTH) TRIAL PERIOD

HEARD IN: Courtroom, Mooresville Municipal Building, Mooresville, North Carolina, on May 15, 1973, at 2:00 P.M. and City Council Chambers, City Hall, Kings Mountain, North Carolina on May 16, 1973, at 9:30 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

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For the Commission's Staff:

Maurice W. Horne
Assistant Commission Attorney
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No Protestants.

WOOTEN, HEARING COMMISSIONER: On March 8, 1973, Southern Railway Company (Applicant) filed with the Commission an application seeking authority to implement a Mobile Agency Concept in the Belmont, North Carolina, area, on a permanent basis. The Commission, being of the opinion that the interest of the public was involved, assigned the matter for hearing on May 15 and 16, 1973, by its Order in this docket

dated March 14, 1973. By the same Order, Applicant was required to give notice to the public of the time, place and purpose of the hearings by having an appropriate notice thereof published in newspapers having general circulation in the area in which it proposed to provide mobile agency service approximately fifteen (15) days prior to May 15, 1973.

The Commission did not receive any protests as a result of the required notice being published.

Hearing in this matter was held at the captioned time and place with Applicant being present and represented by counsel. There were no Protestants. The Applicant presented the testimony of Mr. T. H. Noles, Senior Coordinator of Stations and Terminals; Mr. Charles N. Loughery, Commerce Statistician; Mr. C. A. Stephenson, Jr., Train Master and Mr. Marshall S. Lynch, Communication and Signal Traffic Engineer.

Applicant offered Affidavit of Publication by The Charlotte Observer, Charlotte, North Carolina; South Rowan Times, China Grove, North Carolina; the Kings Mountain Herald, Kings Mountain, North Carolina; and the Belmont Banner, Belmont, North Carolina.

Mr. T. H. Noles offered testimony as to the Mobile Agency Concept generally with regard to its applicability to the proposed area of service and to his company's experience with the Mobile Agency Concept in this State and other states. Mr. Noles further testified that the average per month total transactions at all of the stations on the proposed route, including the base station, were 382 or 18 per day based on five days per week, and that a transaction was considered either one inbound or one outbound revenue car; that the mobile agent will travel approximately 140 miles per day; that toll free telephone service to the base station at Belmont will be available to its customers from each of the involved points served by the Belmont Mobile Agent; that Applicant seeks to retire and remove the station building at China Grove and the Cities of Landis and Kings Mountain to get the station buildings at these respective places, and that the Mobile Agent's radio will be able to be in contact with the base station at all times due to the microwave system.

Mr. Charles N. Loughery offered testimony tending to show that the present actual annual cost of operations of the Kings Mountain and China Grove, North Carolina, agencies were $37,135, with estimated annual cost to operate the Mobile Agency Route to be $18,580, producing estimated savings per year in the amount of $18,555.

Mr. C. A. Stephenson, Jr., offered testimony as to the operation of the trains, the condition and proposed disposition of the involved station buildings.

Mr. Marshall S. Lynch offered testimony generally relative to communications concerning the Mobile Agency Concept. His testimony tends to show that with the microwave system, the base station of Belmont will be able to be in constant radio contact with the mobile agent at any point on this route.

The entire testimony of all of the witnesses is a matter of record in this proceeding.

Having considered all of the evidence presented and the record as a whole, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant, Southern Railway 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 jurisdiction.

2. That Applicant is hereby requesting permanent authority to implement a mobile agency service in the Belmont, North Carolina, area, to operate from a base station at Belmont and to serve the following agency and nonagency stations:

AGENCY STATIONS	NONAGENCY STATIONS
Kings Mountain	Bessemer City
Landis	
China Grove	

3. That Applicant seeks to retire and remove the station building at China Grove, and to arrange for the Cities of Landis and Kings Mountain to get the station buildings at these respective places.

4. That in addition to the above, the proposed Mobile Agency Concept involves the following:

(a) A central office will be established at Belmont and said office will be equipped with a telephone service over which all of its customers in the involved area may phone the agency without cost.

(b) The mobile agent will use a two-way radio equipped station wagon containing necessary agency supplies.

(c) The mobile agent will be expected to perform the usual duties of a railroad agent, including checking of tracks at each 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 five days per week.

(f) There will be a reduction of agents, but these agents are protected by the Brotherhood-Company agreements, and if moved a moving expense will be allowed.

5. That the Applicant will make a monetary savings in operating expense by the establishment of this mobile agency.

6. The proposed implementation of the Mobile Agency Concept in the Belmont area provides that the mobile agent would go on duty and depart from Kings Mountain at 9:30 A.M., depart Bessemer City approximately 10:00 A.M., depart Belmont 11:00 A.M., arriving at Kannapolis at 11:50 A.M., departing Kannapolis at 1:00 P.M., departing China Grove 1:55 P.M. and returning to Belmont at approximately 2:45 P.M. He would depart Belmont at 4:00 P.M., arriving at Kings Mountain at 4:30 P.M., and off duty at 5:00 P.M., with service being provided to Bessemer City.

7. Applicant proposes to close the fixed agency stations at the various locations and to substitute therefor a mobile agency station; to retire the station building at China Grove, with the Cities of Landis and Kings Mountain getting the station buildings at these respective places.

8. That the implementation of the mobile agency service will result in substantially the same or improved service with respect to: (a) there will be no reduction in freight train service at any of the involved stations; (b) the agent will call on customers at the customers' places of business; (c) one station previously classified as nonagency station will be upgraded to an agency station and will receive agency service; (d) stations now receiving five days per week agency service will continue to receive five day per week agency service; (e) toll-free telephone service will be available to customers; and (f) closer coordination between local freight train service and the agent for the benefit of the shipping and receiving public.

9. The changes in the present method of operation as proposed ought reasonably to be made on a six (6) months' trial period, and Applicant shall not retire, remove or dispose of its station buildings at China Grove, Landis and Kings Mountain until further order of the Commission.

10. 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 Southern Railway Company 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. 62-13 (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 area. 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 Commission further concludes that approval for the implementation of the "Mobile Agency Concept" as applied for should be granted, on a six-month trial period, subject to the supervision of this Commission; that during this six-month trial period, Applicant should close, but not retire or otherwise dispose of the present station buildings, and that Applicant should maintain said station buildings in a reasonable state of repair pending further order of the Commission; that Applicant should advise the Commission of any problems occurring in connection with the operations of this mobile agency during this six-month trial period and its 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" on a six-month trial period and to supervise its operation with the view to ordering such changes, additions and/or deletions as may be indicated by circumstances.

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" on a six-month trial period.

The Commission further concludes that the Mobile Agency Concept will be expected to provide all agency services heretofore provided by the three fixed agents as well as providing comparable service for the one nonagency station. If at least this level of service is not maintained, the Commission will take such corrective action as the circumstances may warrant and consider extending the trial period.

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 initiate its Mobile Agency Concept and Plan on a six-month trial period in the area and manner hereinabove described, effective within thirty (30) days after the effective date of this order.

2. That Applicant shall not retire, remove or otherwise dispose of the station buildings involved in this Mobile Agency Concept during this six-month trial period, but should maintain them in a reasonable state of repair pending further order of the Commission.

3. 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.

4. That 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 same, and take appropriate action.

5. 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 25th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 481

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Town of Battleboro, North Carolina, Complainant vs. Carolina Telephone and Telegraph Company, Tarboro, North Carolina Defendant Respondent	)	FINAL ORDER

HEARD IN: The Battleboro Community House, Main Street, Battleboro, North Carolina, on July 28, 1970, at 10:00 A. M.

The Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, on November 16, 1971, and October 25-26, 1972 (Docket No. P-7, Sub 529)

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

Chairman Harry T. Westcott (Presiding), Commissioners John W. McDevitt, Marvin R. Wooten, Miles Rhyne and Hugh A. Wells on November 16, 1971 (Docket No. P-7, Sub 529)

Chairman Marvin R. Wooten (Presiding), Commissioners John W. McDevitt, Miles H. Rhyne and Hugh A. Wells on October 25-26, 1972 (Docket No. P-7, Sub 529)

APPEARANCES:

For the Complainant:

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For: Town of Battleboro

For the Respondent:

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For the Intervenors:

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For: Town of Battleboro
(Docket No. P-7, Sub 529)

For the Commission Staff:

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Raleigh, North Carolina 27602
(Docket Nos. P-7, Sub 481 and P-7, Sub 529)

BY THE COMMISSION. This proceedings was the subject of an Interim Order dated June 24, 1971. That Order effectively and appropriately reviews the background of the case and the events leading up to the Interim Order, and it is therefore unneccessary to repeat that information here.

As indicated in said Interim Order, this docket was left open for further Order preceding the outcome of the proceedings in Docket No. P-7, Sub 529. Hearings in that docket have now been concluded, briefs filed, and that matter is awaiting Commission decision.

The Town of Battleboro's complaint was further considered in and consolidated for hearing with Docket No. P-7, Sub 529. Further evidence was presented in that docket which bears upon Battleboro's complaint.

Based upon the entire record in this docket, and in Docket No. P-7, Sub 529, the Commission makes the following

FINDINGS OF FACT

1. The Town of Battleboro, North Carolina, is located within the certificated territory served by Carolina Telephone and Telegraph Company and lies approximately five miles north of Rocky Mount, North Carolina, and is a part of the Rocky Mount Telephone Exchange. Carolina serves approximately 237 subscribers who receive their services over 98 working cable pairs in Battleboro and surrounding areas, and no multi-party (in excess of 4-party) service is offered.

2. The Town of Whitakers is located approximately 10 miles north of Rocky Mount, North Carolina (near Battleboro), and has a separate exchange with toll-free calling privileges with the Rocky Mount Exchange of which Battleboro is a part.

3. With respect to Battleboro, the 1960 census reflects a population of 364 and the 1970 census reflects a

population figure for Battleboro of 628. The 1970 census figure for Whitakers is 856. There are approximately 237 subscribers in the Battleboro area and 291 subscribers in Whitakers.

4. By comparison of the Battleboro and Whitakers areas, if Battleboro had a separate exchange, it would have a Base Rate Area, resulting in the elimination of mileage or zone charges.

5. The rates and charges within the Whitakers Base Rate Area are the same as those rates and charges applicable within the Rocky Mount Base Rate Area.

6. Carolina has 21 so-called "special rate areas", including Battleboro. These "special rate areas" have been created through the years to meet specific and special situations from time to time without reference to Carolina's overall rate structure, which has resulted in rates that are not just and reasonable in some instances.

7. Carolina has on file with this Commission in addition to tariffs establishing a number of "special rate areas", tariffs which establish differing mileage and zone rate charges, which have been developed through the years without reference to its overall rate design and structure, which has resulted in certain inequities as between subscribers in the various exchanges and between exchanges. Said tariffs provide for more than one base rate area within an exchange and Battleboro compares favorably with other areas served by Carolina in which no zone or mileage charges are applicable.

8. The zone rates and charges on file with the Commission which establish special zone rates for the Battleboro rate area are unjust, unreasonable and discriminatory.

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

CONCLUSIONS

The following definitions appear in the tariffs of Carolina Telephone and Telegraph Company now on file with the Commission:

EXCHANGE: A central office or group of central offices, together with the subscribers' stations and lines connected thereto, forming a local system furnishing means of telephonic intercommunication without toll charges between subscribers within a specified area, usually a single city, town or village.

When an exchange includes only one central office, it is termed a single office exchange, but when it includes more than one central office, the exchange is termed a multi-office exchange.

EXCHANGE AREA: The area in which the Telephone Company undertakes to provide service from one specific exchange.

EXCHANGE SERVICE: The general telephone service rendered in accordance with individual Local Exchange Tariffs and General Exchange Tariff provisions. Exchange service is a general term describing as a whole, the facilities provided for local intercommunication at charges in accordance with the provisions of the Local or General Exchange Tariffs.

BASE RATE AREA: A specific section of an exchange area within which primary classes of service are available without extra exchange line mileage charges.

CENTRAL OFFICE: A central office is an operating switching unit by means of which telephonic communication is established between stations connected to such office.

LOCAL SERVICE: The privilege of intercommunication within a local service area. (See "Exchange Service".)

LOCAL SERVICE AREA: The area within which telephone service is furnished subscribers under a specific schedule of exchange rates and without toll charges. A local service area may include one or more exchange areas.

Whether Battleboro has its own dial office like many other small towns in North Carolina is not pertinent in the consideration of whether or not Battleboro should have its own Base Rate Area. The tariffs of Carolina provide that more than one Base Rate Area may be established in an exchange and that a Base Rate Area should consist of those sections within which the Telephone Company will furnish any primary class of service at rates common to all applicants and without the assessment of any charges based on distance, and further that the Base Rate Area should be restricted to the developed section of the community within which the application of an average rate will not result in unreasonable discrimination through difference in cost. Although Whitakers and Battleboro are similar areas in nature, Battleboro subscribers originally (prior to the Commission's Interim Order dated June 24, 1971, in Docket No. P-7, Sub 481) were paying $9.00 more for individual line service than subscribers at Whitakers, although Whitakers is twice as far from Rocky Mount as Battleboro. Battleboro subscribers are being charged discriminatory rates in that those subscribers do not have a Rate Base Area and are, therefore, required to pay additional charges based on distance for the service they receive whereas a comparison of Whitakers and Battleboro clearly indicates the rates for Battleboro should be substantially reduced by allowing Battleboro subscribers to have their own exchange.

In our Order of June 24, 1971, in Docket No. P-7, Sub 481, we required that the docket be continued and remain open and active for such further action by the Commission as it might deem appropriate pending action in the instant docket. We have reconsidered our action in that complaint proceeding with respect to Battleboro, wherein we concluded that a 25% reduction should be made on an interim basis pending action in this docket, and we now find that in order to remove the discriminations that exist with respect to the Battleboro subscribers, and to require Carolina Telephone and Telegraph Company to comply with its tariff provisions on file with the Commission, Carolina should file within thirty (30) days of the date of this Order a map and tariff to include the entire Battleboro Special Zone Rate Area plus an area 1,000 feet wide on each side of the center of U. S. Highway (business) #301 between the present Rocky Mount base rate area and the Battleboro Special Zone Rate Area, as a part of the Rocky Mount Exchange Base Rate Area, same to be effective within sixty (60) days of the date of this Order.

IT IS, THEREFORE, ORDERED THAT:

Carolina Telephone and Telegraph Company shall file within thirty (30) days of the date of this Order a map and tariff to include the entire Battleboro Special Zone Rate Area plus an area 1,000 feet wide on each side of the center of U. S. Highway (business) #301 between the present Rocky Mount base rate area and the Battleboro Special Zone Rate Area, as a part of the Rocky Mount Exchange Base Rate Area, same to be effective within sixty (60) days of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-29, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Mr. E. A. Friddle and Others Complainants vs. Lee Telephone Company and Southern Bell Telephone and Telegraph Company Defendants	)	RECOMMENDED ORDER CHANGING BOUNDARY LINE

HEARD IN: The Commission Hearing Room, One West Morgan Street, on October 24, 1972, at 10:00 A.M.

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

APPEARANCES:

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For the Commission Staff:

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WELLS, COMMISSIONER. This matter came on for hearing before Division III of the Commission, consisting of Commissioners Wells (Presiding), McDevitt and Rhyne (now retired). The matter arose upon the Petition of a number of residents of a small section of Rockingham County near the Guilford County line, who seek an order of the Commission restructuring the franchise boundary line between Lee Telephone Company and Southern Bell Telephone and Telegraph Company, so as to enable them to receive Bell service from the Summerfield Exchange, located near the Guilford County - Rockingham County line, as opposed to their receiving service from the Lee-Madison Exchange in Rockingham County.

Upon receipt of the Petition, it was served upon Lee and Bell as a complaint filing pursuant to the provisions of North Carolina Utilities Commission Rule R1-9. In apt time, both Lee and Bell answered denying any obligation or disposition to afford the relief petitioned for, whereupon Petitioners requested to be heard. By Order of July 12,

1972, the Commission set the matter for hearing and in said Order provided for all parties to present evidence in support of or opposition to the proposed change in the franchise boundary line.

Testifying for Petitioners were E. A. Friddle and 12 other residents of the area in question. Testifying for Lee was I. L. Grogan, Division Manager of Lee Telephone Company. Testifying for Bell was George L. Selden, State Forecast and Rate Supervisor for Southern Bell Telephone and Telegraph Company in its North Carolina operations. All parties presented certain maps and exhibits illustrating the boundary lines of the two telephone exchanges involved in this proceeding, and the location of Petitioners and other subscribers in relation to telephone service facilities in the area in question.

THE EVIDENCE

A brief recapitulation of the record in this docket, and a review of the Commission's official files, and the Commission's Orders of February 22, 1951, in Docket No. P-55, Sub 8 and of March 17, 1949, in Docket No. 4288, will show the salient facts to be as follows:

Lee's Madison Exchange abuts the Bell Summerfield Exchange generally to the north, but the configuration of the boundary between the two exchanges follows no orderly pattern, cutting arbitrarily across open country and public roads in a markedly zig-zag pattern. The record is bare as to the background of the determination of the Madison Exchange boundary limits and all the evidence in this record bearing upon this point is limited to the manner in which the Summerfield Exchange boundary was shaped.

The result of the configuration alluded to above is that Lee's Madison Exchange takes a deep dip out of the east-west progression of the Summerfield Exchange boundary line in the immediate vicinity where the Petitioners reside, and to their immediate east and west, the Summerfield Exchange juts sharply into the east-west projection of the Madison Exchange boundary. The Summerfield Exchange extends into considerable areas in Rockingham County, but at no point does the Madison Exchange extend into Guilford County.

As a part of its evidence in this docket, Bell filed its Eleventh Revised Sheet of the Summerfield Exchange (Bell Exhibit 2), the effective date of said revisal being October 6, 1968, which exhibit clearly reflects the above referred to boundary configuration. None of the witnesses in this docket were able to precisely recall the manner in which Bell's Summerfield Exchange boundaries were fixed. Bell's Witness Selden testified that it was his recollection that Bell representatives met and talked with some residents in the Summerfield area at the time the original exchange boundary was being considered and formulated, but his testimony was inconclusive as to whether or not the boundary

was established by Commission order or as a result of a public hearing. A review of Dockets P-55, Sub 8 and 4288 reveals that as a result of Commission action, Central Carolina Telephone Company service in the Summerfield area was replaced by Bell service in 1951. The Commission's Order in Docket P-55, Sub 8 constituted Bell's certificate to serve the area. The records in Docket 4288 show that on the west and north, the old Central Carolina Summerfield Exchange boundary was coterminous with the Forsyth and Rockingham County lines, Central Carolina's service not extending at any point into Rockingham County. Prior to the Commission's Order of February 22, 1951, by letter dated December 21, 1950, Bell filed with the Commission its proposed Summerfield Exchange Service Area Map, which map shows deviations of the Exchange boundary into Rockingham County in three separate small areas. There is nothing in the Commission's files to indicate the background or reasons for these deviations. The Commission's Order in Docket No. P-55, Sub 8 does not deal with the boundary map per se, and the official file in said docket reflects that the service area map filed by Bell was routinely processed and approved. The Exchange Service Area Map (Bell Exhibit 2) filed in this docket shows that in the interval between December 1950 and September 1968, the deviations into Rockingham County above referred to have been changed and enlarged. There is nothing in the Commission's official files to indicate that any of these changes or enlargements of said boundary were the result of public hearings or formal dockets. The only other formal docket pertinent to these matters is P-29, Sub 47 (August 1967) wherein the Commission denied a petition for a change in the boundary similar to the one sought herein.

Petitioners presented extensive and creditable evidence tending to show that they all (characteristically) now want and need, and have for some time, wanted and needed (some of them for as long as 25 years or more) telephone service; that they have consistently sought Bell service from Summerfield and have consistently refused Lee service from Madison; Stokesdale and Summerfield in Guilford County, and that they have little or no interest in Madison or Rockingham County; that local service through the Madison Exchange would be almost useless to them, and that if they were forced to take such service, practically all of their telephone usage would result in toll charges; that they have never requested nor encouraged Lee Telephone Company to extend its service into their area; that they have requested consistently and for a long period of time Bell service to be extended to them from Summerfield, and that because of Bell's inability or refusal to extend such service, they have done without telephone service and have never had telephones in their homes or businesses; and that they were not given an opportunity to be heard or to express their preferences when the boundary lines were originally established.

In all, there are approximately 34 residences and/or businesses in the area not presently served, and approximately 16 residences presently receiving Lee service in the immediate vicinity. Lee's present facilities enter the general area from the north along U. S. 220 and from the west along State Road 1104, proceeding thence easterly along the north side of N. C. 65 to its intersection with State Road 2340; thence southerly along the east side of State Road 2340 to the point of its intersection with U. S. 220; thence westerly across U. S. 220 to a point approximately 1/4 mile west of U. S. 220. Hence, the Petitioners, and those similarly situated and not presently served, reside in a pocket between State Road 2340 and N. C. Highway 65, all of which is clearly reflected in the exhibits filed in this docket.

The evidence indicates that it is feasible from a technological or physical standpoint for either Bell or Lee to serve the area in which the Petitioners reside, and we therefore give small weight to this aspect of the case. What is at the heart of this complaint is not whether Bell or Lee can serve these people, but which should serve them.

THE LAW

The public policy of this State envisions that public utility services shall be provided to the people in a manner consistent with their needs.

> "G. S. 62-2. Declaration of policy.--Upon investigation, it has been determined that the rates, services and operations of public utilities, as defined herein, are affected with the public interest and it is hereby declared to be the policy of the State of North Carolina to provide fair regulation of public utilities in the interest of the public, to promote the inherent advantage of regulated public utilities, to promote adequate, economical and efficient utility services to all of the citizens and residents of the State, to provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices, to encourage and promote harmony between public utilities and their users, to foster a State-wide planning and coordinating program to promote continued growth of economical public utility services, to cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public 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."

The above quoted statute enunciates the public policy as to all public utility service. It does not, for instance, state one policy for electric service and another for

telephone service. Nevertheless, it is readily apparent that meeting the needs of the people for electric service as opposed to telephone service presents vastly different problems and requires vastly different solutions. People living in the disputed area would have little or no concern whether their supply of electricity came from the north, south, west or east; from Rockingham County, Guilford County, or some other county. So long as it is adequate and dependable and provided at reasonable rates, its source is of no consequence. Telephone service is on its face of an entirely different nature. Historically, telephone service has been community oriented; and it still is. Easy and convenient as long-distance calling has become, the telephone is still chiefly used for local calling.

The telephone industry, therefore, has grown in a radically different manner from that of the electric industry, and the manner in which telephone service has been extended to the people of this State has no comparison to the extension of any other type of utility service. In the face of this, however, the General Assembly has not stated a different public policy for telephone service. What it has done is to charge this Commission with implementing the pronounced public policy in such a way that telephone service might be provided consistently with that public policy.

At the center of public utility law is the concept of public convenience and necessity. The common law concept of public utility franchise is rooted in the idea that certain business or commercial enterprise is affected with the public interest, in such a way that they should function in a manner different from that of business or commerce in general. As our political, economic, and commercial institutions have become larger and more complex, the list of business enterprises affected with the public interest has grown. Hence, the scope and variety of public utility firms and their activities has expanded and developed over the years. The public utility concept being as dynamic as our society itself, it needs constant re-evaluation. A vital aspect of the concept is that of franchise: the grant by the sovereign to one or more business enterprises of the privilege of engaging in a particular activity to the exclusion of others; the limiting of competition from others in a particular business or commercial enterprise or function. Franchises may be exclusive or non-exclusive. They may be related to a product or to a service, or may relate to a combination of products and services. The demands of modern society, however, dictate that a franchise will not remain fixed and absolute, but will (functionally, at least) undergo a continuing process of evolution and change. A franchise being a privilege and not a right, it is clear, therefore, that a franchise once granted will always be subject to the same review and re-evalution as the public utility concept itself. Such review and re-evaluation is one of the more vital functions of this Commission.

We find ourselves in this proceedings reviewing and re-evaluating both the concept of public utility service and of franchise, as these aspects of our law and public policy apply to telephone service in the area in question and to the people in question.

In the broad sense, both Bell and Lee are franchised to provide telephone service in the area in question. There is no eternal exclusiveness to the franchise of either. Failing their fulfilling their duty to reasonably serve the public's needs, either could be ordered in a proper case to do more, to do less, to serve more or less people, to expand or contract their lines or services. In a proper case, Bell could be ordered to serve some or all of Lee's "territory" and vice versa. The privilege of franchise carries with it the duty to serve, and this Commission is the agency charged with implementing this aspect of the public policy.

"G. S. 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements.--(a) Whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:

(1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or

(2) That persons are not served who may reasonably be served, or

(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, ratus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonably to be made, or

(4) That it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees and the public, or

(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity,

the Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or effected within a reasonable time prescribed in the order...."

THE QUESTION

We now come to the point where we need to examine the pedigree of Bell's and Lee's franchises in the area in question. It may be assumed (and we judicially do so) that

at one time or another in the past, both Bell and Lee sought and acquired Certificates of Public Convenience and Necessity to engage in the business (as a public utility) of furnishing telephone service in this State, but it must be here emphasized that the granting of a certificate of public convenience and necessity to a telephone utility has not (under the laws of North Carolina) served the function of fixing the limits of the franchise. Under the laws of this State, the franchise is subject to the functional dynamics of extending service. (See G. S. 62-110.) Accordingly, if we equate the franchise with the area or areas served by a particular utility, we are inclined to one conclusion; whereas, if we regard franchise as including not only areas served, but contiguous or nearby areas unserved, we are inclined to an entirely different conclusion. To state it simply, there is no nice, clear-cut criteria by which the question of franchise may be answered in each and every case. Franchise limits being functionally dynamic, franchise criteria must of necessity be factually diverse.

This brings us directly to the heart of the problem in this proceedings, which may now be stated thusly: What are the limits of Bell's and Lee's franchises in the area in question? In response to this central issue, both Bell and Lee urge the conclusion that their franchises are fixed by their respective exchange "tariff" maps now on file with the Commission (more precisely sometimes entitled Exchange Service Area Map). Telephone companies in this State have historically followed the practice of informing the Commission of changes in the exchange boundaries by the filing of such maps with the Commission. The procedure is essentially informal, the maps not usually being considered by the Commission itself, but processed by the Commission's staff. Such filings are not publicly noticed and do not involve public hearings or formal orders. Parenthetically, it should be stated that historically such maps filed with this Commission are quite small in scale, generally cover quite large areas, with the result that it is quite difficult, if not impossible, to use the maps to find a precise boundary on the ground.

Thus it may be assumed that Lee's Madison Exchange boundaries as they now exist were "fixed" in such a manner. Having previously alluded to the manner in which Bell's Summerfield Exchange boundary was originally "fixed", we now have the picture of how the boundaries got to be what they are. It is, therefore, clear that the boundaries as fixed represent the unilateral action of the two utilities, and in no way reflect a consideration of the service needs or preferences of the people who live in the area in question. There has been no showing of (1) why Bell did not extend its exchange boundary to include the area; (2) why Lee chose to extend its Madison Exchange boundary to this area rather than its adjacent Reidsville Exchange boundary; or (3) why Lee extended its Madison Exchange boundary to include an area populated by people who did not request or desire its service.

FINDINGS OF FACT

1. Southern Bell Telephone and Telegraph Company and Lee Telephone Company are certificated public utilities operating a telephone utility enterprise in the State of North Carolina, and both telephone companies are franchised in the area in the southern portion of Madison County bounded on the north and west by North Carolina Highway 65, on the east by State Road 2340, and on the south by the Madison-Guilford County line.

2. Petitioners herein reside in the general area described above.

3. The service area boundary lines between Bell's Summerfield Exchange and Lee's Madison Exchange are ill-defined and not precisely fixed, do not reflect any design criteria, and were fixed by the unilateral, arbitrary action of the two companies many years ago.

4. The needs and preferences of Petitioners and other similarly situated in the area in question were not taken into consideration in the fixing of said boundary lines, and in that respect, there was no opportunity for said needs and preferences to be expressed to this Commission at the time said boundary lines were fixed.

5. The boundary lines as they now exist do not meet the test of public convenience and necessity as it applies to the Petitioners herein and other similarly situated in the area in question, and the telephone communication needs of said Petitioners and others similarly situated in said area are therefore not being met.

6. Pursuant to its Certificate of Public Convenience and Necessity and its franchise privileges it exercises and enjoys in this State, Bell is obligated under the circumstances of this case, to extend service to Petitioners, and its service exchange boundary line and that of Lee should be modified in a manner consistent with Bell providing said service, which modification will be dealt with in the Conclusions stated later in this opinion.

7. Lee has certain facilities in the immediate vicinity of the area in question which have apparently been extended to furnish service to one or more subscribers, which facilities may and should remain in the area so long as the present subscribers desire to use them.

CONCLUSIONS

Based upon the evidence in this case, the foregoing Findings of Fact, and the law and public policy of this State, we conclude that the needs of these Petitioners for telephone service has not been met and cannot be met by Lee Telephone Company; can be and should be met by Southern Bell Telephone and Telegraph Company; that Bell should proceed to

modify its Summerfield Exchange boundary limits to anticipate serving the needs of Petitioners, and should begin plans immediately to extend service into the area in question.

An appropriate boundary line under the circumstances now existing is not easy to come by, but the facts indicate that the most appropriate line should now call for Bell extending its boundary from its present intersection with North Carolina Highway 65 north along said highway to its point of intersection with U. S. 220, and thence continuing easterly with North Carolina Highway 65 to its intersection with State Road 2340, and thence along State Road 2340 southerly to its point of intersection with U. S. 220, and thence continuing southerly with U. S. 220 to its point of intersection with Bell's present Summerfield Exchange boundary.

To deny these Petitioners Bell service is to deny them telephones. To extend Bell service to them is fair and reasonable. The great pity of this situation is that after almost 25 years of frustration and disappointment, these Petitioners have been unable to obtain the cooperation and assistance of the two telephone utilities in the area. Instead of help and reasonable compromise, the companies have offered only rigid, unyielding insistence that boundary lines are sacred and that the needs of the people are subordinate to the interest of the utilities franchised to serve them.

IT IS, THEREFORE, ORDERED:

(1) Southern Bell Telephone and Telegraph Company shall extend its Summerfield Exchange boundary from a point 150 feet north of the present point of its intersection with the center line of North Carolina Highway 65, and continuing along the projectory of a line 150 feet north of said center line of said highway in a northeasterly direction to the center line of State Road 1104; thence with the center line of State Road 1104 to its point of intersection with the center line of North Carolina Highway 65; thence easterly with the center line of Highway 65 to a point 150 feet east of the point of intersection of the center line of Highway 65 with the center line of State Road 2340; thence along the projectory of a line 150 feet east of the center line of State Road 2340 until its intersection with U. S. Highway 220, and from there 150 feet east of the center line of U. S. 220, southerly to a point in the present exchange boundary line 150 feet east of the center line of U. S. 220.

(2) Bell and Lee shall within thirty (30) days of the effective date of this Order file respective boundary maps reflecting said change.

(3) Bell shall immediately begin plans to serve all unserved customers in said area and shall extend service to them as soon as is practicable.

(4) Lee shall be allowed to continue to serve its present customers in said area so long as it desires to do so, but may surrender any or all of said customers if requested, and if Lee so desires to surrender them. In the event Lee surrenders any of said customers, Bell shall serve said customers upon request. The word "customers" as used herein shall be construed to include the physical premises wherein the telephone service is located.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of R. Harvey Squires, d/b/a Rockfish Radio Telephone Services for a Certificate of Public Convenience and Necessity to Own, Maintain and Operate a Common Carrier Paging Service and Mobile Radio Service.	)))))	ORDER GRANTING CERTIFICATE AND APPROVING RATES

HEARD IN: The Council Meeting Room, Municipal Building, Wallace, North Carolina, on November 15, 1973.

BEFORE: Chairman M. R. Wooten, Presiding, (Commissioners Wells, Roney and Deane to Read the Record and Participate in the Decision).

APPEARANCES:

For the Applicant:

William C. Blossom, Esq.
Wells, Blossom & Burrows
124 East Boney Street
Wallace, North Carolina 28466

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION. R. Harvey Squires, d/b/a Rockfish Radio Telephone Services, Wallace, North Carolina (hereinafter referred to as Applicant), filed with the

Commission on July 18, 1973, an Application for a Certificate of Public Convenience and Necessity to own, maintain and operate a common carrier mobile radio and paging service within a thirty-five mile radius of the Town of Wallace, Duplin County, North Carolina. The Applicant proposed to install an antenna on a pre-existing tower in the vicinity of Wallace. The Applicant filed a proposed tariff scheduled to become effective upon the granting of a Certificate by the Commission; he also filed with the Commission on October 12, 1973, amended tariff pages revising the original tariff.

By Order dated July 24, 1973, the Commission set the matter for hearing in the Municipal Building, Wallace, North Carolina. The Order required the requisite public notice in a newspaper having general coverage of the proposed area. Public notice of the hearing was published in the Wallace Enterprise, a semiweekly newspaper published in Duplin County.

The Application came on for hearing on November 15, 1973, at 10:30 A.M., in the Municipal Building in Wallace. The Applicant Squires testified in support of his Application and offered the testimony of five witnesses. There were no protestants at the hearing to oppose the granting of the Certificate.

Based on the records of the Commission and the evidence adduced at the hearing, the Commission makes the following

FINDINGS OF FACT

(1) R. Harvey Squires, a Certified Public Accountant in the Town of Wallace, has formed a proprietorship, known as Rockfish Radio Telephone Services, for the purpose of owning, maintaining and operating a mobile radio and common carrier paging service in Wallace and vicinity.

(2) The Applicant plans to utilize an existing tower located at Worsley Oil Company just outside the Town of Wallace. The height of the tower is about 160' above ground level and its coordinates are 34 degrees 44' 56" latitude and 77 degrees 59' 52" longitude.

(3) The radio coverage of the base station will be approximately 30 miles.

(4) The central office of the Rockfish Radio Telephone Service will be located at Mr. Squires' office in Wallace.

(5) The Applicant proposes initially to offer the services outlined in his Application and tariff during the hours from 8:00 A.M. to 5:00 P.M., Monday through Friday; during other times, automatic equipment will enable Rockfish mobile subscribers to place mobile to landline calls through the facilities of the telephone company.

(6) There is no radio common carrier or paging service now available in Wallace.

(7) The witnesses for the Applicant testified as to the need in the Wallace area for the proposed service and stated that they had committed themselves to the service whenever it becomes available. These witnesses included people in the insurance and real estate business, poultry and egg processing business, and the automobile business.

(8) The Applicant proposes to interconnect telephone calls through the landline service of Carolina Telephone and Telegraph Company.

CONCLUSIONS

The Applicant, R. Harvey Squires, d/b/a Rockfish Radio Telephone Services, has established to the satisfaction of the Commission that radio common carrier service is needed in the Wallace, North Carolina, area and that the Applicant is fit, willing and able to provide such service. The Commission, therefore, concludes that the Applicant should be granted a Certificate of Public Convenience and Necessity to provide radio common carrier service, including interconnection with the landline telephone system, in a service area of 30 miles radius of the coordinates of the Applicant's base station tower. The Commission further concludes that the tariff filed by the Applicant should be approved.

IT IS, THEREFORE, ORDERED:

(1) That R. Harvey Squires, d/b/a Rockfish Radio Telephone Services, be granted a Certificate of Public Convenience and Necessity under Chapter 62 of the North Carolina General Statutes to provide radio common carrier service within a service area of 30 miles radius of the base station antenna located in Wallace, North Carolina, at coordinates 34 degrees 44' 56" latitude and 77 degrees 59' and 52" longitude.

(2) That the tariffs filed by the Applicant on July 18, 1973 and October 12, 1973, are hereby approved to become effective upon commencement of service to the public; provided, however, that the following changes be made in the tariffs:

(a) That the word "licensee" contained in D.4.a. (1) and (2) be deleted and the word "subscriber" inserted in lieu thereof.

(b) In D.4.a. and b., the third sentence therein shall be amended to read as follows: "A charge of $2.00 per month per unit shall be made for each extra rechargeable battery and charger".

(3) That the Applicant file with this Commission the Application to the Federal Communications Commission for a construction permit, as well as a copy of the Federal Communications Commission license when issued.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-10, SUB 338

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application of Central Telephone Company and Lee Telephone Company for Approval of Certain Adjustments in their Monthly Rates and Charges for Local Exchange Services and In Certain Nonrecurring Charges) ORDER

HEARD: Commission Hearing Room, Ruffin Building, Raleigh, North Carolina, July 10, 11, 12, 13, and 17, 1973; Randolph County Courthouse, Asheboro, North Carolina, July 24, 1973; Courtroom, Police Station, Hickory, North Carolina, July 25, 1973; Courtroom, Wilkes County Hall of Justice, Wilkesboro, North Carolina, July 26, 1973; City Council Chambers, Eden Municipal Building, Eden, North Carolina, July 27, 1973.

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioners Hugh A. Wells and Ben E. Roney

APPEARANCES:

For the Applicants:

James M. Kimzey,
Attorney at Law
1408 BB&T Building, P. O. Box 150
Raleigh, North Carolina

Donald W. Glaves
Ross, Hardies, O'Keefe, Babcock & Parsons
122 S. Michigan
Chicago, Illinois 60603

For the Intervenors:

T. W. Graves, Jr.
Counsel and Secretary
Fieldcrest Mills, Inc.
Stadium Drive, Eden, North Carolina
Appearing for Fieldcrest Mills, Inc.

I. Beverly Lake, Jr.
Assistant Attorney General
Ruffin Building
One West Morgan Street, Raleigh, North Carolina
Appearing for the Using and Consuming Public

Ruth G. Bell
Assistant Attorney General
Box 629, Raleigh, North Carolina
Appearing for Robert Morgan on behalf of the
Using and Consuming Public

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

Wilson B. Partin, Jr.
Assistant Commission Attorney
Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION. On January 16, 1973, Central Telephone Company and Lee Telephone Company filed joint application with the Commission for approval of certain adjustments in their monthly rates and charges for local exchange service and in certain non-recurring charges.

The present and proposed main station rates and the amount of the increase are as follows:

STATEWIDE MONTHLY FLAT RATE SCHEDULE

	Residence				Business			
	Ind.	2-Pty.	* 4-Pty.	** 5-Pty.	Ind.	2-Pty.	* 4-Pty.	** 5-Pty.
Exchanges:	Biscoe, Candor, Danbury, Hillsborough, Madison, Mocksville, Mount Gilead, Prospect Hill, Quaker Gap, Roaring Gap, Roxboro, Sandy Ridge, Stoneville, Timberlake, Troy, Walnut Cove, West Jefferson, Yadkinville, Yanceyville							
Present	$ 6.80	$ 5.85	$ 5.55	$ 5.10	$13.60	$11.60	$11.10	$10.10
Proposed	10.25	9.05	9.00	8.35	20.60	18.15	17.55	15.35
Increase	3.45	3.20	3.45	3.25	7.00	6.55	6.45	5.25
Exchanges:	Boonville, Catawba, Dobson, Elkin, Hays, Mount Airy, Mulberry, North Wilkesboro, Pilot Mountain, Ramseur, Seagrove, Sherrills Ford, State Road							
Present	7.05	6.05	5.80	5.30	14.10	12.10	11.60	10.60
Proposed	10.60	9.40	9.20	8.85	21.40	19.15	18.55	16.60
Increase	3.55	3.35	3.40	3.55	7.30	7.05	6.95	6.00
Exchanges:	Bethlehem, Eden, Granite Falls, Hildebran							
Present	7.30	6.30	6.05	--	14.60	12.60	12.10	--
Proposed	10.95	9.70	9.45	--	22.20	19.95	19.35	--
Increase	3.65	3.40	3.40	--	7.60	7.35	7.25	--
(1) Exchanges:	Asheboro, Valdese, West End							
Present	7.05	6.05	5.80	--	14.10	12.10	11.60	--
Proposed	10.95	9.70	9.45	--	22.20	19.95	19.35	--
Increase	3.90	3.65	3.65	--	8.10	7.85	7.75	--

(2) Exchange: Hickory

Present	7.30	6.30	6.05	--	14.60	12.60	12.10	--
Proposed	11.25	10.00	9.65	--	23.00	20.45	19.85	--
Increase	3.95	3.70	3.60	--	8.40	7.85	7.75	--

Exchange: Walkertown

Present	7.90	6.95	6.65	--	15.80	13.70	13.20	--
Proposed	11.45	10.20	9.85	--	23.65	21.10	20.50	--
Increase	3.55	3.25	3.20	--	7.85	7.40	7.30	--

* Obsolete Service Offering Inside Base Rate Area

** Obsolete Service Offering

(1) Changing from Group 2 to Group 3

(2) Changing from Group 3 to Group 4

In addition to the rates and charges set out above, the Companies propose certain other adjustments in the rates and charges for service connection charges, private branch exchange service, mobile telephone service, key equipment, zone rate charges, and other miscellaneous equipment and services.

The Commission being of the opinion that the proposed changes in rates and charges affected the public interest and that the same should be investigated to determine if such rates are just and reasonable, by order dated February 13, 1973, among other things, set the matter for hearing, the hearing to begin on July 10 in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina; required notice to the public; and suspended the increases in rates and charges as filed.

Motion was filed with the Commission on March 5, 1973, by the Applicants moving that Mr. Donald W. Glaves, Attorney licensed to practice law in the State of Illinois, be permitted to appear on their behalf as an attorney and same was allowed by Commission order dated March 5, 1973.

Supplemental order was issued on March 9, 1973, to specify a date by which certain items required in the February 13 order should be furnished.

Letter was received on March 21, 1973, from Mr. Wilson B. Garnett, Executive Vice President of Applicants, requesting that said Applicants be relieved of the obligation of providing certain information required in the Commission's order of February 13. An order modifying, deleting, and confirming informational items required in the Commission's order of February 13, 1973, was issued by the Commission on March 27, 1973.

Motion requesting approval of the notices as published with certain changes as required by the initial order was approved by the Commission on May 22 in view of the fact that the notices as published were in substantial compliance with the Commission's February order.

Notice of intervention was filed by the Attorney General, the Honorable Robert Morgan, intervening for and on behalf of the using and consuming public which was filed on May 21, 1973, and recognized by Commission order of June 11, 1973.

Petition for leave to intervene was filed with the Commission on June 11, 1973, by Fieldcrest Mills, Inc., and allowed by Commission order of June 19, 1973.

Motion of Attorney General for extension of time for filing expert testimony was filed on June 14, 1973, with the Commission, and allowed by Commission order of June 19, 1973.

Procedural Order issued by the Commission on June 21, 1973, inter alia, set four days of additional hearings in Central's service areas for the convenience of the public.

The hearing in this Docket began on July 10, 1973, at 9:30 A.M. in the Commission Hearing Room, Ruffin Building, Raleigh, North Carolina and extended through five (5) hearing days. Hearings were continued in Randolph County Courthouse, Asheboro, North Carolina on July 24, 1973; Courtroom, Police Station, Hickory, North Carolina on July 25, 1973; Wilkes County Hall of Justice, Wilkesboro, North Carolina, on July 26, 1973; Eden Municipal Building, Eden, North Carolina, on July 27, 1973. 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.

WITNESSES

The Applicants offered the testimony and exhibits of the following witnesses: Mr. Wilson B. Garnett, Executive Vice President, Central Telephone Company, as to the reasons for the filing and the effects of the requested increase; Mr. Samuel E. Leftwich, Vice President and North Carolina Division Manager of Central Telephone Company as to the North Carolina Division's plant improvement programs and their costs; Mr. Baxter F. Smith, Division Plant Manager of Central Telephone Company as to plant improvement programs, trouble handling, and other aspects of the company's operations; Mr. Howard Gene Gaskins, Division Commercial Settlements Administrator with Southeastern Telephone Company, Tallahassee, Florida, a subsidiary of Central Telephone Company, as to a cost separation study of the North Carolina operations of Central Telephone Company; Mr. K. L. Pohlman, Secretary-Treasurer of Central Telephone Company as to accounting adjustments; Mr. Keith Knudsen, Assistant Secretary and Tax Director for Central Telephone Company as to a trended original cost study prepared under his direction; Dr. Charles E. Phillips, Consultant, as to fair rate of return, Mr. Marvin M. Wandrey, Vice President, Central Telephone Company, as to the operations of Centel Service Company; Mr. R. T. Payne, Consultant, offered rebuttal testimony on Central's plant margins and engineering practices.

The Commission Staff offered the testimony and exhibits of the following witnesses: Mr. Hugh L. Gerringer, Staff Telephone Engineer, as to the appropriateness of the division between inter-state and intra-state operations of the company within North Carolina, and the status of the intra-state toll settlements for the test period; Mr. F. Paul Thomas, Senior Accountant as to the results of his audit of the books and records of the North Carolina Division of Central Telephone Company; Mr. Vern W. Chase, Chief Engineer, Telephone Rate Section, as to his evaluations of the rate proposals and other rate matters; Mr. Charles D. Land, Staff Telephone Engineer, as to the

results of the Commission Staff's review of telephone service provided by the North Carolina Division of Central Telephone Company; Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Section, as to the operations of Central Telephone Company as they relate to the rate proceeding.

The Attorney General introduced the testimony and exhibits of Dr. Charles E. Olson as to the fair return required by Central in North Carolina.

The following public witnesses testified in Asheboro: Mr. Albert J. James; Mrs. Lucy T. Rice; Mr. R. J. Levin; Mr. Jack P. Jordan; Mrs. Effie Navy; Mr. David Warrick; Mrs. Barbara Ward; Mr. Leonard Hiatt; Mr. Fred Baker; Mr. Jack Lail; Mr. Don Owen; Mrs. Haddie B. Varner; Mr. Q. R. Bass; Mr. Earl Smith and Mr. Jon Cundiff.

The following public witnesses testified in Hickory: Mr. Sam Smith; Mr. Jim R. Jacumin; Mr. Virgil B. Cagle; Mr. Robert B. Hinkson; Mrs. Phil Bolick; Mr. John D. McClure; Mr. Donald T. Robbins; Mr. Fred A. Crump; Mr. J. E. Wells; Mr. C. B. Scott; Mrs. Sue Davis; Mr. Benny Fox; Mr. E. R. Vaught; Mr. Bill Melton; Mrs. Tina Williams; Mr. Paul Fuller; Mr. David Hunsucker; Mr. John R. Morris; Mr. E. E. Bradford; Mr. W. R. Rollins; Mr. C. E. Padgett; Mr. L. M. Bollinger; Mrs. Peggy Davis; Mr. Glenn Deck; Mrs. Mary Rhodes; Mr. James R. Jackson; Mr. Roy H. Johnson; Mr. Ned Williams; Mr. Ray Saine; Mr. B. H. Smith, Jr., Mr. Lee W. Gabriel; Mrs. Flora H. Knox; Mr. L. L. Martin; Mr. James B. Teague and Mr. Jerry Lee Morrow.

The following public witnesses testified in Wilkesboro: Mr. Joe Harris; Mr. Wayne Shepherd; Mr. Robert Burgess; Mr. G. M. Green; Mrs. Jerry Eller; Mrs. Gail McNeill; Mr. J. E. Brown; Ms. Jean Dobbins; Mr. Bob Johnson; Mr. Roland Brown; Mr. Patrick McDonnell, Jr., Mr. Harvey Smith and Mr. Albert Martin.

The following public witnesses testified at Eden: Ms. Betty Tate; Mr. A. D. Weaver; Reverend A. W. Smith; Mr. J. T. Chandler; Mr. W. R. Fitchett; Mr. Ralph M. Ramsey; Mrs. William Davis; Mr. A. G. Singleton; Mr. William O. Pugh; Mr. Clyde Holliman; Mrs. Edna McCollum; Mr. Gold Minter; Ms. Gloria D. Hilton; Ms. Madelyn Smart; Mr. Randy Nahvi; Mr. Tyrus Robertson; Mr. Robert Shelton; Mr. Carl Spain and Mr. Robert Wall. In addition, 108 witnesses, their names recorded in the record of this proceeding, appeared at the public hearing in Eden for the purpose of expressing to the Commission their opposition to the increase applied for.

I. EVIDENCE

A. Quality of Service

Background:

In its final Order in Dockets P-10, Sub 312 and P-29, Sub 81 entered on April 27, 1972, the Commission concluded that "Central and Lee must continue to be alert to its service problems and act responsibly to eliminate them". Appendix "C" to that Order set the following as required service improvements for Central Telephone Company:

CENTRAL SHALL:

1. Take the necessary action by December 31, 1972, to reduce and maintain the DDD call failure rate to a range of 5% or less.

2. Take action so that by July 1, 1973, 95% of out-of-service trouble reports are consistently cleared within 24 hours and 10% or less of out-of-service trouble reports received before 5 P.M. are carried over.

3. Take action to reduce the repeat trouble reports to 10% or less on a consistent basis by July 1, 1973.

4. Take action to balance traffic in originating and terminating central office equipment and to provide intra-office, local inter-office and toll trunking to meet the current and projected usage requirements during the period for which the additions are being engineered.

Evidence regarding quality of service was presented in this proceeding by way of direct testimony and exhibits by the applicant, the Commission staff, and the subscribers of Central.

Baxter F. Smith, Division Plant Manager of Central Telephone Company testified about the service provided by Central Telephone Company. Central has placed added emphasis on the handling of service orders in order to improve this service. This includes careful reporting of any missed appointments and periodic checking of each craftsman's work by supervisory personnel. Central has instituted a controlled maintenance program and installed a considerable amount of equipment in order to improve its direct distance dialing. At the time of the hearing, Mr. Smith stated that on a division basis, the DDD call failure rate of Central was in the range of 5%. The company had made considerable progress in clearing out-of-service trouble reports within 24 hours and in clearing out-of-service trouble reports received before 5 P.M. on the same day. The objectives set by the Commission are difficult to reach because there are many conditions that are classified

as out-of-service although the subscriber is not completely without telephone service. It was the company's hope that programs in progress would permit the company to comply with the Commission's objective by the July 1, 1973 deadline. With respect to repeat trouble reports, the company has met that standard during seven months of 1972. The company has gone as far as possible without changing the subscriber's numbers to balance traffic in originating and terminating central office equipment. The company has begun installation of electronic scanning equipment which will monitor traffic in an office and then pass the information automatically back to the computer. Traffic studies will be made frequently and provide the company's engineers with data for a very effective traffic adminstration program. The company has made progress in improving service by replacing much of the open wire with buried cable. Of the total sheath miles of cable, 85.6% are being placed below ground. The company is also undertaking a program to pressurize paper insulated cables and to replace fuse type station protectors with the more reliable fuse-less type. In his rebuttal testimony, Mr. Smith stated that after reviewing the exchanges which Mr. Land pointed out as having service deficiencies, he directed that both EAS and DDD calls be made to the same terminating numbers used in making the Commission staff's field service investigation. The results of his test calls showed substantial improvements in service. Central has worked with connecting companies to improve call completion rates, transmission levels and to reduce noise where the facilities are either jointly owned or entirely owned by the connecting company. Where the results of his tests indicated that service deficiencies still existed, corrective action was initiated. Where his test calls into connecting company exchanges indicated deficiencies, copies of the test results were furnished to the company. Central's progress in meeting the Commission's objective for handling out-of-service trouble reports has continued to show an improving trend since the end of the test period. On a division basis, all of the Commission service requirements were met in May, 1973. Mr. Smith testified that he was aware that the DDD and operator answer test results for Asheboro indicate that problems exist. He and his staff were working very hard to see that the problems are solved. Insofar as DDD is concerned, many of the test call failures encountered occurred on connecting company facilities. The correction of these problems was the responsibility of that connecting company.

Mr. Robert T. Payne, Vice President, Mid-South Consulting Engineers, testified on behalf of Central Telephone Company in rebuttal to the direct testimony of Gene A. Clemmons and Charles D. Land of the Commission Staff. Mr. Payne testified that he found the central office equipment to be furnished in accordance with the Company's engineering criteria and the margins to be well within the limits of good engineering; that the engineering practices and intervals used by Central Telephone Company for the provision of outside plant, central office equipment and

buildings, are proper; that the service rendered by Central Telephone Company in North Carolina is on the par with or above Commission and other telephone company standards and the company is providing high quality service to its subscribers.

Charles D. Land, Commission Staff Engineer in the Telephone Service Section, testified to present the results of the Staff's review of telephone service provided by the North Carolina Division of Central Telephone Company. The Staff investigation consisted of field tests and inspections of central office facilities, tests of public paystations, analysis of monthly reports made by Central to the Commission and analysis of information provided by Central in response to the Commission's Order setting the company's rate increase for hearing. The central office tests indicated that on a company-wide basis, service was good. However, it also indicated some exchanges where problems existed that needed correcting. The exchanges of Mulberry, North Wilkesboro and West Jefferson had excessive inter-office call failure rates. West End, Asheboro, Troy, Danbury, Walnut Cove, Pilot Mountain, Yadkinville and Mulberry all had excessive DDD failure rates of 10% or higher. Mr. Land recommended that the company take action to reduce inter-office call failures to 2% or less in each exchange and the percentage of DDD call failures to 5% or less in each exchange. Specific problems in certain exchanges were also found in connection with DDD transmission measurements, EAS transmission measurements and EAS noise measurements. Operator answer time was found to be slightly below standard in Asheboro during seven months of the test period. In an earlier application by Central for a rate increase in Docket No. P-10, Sub 312, Central was ordered to "take action so that by July 1, 1973, 95% of out-of-service trouble reports were consistently cleared within 24 hours and 10% or less of out-of-service trouble reports received before 5 P.M. were carried over..." and "to take action to reduce the repeat trouble reports to 10% or less on a consistent basis by July 1, 1973." The company met the requirement concerning repeat trouble reports and at the time the Staff review was made, it appeared that the company would probably be meeting the other requirements by July 1, 1973. Under cross-examination, Mr. Land stated that the staff did not make any test calls from private branch exchange systems.

Hearings were held in Asheboro, Hickory, Wilkesboro and Eden to hear testimony from members of the public. In Asheboro, 16 witnesses testified. From these 16 witnesses, there were 11 complaints of poor DDD service, 3 complaints of cross-talk, 3 complaints of interference during rainy weather, 1 complaint of slow operator answer and 2 requests for EAS. Three witnesses had no complaints except the high rate increases proposed.

In Hickory, 35 witnesses testified. From these witnesses came 19 affirmations of excellent service, 2 of which

opposed the rate increase as excessive, 15 requests for EAS (many from the Hildebran area), 3 complaints of local dialing difficulty and 2 complaints about slow operator answer time.

In Wilkesboro, 13 members of the public testified. Seven stated that they were receiving good telephone service and had no complaints. There were 3 complaints of difficulties calling co-op exchanges, 2 complaints of noise and cross-talk on DDD, 2 complaints of difficulty receiving calls. One witness complained that she had made many trouble reports that Central did not respond to and which she was informed Central had no record of.

In Eden, 127 subscribers appeared. Of these subscribers, 108 appeared only to express their opposition to the proposed rate increase. From the other 19 subscribers came complaints of telephones going dead occasionally, callers complaining of no answers when the called subscriber was home and their telephones didn't ring, trouble reaching the operator, other conversations on the line, service problems during rainy weather, DDD problems, and troubles reaching the dialed number. Five subscribers stated they were receiving excellent service.

B. FAIR VALUE OF PLANT IN SERVICE

Background:

G.S. 62-133 provides that the Commission in rate proceedings shall ascertain the fair value of plant in service at the end of the test period, considering original cost, replacement costs, and any other factors relevant to the present fair value of the property.

Evidence:

Mr. Keith Knudsen, Assistant Secretary and Tax Director of Central Telephone Company testified to the trended original cost of the North Carolina Properties of Central Telephone Company devoted to intra-state service. The witness testified that the trended original cost study was made by first determining the original cost dollars for each classified account making up the plant in-service balance at December 31, 1972; the age distribution of the dollars making up the balances in these classified accounts was determined from company records where available or through the use of Iowa type survivor curves; that a price index was either developed or selected for each account and applied to the aged original cost dollars to arrive at the trended original cost; that the depreciation reserve assigned to the trended original cost of depreciable plant should have the same percentage relationship to such trended original cost as the book depreciation reserve bears to the original cost of depreciable plant; that a check of the reasonableness of the trended original cost study was made using the consumers price index; that the trended original cost study was made

using the consumers price index closely approximates the original cost found by the company study; that no deduction was made for obsolescence or inefficient plant; that no attempt was made to determine how much of the company's North Carolina plant would be duplicated if reproduced at December 31, 1972 in light of the development of new equipment and modern design methods; and that $109,216,089 including the total North Carolina trended original cost less depreciation plus adjustments for materials and supplies and cash working capital approximates the current fair value of the company's North Carolina property; and Knudsen Exhibit 5, Schedule 1, page 1-A showed the intrastate portion of the net trended original cost plus materials and supplies and cash working capital to be $94,592,456.

Mr. Martin M. Wandrey, Vice President of Central Telephone Company, testified to the relationship of Central Telephone Company to the CenTel Service Company. The witness testified that CenTel Service Company does not engage in the telephone business but purchases, warehouses and re-sells to other companies within the Central Telephone Company System; that CenTel Service Company gets certain price advantages by virtue of purchasing in large volume and directly from manufacturer; that Central Telephone Company purchases from CenTel Service Company telephone instruments and other standard materials and supplies at prices equal to or lower than those that would be required to pay for materials of comparable quality; that CenTel Service Company maintains a constant surveillance of prices charged by other distributors of materials and adjusts its prices to assure that the Central Telephone System prices are equal to or less than those that the operating companies would have to pay from other reputable and dependable distributors; that during the twelve months ended December 31, 1973, the North Carolina Division of Central Telephone Company purchase 59.88% of its total purchases from CenTel Service Company; that CenTel Service Company's percentage of profit related to its gross sales was 6.1% for the twelve months ended December 31, 1972; and that there are a number of advantages received by the North Carolina Division on purchases made from CenTel Service Company including faster delivery, and deferred federal income tax on intercompany transactions. Mr. Wandrey further testified that it is Company policy to track Automatic Electric prices when determining the selling price to the operating telephone company.

Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Section of the North Carolina Utilities Commission testified relating to the operations of Central Telephone Company. The Witness testified that the gross plant added per year end station increased from $51.54 in 1967 to $78.91 in 1970 to $122 per station in 1971 and continued at this level in 1972; that the Company's 1973 construction budget shows the projected plant per projected station to be approximately $78 per station; that the company's upgrading program during 1971 and 1972 contributed significantly to the gross plant

additions; that the gross additions provided relief in plant for future growth when the available growth facilities were exhausted by the regrading program; that a total North Carolina investment in central office lines and terminals exceeding a reasonable engineering period was $1,103,500 installed at the end of the test period; that the company's 1973 central office construction budget projects an investment of $2,106,200 while the 1972 investment was $5,347,600 and $8,502,000 in 1971; that the company is installing extensive automatic traffic measuring equipment for use in determining trunk requirements and central office equipment switch quantities; that the company has not realized the most efficient use of central office equipment because of the limited traffic usage data available; that within the next year, traffic data will be available for the company to make the necessary adjustments in switch quantities; that the average materials and supplies during 1972 of $1,515,202 used by the company for determining the rate base should be normalized to $1,137,000 for rate making purposes; that the prices paid by Central for purchases from CenTel Service Corporation was comparable with prices of similar items by other telephone companies with the exception of load coils.

C. FAIR RATE OF RETURN

Background:

As provided by G.S. 62-133 (b) (4), the North Carolina Utilities Commission is charged by law to "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 stockholder, --- and to compete in the market for capital funds on terms which are fair to its customers and to its existing investors, (emphasis added)." The witnesses testifying on accounting procedures, rate of return, and finances of Central Telephone Company have express differences of opinion as to a fair rate of return necessary to provide a fair profit for stockholders under these requirements.

Evidence:

Mr. K. L. Pohlman, Secretary-Treasurer of Central Telephone Company, offered testimony and exhibits concerning rates of return on plant investment and on common equity. Mr. Pohlman's testimony was substantially as follows: For test period operations after pro forma adjustments, and allocations to intra-state operations, the original cost net investment is $79,194,316, which, with a net operating income for return of $4,245,325 results in a rate of return of 5.36% under present rates.

Staff witness, F. Paul Thomas, presented testimony and exhibits on rates of return as follows: After accounting and pro forma adjustments and allocation to intra-state operations, the original cost net investment is $78,437,743,

which, with a net operating income for return of $4,379,106, results in a rate of return of 5.58% under present rates. A return of 4.26% on book common equity was found at the end of the test period under present rates. After allowing for the proposed increase, the return on original cost net investment rises to 9.18% while the return on book equity becomes 12.22%. Allowances for working capital are included in the original cost net investment.

The differences in the rate of return figures as presented by Mr. Pohlman and Mr. Thomas were results of the following:

(1) In determining intra-state toll revenue the Commission Staff increased toll revenue $9,635 for WATS messages which were recorded as regular toll for settlement purposes.

(2) The Commission Staff increased toll revenue $20,000 to eliminate a reversal in the test period but applicable to a prior period.

(3) The Commission Staff decreased toll revenue $23,756 to record the final settlement with the connecting company for the test period.

(4) The Commission Staff reduced traffic expenses $4,655 and Central $4,295 due to use of different allocation methods.

(5) The Commission Staff reduced commercial expenses $3,858 to exclude membership dues in merchants' associations and social clubs.

(6) The Commission Staff reduced relief and pension expense $2,218 to restate the test period cost.

(7) The Commission Staff's amount for depreciation is $4,007,265 and Central's in the amount of $4,106,632. The Staff did not include additional depreciation from increased rates on station connections requested by Central.

(8) The Commission Staff's amount for taxes other than income is $562 more than Central's amount resulting mainly from the difference between the toll revenue adjustments made by the Staff and Central.

(9) The Commission Staff's amount for intra-state, state, and Federal income taxes is $26,493 less than Central's amount resulting from the difference between the Commission Staff's and Central's amounts for revenues, expenses, depreciation, general taxes and interest expense.

(10) In determining net operating income for return, the Commission Staff deducted intra-state interest on customer deposits in the amount of $3,400 while Central did not deduct this item.

(11) In determining the allowance for working capital, the Commission Staff amount is $900,364 and Central $1,656,937. This difference is the result of the Staff deducting all tax accruals compared to Central's deduction of state and Federal accruals only and the Commission Staff's deduction of average customer deposits.

The company and the Attorney General each presented expert testimony as to the fair rate of return and cost of capital. There was disagreement between the expert witnesses; this disagreement concerned the cost of equity capital, the cost of capital and the capital structure to which the cost of equity and cost of debt capital should be applied.

Dr. Charles F. Phillips, Jr., Professor of Economics at Washington and Lee University, testified for the company in the matter of the fair rate of return. Dr. Phillips' testimony was substantially as follows:

The fair rate of return is that percentage figure which, when applied to the company's capitalization, will yield the actual earnings requirement of the company in dollars. Included in the return is interest on the company's debt, dividends on its preferred stock, and the earnings needed on its common stock equity. The result in earnings requirement is then added to all allowable operating costs to determine the total revenue requirement that the company must obtain in rates charged its customers.

The fair rate of return has three main functions: (1) to maintain the financial integrity of utility, (2) to permit the utility to attract the capital it needs to serve the public and (3) to provide a return to the equity owner that is commensurate with returns on investments in other enterprises having corresponding risks. If it earns a fair rate of return, the utility is able to expand its plant to meet the demands of the new and expanded service, is able to provide high quality service, is encouraged to engage in technological innovations which will improve service and, other conditions remaining constant, reduce unit costs.

Dr. Phillips testified that he determined the fair rate of return for Central Telephone Company's North Carolina Division by estimating the cost rates applicable to the company's debt of short and long term preferred stock and common equity and then weighing each component by its proportion in the capital structure. He found that the embedded cost of long-term debt was 7.27% and the embedded cost of preferred stock was 6.84%. The embedded cost of short-term debt was found to be 6.0%. In estimating the cost rate to be applied to the equity stocks of Central Telephone Company, Dr. Phillips testified that he used the comparable earning standard which is to estimate the returns that capital could earn in alternative investments with comparable risks as the opportunity cost or cost rate of equity capital to the company.

In determining the fair rate of return on common equity by the comparable earnings approach he examined the rate of return on average common equity earned by both unregulated and regulated companies with particular emphasis on the 1965-1969 period as a primary basis for reaching such a determination. Based on this examination, Dr. Phillips testified that he recommended a minimum rate of return which the company should have the opportunity to earn on the common equity portion of its investment in intra-state plant in the North Carolina Division in the range of 12% to 13%. However, if a fair value adjustment is undertaken on the value of Central Telephone Company's North Carolina Division because of the higher equity ratio which would result in such a fair value adjustment, the minimum return required common equity would be reduced to a range of 11.5% to 12%.

Dr. Phillips testified that he computed the cost of capital or the rate of return in two ways, both before any fair value adjustment:

a. Based on the North Carolina Division's capital structure in December, 1972, the overall fair rate of return is estimated to be in the range of 9.13% to 9.58%.

b. Based on the North Carolina Division's projected capital structure at June 30, 1973, the overall fair rate of return is estimated to be in the range of 9.17% to 9.64%.

Dr. Phillips testified under cross-examination that he did not consider the ownership of Central Telephone Company by Central Telephone and Utilities Corporation or the ownership by Central Telephone Company of its own subsidiaries to be of any importance in determining the fair rate of return required on the intra-state investment in North Carolina. Although the common stock of Central Telephone Company is not traded on the open market, it still must meet the usual capital attraction tests in estimating the fair rate of return. Dr. Phillips further testified that double leverage is said to exist when the purchase of part of the common stock of a company is financed by both the debt and equity issued by another company. When double leverage is used, it tends to increase the equity return of the parent company of the equity return of the subsidiary.

Dr. Phillips further testified that in 1971 and 1972, Central Telephone Company had been able to issue its securities on reasonable terms and had expanded its plant, had met demands for new and expanded service and had engaged in technological innovations to improve service but that past and continuing inflation might erode the expected decrease in unit costs from technological improvements.

The capital structure which Dr. Phillips used in arriving at his conclusions was that of Central Telephone Company which before fair value adjustment, at December 31, 1972, was as follows:

Long-term debt	40.16%
Short-term debt	2.78
Preferred stock	8.65
Common equity	45.39
Tax credits	3.02
	100.00%

Dr. Charles E. Olsen, Associate Professor of Public Utilities and Transportation, Department of Business Administration, University of Maryland, testified for the Attorney General in the matter of the fair rate of return which Central Telephone Company should have the opportunity to earn on its North Carolina intra-state investment.

Dr. Olsen testified substantially as follows:

The fair rate of return was that rate which generates the total number of dollars required to attract capital at reasonable rates. In determining the fair rate of return to Central Telephone Company (CTC) on its intra-state investment, Dr. Olsen used the cost of debt and equity which he estimated for Central Telephone and Utilities Corporation (CTU) which owns all of the common stock in Central Telephone Company. The embedded cost rate of long-term debt to CTU was found to be 7.27% while the cost of short-term debt to CTU was estimated to be 8.25% and the embedded cost of preferred stock was found to be 6.84%.

Dr. Olsen testified that an estimate of the cost of equity to CTU was arrived at by using the opportunity cost standard in his determination of the cost of equity meaning that a potential investor must be able to earn at least as much on an investment in CTU as on another investment of similar risk. This opportunity cost may be estimated by determining what investors have required as return on CTU using the discounted cash flow (dcf) method of estimation. The dcf method of estimation uses divided yield, and growth rate of earnings as a measure of the required rate of return. This method was used in the case of CTU because CTU has had a good record of dividends and growth. Dr. Olsen found that the rate of growth and earnings of CTU was between 6.5% and 7.0% and that the recent dividend yield for CTU was 4.3%. These estimates were combined to yield an estimate that the cost of equity capital to CTU was between 10.8% and 11.3%. This was in turn the cost capital to CTC because CTU is the source of equity capital to CTC.

In determining the capital structure to which the estimate of the cost of equity and the embedded cost of senior capital (debt and preferred stock) should be applied in order to compute the cost of capital to CTC Dr. Olsen addressed his testimony to the concept of double leverage as it applied to CTC and its subsidiaries and CTU and its subsidiaries (including CTC). Dr. Olsen testified that double leverage exists when there is debt in the capital structure of a holding company and there is also debt issued by subsidiaries as a part of their own capital structures.

Double leverage allows increased rates of return on equity of CTU and also increases risk of the equity return of CTU.

In order to adjust for the effects of double leverage, Dr. Olsen used the consolidated capital structure of CTC and its subsidiaries and subtracted CTC's investment in its subsidiaries from the equity portion of the capital structure. This adjusted capital structure was weighted by the estimated cost of equity to CTC and the respective embedded debt costs to arrive at a recommended rate of return on investment between 7.70% and 7.81%. Dr. Olsen stated that this rate of return should be applied to CTC's North Carolina intra-state investment.

Dr. Olsen stated under cross-examination that if CTC spun off its subsidiaries by distributing shares of their stock to stockholders of CTU, the required rate of return on equity and investment in the state of North Carolina would increase because the effects of double leverage on the equity earnings of CTC would have been removed.

The capital structure which Dr. Olsen used in his estimation of the cost of capital for Central Telephone Company was as follows:

Long-term debt	57.72%
Short-term debt	4.00
Preferred stock	12.43
Common equity	21.50
Tax credits	4.35
	100.00%

The disagreements between the evidence presented by the two expert witnesses is in three main areas:

(1) cost rate of short-term debt (6.00 vs. 8.25%)

(2) cost of equity capital to Central Telephone Company (10.8 - 11.3% vs. 12.00 - 13.00%)

(3) proper capital structure with which to weight capital component costs

The disagreement in required rate of return on investment can be shown to stem from the disparity in the three areas above. The above disagreements may be explained by the following:

(1) Dr. Phillips in assaying the cost rate for short-term debt at 6.00% used the embedded short-term debt cost for Central Telephone Company as of December 31, 1972 while Dr. Olsen used the then current prime rate of 8.25% in arriving at his estimate.

(2) Dr. Phillips in estimating the cost of equity capital used the comparable earnings approach to arrive at a required equity return in the 12-13% range. Dr. Olsen used

the discounted cash flow method to yield his estimated cost of equity to Central Telephone Company of 10.8%-11.3%.

(3) Dr. Olsen based his adjustments in the capital structure on the concept of "double leverage" between parent and subsidiary companies. Dr. Phillips rejects the use of this concept and the nature of the adjustments which Dr. Olsen makes (substracting Central Telephone Company's investment in its subsidiaries from its equity in the consolidated balance sheet of Central Telephone Company and its subsidiaries).

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

FINDINGS OF FACT

1. Corporate History: Central is a duly franchised public utility providing telephone service to its subscribers in forty-one local exchanges in Piedmont and Western North Carolina, and is a duly created and existing corporation authorized to do business in North Carolina and is properly before the Commission in these proceedings for a determination as to the justness and reasonableness of its proposed rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. Nature of Increase Requested: The total net increases in rates and charges as filed by Central, would produce $6,051,099.36 in additional gross annual revenue.

3. Test Period: All parties to this proceeding utilized as the test period the twelve month period ending December 31, 1972.

A. Quality of Service

4. We find the quality of service provided by Central Telephone Company to be adequate.

B. Fair Value of Plant in Service

5. Original Cost Plant Investment - The plant investment used in Central's presentation and the Staff's presentation are book figures. They represent original cost to the extent that Central's books have been kept in a generally uniform manner based on actual cost. The evidence in this proceeding indicates that the telephone plant in service on the books of the North Carolina Division of Central Telephone Company is recorded at original cost. Accordingly, the book cost figures reasonably represent original cost figures except as adjustments are hereinafter indicated. The book cost of Central's North Carolina intrastate utility property is $90,855,416, the book depreciation reserve is $13,318,037 and the net book cost is $77,537,379. Central's book cost investment of $90,855,416 in telephone

plant is reduced in the amount of $940,000 resulting in reasonable original cost plant investment of $89,915,416. The book depreciation reserve is decreased in the amount of $64,800 to reflect the disallowed intra-state portion of the amount testified to by the Commission staff as excess margin in central office equipment at the end of the test period and increased in the amount of $117,650 to reflect the change allowed in station connection accruals, thereby producing reasonable depreciation reserve of $13,370,887. The reasonable net original cost is found to be $76,544,529.

6. Replacement Cost - We find the reasonable replacement cost of Central's intra-state property, adjusted for the previously discussed factors, to be $86,000,000 considering the adjusted net original cost of the plant-in-service and including a working capital and materials and supplies allowance in the amount of $571,991. The materials and supplies allowance reflects the normalization recommended by the Commission staff hereinafter discussed.

7. Fair Value - The fair value of Central's property used and useful in providing service to the public within North Carolina at the end of the test period considering the adjusted net original cost and the reasonable replacement cost is $82,022,397. In making this finding, we have considered the adjusted net original cost, the reasonable replacement cost and an allowance for cash working capital, materials and supplies.

C. FAIR RATE OF RETURN

8. Central Telephone Company's revenues after adjustments and allocation to intra-state operations are $21,484,999 under present rates. Deduction of allowable operating expenses and adjustments leaves $4,425,016 available for return. This translates into a return on original cost net investment of 5.74% and a return on original cost common equity investment of 4.17%. This return is found to be unjust and unreasonable.

The above return figures are based on the capital structure which is obtained by consolidation of the balance sheets of Central Telephone Company and its subsidiaries. The capital structure of Central Telephone Company and subsidiaries consolidated is found to be proper for use in this case because it is this structure which equity or debt investors will be most likely to use in evaluation of the prospects of Central Telephone Company. At least a part of Central Telephone Company's debt must be attributable to support of its equity investment in its subsidiaries and at least part of its return must be said to be derived from the operations of these subsidiaries.

9. The subtraction of Central Telephone Company's investment in the equity of its subsidiaries from its own equity is found to be unreasonable and unjust. It would also be unreasonable and unjust to ignore the effects of

corporate structure "in toto" when assessing the return and revenue requirements.

10. It is found that the proper rate of return to equity which Central should have an opportunity to earn on its North Carolina intra-state original cost net investment is 11.0%. This return to common equity requires a return to original cost net investment of 8.01%.

11. It is found that the proper rate of return which Central Telephone Company should have the opportunity to earn on its fair value common equity in intra-state investment in North Carolina is 9.13% and that this return to common equity requires a return on fair value intra-state investment in North Carolina of 7.50%.

12. It is found that Central Telephone Company has, in the past, been able to enjoy adequate access to necessary capital markets under reasonable terms. The allowed rate of return in this instance should not hinder the ability of the company to enjoy the benefits of this access availability in the future. The interest coverage ratio requirements will continue to be met and these allowed returns will not be of a confiscatory nature.

13. The proper cost factor for short-term debt is found to be 7.75% which takes both current prime rates and embedded short-term debt costs into account to arrive at a representative figure of the cost of this element of the capital structure.

14. That the final step in reduction and elimination of zone charges for customers outside of the base rate area will produce a decrease in annual revenue of $279,758.80 based on units in service at the end of the test period. Such a step would eliminate the need for an extension of the base rate area as proposed by the company.

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

CONCLUSIONS

A. Quality of Service

We conclude that the overall quality of service rendered by Central is adequate. However, certain specific service problems were testified to by subscribers during the course of the hearings and certain trouble areas were indicated by the Commission staff. Central was ordered in Docket No. P-10, Sub 312 to consistently meet certain service improvement requirements by July 1, 1973. The record of this proceeding includes company testimony indicating service progress through the month of May 1973 during which month all requirements were met.

The level of subscriber satisfaction is an important measure of a telephone company's service. Some of Central's subscribers indicated dissatisfaction with DDD service in Asheboro and local service difficulties in Eden. Other subscribers expressed their satisfaction with service received.

Central should correct those service problems testified to by subscribers and the staff as well as continue its program and efforts to maintain the service requirements established in Docket No. P-10, Sub 312.

B. Fair Value of Plant in Service

1. Original Cost Plant Investment: Excess Plant

The Commission staff evidence indicates that the applicant at the end of the test period had excess plant margin in intra-state central office equipment investment amounting to approximately $940,000. An adjustment is necessary to eliminate this amount of plant which is not used and useful in providing telephone service in North Carolina. This quantity of plant cannot be considered used and useful to the extent of this adjustment since present ratepayers should not be required to pay rates for service to provide return on property which is not needed under the present operating circumstances of the company or within a reasonable period of time in the future. A reasonable engineering interval was allowed in the Commission staff's study to provide time within which to plan, engineer, deliver and install equipment on a timely basis to meet present and new service requirements of subscribers within the applicant's service area. An adjustment to the original book cost of the central office plant in service at the end of the test period should be made to deduct the excess margin.

2. Replacement Cost

a. Allowance for Materials and Supplies

The Commission staff evidence indicates that the allowance for materials and supplies at the end of the test period should be adjusted to reflect more normal operating circumstances. An allowance is made in a rate case to compensate the utility for capital invested in the materials and supplies necessary for meeting on-going service and construction requirements. Such an allowance becomes part of the overall rate base of the company on which subscriber rates are fixed. The construction by Central during the test year, 1972, and the associated materials and supplies were the highest in a six year period. The company's 1973 construction budget was significantly lower than the 1972 gross plant additions. A determination of materials and supplies for inclusion in the rate base should not be based on a year in which the amount of construction and the associated materials and supplies are abnormally high. The

allowance for materials and supplies should be determined in a normalized basis reflecting the reasonable on-going requirements of the company. For these reasons, we find that the materials and supplies allowance recommended by the Commission staff in the amount of $1,005,421 for intra-state plant is reasonable and such an allowance is included in the determination of the replacement cost and fair value of the company's plant at the end of the test period.

b. Replacement Cost

Although the term "replacement cost" envisions replacing utility plant in accordance with modern design techniques and with the most up-to-date changes in the state of the art of telephony, trended original cost as presented by company Witness Knudsen envisions and is founded upon the premise of the duplication of plant as is with inefficiencies and outmoded design included. Accordingly, the weight given to the trended original cost study offered in this proceeding as evidence of replacement cost is based upon a detailed evaluation of the methodology employed.

The trended original cost study presented by Witness Knudsen had several deficiencies which make it unacceptable as a full basis for determining replacement at the end of the test period. The vintage by year of placement of these dollars was determined to a large extent on application of Iowa curves selected by the witness. The application of Iowa survivor curves to determine surviving vintage dollars is a matter of judgment and selection must be made from a wide variety of curves available. Mr. Knudsen trended the vintage dollars using cost index numbers which he either selected or which he developed. The current ratio of labor costs to materials costs was used in developing the cost indices even though this ratio does not apply over the entire life span of the surviving plant. The book depreciation reserve was then trended by the same percentage as the original cost plant related to the trended original cost.

Mr. Knudsen did not make any allowance in his trending of original cost for inefficient or obsolete plant, for excess plant margin, for any existing service or plant deficiencies, or advances in the art of telephony which have occurred over the life span of the surviving plant. Mr. Knudsen's approach ignores all of these considerations since the method trends historical dollars recorded on the company books rather than making a determination of the cost to replace the plant using current engineering, construction and plant materials.

That Mr. Knudsen's results are based to a significant extent on estimates and assumptions in arriving at the surviving dollars by years of placement before any trending factors are applied; the methods employed used various estimates and assumptions in arriving at the cost trend factors to be applied to the estimated surviving dollars;

the trending methods did not make allowance for obsolete plant; the methods employed make no allowance for excess plant margins; and the methods employed do not reflect the advancements in telephone engineering and construction which have occurred since the installation of the surviving plant on the books at the end of the test period. For the reasons hereinabove stated, we conclude that Central has failed to present reasonable and sufficient evidence for the Commission to fully accept the company's trended cost study as reflecting the replacement cost of its North Carolina intra-state property.

C. Fair Rate of Return

The following tables, based on the Findings of Fact, show the adjusted operating revenues, operating revenue deductions, depreciation and amortization, general and income taxes, telephone plant investment, allowance for working capital, returns on original cost net investment, fair value rate base, original cost common equity, fair value common equity, embedded costs of debt and preferred stock dividend requirements and determination of interest charges coverage.

CENTRAL TELEPHONE COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF RETURN

	Present Rates	Approved Increase	Approved Rates
Operating Revenues			
Local service	$14,340,925	$3,766,400	$18,107,325
Toll service	6,329,428		6,329,428
Miscellaneous	881,062		881,062
Uncollectibles - dr.	66,416	16,196	82,612
Total Operating Revenues	21,484,999	3,750,204	25,235,203
Operating Revenue Deductions			
Maintenance expenses	4,078,044		4,078,044
Traffic expenses	1,642,257		1,642,257
Commercial expenses	1,568,638		1,568,638
General, office salaries and expenses	947,855		947,855
Other operating expenses	731,153		731,153
Total operating expenses	8,967,947		8,967,947
Depreciation	4,077,404		4,077,404
Taxes - other than income	2,526,752	225,012	2,751,764
Income taxes - state	65,109	211,512	276,621
Income taxes - Federal	47,606	1,590,566	1,638,172
Deferred income taxes	1,143,396		1,143,396
Investment tax credit normalization	453,178		453,178
Investment tax credit amortization	67,286		67,286
Total operating revenue deductions	17,214,106	2,027,090	19,241,196
Net operating income	4,270,893	1,723,114	5,994,007
Plus: Annualization adjustment	157,523		157,523
Less: Interest on customer deposits	3,400		3,400
Net operating income for return	$ 4,425,016	$1,723,114	$ 6,148,130

Investment in Telephone Plant			
Telephone plant in service	$89,915,416	$	$89,915,416
Less: Accumulated provision for depreciation	13,370,887		13,370,887
Net investment in telephone plant	76,544,529		76,544,529
Allowance for Working Capital			
Material and supplies	1,005,421		1,005,421
Cash (1/12 of operating expenses)	775,429		775,429
Less: Average tax accruals	1,152,041	332,703	1,484,744
Average customer deposits	56,818		56,818
Total allowance for working capital	571,991	(332,703)	239,288
Net investment in telephone plant plus allowance for working capital	$77,116,520	$ (332,703)	$76,783,817
Rate of return on original net investment	5.74		8.01
Fair value rate base	$82,022,397		$82,022,397
Rate of return on fair value rate base	5.39		7.50

CENTRAL TELEPHONE COMPANY
CONSOLIDATED CAPITAL STRUCTURE AND EMBEDDED COST OF DEBT AND PREFERRED STOCK AT DECEMBER 31, 1972

Type of Capital	Consolidated Capital Structure	Ratio	Embedded Cost of Debt and Preferred Stock
Long-term	$283,924,000	49.02	7.27
Short-term debt	23,900,000	4.13	7.75
Preferred stock	39,992,000	6.90	6.84
Interest-free capital	39,330,000	6.79	
Common equity	192,054,000	33.16	
Total capitalization	$579,200,000	100.00	

RETURN ON COMMON EQUITY
NORTH CAROLINA INTRASTATE OPERATIONS

	Ratio %	Original Cost Net Investment or Fair Value Rate Base	Embedded Costs and Return on Common Equity %	Net Operating Income for Return
Original Cost Net Investment - After Increase				
Capitalization				
Long-term debt	49.02	$37,639,427	7.27	$2,736,386
Short-term debt	4.13	3,171,172	7.75	245,766
Preferred stock	6.90	5,298,083	6.84	362,389
Interest-free capital	6.79	5,213,621		
Common equity	33.16	25,461,514	11.00	2,803,589
Total	100.00	$76,783,817		$6,148,130
Fair Value Rate Base - After Adjustments				
Capitalization				
Long-term		$37,639,427	7.27	$2,736,386
Short-term debt		3,171,172	7.75	245,766
Preferred stock		5,298,083	6.84	362,389
Interest-free capital		5,213,621		
Common equity		30,700,094	9.13	2,803,589
Total		$82,022,397		$6,148,130

CENTRAL TELEPHONE COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
COMPUTATION OF INTEREST CHARGES COVERAGES

After Taxes	
Income available for return	$6,148,130
Fixed charges	2,982,152
Fixed charges coverage	2.06
Before Taxes	
Income available for return	$6,148,130
Add: Income taxes	3,444,081
Income before income taxes	9,592,211
Fixed charges	2,982,152
Fixed charges coverage	3.22

ZONE CHARGES

We conclude that all zone charges should be eliminated in order to remove the differential between rates for rural customers and rates for customers located in the base rate area.

MEASURED SERVICE STUDY

The Commission required Central by Order dated March 27, 1973 to file a plan for offering local limited use service in its North Carolina exchanges. The Company submitted a plan in response to the ordering requirements. The Commission concludes that the company plan should be approved including a study of both business and residence subscriber usage on a number of calls as well as average holding time basis. The study results should be provided to the Commission on or before September 1, 1974.

IT IS, THEREFORE, ORDERED As Follows:

1. That the applicant, Central Telephone Company be, and hereby is, authorized to increase the North Carolina intrastate local exchange telephone rates and charges to produce additional annual gross revenue not exceeding $3,766,400, by applying total increases of $4,064,151, less total decreases of $297,751 based upon stations and operations as of December 31, 1972, as hereinafter set forth in Appendix "A".

2. That residence four-party service shall continue to be offered outside of the base rate areas as said base rate areas existed and were described prior to this order.

3. That the local monthly rates and general exchange tariff item rates prescribed and set forth in Appendix "A" hereto attached, which will produce additional gross revenue of $3,766,400 from said end of test period customers be, and are hereby, approved to be charged by Central in North Carolina, effective on billings to be rendered on or after December 4, 1973.

4. That Central shall file, within 10 days of the date of this order, the necessary revised tariffs reflecting the above increases and decreases, said tariffs to be effective as of the dates prescribed above.

5. That Central submit by September 1, 1974, the results of a usage study as set forth in its letter dated April 23, 1973 in response to Item 13 of the Commission Order dated February 13, 1973. The study should be made for business and residential subscribers on the basis of number of calls and average holding time per call.

6. Company shall take action to correct all service problems testified to in this proceeding. In the event corrective action on the part of a connecting company is required, cooperation shall be solicited. If action by the

connecting company is not forthcoming promptly, Central shall so notify this Commission.

7. That the service requirements of Docket No. P-10, Sub 312 shall remain effective and that the Commission staff shall make further periodic reviews and report to the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-10, SUB 338

WOOTEN, CHAIRMAN, CONCURRING and EXCEPTING to the insufficiency of returns allowed.

I concur with the Majority in this case in order to aid this telephone utility in obtaining what I consider to be an insufficient revenue increase for the reason that to do otherwise could well have the net effect of denying any increase whatsoever, even though the need for substantial increases were more than justified by the record herein.

Central Telephone Company has exerted great effort, a cooperative attitude and expended large sums of money in upgrading the level of its service, eliminating multi-party service and mileage charges, all in accord with programs ordained and established by this Commission, and it is my considered judgment that the rates of return herein allowed by the Majority are inadequate compensation under our rate-making statutes for the furnishing of a good and adequate level of service by this utility.

I agree with the Majority when they consider Central's consolidated capital structure, but I cannot agree with them when they fail to adjust the resulting debt-equity ratio, to one found by this Commission to be just and reasonable, to wit: 45-55, however, to have done so would have required the granting of substantially greater revenues to this company in this case. In previous cases where capital structures have been consolidated, adjustment to 45-55 ratios has resulted in lower rates, yet here the result would have been the reverse. I vote for appropriate consistency.

In times of inflation the rationale of reducing equity returns from 11.5% in April 1972, to 11.0% in December, 1973, escapes me, and I cannot agree with such action.

Since it would be to no avail here, I refrain from a discussion of other areas of disagreement involving

deductions for so-called "excess plant", findings on replacement costs, fair value, and other rates of return allowed.

When there exists no real prospect of interest reductions below present levels, I cannot agree to establishing short term interest rates lower than the present market and foreseeable such rates. Neither can I agree to an inadequate provision for materials and supplies.

If what I consider to be appropriate adjustments had been made, and appropriate returns allowed, the same would have required the granting of approximately 86% of the revenue increases requested herein by the company. Yet, I must agree with the Majority in the granting of the amount so granted and state that I feel that we have only gone part way and have duly granted a portion of that justified by the record herein.

Marvin R. Wooten, Chairman

APPENDIX "A"

EXCHANGE RATE GROUPINGS

	Monthly Flat Rate							
	Residence				Business			
Group	Ind.	2-Pty.	4-Pty.	5-Pty.	Ind.	2-Pty.	4-Pty.	5-Pty.
1. 0- 8000	8.45	7.50	7.20	6.75	21.20	19.20	19.30	17.70
2. 8001-16000	8.70	7.70	7.45	6.95	21.80	21.80	19.80	18.30
3. 16001-32000	8.95	7.95	7.70	--	22.40	20.40	19.90	--
4. 32001-64000	9.20	8.20	7.95		23.10	21.10	10.60	--
5. 64001-up	9.55	8.60	8.30		24.00	21.90	21.40	

RATES BY EXCHANGES

	Residence				Business			
Exchange	Ind.	2-Pty.	4-Pty.	5-Pty.	Ind.	2-Pty.	4-Pty.	5-Pty.
Asheboro	8.95	7.95	7.70	--	22.40	20.40	19.90	--
Bethlehem	8.95	7.95	7.70	--	22.40	20.40	19.90	--
Biscoe	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Boonville	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Candor	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Catawba	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Danbury	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Dobson	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Eden	8.95	7.95	7.70	--	22.40	20.40	19.90	--
Elkin	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Granite Falls	8.95	7.95	7.70	--	22.40	20.40	19.90	--
Hays	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Hickory	9.20	8.20	7.95	--	23.10	21.10	20.60	--
Hildebran	8.95	7.95	7.70	--	22.40	20.40	19.90	--

RATES BY EXCHANGES

	Residence				Business			
Exchange	Ind.	2-Pty.	4-Pty.	5-Pty.	Ind.	2-Pty.	4-Pty.	5-Pty.
Hillsborough	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Madison	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Mocksville	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Mount Airy	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Mount Gilead	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Mulberry	8.70	7.70	7.45	--	21.80	19.80	19.30	--
North Wilkesboro	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Pilot Mt.	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Prospect Hill	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Quaker Gap	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Ramseur	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Roaring Gap	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Roxboro	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Sandy Ridge	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Seagrove	8.70	7.70	7.45	--	21.80	19.80	19.30	17.70
Sherrills Ford	8.70	7.70	7.45	--	21.80	19.80	19.30	--
State Road	8.70	7.70	7.45	--	21.80	19.80	19.30	--
Stoneville	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Timberlake	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Troy	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Valdese	8.95	7.95	7.70	--	22.40	20.40	19.90	--
Walkertown	9.55	8.60	8.30	--	24.00	21.90	21.40	--
Walnut Cove	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
West End	8.95	7.95	7.70	--	22.40	20.40	19.90	--
West Jefferson	8.45	7.50	7.20	6.75	21.20	19.20	18.70	17.70
Yadkinville	8.45	7.50	7.20	6.75	21.20	19.90	18.70	17.70
Yanceyville	8.45	7.50	7.20	6.75	21.20	19.90	18.70	17.70

See official Order in the Office of the Chief Clerk for the remainder of Appendix A.

DOCKET NO. P-19, SUBS 133 AND 136

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of General Telephone Company of the Southeast for Authority to Increase Its Rates and Charges in Its Service Area Within North Carolina) ORDER DENYING RATE INCREASES

HEARD: Multipurpose Room, Union County Courthouse, Monroe, North Carolina, April 11, 1973; Durham County Commissioner's Hearing Room, Durham County Courthouse, Durham, North Carolina, April 18 and 19, 1973; and in the Hearing Room of the Commission, Ruffin Building, Raleigh, North Carolina on April 25 -27, May 1 - 4 and June 11 - 14, 1973.

BEFORE: Chairman Marvin R. Wooten, presiding, Commissioners John W. McDevitt, Hugh A. Wells, and Ben Roney

APPEARANCES:

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INTRODUCTION

CHRONOLOGY OF EVENTS

BY THE COMMISSION. On November 5, 1971, General Telephone Company of the Southeast, hereinafter referred to as "General" or "the applicant", a wholly owned subsidiary of General Telephone and Electronics Corporation, hereinafter referred to as "GT&E", filed Application with the Commission for authority to increase its rates and charges for intrastate telephone service in North Carolina.

The proposed increases would have the effect of producing approximately $2,930,575 additional annual gross revenues to the applicant.

The present and proposed main station rates and the amount of increase by exchanges are as follows:

ALTAN, GOOSE CREEK AND MONROE

	Residence				Business			
	1-Pty.	2-Pty.	4-Pty.	Multi.	1-Pty.	2-Pty.	4-Pty.	Multi.
Present	7.90	7.10	5.95	4.95	15.80	14.80	13.80	12.80
Proposed	8.95	7.95	6.95	5.95	22.00	20.00	18.00	16.00
Increase	1.05	.85	1.00	1.00	6.20	5.20	4.20	3.20

DURHAM, CREEDMOOR

Present	7.35	6.50	5.85	5.10	20.00	18.50	17.00	15.50
Proposed	9.95	8.95	7.95	6.95	29.00	26.00	24.00	22.00
Increase	2.60	2.45	2.10	1.85	9.00	7.50	7.00	6.50

In addition to the rates and charges set above, General Telephone Company of the Southeast proposes certain adjustments for extension telephones, directory listings, key equipment, Centrex service, private branch exchange service, mobile telephone service, and other miscellaneous equipment and services.

The Applicant also proposes to increase its non-recurring charges as hereinbelow described:

TYPE OF ORDER	PRESENT SCC OR NRC*	PROPOSED SCC OR NRC	INCREASE
NEW CONNECTS (Not in Place)			
Main Station, PBX Trunks, Outside Extension and PBX Station, Tie Line, and Private Line, each	$10.00	$15.00	$5.00
Extension Station, PBX Station, Bell, Gong, Horn, Key, Switch, Chime and Lamp, each	5.00	10.00	5.00
Centrex Stations	6.00	10.00	4.00
NEW CONNECTS (In Place)			
Main Station, plus any other portion of entire service utilized	5.00	10.00	5.00
PBX Station or Extension Station, each	5.00	10.00	5.00
INSIDE MOVES			
Main Station, Extension Station, PBX Station, Bell, Gong, Horn, Chime, and Lamp, each	5.00	10.00	5.00
CHANGE IN STATION			
Business	5.00	10.00	5.00
Residence	5.00	10.00	5.00
CHANGE IN TELEPHONE NUMBER			
Business	5.00	10.00	5.00
Residence	5.00	10.00	5.00
RESTORATION CHARGE			
Business and Residence	5.00	10.00	5.00
Minimum Visit Charge	--	10.00	5.00**

*Service Connection Charge or Non-Recurring Charge
**As Related to Present Move or Change Charge

By Order of November 30, 1971, the Commission, inter alia, declared the application to be a general rate case under the provisions of G.S. 62-137, suspended until further order of the Commission the proposed effective date of the requested increase, required the applicant to give notice of its Application, and set the matter for investigation and hearing, the hearing to begin on April 18, 1972, in the

Durham County Courthouse, with a single day of hearing to receive public witness testimony scheduled for April 25, 1972 in the Union County Courthouse.

Petition for Leave to Intervene was filed by the City of Durham on January 25, 1972 and was allowed by Commission Order of February 1, 1972.

On February 29, 1972, the Applicant filed Motion to (1) reinstate the petition and tariffs, pertaining to certain non-recurring charges, previously filed in Docket No. P-19, Sub 133, which docket had been ordered closed by Commission Order of February 24, 1972, and (2) to consolidate Docket No. P-19, Sub 133 with the Application for increased rates in Docket No. P-19, Sub 136. The Commission, Commissioner Wells dissenting, issued an Order on March 17, 1972, reopening Docket No. P-19, Sub 133, and consolidating it with Docket No. P-19, Sub 136.

Application for Leave to Intervene was filed by Monroe-Union County Chamber of Commerce on March 29, 1972. The Intervention was allowed by Commission Order of March 31, 1972.

The consolidated Docket was called for hearing on April 18, 1972, at which time the Commission unanimously ruled that the Applicant had not complied with Paragraph Four of the Commission's Order dated November 30, 1971, by failing to publish notice of its general rate application in newspapers having general coverage in its service area by February 14, 1972, and further, had not published such notice as of April 18, 1972. Following the Commission ruling, the Applicant moved for continuance of the proceeding, stipulating that the 270 day statutory period be extended 90 days from the final date of public hearing, and also moved to update the test period.

By Interim Order of April 19, 1972, the Commission, inter alia, ordered the hearing continued; scheduled separate dates for receiving public witness testimony in Monroe and Durham; set hearings to begin on July 18, 1972, in the Durham County Courthouse to receive testimony and exhibits of the Applicant, the Intervenors, and the Commission Staff; required public notice; and ordered that the test period remain unchanged. On July 6, 1972, the Attorney General moved for continuation until a date subsequent to the Commission's reconsideration of General's general rate case in Docket No. P-19, Sub 115. Commission Order of July 10, 1972, set the Attorney General's motion for oral argument on July 14, 1972.

On July 10, 1972, the Intervenor, City of Durham, entered a Motion for Continuance until after the Commission entered its Order on Remand in Docket No. P-19, Sub 115.

By order of July 11, 1972, the Commission continued proceedings until such time as it entered an Order on Remand in Docket No. P-19, Sub 115.

On August 22, 1972, the applicant filed with the Commission an Undertaking to place certain of the increases requested in the consolidated Docket into effect on all bills rendered to its customers on and after September 4, 1972, under the provisions of G.S. 62-135. By Order of August 29, 1972, the Commission approved said Undertaking, requiring, inter alia, that the Company issue a general news release and mail a copy of the Undertaking and the Commission's approving Order to each of its customers. On August 31, 1972, the Applicant filed a motion to amend Commission Order of August 29, 1972, contending that its notice mailed to customers on August 22 should be sufficient to comply with the public notice requirement of the Commission's August 29 Order. The August 29, 1972 Order was amended by Commission Order of September 1, 1972, to require only a general news release.

The Intervenor, City of Durham, filed Objection, Exception and Motions to the Applicant's Undertaking. Commission Order of September 1, 1972 overruled the Objections of the City of Durham.

The Applicant, on November 10, 1972, filed Motion Requesting Immediate Hearing.

On November 14, 1972, the Commission issued its Order on Remand in Docket No. P-19, Sub 115.

By Order of November 16, 1972, the Commission, inter alia, denied the motion of the applicant requesting immediate hearing; rescheduled the hearing, setting separate days for public witness testimony in both Monroe and Durham, with the remainder of the hearing set for the Commission Hearing Room, Raleigh, North Carolina, beginning on Wednesday, April 25, 1973; and required a new test period, being the twelve months period ending December 31, 1972. The Order further required notice by publication and by separate mailing or bill insert to each of its subscribers, and also required all parties to file completely revised testimony and exhibits.

By Order of February 7, 1973, the Commission required the Applicant to file a plan for offering local limited use service in its North Carolina exchanges.

The Applicant filed its First Amended Application, based on the revised test period on February 23, 1973.

A Motion for Leave to Serve Request for Admission of Facts was submitted on March 23, 1973, by Commission Staff Counsel. The Motion was allowed by the Commission's Order of March 23 and transmittal of said request for admission of facts was forwarded to the Applicant on March 23, 1973.

The procedure for receiving testimony was stated by the Commission in its Order of March 26, 1973.

Notice of Intervention in this matter was filed with the Commission on March, 1973, by Honorable Robert Morgan, Attorney General of North Carolina, by his representative, I. Beverly Lake, Jr., Assistant Attorney General; and Order recognizing that intervention was issued on April 9, 1973. On April 9, 1973, the Attorney General, in response to an amendment to the Application filed by the Applicant, filed a Motion to Require Additional Notice, Requesting Additional Public Hearings.

On April 10, 1973, the Commission issued an Order of Clarification, ruling that the hearing would proceed upon the original request of $2,930,575, and upon the original schedule and notice of rates and charges filed in the hearing, and would be limited to those proposed rates and charges and to the $2,930,575, of additional revenue; the Order also denied the April 9 Motion by the Attorney General for additional hearings.

The hearing in this Docket began with public witness testimony in Monroe, North Carolina, on April 11, 1973, and in Durham, North Carolina, on April 18 and 19, 1973. Hearings were continued in the Commission Hearing Room, Raleigh, North Carolina, and extended through twelve hearing days. 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.

WITNESSES

The Applicant offered the testimony and exhibits of the following witnesses:

Mr. Michael E. Holstrom, Accounting Director of General Telephone Company of the Southeast, testifying as to the results of a net trended original cost study prepared under his supervision; Mr. James W. Hevener, Revenues and Earnings Director for General Telephone Company of the Southeast as to the fair value of the Company's property in North Carolina devoted to intrastate telephone operations; Mr. Daniel L. Golombisky, Chief Engineer of General Telephone Company of the Southeast, as to the planning and techniques employed by the Company to ensure the economical placement of telephone plant necessary for growth and the requirements of the customer; Mr. Malcolm Shepherd, District Manager of General Telephone Company of the Southeast, as to the operations of the Company's Monroe District; Mr. John C. McKinney, Plant Director of General Telephone Company of the Southeast as to purchasing policies and procedures; Mr. Spiro B. Kircos, Assistant Controller, Financial Analysis of GTE Automatic Electric Incorporation, as to the relationship between GTE Automatic Electric, Inc., and subsidiaries and the GTE Telephone Companies; Mr. William R. Wofford, Vice President and Controller of GTE Data Services,

Incorporated, as to the data processing services provided GTE operating telephone companies; Mr. F. Gordon Maxson, Vice President-Revenue Requirements of General Telephone Company of the Southeast as to the conditions which necessitated the filing for an increase in rates; Mr. Charles Clos, Consultant, as to his evaluations of specific service areas of the Company's operations; Mr. Wilbur S. Duncan, CPA and partner, Arthur Andersen and Company, as to accounting procedure and the propriety of using rate of return on investment as a basis for comparing the relative profitability of one company with another; Mr. Claude O. Sykes, General Manager of General Telephone Company of the Southeast, as to quality of service; Dr. Avery Cohan, Consultant, offered rebuttal testimony to Staff witness Dr. Edward W. Erickson; Mr. Benjamin Hatfield, Consultant, offered rebuttal testimony to Staff witness Mr. Gene A. Clemmons; Mr. Lyle E. Orstad, Treasurer of General Telephone Company of the Southeast as to rate of return; Mr. Gerald Gawronski, Vice President, Controller of General Telephone Company of the Southeast as to certain computations on rate of return on original cost and fair value.

The following public witnesses testified in Monroe on April 11, 1973: Mrs. Joyce Stewart; Mrs. Adam Rushing; Mr. Charles Norwood; Mr. Richard Von Dorn; Mr. Thomas P. Dillon; Mr. John Pigg; Mrs. W. C. Wolfe; Mr. Earl Haigler; Mr. Joe McCollum; Father Edward Sheridan; and Mr. Richard Clark.

The following public witnesses testified in Durham on April 18, 1973: Mrs. William J. Witt, Jr.; Ms. Barbara Sevald; Mr. Robert Conner; Mr. Gary Mottern; Dr. Gerald Ahronheim; Ms. Margaret King; Mrs. Jacob May; Mr. James N. Scoggins; Mr. Garland Hicks; Dr. William D. Gentry; Dr. Warren Kirkendale; Mr. William Lee Richardson; Mr. John R. Dunn; Ms. Brenda Mann; Mr. J. M. Oakley, Ms. Myrtle Spencer Weeks; Ms. Etta Chambers; Ms. Julia McBride; Ms. Minnie James; Mr. Haywood Davis; Mr. Carl Rietman; Mr. H. B. Matthews; Mr. Jack Landers; Mr. Phillip Lee Milsted. The following public witnesses testified in Durham on April 19, 1973: Mr. O. J. Jordan; Mr. Charles F. T. Nakari; Mr. David Audet; Mr. Jeffrey Kamin; Mr. A. K. Robinson; Mrs. Jane Jones; Ms. Teresa B. Canty; Ms. Nancy G. Douglas; Ms. Nellie R. White; Ms. Sharon Brehm; Ms. Carol A. Jackson; Ms. Kitty Dempson; Ms. Melinda Harris; Mr. Paul Lang; Mrs. Ruth Ford; Ms. Cynthia White; Mr. Charles R. Clayton; Ms. Donann Clement; Ms. Betty B. Millspaw; Ms. Mara G. Simmerman; Ms. Constance Fennema; Dr. Patricia Prinz; Ms. Linda Burdette; Dr. Robert Bailey; Ms. Vangie Horton; Ms. Cynthia DeFrance; Mr. Gary Berman; Mr. Wib Gulley and Mr. R. J. Frye.

The Commission Staff offered the testimony and exhibits of the following witnesses:

Mr. Hugh L. Gerringer, Staff Telephone Engineer, as to the appropriateness of the division between interstate and intrastate operations of the Company within North Carolina, the status of the intrastate toll settlements for the test

period, and the determination of the Company's normalized intrastate toll revenues for the test period; Mr. William E. Carter, Jr., Senior Staff Accountant, as to rate of return; Mr. Vern W. Chase, Chief Engineer, Telephone Rate Section, as to various aspects of rate changes proposed in the Company's application; Mr. Charles D. Land, Staff Telephone Engineer, as to the Staff's review of telephone service provided by the Company; Mr. Donald R. Hoover, Staff Accountant, as to the relationship and transactions between GTE Automatic Electric, Inc., and the North Carolina Division of General Telephone Company of the Southeast; Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Section, as to the results of the Commission Staff's study of the cost of equipment and plant purchases by General Telephone Company of the Southeast as compared to other telephone companies operating in North Carolina and excess investment in plant; Dr. Edward W. Erickson, Consultant, as to the relationship and transactions between GTE Automatic Electric, Inc. and the North Carolina Division of General Telephone Company of the Southeast; Dr. Richard Sylla and Dr. Charles P. Jones, Consultants, as to their determination of the cost of capital to General Telephone Company of the Southeast, and on rate of return.

Intervenor, Monroe-Union County Chamber of Commerce introduced Exhibit No. 1, a letter from Mr. E. M. Shepherd, Jr., General's Manager in the Monroe District to Mr. Charles Norwood, President of the Monroe-Union County Chamber of Commerce, dated April 10, 1973, whereby General resigned from the Chamber because the Chamber was opposing General's rate application.

Intervenor, City of Durham introduced Exhibits 1 through 6 relating to certain rate schedules of various companies reflected therein, which said companies were alleged to be comparable companies for the purpose of rate level comparisons with General and supported in part by the testimony of Mr. Lyle Orstad, witness for General, who used certain of the companies as "comparable companies" in his rate of return testimony. Further substantiation of comparability was established in cross-examination of certain witnesses as to City of Durham's Exhibits 2 and 3.

The Attorney General introduced Exhibits 1, 2, 3, 4, 7, 8, 10, 11, 12 and 13 including certain voluminous exhibits relating to General's relationship with GT&E affiliates.

The intervenors assisted the public witnesses in the presentation of their testimony.

I. EVIDENCE

A. QUALITY OF SERVICE

Background

The Commission's final order in Dockets P-19, Subs 94 and 95 entered on December 19, 1968, indicated that:

> "The Company should give more attention to eliminating antiquated equipment, toward serving its Research Triangle patrons who require sophisticated equipment, specialized service, and technological expertise, and toward upgrading the quality of its residential service. Glaringly apparent from the evidence in this proceeding is the Company's failure to maintain sufficient personnel and adequately train them and its apparent lack of concern and attention to procedures and policies for courteously receiving and promptly remedying subscriber complaints."

The Commission, in that case, considered the quality of service then being rendered by General as a material fact bearing upon its determination of what were just and reasonable rates and based upon the record required 30 specific improvements, which were attached to that order as Appendix "B". The final ordering paragraph of the Commission's Order of December 19, 1968, provided as follows:

> "8. Applicant, General Telephone Company of the Southeast shall fully comply with all service provisions and requirements, and shall promptly make all reports, as contained in Appendix "B" hereto attached and incorporated, but, in any event, shall have effected substantial overall improvement in the quality of its North Carolina service not later than December 31, 1969. Failure to comply with the service improvement provision of this order, specifically including Appendix "B", shall result in action by the Commission as in contempt, or in proceedings to show cause why Applicant's Certificate of Public Convenience and Necessity should not be revoked or statutory penalties invoked."

On May 11, 1971, the Commission entered an order in Docket No. P-19, Sub 115 and required 11 specific service improvements.

The specific improvements required were:

(1) Reduce failure rate on local interoffice calls to a range of .2%.

(2) Sustain service so the failure rate on intraoffice 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 of DDD calls so that the failure rate on originating DDD calls is less than 5%.

(5) Maintain public paystations so that 90% or more paystations 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 trouble during a month are cleared within 24 hours from the time the trouble is reported to the company.

(11) Provide service installations 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.

The Commission indicated in that order that "should General fail to comply with the service improvements provisions of this order, the Commission should give serious consideration to issuance of show cause proceedings as to whether statutory penalties should be invoked." Three Commissioners found that General's overall quality of service was on the low side of being reasonably adequate. Subsequent to appeal of that order, the Commission entered an order on remand in Docket No. P-19, Sub 115 on November 4, 1972, from which no appeal was taken by any party. The majority order found that the overall quality of service afforded by General to its subscribers was reasonably adequate, but just barely so. The order on remand reinstituted the 11 service requirements of the Commission's order of May 11, 1971, to be completed on or before July 1, 1972.

Evidence

Evidence regarding quality of service was presented in this proceeding by way of direct testimony and exhibits by

the applicant, the Commission Staff, the protestants, and from the subscribers of General.

Mr. Charles Clos, Engineering Consultant employed by General, testified to the results of his independent evaluation of the company's operations in the area of toll traffic, the completion rates of telephone calls for both toll and local service, and certain specific requirements of the Commission's May 11, 1971, Order in Docket No. P-19, Sub 115.

Mr. Claude Sykes, General Manager of General Telephone Company of the Southeast, testified for the purpose of discussing service measurements that are in compliance with the ordering paragraphs of Docket No. P-19, Sub 115 and Docket No. P-36, Sub 56, and also to discuss areas of service which are not directly measurable but directly affect the service provided to subscribers. Mr. Sykes expressed the opinion that his company was meeting nine of the Commission requirements and that the other two (10% or fewer repeated trouble reports and 5% or less DDD test calls failures) were not realistic requirements. Mr. Sykes further commented on the company's policy of meeting service requirements efficiently, and cited company innovations to increase productivity.

Numerous specific levels of service were measured by Commission Staff witness Charles Land. In his testimony, Mr. Land stated that of the eleven service improvement requirements placed on General in Docket No. P-19, Sub 115, only seven have been met. The service improvement requirements not met were: DDD test call failure rate, repeated trouble reports, percent of paystations out of service and interoffice call failure rate.

In response to the testimony of Mr. Clos, the Commission Staff offered into evidence Staff Exhibit Z, consisting of a lengthy memorandum dated October 22, 1971, prepared by Mr. Clos for General, wherein Clos discusses in detail his observations and findings in respect to General's level of service and service problem. Much of the context of the Clos memo reinforces the testimony and findings of Staff Witnesses Land and Clemmons in this docket and Clemmons' testimony and findings in previous dockets.

PUBLIC WITNESS TESTIMONY IN MONROE

At the public hearing in Monroe on April 11, 1973, witnesses testified that they encountered problems with local dialing; direct dialing of long distance calls; static on the line; fading of voice tones; complete outages of service; wrong numbers; difficulty obtaining directory assistance; billing problems; and indicated that third parties had stated that they could not reach the witness by calling into the witness' telephone, one witness indicated a problem with underground service installation and witnesses

reported parties on their lines even though they were assigned and paying for an individual line.

PUBLIC WITNESS TESTIMONY IN DURHAM

At the public hearing in Durham on April 18, 1973, witnesses testified that they encountered difficulties with local dialing; direct dialing of long distance calls; wrong numbers; complete outages in service; static on the line; numbers reported out of service when they were not; third parties stated that they could not reach the witness by dialing into the witness' telephone; witnesses indicated other parties were on the line even though the witnesses were assigned and paying for an individual line; difficulties with respect to obtaining phone service initially; in obtaining directory assistance; telephone ringing when no one is on the line; problems in being disconnected for non-payment without notice; fading of voice tones; poor response to telephone service by General, including missed appointments being disconnected and cut-off in middle of a conversation; and a number of persons testified that they consistently encountered billing problems and in particular being billed for toll charges which, although removed and not paid for that month, would reappear in subsequent months.

B. INTER-COMPANY TRANSACTIONS

Background

In the final order of December 19, 1968, in Docket No. P-19, Subs 94 and 95 the Commission found that:

> "General's purchases from its affiliated supplier, Automatic Electric Company, since its last rate case have amounted to the affiliates dealing with themselves under conditions other than arms-length bargaining and have produced investment costs to General and profits to the affiliated supplier which are unjust and unreasonable and which, if not adjusted for ratemaking purposes, will have the effect of concealing, transferring or dissipating the earnings of the public utility for rule-making purposes."

That finding was based upon a record which contained a comparison of prices paid by General to AE and paid to other non-affiliated suppliers by operating telephone companies. No appeal was taken from that order.

A similar finding and adjustment in General's rate application in Docket No. P-19, Sub 115, was disallowed by the North Carolina Supreme Court, which found no evidence in the record of the proceeding to support such an adjustment. The Commission, in its Order on Remand in Docket No. P-19, Sub 115, viewed the Supreme Court's determination of error on this point to be based on error in methodology rather than principle.

Evidence

Mr. Spiro B. Kircos, Assistant Controller, Financial Analysis, GTE Automatic Electric Incorporated, testified concerning accounting procedure and the relationship between GTE Automatic Electric, Incorporated and Subsidiaries and the GTE telephone companies. Mr. Kircos testified that Automatic Electric's (AE) basic price policies are the same as the policies that existed prior to the acquisition of AE by GTE, and have changed only to the extent of increasing the number of products sold at lower prices to affiliates.

Mr. Kircos presented price comparisons of items of equipment and supplies sold by AE to affiliates with those sold to non-affiliates; comparisons of AE's gross margin on transactions with affiliated and non-affiliated customers; and comparisons of return on equity of AE with seven companies included in the Electrical Machinery, Equipment and Supplies industry was grouped by the SEC. Mr. Kircos also presented his computation of the rates of return earned by GTE on its investment in AE for the years |95| - |97|.

Mr. Kircos testified GTE used the "pooling of interests" method in recording the acquisition of AE, and therefore the assets of the acquired company are carried on the books of the acquirer at the same value they were carried on the books of the acquired company before acquisition. Mr. Kircos testified the rates of return he computed on GTE's investment for the years |95| - |97| reflect the pro forma recording and subsequent amortization of goodwill in accordance with the "purchase" method of accounting for an acquisition.

Mr. Kircos further testified that successful manufacturing companies ordinarily earn a greater return than public utilities in that manufacturers are subject to significantly greater risk.

Mr. Wilbur S. Duncan, CPA and partner, Arthur Andersen and Company, witness for the company, testified concerning accounting procedures and the propriety of using rate of return on investment as a basis for comparing the relative profitability of one company with another. Mr. Duncan testified it is a generally accepted accounting principle that the cost of an asset, tangible or intangible, is measured by the fair value of the consideration given in exchange. In the case of an acquisition by the issues of shares, the cost is measured by the fair value of the stock issued for the acquisition.

Mr. Duncan testified that GTE's investment in Automatic Electric Incorporated is not recorded on the book of GTE at the fair value of the shares issued. Under the alternative accounting treatments available at the time, GTE had the option of recording its investments at the underlying book value of Automatic's tangible assets rather than accounting for the cost of its assets to GTE.

Mr. Duncan testified that it is extremely difficult to draw any meaningful conclusions on comparisons of return on investment between industrial companies without careful analysis of the comparability of the companies. Mr. Duncan further testified that a valid comparison of Automatic's return on investment with the return of other industrial companies would require companies with product lines similar to those of Automatic and whose return is not influenced by significant factors not present in Automatic's operation.

Dr. Avery B. Cohan, Professor of Finance, University of North Carolina, Chapel Hill, witness for the company, offered testimony and exhibits in rebuttal of the testimony and exhibits presented by Dr. Edward W. Erickson, Associate Professor of Economics, North Carolina State University, witness for the Commission Staff. Dr. Cohan testified that before price leadership can exist in any given market there must be a dominant firm and the other firms must be small in number and size and docile. Dr. Cohan contends these conditions for price leadership in the telecommunications industry are not satisfied.

Dr. Cohan testified that in assessing the reasonableness of prices Automatic Electric charges General Telephone Company of the Southeast, prices charged by Automatic Electric to other independent telephone companies can be used to judge the reasonableness of prices to General Telephone Company of the Southeast. Dr. Cohan testified that, in his opinion, Automatic Electric's prices to General Telephone Company of the Southeast are not unreasonably high.

Dr. Cohan further testified that Dr. Erickson's testimony stands or falls on his allegation that Automatic's prices to General Telephone Company of the Southeast are unreasonably high and that Dr. Erickson's conclusion is based on unrealistic price comparisons.

Mr. William P. Wofford, Vice President and Controller, GTE Data Services, Incorporated, testified concerning data processing services provided GTE operating telephone companies. Mr. Wofford testified that new sophisticated data processing techniques are required to meet demands for increased efficiency, response to technical change, and continuing improvement of service, and that only the economics of a large, integrated and consistent approach of a specialized corporation, such as that of GTE Data Services Incorporated make these techniques economically feasible.

Mr. Wofford further testified that a regional staff of professional data processing personnel is available to all locations, thus allowing the operating telephone companies, such as General Telephone Company of the Southeast, to draw upon the professional resources of a central staff without having to underwrite the cost of such a staff entirely on its own.

Dr. Edward W. Erickson, Associate Professor of Economics, North Carolina State University, witness for the Commission Staff, testified concerning the relationship and transactions between GTE Automatic Electric, Incorporated and the North Carolina Division of General Telephone Company of the Southeast, both companies subsidiaries of General Telephone and Electronics Corporation. Dr. Erickson's testimony included an analysis of the competitive environment and the reasonableness of prices charged by GTE Automatic Electric, Incorporated to the North Carolina Division of General Telephone Company of the Southeast and the effect these transfer prices have on the rate base of the North Carolina Division.

Dr. Erickson testified the non-Bell market for telephone equipment and supplies is dominated by GTE Automatic Electric, Incorporated and cannot be characterized as a free and competitive market with arm's-length bargaining. Dr. Erickson found the transfer prices between GTE Automatic Electric, Incorporated and the North Carolina Division of General Telephone Company of the Southeast to be unreasonably high.

Dr. Erickson testified that the pervasive existence of sales between affiliated companies which are subsidiaries of the same holding company cannot represent arms-length transactions, and in the absence of arms-length bargaining the incentives are for affiliated buyers and sellers to set transfer prices which maximize the profits of the joint, combined, affiliated operations. Dr. Erickson testified, that in his opinion, such a relationship exists between Automatic Electric and the North Carolina Division of General Telephone Company of the Southeast.

Dr. Erickson further testified that, as a result of the unreasonably high transfer prices between the subsidiaries of General Telephone and Electronics Corporation, the rate base of the North Carolina Division of General Telephone Company of the Southeast is inflated and results in increased charges for telephone service to the company's customers.

Dr. Erickson recommends that appropriate action be taken to eliminate the unreasonably high component of the subsidiaries' transfer prices from the rate base of the North Carolina Division of General Telephone Company of the Southeast.

Mr. Donald R. Hoover, Staff Accountant, witness for the Commission Staff, offered testimony and exhibits directed to the relationship and transactions between GTE Automatic Electric, Incorporated and the North Carolina Division of General Telephone Company of the Southeast. Mr. Hoover also presented a report on his study of the purchase of an aircraft by General Telephone Company of the Southeast.

Mr. Hoover testified that over 68% of AE's total sales of equipment and supplies during the 16-year period, 1957 through 1972, have been to its affiliated domestic telephone companies, and that AE's total sales to non-affiliated domestic telephone companies declined from 35.2% in 1957 to 14.1% in 1972.

Mr. Hoover testified that AE's unadjusted net income on sales to the North Carolina Division produced rates of return on staff unadjusted net investment ranging from 13.28% to 40.62% during the 16-year period, 1957 through 1972, and that AE's return on average stockholder's equity ranged from 13.7% to 40.8% during the 15-year period, 1958 through 1972, with an average return on common equity of 20.7%.

Mr. Hoover recommended that the North Carolina Utilities Commission adopt the basic concept of limiting the rate of return on investment of supplier affiliates to that allowed the affiliated regulated utility on transactions between the supplier and the utility when both companies are affiliates or subsidiaries of the same parent. Mr. Hoover further recommended that action be taken to eliminate from the North Carolina Division rate base those charges for goods and services that represent a rate of return on investment to the supplier affiliate in excess of that allowed the North Carolina Division of General Telephone Company of the Southeast.

With regard to the purchase of an aircraft by General Telephone Company of the Southeast, Mr. Hoover testified the North Carolina Division benefits very little, if at all, from the use of the company aircraft, and since its acquisition, total air travel expenses have increased. The increase is far in excess of the related increase in the number of Southeast Division employees. Mr. Hoover testified that the increased air travel cost further emphasizes the question of whether the ownership of the plane and its attendant fixed cost and the ready availability of the aircraft tended to cause the accelerated increase in total air travel costs. Mr. Hoover testified that the economics of this purchase remain in question.

C. FAIR VALUE OF PLANT IN SERVICE

Background

G.S. 62-133 provides that the Commission in rate proceedings shall ascertain the fair value of plant in service at the end of the test period, considering original cost, replacement costs, and any other factors relevant to the present fair value of the property.

Evidence

Mr. Michael E. Holstrom, Accounting Director, General Telephone Company of the Southeast, testified to the results

of a net trended original cost study prepared under his supervision. Mr. Holstrom's study produced a total net trended original cost of $79,780,737 for North Carolina as of December 31, 1972. Mr. Holstrom testified that his net trended original cost is the statement of original cost of telephone plant in service reduced by the portion of that cost which has been recovered by depreciation accruals, translated from price levels existing in the years of installation to current price levels and that this translation is achieved by multiplying the net book cost of each class of property for each vintage by the ratio of the cost index numbers for the current year to cost index numbers for the year in which the property was installed. The investment in existing telephone plant in terms of today's price level was determined by applying the current ratio of labor cost to material cost to the individual labor and material indices. The vintage dollars to which the trended factors were applied were developed by Mr. Holstrom on the basis of the application of selected Iowa survivor curves. A theoretical reserve study was prepared for each account, the total actual book reserve was distributed to accounts proportionately to obtain the vintage reserve and the vintage reserve was then aged to distribute the dollars as accrued over the years. The original cost less the aged depreciation reserve was then multiplied by the trending factors to arrive at the trended net book cost for each account.

Mr. James W. Hevener, Revenues and Earnings Director for General Telephone Company of the Southeast, testified to the fair value of the Company's property in North Carolina devoted to intra-state telephone operations. Mr. Hevener testified that he determined the fair value of the intra-state telephone property to be $63,500,000. Mr. Hevener testified that in arriving at his fair value determination, he reviewed the past operations of the company, including service demands of customers, placement and utilization of telephone plant, social and economic conditions, quality of telephone service, and the overall effectiveness of the company's operations. He further testified that he reviewed the continued increase of telephone plant needed to meet service requirements, the development of the company's intrastate net investment based on original cost from the books of the company, the net trended value of the telephone plant as developed by Mr. Holstrom, and he verified Mr. Holstrom's findings by making two trended depreciated book cost evaluations using the Consumer Price Index and the Gross National Product Implicit Price Deflator. Mr. Hevener testified that his ultimate determination of fair value is a judgment decision giving general weight to the considerations previously mentioned.

Mr. Daniel L. Golombisky, Chief Engineer of General Telephone Company of the Southeast, testified to the planning and techniques employed by the company to ensure the economical placement of telephone plant necessary for growth and the requirements of the customer. Mr.

Golombisky's testimony related to the utilization of inside and outside plant facilities.

Mr. Golombisky offered rebuttal testimony to the direct testimony of Mr. Gene A. Clemmons of the Commission Staff concerning excess line and terminal equipment, linefinders-first selectors and trunking.

Mr. Malcolm Shepherd, District Manager of General Telephone Company of the Southeast, Monroe District, testified that he was responsible for the entire operation in the Monroe District; that he was involved in purchases for items of use in connection with operations in Monroe, Altan and Goose Creek; that items normally purchased are telephones, drop wires, station protectors and hardware used in telephone maintenance; that these purchases are made from a standard material list; that the majority of the telephones are purchased from Automatic Electric; that no advertising of any equipment used in the maintenance operations is conducted. Mr. Shepherd also testified with respect to the quality of telephone service in the Monroe District.

Mr. John C. McKinney, Plant Director of General Telephone Company of the Southeast, testified as to purchasing policies and procedures. The witness testified that they are not obligated to purchase from any manufacturer or supplier; that the company is working toward standardization of equipment because of the benefits derived by standardization; that materials, supplies, and station apparatus are purchased from Automatic Electric because they are generally available at a lower cost than from other supply sources; that they purchase from other suppliers when it is found that based on price, availability or other considerations that it is more economical to do so; that during 1972, they purchased about $2,380,681 worth of material from non-affiliated suppliers for use in North Carolina; that price comparisons made by the witness between Automatic Electric's price list and a combination of purchase prices and catalog prices from Graybar Electric, Stromberg-Carlson, and Superior Continental, showed General Telephone Company of the Southeast prices to be equal to or better than the prices being paid by other telephone companies.

Mr. McKinney offered rebuttal testimony for the purpose of showing that the direct testimony of Mr. Gene A. Clemmons of the Commission staff was in error in comparing the prices paid by General Telephone Company of the Southeast for equipment and materials to those paid by the Bell Telephone Company since the Western Electric source of supply is not available to the independent telephone industry; that General Telephone Company of the Southeast's prices compared favorably with purchases made by other independent telephone companies and that it is normal to expect some variances when comparing a variety of items for good and cogent reasons; that Mr. Clemmons compared many unlike items; and

that in many instances, the lowest purchase price does not result in the lowest investment or lowest repair cost.

Mr. Benjamin P. Hatfield, Public Utilities Consultant, testified as a rebuttal witness for General Telephone Company of the Southeast to the testimony of Mr. Gene A. Clemmons of the Commission Staff. Mr. Hatfield testified about the ratio of telephone plant in service to company stations; that there are a number of variables that affect the cost and investment of telephone; that in his opinion, it is not possible to judge a telephone company's performance by investment per telephone; that the ratio of maintenance expense per average company telephone does not have any significance for judging any performance or inefficiency by looking at maintenance expense per average telephone alone.

Mr. Gene A. Clemmons, Chief Engineer, Telephone Service Section, of the North Carolina Utilities Commission, testified as to the results of the Commission staff's study of the cost of equipment and plant purchases by General Telephone Company of the Southeast as compared to other telephone companies operating in North Carolina. His testimony also covered central office equipment margins at the end of the test period. The cost comparison study included cable, station apparatus, station connection material, outside plant items and central office equipment. The witness made a comparison of prices taken from company invoices or from data filed by the companies compared. Purchases by General Telephone Company were compared with purchases of Southern Bell, Carolina Telephone Company, North State Telephone Company, North Carolina Telephone Company, Concord Telephone Company, Central Telephone Company and Western Carolina Telephone Company.

Mr. Clemmons also placed in the record through a series of exhibits derived from the Commission's files telephone plant year-end investment, company stations, and investment per station for all regulated North Carolina telephone companies for the years 1967-1972.

Using the two companies most comparable in size and characteristics of area served to General (North State Telephone Company and Concord Telephone Company) the following table discloses the year-end investment per station comparisons:

PLANT INVESTMENT PER STATION

	1967	1968	1969	1970	1971	1972
Concord Telephone Company	$371	$392	$404	$419	$435	$453
General Telephone Company of the S. E.	454	528	573	621	724	771
North State Telephone Co.	343	345	359	386	405	424

Mr. Clemmons testified that his review of the quantity of lines and terminals installed in plant of General Telephone Company which exceeded the requirements for a reasonable engineering period was estimated to be $317,645. The witness' estimation of excess investment in trunks, linefinders-selectors, and connectors which were installed at the end of the test period but not required by the traffic load was $712,909.

D. FAIR RATE OF RETURN

Background

As provided by G.S. 62-133(b)(4), the North Carolina Utilities Commission is charged by law to "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 stockholder, ... and to compete in the market for capital funds on terms which are . . . fair to its customers and to its existing investors, (emphasis added)." The witnesses testifying on accounting procedures, rate of return, and finances of General Telephone Company of the Southeast have expressed differences of opinion as to a fair rate of return necessary to provide a fair profit for stockholders under these requirements.

Evidence

Mr. O. G. Gawronski, Vice President-Controller of General Telephone Company of the Southeast offered testimony and exhibits concerning rates of return on plant investment and on common equity after an added increment representing the difference between the company's fair value of telephone plant in service and original cost of telephone plant in service. Mr. Gawronski's testimony was substantially as follows: For test period operations after pro forma adjustments, adjustments to end-of-period level, and allocations to intrastate operations, the original cost net investment is $58,886,262, which, with a net operating income for return of $3,696,452, excluding out of test period wage increases, results in a rate of return of 6.28% under present rates. A return of 4.12% on fair value common equity was found at the end of the test period under present rates.

Staff witness William Carter presented testimony and exhibits on rates of return as follows: after accounting and pro forma adjustments, adjustments to end-of-period and allocation to intra-state operations, the original cost net investment is $57,143,639, which, with a net operating income for return of $3,778,527, results in a rate of return of 6.61% under present rates. A return of 6.82% on book common equity was found at the end of the test period under present rates. After allowing for the proposed increase, the return on original cost net investment rises to 9.01 while the return on book common equity becomes 12.20%.

Allowances for working capital are included in the original cost net investment.

The differences in the rate of return figures as presented by Mr. Gawronski and Mr. Carter were results of the following:

1) In determining the end-of-period adjustment for miscellaneous revenues, General annualized the actual miscellaneous revenues for the last three months of the test period while the Commission Staff increased actual miscellaneous revenues for the test period by the station growth during the test period. The Commission staff's method results in $37,960 more intrastate miscellaneous revenues than General's method.

2) The Commission Staff's end-of-period adjustment to intrastate toll service revenues is $7,294 less than General's adjustment because the Commission Staff disallowed certain of General's pro forma expense adjustments which have an effect on General's toll service revenues.

3) The Commission Staff reduced intra-state maintenance expenses by $30,175 to exclude charges for non-recurring expenses for moves and changes connected with reallocation of floor space in the general office building.

4) The Commission Staff reduced intra-state maintenance expenses by $2,328 to exclude tree trimming expenses for work performed prior to the test period, but recorded during the test period.

5) The Commission Staff's intra-state end-of-period adjustment to maintenance expenses is an additional $1,189 less than General's resulting from the above-mentioned maintenance expense adjustments multiplied by the growth in stations during the test period.

6) The Commission Staff reduced intra-state general office salaries and expenses by $590 to reclassify charitable contributions to miscellaneous income deductions. This adjustment resulted in an additional reduction in intra-state general office salaries and expenses of $22 when multiplied by the growth in stations during the test period.

7) The Commission Staff reduced intra-state other operating expenses by $14,325 to amortize current and prior rate case expenses over a five year period. General expenses rate case costs in the year incurred.

8) The Commission Staff reduced intra-state other operating expenses by $1,728 to reclassify Chamber of Commerce dues and contributions to miscellaneous income deductions.

9) The Commission Staff reduced intra-state other operating expenses by $7,110 to exclude charges for a performance share plan.

10) The Commission Staff's intra-state end-of-period adjustment to other operating expenses is an additional $848 less than General's resulting from the above-mentioned other operating expenses adjustments multiplied by the growth in stations during the test period.

11) The Commission Staff's end-of-period intra-state adjustment to depreciation expense is $24,864 less than General's adjustment because General used a depreciation rate of 6.7% on a type of central office equipment instead of the approved rate of 6.1%.

12) The Commission Staff's amount for intrastate taxes other than income is $2,277 more than General's amount resulting from the difference between the Commission Staff's and General's end-of-period adjustments to miscellaneous revenues.

13) The Commission Staff's amount for intra-state Federal and state income taxes is $25,493 more than General's amount resulting from the difference between the Commission Staff's and General's amounts for revenues, expenses, general taxes and interest expense. Also, the Commission Staff used a Federal income tax rate of 47.66% which is the effective rate for General Telephone and Electronics Corporation for 1972. General used a rate of 48%.

14) The Commission Staff's intra-state amount for accumulated provision for depreciation is $210,029 more than General's amount because General did not increase the accumulated provision for depreciation following the end-of-period adjustment to depreciation expense.

15) In determining net operating income for return the Commission Staff deducted intra-state interest on customer deposits in the amount of $4,000 while General did not deduct this item.

16) In determining the allowance for working capital, the Commission Staff included material and supplies, a cash allowance of 1/12 of operating expenses, average prepayments, less average tax accruals and average customer deposits for a negative amount of $359,726. General included material and supplies and a cash allowance of 1/8 of operating expenses, based on a lead-lag study prepared by Mr. Gawronski. General's allowance for working capital totaled $1,172,870.

Through a series of exhibits developed from information obtained in the Commission's files, Staff Witness Clemmons developed comparative figures for maintenance expense per average station for all regulated telephone companies in North Carolina for the calendar years 1967-1972. The

following table reflects the experience of General compared to North State Telephone Company and Concord Telephone Company, two other systems whose size and service area characteristics make them comparable to General:

MAINTENANCE EXPENSE PER STATION

	1967	1968	1969	1970	1971	1972
Concord Telephone Co.	$|5.72	$|6.34	$|6.82	$|8.72	$|9.37	$|9.74
General Tel. Co. of the S.E.	|8.04	20.80	24.67	26.4|	32.22	35.59
North State Tel. Co.	|8.03	|9.58	|9.34	20.2|	23.32	24.87

Mr. Lyle E. Orstad, Treasurer of General Telephone Company of the Southeast, offered testimony and exhibits concerning a fair rate of return. Mr. Orstad's testimony was substantially as follows: In determining a fair rate of return emphasis was placed on the financial history as well as the future financial plans of the company, the economy of the area served, the financial data of similar type companies, and a study of the money market to determine the availability to the company of the funds necessary to continue the company's substantial construction program, and at what cost level.

The capitalization of the company as of December 3|, |972 totaled $404,825,000 as follows: Bonds - $|52,736,000; Debentures $4,800,000; other Long-Term Debt - $24,000; Short-Term Debt - $50,5||,000; Deferrals - $|2,2|4,000; Preferred Stock - $3,870,000; and Common Equity - $|80,670,000. Mr. Orstad proformed a capital structure at December 3|, |972 to include the issuance of $25,000,000 in First Mortgage Bonds to occur in March, |973 and the issuance of $8,5||,000 of common stock to occur in March, |973. The purpose of both of these issues will be to reduce short-term debt.

The embedded cost of long-term debt at December 3|, |972 was 7.32% based on actual capital structure and 7.39% based on the proformed capital structure, using a cost of 7.83% for the bonds to be issued in March, |973. The embedded cost of preferred stock was 4.66%. Mr. Orstad used a rate of 8% for short-term debt.

In determining an earnings requirement for common equity, comparable utilities were studied to determine the return on equity of similar companies subject to corresponding risks and uncertainties. Also, interest coverages of utilities were analyzed and a level of coverage necessary to maintain financial integrity and successfully market securities was determined.

General Telephone Company of the Southeast needs to maintain a level of interest coverage of at least 2.5 times in order not to jeopardize its Bond rating position of A.

but General's bond indentures requires only an interest coverage of two times before income taxes and is on bonds only, and would not include any interest on debentures or short term debt. (Transcript Vol IX, page 34). A 2.5 times interest coverage would result in a return on common equity of 12.18% for General Telephone Company of the Southeast, and an overall return requirement of 9.54%.

Mr. Orstad further stated in his opinion that, based on an analysis of earnings on common equity of comparable utilities, the requirement for common equity should be in the range of from 12% to 14%. On the basis of an interest coverage review, the requirement for common equity should be at least 12%. The earnings allowances on equity should be in the range of from 12% to 13.5%, which would result in an overall cost of capital of 9.24% to 9.94%. A fair rate of return to General Telephone Company of the Southeast is 9.5%.

Drs. Sylla and Jones, witnesses for the Commission Staff, offered testimony and exhibits presenting their determination of the cost of capital to General Telephone Company of the Southeast and to determine what constitutes a fair rate of return for the Company on its investment used and useful in providing telephone service in its North Carolina intrastate operations. The cost of common equity to General is between 10.6% and 11.3%. This was determined by judgment based on the dividend growth and past book value growth of eleven risk-equivalent stocks including General Telephone and Electronics Corporation. The overall cost of capital to General Telephone Company of the Southeast is between 8.32% and 8.62%, based on a capital structure of 53.34% debt, 3.02% no cost deferrals, .95% preferred stock and 42.69% common equity and embedded cost of 7.32% for mortgage bonds, 4.88% for debentures, 8.00% for other long-term debt, 4.66% for preferred stock and a rate of return on equity of 10.6% to 11.3%. A rate of return of 8.40% will allow General Telephone Company of the Southeast to compete in the market for capital funds on a reasonable and fair basis to its existing investors and to its customers.

In addition to evidence on rate of return necessary to attract capital, the Commission has considered the matter of rate levels. Evidence was introduced by the City of Durham relating to the level of rates in effect for telephone companies operating in North Carolina and other states which General's witnesses had characterized as being comparable to General. These companies were Southern Bell Telephone and Telegraph Company (North Carolina), Carolina Telephone and Telegraph Company (North Carolina), General Telephone Company of Kentucky, and United Telephone Company of Ohio. The table below illustrates the comparison between rates in effect for said companies and General's rates in effect during the test period. In addition, we judicially notice and include in the table rates in effect for North State Telephone Company and Concord Telephone Company. In each

instance we have used the rates in effect in respective rate groupings most similar to General's Durham District.

	Business One Party	Residence One Party
General Telephone Company of the Southeast	$20.00	$7.30
Carolina Telephone and Telegraph Company	15.00	7.50
Southern Bell Telephone and Telegraph Company	15.85 (18.45)*	6.50 (8.00)*
General Telephone Company of Kentucky	18.80**	6.30**
United Telephone Company of Ohio	18.35***	7.90***
North State Telephone Company	9.50	4.50
Concord Telephone Company	15.00	7.25

* Rates being applied for
** Rates approved April 19, 1973
*** Rates effective February 4, 1973

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

FINDINGS OF FACT

1. Corporate History: That General Telephone Company of the Southeast is a duly franchised public utility providing general telephone service to its subscribers, and as a duly created and existing corporation under the laws of this State is properly before the Commission in this proceeding. General's rates and services are regulated by this Commission under the provisions of Chapter 62 of the General Statutes of North Carolina.

2. Nature of increase requested: That the increases requested by General would amount to approximately $2,930,575 additional annual gross revenues.

3. Test period: That all parties to this proceeding utilized as the test period the 12 month period ending December 31, 1972.

A. QUALITY OF SERVICE

4. General Telephone Company of the Southeast has not completed all service improvements as set forth by Commission Order of May 11, 1971, in Docket No. P-19, Sub 115. Further, the record of this proceeding does not support contentions by General that two of the requirements for service improvements are unreasonable.

5. Service indices do not measure all aspects of telephone service, nor do they fully reflect customer satisfaction with the service received. Subscriber complaints in the record of this proceeding indicate aggravation with inadequacies in Direct Distance Dialing service and with the necessity of repeatedly reporting service problems. Subscribers also indicated dissatisfaction with local dialing service, billing matters, and other aspects of company operations.

B. INTERCOMPANY TRANSACTIONS

6. The transfer prices for equipment and supplies between Automatic Electric Company (AE) and the North Carolina Division (NCD) of General Telephone Company of the Southeast have been unreasonably high. The unreasonably high transfer prices have served to inflate the rate base of the North Carolina Division and to unnecessarily increase the cost of its operations.

The unreasonableness of prices placed on intra-corporate exchanges of equipment and supplies between the affiliated companies (AE/NCD) was demonstrated both directly and indirectly by the Commission Staff.

The unreasonableness of transfer prices between AE/NCD was exhibited directly through price comparison of comparable items of equipment exchanges between Western Electric (wholly by the Bell System) and the Bell System operating companies as compared to prices charged by AE on sales to the NCD. For example, in a specific price comparison, one version of the five-line telephone set purchased by the NCD from AE cost $61.05 while the same version purchased by the Bell System from Western Electric cost $27.21. The cost to the NCD was 124 percent higher than the cost to the Bell System on purchases of comparable equipment from Western Electric. In another specific price comparison presented by Commission Witness Clemmons, the cost of standard length four conductor station wire to the NCD on purchases from AE was $30.10. The Bell cost from Western Electric was $10.90. The NCD cost was 176 percent higher than the cost to the Bell System.

Mr. Clemmons presented 21 such specific price comparisons for standard items of equipment, and on each and every item the NCD cost was higher than the Bell cost. The total average cost of the 21 comparisons to the NCD on purchases from AE as compared to the average cost of the comparisons to the Bell System on purchases from Western Electric reveals, on average, costs to the NCD in excess of 59 percent higher than the Bell costs. In comparisons of cable and central office equipment items which are somewhat less fungible than the previously mentioned specific price comparisons, Mr. Clemmons presented data which reflect findings similar to those demonstrated by the specific price comparisons.

In comparing three types of cable which are strictly and directly comparable, the NCD costs from AE were found to be 40.7 percent, 38.1 percent and 35.1 percent higher than the respective Bell costs from Western Electric. The 45 other cable price comparisons, to the extent that they are comparable, in each and every case resulted in excessive charges to the NCD on purchases from AE as compared to the Bell cable costs on purchases from Western Electric. The average by which the NCD cable costs exceeded the Bell cable costs was 26.8 percent.

Central office equipment is generally purchased in a package with a number of items included and with only the price of the entire package quoted; however, witness Clemmons found several individual items which provide a basis for comparison. These comparisons show, as did the previous comparisons, that the NCD cost for comparable items exceeded the Bell cost. In many cases the AE cost to the NCD was in excess of 100 percent higher than the Western Electric cost to Bell. In at least one instance, the NCD cost exceeded the Bell cost by 214 percent.

Mr. McKinney in rebuttal contended that Mr. Clemmons was in error in comparing AE/NCD prices with those of Western Electric to Southern Bell. Mr. McKinney reasoned that items contained in Mr. Clemmon's exhibits were not available from Western Electric to the independent telephone industry and, therefore, do not constitute a realistic comparison that the lowest purchase price does not necessarily result in the lowest investment or the lowest cost of service; that NCD purchases compare favorably with purchases made by other independent telephone companies; and that Mr. Clemmons in his comparisons compared many unlike items. In considering this question of comparability and the quality and cost of service, the Commission points to the testimony of Dr. Erickson. Included in Dr. Erickson's observations and supported by his direct testimony, and testimony and exhibits of witnesses Hoover and Clemmons, Dr. Erickson concludes:

"Because of the market dominance of AE, the comparison of the transfer prices between AE and NCD with other prices in the non-Bell market does not give sufficient information about the reasonableness of the transfer prices between AE and NCD.

"There are two ways to judge the reasonableness of the transfer prices between AE and NCD. These are:

a. Comparison of the AE/NCD transfer prices with prices for similar equipment in a market external to the non-Bell market dominated by AE, and

b. Comparison of the rate of return earned by AE with the rates of return earned by comparable

manufacturing enterprise in markets external to the non-Bell market dominated by AE."

Dr. Erickson analyzed the non-Bell market for telephone equipment and supplies. AE sales account for nearly half of the volume of transactions in this market, and almost three-quarters of AE's sales are to affiliated GT&E companies. Dr. Erickson concluded that the economic theory of "dominant firm price leadership" was the relevant theory in such a situation. Dr. Erickson related the characteristics and pattern of market behavior of a dominant firm to the market behavior of AE, and demonstrated that comparisons of AE/NCD transfer prices with prices in the non-Bell market dominated by AE, are less meaningful than comparisons of prices in a market external to the non-Bell market. In essence, the AE prices themselves are a significant determinant of other prices existing in the non-Bell market and would be almost as meaningless as comparing AE/NCD prices to AE/NCD prices. Price comparisons in a market external to the AE dominated non-Bell market are required. The price comparisons considered most meaningful are the exchange or transfer prices between AE and the NCD as compared to exchange prices between Western Electric and the Bell System. Again, as pointed out by Dr. Erickson, the comparison of AE/NCD transfer prices to other prices existing in the non-Bell market is "inherently circular".

Mr. McKinney raised a question relating to the cost and quality of equipment purchased by the Bell System from Western Electric as compared to the cost and quality of equipment purchased by the NCD from AE. Dr. Erickson noted that prices often tend to be directly correlated with quality, but that this does not seem to be the case with respect to the AE/NCD prices and quality in comparison with Western Electric prices and quality to the Bell System. It is often impossible to get quality without cost, but is possible to get cost without quality. If AE's equipment allowed the NCD to provide a higher quality of service at the same cost or the same quality of service at a lower cost in relation to the quality and cost of service to the Bell System, then this quality/cost differential would support the contention that the AE equipment was superior to that of Western Electric. However, the record does not show this to be the case. In fact, the evidence indicates, based on the degree of adequacy of past and present service that the high priced AE equipment is of lower quality than that of Western Electric. Dr. Erickson also points out that the total AE/NCD and WE/Bell price differential cannot be explained by manufacturing and distribution cost relationships, i.e. economies of scale; cost of capital, etc. Dr. Erickson testified,

"The General System is not as large as the Bell System and AE is not as large as WE. We should, therefore, expect WE to have some cost advantage over AE, but the whole difference by which AE/NCD prices exceed WE/Bell prices cannot be explained by such WE cost advantages.

"This is because of the difference in the rates of return earned by AE and WE. Only if AE were earning the same rate of return as WE could the price differential by which AE/NCD prices exceed WE/Bell prices be explained by WE cost advantages. AE earns a higher rate of return than WE. Therefore, some of the difference by which AE/NCD prices exceed WE/Bell prices must reflect something other than manufacturing and distribution cost."

Dr. Erickson identified this "something other" as "the unreasonable component of the AE/NCD prices."

With respect to Mr. McKinney's contention that Mr. Clemmons compared many unlike items of equipment, the record does not show that Mr. McKinney took issue with the comparison between AE/NCD equipment and that purchased by the Bell System from Western Electric from a standpoint of like-kind equipment. Mr. McKinney's sole objection to the validity of the Bell/Western Electric comparisons rests on the lack of availability of equipment from Western Electric to the independent telephone industry.

In considering the propriety of the AE/NCD-WE/Bell price comparisons, the evidence presented indicates that the AE/NCD-WE/Bell comparisons are objective, valid and infinitely more meaningful than AE/NCD prices as compared to prices in the non-Bell market was exhibited, as previously indicated, by witness Erickson in his presentation of the economic theory of "dominant firm price leadership".

Indirectly, the Commission Staff exhibited the unreasonableness of the AE/NCD transfer prices most emphatically through comparisons of the return-on-equity earned by AE with the return-on-equity earned by comparable manufacturing companies, including Western Electric.

To interpret the impact of the return-on-equity comparisons in relation to the unreasonableness of AE/NCD transfer prices, it is essential to understand: the market structure and the economic environment in which AE conducts its manufacturing and marketing operations; the accounting theory in support of the accounting method employed in determining AE's equity and return-on-equity, thereby insuring the comparability of the various return-on-equity comparisons; the direct correlation between the unreasonableness of AE/NCD transfer prices and the excess profits earned during the 15-year period, 1958-1972, measured in terms of return-on-equity to AE.

The non-Bell market for telephone equipment and supplies is not a free and competitive market. This lack of competition results from market dominance by AE and the existence of sales between affiliated companies (AE/NCD). Such sales do not represent arms-length transactions.

Dr. Erickson, in elaborating on the importance of arms-length bargaining, testified:

"Arms-length bargaining is an important condition for satisfactory performance in free and competitive markets. When transactions are made at arms-length between completely independent buyers and sellers, each buyer has a very strong incentive to find the lowest possible price from any of the alternative independent sources of supply.

"On the other side of the market, sellers are searching for buyers. One of the ways sellers have of increasing the probability that they will find buyers (or be found by buyers) is to quote the lowest possible price."

Dr. Erickson, in commenting on the absence of arm's-length bargaining, testified:

"In the absence of independent buyers and sellers, on each side of the market, the incentives are for affiliated buyers and sellers to set transfer prices which maximize the profits of the joint, combined affiliated operation. I believe such a relationship exists between AE and NCD."

Mr. Hoover's testimony and exhibits lend support to Dr. Erickson's evaluation and conclusion that the non-Bell market for telephone equipment and supplies is not a free and competitive market but a market dominated by AE, and the conclusion that the incentives are for AE and NCD to set transfer prices which maximize the profits of the joint, combined, affiliated operation.

Mr. Hoover's exhibits show that over 68 percent of AE's total sales during the 16-year period, 1957-1972 were to the affiliated telephone companies of General Telephone and Electronics Corporation; that over 78 percent of AE's total sales to domestic telephone companies have been to domestic affiliated telephone companies; that AE sales to the GTE domestic affiliated telephone companies have increased from a low of approximately 52 percent in 1957 to a high of approximately 80 percent in 1971; that sales to domestic non-affiliated telephone companies have decreased from approximately 35 percent in 1957 to a low of 11 percent in 1970; that approximately 80 percent of the NCD purchases of telephone equipment and supplies during the 6-year period, 1967-1972, were from AE.

GTE's acquisitions of other independent telephone companies have undoubtedly been a contributing factor in the pronounced increase in AE's sales to the affiliated telephone companies of GTE. As pointed out by Dr. Erickson, these acquisitions of potential customers of non-AE firms in the non-Bell market have served to insulate AE's share of the market from erosion, and confirms the pattern of "dominate firm price leadership". Dr. Erickson testified,

"The significance of this pattern is that the increasing control by General System companies of the non-Bell market has tended to provide AE with an insulated market of sales to affiliated companies who are also subsidiaries of the

same parent holding company. As the control of the non-Bell market by General System companies has increased, dominance in this market by AE has also increased in a step-by-step fashion. In 1957, 52.6 percent of AE sales were to the General System and the General System controlled 31 percent of the non-Bell market. In 1969, 76.0 percent of AE sales were to the General System, and the General System controlled 46 percent of the non-Bell market. The GTE/AE/NCD combination has been able to make the dynamics of 'dominate firm price leadership' work in its favor via a continuous extension of control over the non-Bell buyers of telephone equipment and supplies."

Commenting on the "Bell Consent Decree" and its effect on the non-Bell market dominated by AE, Dr. Erickson testified,

"My conclusion regarding the dominant position of AE is strengthened by the existence of a restraint on sales by Western Electric (WE). WE would be a natural alternative source of supply in the absence of such a restriction. The restriction actually contributes to the dominant market position of AE."

Dr. Cohan in rebuttal testified,

"In essence, Dr. Erickson's testimony is that price leadership means non-competitive prices which are unreasonably high--which in turn means unreasonably-high rates of return on equity; but Dr. Erickson's testimony really stands or falls on his allegation that AE's prices are unreasonably high. If he had found that AE's prices to GTSE were not unreasonably high, he could not have argued that AE's return on equity was excessive."

Dr. Cohan disagrees with Dr. Erickson's conclusion that the non-Bell market for telephone equipment and supplies is a market dominated by AE, and characterized by price leadership. Moreover, Dr. Cohan takes issue with Dr. Erickson's division of telephone equipment market into two parts, the Bell and the non-Bell markets.

With respect to the AE/NCD-WE/Bell price comparisons of witness Clemmons, Dr. Cohan asserts that the items are not available for sale outside the Bell System and, therefore, are not real prices, i.e. prices at which actual transactions have taken place outside of the Bell System. Dr. Cohan testified that price leadership does not exist in the market for telephone equipment and, therefore, in determining the reasonableness of AE/NCD transfer prices, AE prices charged in the non-Bell market can be used as a measure of reasonableness of the AE/NCD prices.

The Bell market for telephone equipment and supplies is a distinct, identifiable economic entity, and to ignore the divisibility of the telephone operating company market for telephone equipment and supplies into the Bell and non-Bell (independents) sub-markets is to ignore reality. In fact

and as a matter of public record, GTE has acknowledged the existence of the Bell sub-market.

"In U.S. v. General Telephone and Electronics, Civil No. 64-1912, GTE alleged in its answer to the Government's complaint:

'A result of the Bell System Consent Decree has been the foreclosure of that portion of the market for telephone equipment consisting of the Bell System telephone operating companies from competition by telephone equipment manufacturers other than Western Electric because the Bell System telephone operating companies purchase all their equipment and supplies from Western Electric.'" (III V. GTE, Civil No. 2754)

With regard to Dr. Cohan's contention that price leadership does not exist, for reasons previously stated, it is reaffirmed that price leadership does exist in the non-Bell market for telephone equipment and supplies. Because of this price leadership, market dominance by AE and the resultant influence on prices in the non-Bell market, AE/NCD price comparisons to a market external to the non-Bell market are without question valid and meaningful comparisons.

The unreasonableness of AE/NCD transfer prices was further evidenced by Mr. Hoover's return-on-equity comparisons. Mr. Hoover in comparing the return-on-equity of AE to companies engaged in similar manufacturing activity, found AE earnings to be consistently higher than the weighted-average earnings of comparable companies. The weighted-average return on equity of the 78 companies, AE and WE compare as follows:

	Return on Net Worth		Funded Debt % Total Capital	
	1971	1972	1971	1972
78 companies	11.0%	13.4%	29.6%	28.7%
Automatic Electric	16.5%	14.7%	11.8%	11.5%
Western Electric	9.3%	9.7%	19.1%	20.0%

AE's return on average-shareholder equity for the 15-year period, 1958-1972, averaged 20.7 percent with a high-low range of 40.8 percent in 1965 to 13.7 percent in 1972.

The weighted-average earnings on equity of the 78 comparable companies that comprise the electrical equipment/electronics industry as grouped by The Value Line Investment Survey for the years 1971 and 1972 was 11.0 percent and 13.4 percent respectively.

It is easily observed that AE's return is higher than that of the 78 companies and substantially higher than that of WE, notwithstanding the fact that AE's ratio of funded debt to total capital is far lower than that of the 78 companies and WE.

Dr. Erickson, in commenting on the relationship of funded debt to total capital, testified,

> "The standard interpretation is that the lower the ratio of funded debt to total capital, the less risky is investment in the firm. The less risky is investment, the lower the rate of return required to attract capital. Although AE has a lower funded debt to total capital ratio, AE actually has a higher rate of return. This higher rate of return cannot be considered to a risk adjustment for a debt-heavy capital structure."

It is further noted in evaluating AE's risk factor that over 68 percent of AE's total sales during the 16-year period, 1957-1972, were to the affiliated telephone companies of GTE.

Mr. Kircos testified that profit rates vary widely between industries and,

> "the average for all industries or all manufacturing industries cannot logically be used to compare the appropriateness of earnings for any one industry or company included in the total."

While Mr. Kircos' statement may be true, it is irrelevant because Mr. Hoover's comparison of AE's return-on-equity was not with all industries or all manufacturing industries, but with the electrical equipment/electronics industry. Mr. Kircos did not take exception to Mr. Hoover's comparison of AE's return-on-equity to that of Western Electric. These comparisons are found to be both valid and meaningful.

Mr. Kircos, in his Exhibit 1, Schedule 7, Page 1 of 1 presents for the 5-year period, 1966-1970, the rate-of-return on common equity for several manufacturing companies which he considers to be comparable to AE, and the average return on common equity for Electrical Equipment Manufacturers Group and for Electric-Electronic Major Manufacturers Group as reported by Standard and Poor's. As indicated by Mr. Kircos in his direct testimony, the eight companies he considers to be comparable to AE and the six companies to which he refers as, "Other successful companies in the Electrical Machinery, Equipment and Supplies Industry Group: were subjectively selected, therefore, obviously subject to bias, from the Electrical Machinery, Equipment and Supplies Industry Group as classified by the Securities and Exchange Commission.

Below is a comparison of AE's return on average common equity as computed by Mr. Kircos and the Staff for the 5-year period, 1966-1970, with the average return on equity of the Electrical Equipment Manufacturers Group and the Electric-Electronic Major Manufacturers Group as reported by Standard and Poor's and as shown in Mr. Kircos' exhibit.

Company or Grouping	Average Return on Common Equity				
	1970	1969	1968	1967	1966
Electrical Equipment Manufacturers Group	14.7%	15.9%	15.8%	15.4%	16.5%
Electric-Electronic Major Manufacturers Group	12.1%	13.1%	14.0%	14.6%	14.7%
Automatic Electric (Kircos-including goodwill)	10.0%	13.2%	12.5%	12.2%	13.9%
Automatic Electric (Staff-excluding goodwill)	13.9%	18.9%	18.4%	20.1%	27.4%

As shown by the above comparison, with the exception of 1970 during which AE's profits were adversely affected by a prolonged strike, AE's return-on-equity (computed by the staff) was substantially higher than the average return of the comparable industrial groupings included in Mr. Kircos' exhibit. It is interesting to note that AE's return-on-equity, as shown in Mr. Hoover's Exhibit No. 8, Page 2 of 2, reached a high of 40.8% in 1965.

As mentioned and shown above AE's return-on-equity as computed by the staff, does not include the pro forma recording of the intangible asset goodwill as a component of common equity, nor has the staff reduced net income to reflect the amortization of such goodwill. AE's return-on-equity computed by Mr. Kircos includes a pro forma adjustment increasing common equity (e.g. in 1970 common equity was increased $66,050,732) to include goodwill and a pro forma adjustment decreasing net income (e.g in 1970 net income was decreased $2,385,620) to reflect the amortization of such goodwill.

Mr. Kircos maintained that the pro forma adjustment increasing common equity to include goodwill and its subsequent amortization is in keeping with the American Institute of Certified Public Accountants' Accounting Principle Board Opinions No. 16 and No. 17. Mr. Kircos stated that if opinion Nos. 16 and 17 had been in effect at the time of the acquisition of Gary and AE by GTE, GTE would have been required to adopt the purchase method in recording its investment in AE. However, Mr. Kircos failed to mention that at the time of acquisition, GTE had the option of recording its investment under either method, and elected the pooling of interests method, presumably to the advantage of GTE. Mr. Kircos mentioned that Opinion Nos. 16 and 17 were issued in August of 1970; however, he failed to mention that each opinion clearly and specifically states,

> "The provision of this opinion should not be applied retroactively for business combinations consummated before November 1, 1970."

As indicated in Kircos' Exhibit 1, Schedule 1, Page 1 of 4, controlling interest in AE was purchased by GTE in 1955 and the minority interests were subsequently acquired in 1960 and 1961.

Mr. Duncan commenting on Mr. Kircos' pro forma adjustment of goodwill testified that the pro forma adjustment has been, "properly computed." However he did not speak to the propriety of its retroactive application.

With regard to Mr. Kircos' comparison of AE's return-on-equity with the return of other industrial companies, Mr. Duncan stated,

> "This study has been reviewed by our office in Chicago to determine that the information included in the study is accurate and properly compiled."

Mr. Duncan did not testify that the companies were, in fact, comparable.

As previously indicated the companies presented by Mr. Kircos in his comparisons were subjectively selected and obviously subject to bias. It is presently noted that the equity of several of these companies included goodwill and several did not. With respect to Mr. Hoover's comparisons the intangible asset, goodwill was not included in the equity of the 78 companies, the 13 companies, AE or WE.

Dr. Erickson commenting on goodwill testified,

> "The goodwill in question is the excess over book value paid for AE by GT&E. This excess in part reflects the prospective value to GT&E of AE as a supplier to the General System operating companies. The record shows that AE was given an increasing share of the General System companies' requirements. As will be discussed in more detail below, the transfer prices involved in this business have been unreasonably high. The decisions regarding this patronage are made within the GT&E family. The value of this patronage would be reflected in the price that GT&E would be willing to pay for AE, and thence in the amount of 'goodwill' carried on the books. To include this goodwill for the purposes of the rate of return calculations reported here would be circular."

Both Mr. Kircos and Mr. Duncan maintained that it is extremely difficult to draw any meaningful conclusions from comparisons of return-on-equity between industrial companies. However, it is an incontestable fact that every segment of the investment community, including the analyst, investor and issuing company, attach major significance to such key financial ratios as return-on-equity, earnings-per-share, price-earnings, etc.

With respect to GTE investment in AE as indicated by witness Hoover, Kircos, and Duncan, goodwill is not now and never has been reflected on the books and records of GTE. GTE in financial reports to stockholders and other members of the financial community has never included goodwill arising from the acquisition of AE on its balance sheet and has never recognized its amortization on the income

statement. To have done so would have had an adverse effect of GTE's relative profitability measured in terms of return-on-equity, price-earnings, earnings-per-share, or any other of several "financial yardsticks".

The evidence presented indicates the above average rate of return-on-equity earned by AE is indirect and valid evidence that the transfer prices charged by AE to the NCD are unreasonably high. This finding is consistent with the direct price comparisons made and is supported by cost/quality differentials and the findings on adequacy of service.

Other state regulatory commissions have exercised jurisdiction over affiliated intercompany transactions. Two methods employed by the various commissions in controlling the profits included in the transfer prices of products and services furnished regulated companies by affiliated interests have been to either limit the rate of return on investment of the supplier affiliate to the rate of return on investment allowed the utility or to limit the earnings of the supplier affiliate to a reasonable rate of return-on-equity.

Mr. Hoover presented what he considered to be the "excess profits" earned on intercompany transfers of equipment and supplies between AE and the NCD based on the concept of allowing the supplier affiliate the same rate of return on investment as that allowed the utility and the concept of limiting the earnings of the supplier affiliate to a reasonable return-on-equity. Dr. Erickson and Mr. Hoover recommended that the rate of return on investment on intercompany transactions between AE and the NCD be no greater than the rate of return allowed the NCD. Mr. Hoover, as an alternative and his second choice, recommended that AE be limited to a 12 percent return-on-equity on AE/NCD intercompany transactions.

The Attorney General offered and there were received into evidence voluminous exhibits relating to the relationship between General, GT&E and GT&E service affiliates. In particular Attorney General Exhibit No. 11 provides persuasive evidence with respect to the control which the service corporation has over the purchasing practices of General. For example, in the letter dated May 17, 1968 from C. E. Munsell, Engineering Director, GT&E Service Corporation, to "all operating company chief engineers, all operating company plant directors" there is a clear indication from the service corporation to General that General should "adjust (its) engineering and ordering practices accordingly", with respect to certain outside plant cable and "should confine (its) engineering requirements and supply orders to standard items except under unusual circumstances." While the testimony of the company witnesses for General and those witnesses employed by the service affiliates purports to indicate that decisions with respect to plant acquisitions are made by

General and not at a higher level, the evidence reflected in the Attorney General Exhibit 11 indicates clearly to the contrary. The correspondence and memoranda between GT&E Service Corporation directed to the operating companies emphatically indicate a substantial control over the ultimate decisions regarding equipment and supply acquisitions. It is further noted that, virtually without exception, the witnesses who testified in this case for General have at previous times worked for one or more of the GT&E operating or service affiliates. This tends to indicate a substantial amount of control over personnel, some of whom are responsible directly for making decisions regarding plant acquisitions. In a memorandum dated August 30, 1967 GT&E Service Corporation instructed all operating company Chief Engineers with respect to certain Lenkurt carrier system. This memorandum concluded: "Hopefully, we will be able to hold such non-System purchases to an absolute minimum."

The applicant's net investment in intrastate utility plant in service is adjusted to exclude "excess profits" in the amount of $838,448 ($989,405 book cost less $150,957 accumulated depreciation) resulting from intercompany transactions between AE and the NCD. The adjustment is based on the concept of limiting the earnings of the supplier affiliate to a reasonable rate of return-on-equity. Any rate of return-on-equity to AE on transfers of equipment and supplies in excess of 15% is unjust and unreasonable.

C. FAIR VALUE OF PLANT IN SERVICE

7. Original Cost Plant Investment. The plant investment used in General's presentation and the Staff presentation are book figures. They represent original cost to the extent that General's books have been kept in a generally uniform manner based on actual cost. The evidence in this proceedings, while indicating that the telephone plant in service on the books of the North Carolina Division of General Telephone Company of the Southeast is recorded at original cost, nevertheless raises many serious questions as to whether General's expenditures for plant and equipment have been prudently made and therefore whether book cost represents reasonable original cost. Except for the precise adjustments recommended by the Staff, we cannot on this record quantify in dollars the adjustments to be made, but neither can we accept book cost per se as being reasonable original cost. The book cost of General's North Carolina intrastate utility property is $67,829,628; the depreciation reserve is $10,326,623; and the net book cost is $57,503,365.

The adjustments to the booked costs which can be precisely made are as follows:

a. Applicant's book original cost investment in telephone plant is reduced in the amount of $835,426 and the depreciation reserve decreased in the amount of $148,900 to

reflect the intrastate portion of the amount testified to by the Commission staff as excess margin in central office equipment at the end of the test period. In determining whether the properties of General were used and useful in rendering service at the end of the test period, we find that General's utility plant was over-built and cannot be considered used and useful to the extent of this adjustment since present ratepayers should not be required to pay rates for service to provide a return on property which is not needed under the present operating circumstances of the company or within a reasonable period of time in the future. We find that the Commission staff has allowed a reasonable engineering interval to provide for variation in forecasted growth requirements and allow a well managed and operated company adequate flexibility to revise growth forecasts and equipment additions to meet present and future customer requirements without resulting in insufficient or excessive quantities of central office equipment. We find that General has over-engineered and over-built central office equipment as a result of inadequate planning and forecasting in years prior to the test period and consequently, resulted in the provision of excessive quantities of plant which are not used and useful. We find this practice of General to be inefficient and unnecessary for the provision of adequate and efficient service.

b. The applicant's net investment in utility plant in service is adjusted to exclude "excess profits" in the amount of $838,448 ($989,405 book cost less $150,957 accumulated depreciation) resulting from intercompany transactions between AE and the NCD. The adjustment is based on the concept of limiting the earnings of the supplier affiliate to a reasonable rate of return-on-equity. Any rate of return on equity to AE on transfers of equipment and supplies in excess of 15% is unjust and unreasonable.

In addition to the foregoing adjustments to book cost, we find a negative working capital allowance of $361,532 representing the Commission Staff's amount after additional adjustments for cash and tax accruals, to be just and reasonable. The negative working capital allowance was determined by including material and supplies of $336,642, a cash allowance of $553,494, average prepayments of $119,976, and deducting average tax accruals in the amount of $1,253,654 and average customer deposits of $117,990.

We find the original book cost to be $66,004,797, the depreciation reserve to be $10,026,406, and the net original book cost to be $55,978,391.

8. Evidence of Replacement Cost

Company Witness Holstrom testified that he determined the net trended original cost by translating the original cost of telephone plant in-service, reduced by that portion of the cost which has been recovered by depreciation accruals, from price levels existing in the years of

installation to current price levels by multiplying the net book cost of each vintage class of property by the ratio of the cost index numbers for the current year to cost index numbers for the year in which the property was installed. The vintage dollars to which the trend factors were applied, were developed by Mr. Holstrom on the basis of the application of selected Iowa survivor curves.

Although the term replacement cost envisions replacing the utility plant in accordance with modern design and technique and with the most up-to-date changes in the state of the art of telephony, trended original cost as presented by Witness Holstrom envisions and is founded upon the premise of a duplication of plant as is, with inefficiencies and outmoded design included. Accordingly, the weight given to the trended original cost study offered in this proceeding as evidence of replacement cost is based upon a detailed evaluation of the methodology employed.

The trended original cost study presented by Witness Holstrom had several deficiencies which make it unacceptable as the full basis for determining replacement cost. The approach taken by Holstrom is to trend depreciated vintage dollars of plant investment surviving on the books at the end of the test period. These surviving vintage dollars by year of placement were determined on the basis of applying selected Iowa type survivor curves to the book balances at the end of the test period. The application of Iowa survivor curves to determine surviving vintage dollars is a matter of judgment and selections must be made from a wide variety of curves available. The book reserve was then distributed on a vintage basis using the results of a theoretical reserve study and not based on actual records.

Mr. Holstrom then trended the net vintage dollars using cost index numbers which he developed. The current ratio of labor cost to material cost was used in developing the cost indices even though this ratio does not apply over the entire life span of the surviving plant.

Mr. Holstrom does not make any allowance in his trending of original book cost for inefficiency of excess margin, existing service or plant deficiencies, any advances in the art of telephony which have occurred over the life span of the surviving plant, or adjust for any excess prices paid for installed plant facilities. To the contrary, the result of Mr. Holstrom's approach is to compound all of these deficiencies through his trending process. Mr. Holstrom has not heretofore testified as to any replacement cost study.

We find that Mr. Holstrom's results are based to a significant extent on estimates and assumptions in arriving at the surviving dollars by years of placement before any trending factors are applied; the methods employed use various estimates and assumptions in arriving at the cost trend factors to be applied to the estimated surviving dollars; the methods employed make no allowance for

inadequate engineering, excess plant margins or excess profits to AE; the methods employed make no allowance for plant service deficiencies; and the methods employed do not reflect any of the advancements in the art of telephone engineering and construction which have occurred since the installation of the surviving plant on the books at the end of the test period. For the reasons herein above stated, we find that General has failed to present fully persuasive and sufficient evidence for the Commission to fully accept the Company's trended cost study as reflecting the replacement cost of its North Carolina intrastate property.

We have carefully reviewed the company's evidence of replacement cost including that of Mr. Holstrom recapitulated in detail above and the other company witnesses testifying on this point, and in view of our reservations above stated re: replacement cost and our reservations previously stated as to reasonable original cost, we find replacement cost to be another serious question, and therefore can only approximate the reasonable replacement cost in this docket as being $60,000,000.

9. Fair Value

The fair value of General's property used and useful in providing service to the public within North Carolina as of the end of the test period is $57,201,810. In making this finding, we have considered the original cost depreciated and adjusted for excess margins and excess profits, the reasonable replacement cost, General's high station density and rapid increase in plant investment per station during the past five years, the plant inefficiency as indicated by the high plant maintenance expense, the inadequacy of telephone service provided by the plant, and the additions to plant since the last rate proceeding.

D. FAIR RATE OF RETURN

10. That, after the Staff's accounting, pro forma and end-of-period adjustments and allocation to intrastate operations, General's revenue under present rates is $17,474,709; that operating expenses at end of test period are $6,641,934, which represents the Commission Staff's amount after including Chamber of Commerce dues of $1,728, performance share plan expenses of $7,110 and wages and benefits of $25,005 approved by the Pay Board in 1973 which were applicable to the test period; that depreciation and amortization at the end of the test period was $3,172,763 which represents the Commission Staff's amount less annual depreciation of $41,364 on excess margin of Central Office equipment and $47,578 annual depreciation on excess profits of plant purchased from Automatic Electric; that taxes other than income at the end of the test period were $2,231,327, representing the Commission Staff's amount after including payroll taxes on wage increases approved by the Pay Board in 1973 which were applicable to the test period; that State and Federal income taxes were $1,619,695, representing the

Commission Staff's amount after income tax effects of $27,326 on the adjustments to operating expenses, depreciation expense and taxes other than income; that interest on customer deposits at the end of the test period were $4,000; that net operating income for return at the end of the test period was $3,804,990, giving a rate of return on adjusted depreciated original cost net investment of 6.84%; a return on original cost common equity of 7.34%; a return on the adjusted fair value rate base of 6.65%; and a return on fair value common equity of 6.90%.

11. That after all Commission Staff adjustments, excess plant margin and excess profits on purchases from Automatic Electric Corporation adjustments and the additional adjustments detailed in the preceding paragraph, General's interest coverage before income taxes is 2.77 times.

12. That assuming adequate service were being provided, a rate of return between 8.02% and 8.24% on the fair value rate base, and a rate of return on General's common book equity in the range of 10.5% to 11.0%, based on test year operations and the present capital structure would represent a fair rate of return on fair value and a reasonable rate of return on the end of test year common equity investment; that the rate of return in the range of 8.02% to 8.24% on the fair value rate base would provide a rate of return in the range of 9.87% to 10.34% on common equity as adjusted for the increment by which fair value exceeds original cost, which would be a reasonable rate of return on said adjusted common equity, if adequate service were being provided.

13. That because of General's presently inadequate service, a rate of return of 6.65% on the fair value rate base is just and reasonable; that said 6.65% rate of return on the fair value rate base will produce a 7.34% rate of return on test period common equity and a rate of return of 6.90% on common equity as adjusted for the fair value increment; and that although the 7.34% rate of return on test period common equity is below the return on common equity which would be found reasonable for this utility equity investment if the service were adequate, the net operating income for return produced by the present rates produce the rates of return on the fair value rate base and the rates of return on common equity set out above and is sufficient to cover all test year interest charges, preferred dividends, and results in an interest charges coverage of 2.77 times, which will allow General to issue additional bond debt for financing purposes, and based on the present quality of service, such rates of return are just and reasonable, and telephone rates producing revenues for any higher rate of return on fair value or on common equity would be unjust and unreasonable at this time.

14. That General's inability to earn a better rate of return at its present level of rates and charges has been and continues to be substantially caused by a) its inordinately high plant investment; b) inordinately high

maintenance expense; and c) management practices and policies resulting in operating inefficiencies.

15. That the rate increases proposed in this docket are unjust and unreasonable, and that General has failed to carry the burden of proof that any rate increase should be allowed in this Docket.

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

III. CONCLUSIONS

A. QUALITY OF SERVICE

The level of service now being provided by General to its North Carolina subscribers is not adequate and must be improved with respect to reliability and dependability of service. The Commission concludes that the requirements for specific service improvements set forth in the Commission Orders in Docket No. P-19, Sub 115 should remain in full force and effect. General's progress in meeting all service improvement requirements of orders dated May 11, 1971, and November 14, 1972, as well as its progress in remedying other subscriber dissatisfactions will be carefully considered in any future proceedings before this Commission.

B. INTERCOMPANY TRANSACTIONS

The Commission concludes that transfer prices placed on exchanges of equipment and supplies between the Applicant and Automatic Electric, Incorporated were determined in the absence of arms-length bargaining and that the affiliated buyer (Applicant) and seller (AE) set transfer prices which maximize the profits of the joint, combined, affiliated operation. AE's dominance of the non-Bell market and the above average rate of return-on-equity earned by AE is indirect and valid evidence that the transfer prices charged by AE to the Applicant are unreasonably high. The unreasonableness of the transfer prices is further evidenced by the direct price comparisons and is supported by cost/quality differentials and the findings on adequacy of service. The unreasonably high transfer prices have served to inflate the rate base of the Applicant and to unnecessarily increase the cost of its operation. The Commission concludes that the transfer prices placed on exchanges of telephone equipment and supplies between the Applicant and AE have been unreasonable and excessive to the extent they produce a rate of return on AE's common equity in excess of 15 percent. The Commission cannot permit parent holding companies to use affiliated 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 affiliated company (G.S. 62-153). In transactions between affiliates such as the Applicant and AE, who are wholly-owned subsidiaries of General Telephone and Electronics Corporation, at least one

state has limited the rate of return on investment allowed the utility. Other states have limited the earnings of the supplier affiliate to a reasonable rate of return-on-equity. The Commission concludes the Applicant's net investment in utility plant in service should be adjusted to exclude "excess profits" surviving in the plant accounts at December 31, 1972, in the amount of $838,448, earned on AE/NCD intercompany transactions, and that depreciation expense for the test period should be reduced in the amount of $47,578 to reflect the exclusion of the "excess profits" from depreciable utility plant in service. The adjustment is based on the concept of limiting the earnings of the supplier affiliate to a reasonable rate of return on equity. The Commission concludes that on transfers of equipment and supplies between AE and the Applicant's North Carolina Division any return in excess of 15% to AE is an unjust and unreasonable return.

As indicated by the Supreme Court of North Carolina, the Commission may in a proper case refuse to allow the Applicant to include in its rate base, or in its operating expenses, the full price actually paid AE for equipment and supplies. We conclude upon this record that this is a proper case and that the adjustments described hereinabove should be made.

C. FAIR VALUE OF PLANT IN SERVICE

The Commission Staff evidence indicates that the applicant at the end of the test period had excess plant margin in intrastate central office equipment investment amounting to approximately $835,426. An adjustment is necessary to eliminate this amount of plant which is not used and useful in providing telephone service in North Carolina and that a reasonable engineering interval was allowed in the Commission Staff's study to provide time within which to plan, engineer, deliver and install equipment on a timely basis to meet present and new service requirements of subscribers within the applicant's service area. An adjustment to the original book cost of the central office plant in service at the end of the test period should be made to deduct the excess margin from the rate base.

D. LOCAL LIMITED USE SERVICE

The Commission required the applicant by order dated February 9, 1973 to file a plan for offering local limited use service in its North Carolina exchanges. The Company offered testimony relating to a limited use plan. The Commission concludes that the Company proposal should not be approved and that prior to initiating such a limited use plan in exchanges of General Telephone Company, further usage information should be obtained. This data should be developed through a scientific sample in the Durham, Creedmoor and Monroe exchanges indicating the percentage of residence and business subscribers making 5 or less, 6-10, 11-20, 21-50 and over 50 local originating calls per month

and the average holding time per call in each category. A description of the study and the summary results should be provided to the Commission on or before September 1, 1974.

E. FAIR RATE OF RETURN

The following tables, based on the Findings of Fact, show the adjusted operating revenues, operating revenue deductions, depreciation and amortization, general and income taxes, telephone plant investment, allowance for working capital, returns on original cost net investment, fair value rate base, original cost common equity, fair value common equity, and determination of embedded costs of debt and preferred stock and determination of interest charges coverage.

GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF RETURN

	Per Commission Staff Audit Report	Adjustments	After Adjustments
Operating Revenues			
Local service	$12,009,978		$12,009,978
Toll service	5,296,959		5,296,959
Miscellaneous	325,155		325,155
Uncollectibles - debit	157,383		157,383
Total operating revenues	17,474,709		17,474,709
Operating Revenue Deductions			
Maintenance expenses	3,254,601	14,762	3,269,363
Traffic expenses	1,142,134	5,386	1,147,520
Commercial expenses	819,986	1,958	821,944
General office salaries and expenses	1,107,481	1,404	1,108,885
Other operating expenses	283,889	10,333	294,222
Total operating expenses	6,608,091	33,843	6,641,934
Depreciation and amortization	3,261,705	(88,942)	3,172,763
Taxes - other than income	2,230,017	1,310	2,231,327
Income taxes - State	119,202	3,228	122,430
Income taxes - Federal	532,823	24,098	556,921
Deferred income taxes - Federal	604,259		604,259
Deferred income taxes - State	85,346		85,346
Investment tax credit normalization	321,994		321,994
Investment tax credit amortization	(71,255)		(71,255)
Total operating revenue deductions	13,692,182	(26,463)	13,665,719

Net operating income	3,782,527	26,463	3,808,990
Less: Interest on customer deposits	4,000		4,000
Net operating income for return	$ 3,778,527	26,463	$ 3,804,990
Investment in Telephone Plant			
Telephone plant in service	$67,829,628	(1,824,831)	$66,004,797
Less: Accumulated provision for depreciation	10,326,263	(299,857)	10,026,406
Net investment in telephone plant in service	57,503,365	(1,524,974)	55,978,391
Allowance for Working Capital			
Material and supplies	336,642		336,642
Cash (1/12 of operating expenses)	550,674	2,820	553,494
Average Prepayments	119,976		119,976
Less: Average tax accruals	1,249,028	4,626	1,253,654
Average customer deposits	117,990		117,990
Total allowance for working capital	(359,726)	(1,806)	(361,532)
Net investment in telephone plant in service plus allowance for working capital	$57,143,639	(1,526,780)	$55,616,859
Rate of return on original cost net investment	6.61%		6.84%
Fair value rate base	$58,728,590	(1,526,780)	$57,201,810
Rate of return on fair value rate base	6.43%		6.65%

GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
DETERMINATION OF EMBEDDED COST OF DEBT AND PREFERRED STOCK
BASED ON TOTAL COMPANY CAPITALIZATION AT DECEMBER 31, 1972

Type of Capital	Total Company Capitalization	Ratio %	Interest and Dividend Requirements	Embedded Cost of Debt and Preferred Stock
Total debt	$208,070,500	51.40	$ 14,249,617	6.85%
Preferred stock	3,870,000	.95	$ 187,308	4.84%
Interest free capital	12,213,608	3.02		
Common equity	180,670,087	44.63		
Total Capitalization	$404,824,195	100.00		

RETURN ON COMMON EQUITY
NORTH CAROLINA INTRASTATE OPERATIONS

	Ratio %	Original Cost Net Investment or Fair Value Rate Base	Embedded Costs and Return on Common Equity-%	Net Operating Income for Return
Original Cost Net Investment-After Adjustments				
Capitalization				
Total debt	51.40	28,587,066	6.85	1,958,214
Preferred stock	.95	528,360	4.84	25,573
Interest free capital	3.02	1,679,629		
Common equity	44.63	24,821,804	7.34	1,821,203
Total	100.00	55,616,859		3,804,990
Fair Value Rate Base - After Adjustments				
Capitalization				
Total debt		28,587,066	6.85	1,958,214
Preferred stock		528,360	4.84	25,573
Interest free capital		1,679,629		
Common equity		26,406,755	6.90	1,821,203
Total		57,201,810		3,804,990

GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
NORTH CAROLINA INTRASTATE OPERATIONS
COMPUTATION OF INTEREST CHARGES COVERAGES

After Taxes	
Income available for return	3,804,990
Fixed charges	1,958,214
Fixed charges coverage	1.94
Before Taxes	
Income available for return	3,804,990
Add: Income taxes	1,619,695
Income before income taxes	5,424,685
Fixed charges	1,958,214
Fixed charges coverage	2.77

The foregoing tables reflect the numbers to be derived from the evidence in this record, but of course we do not stop there. To arrive at a final judgment, the Commission has considered and carefully weighed all the evidence and the reasonable inferences to be drawn therefrom; and additionally, we have reviewed previous recent Commission Orders culminating previous rate applications by General, particularly as those Orders deal with the problems of

adequacy of service. We find the record to be replete with evidence of poor planning and engineering, biased selection of equipment and materials, high investment, high expenses, operational inefficiencies, and chronically poor service. The whole ball of wax adds up to bad management. We use the term "management" in its broadest sense in this case, for the direct management of the North Carolina Division of General Telephone Company of the Southeast does not operate independently of the Southeast management, the Service Corporation or the Parent Company, General Telephone and Electronics Corporation. We are dealing here with the collective capabilities of the second largest telephone holding company in the United States, and all of that has been considered.

It would appear that General's management might benefit from a careful reading of the pertinent provisions of Chapter 62 of the North Carolina General Statutes. In return for the grant of franchise (monopoly), the State offers the utility the opportunity to earn a fair rate of return, but there is nothing in the law which guarantees any public utility a profit from its operations. The law calls for "adequate, economical, and efficient utility service" (G.S. 62-2 and 62-3|); "reasonable original cost" (G.S. 62-|33); "reasonable operating expenses" (G.S. 62-|33); "sound management" (G.S. 62-|33); and "just and reasonable" rates (G.S. 62-|3|). We have seen that General's rates are not glaringly insufficient when compared to rates being charged by comparable companies, either in this State or other states, and yet this record reflects that General's rate of return is sharply below acceptable levels. For us to allow General to increase its rates in this docket sufficiently to achieve an adequate or acceptable rate of return as judged by the marketplace, would of necessity involve our finding and concluding that General's investment is at reasonable original cost, that its service is adequate, efficient, economical and reasonable, and that its management has been sound. This we simply cannot do. There are limits to what a regulatory commission can accomplish in a rate proceeding--we cannot substitute for management and we do not purport to do so, but it is our clear duty to evaluate management, and this we have attempted to do. We recognize that many of the shortcomings of General's management are intangible and somewhat difficult to observe from a written record. However, the demeanor of several of the witnesses from the higher levels of management are clearly demonstrative of an attitude of a complacent monopoly.

We conclude that if all prerequisites were present, a substantially higher rate of return should and would be allowed, but that in view of the inefficient and inadequate service, unreasonable levels of investment and expense, and unsound management, no increase in rates should be allowed herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the rates requested by General's Application herein be, and the same hereby, are, denied.

2. That General shall immediately institute steps to refund all monies, with appropriate interest, collected from its customers under its undertaking instituted in this docket.

3. That in reference to a possible future institution of optional metered service, General shall submit by September 1, 1974, the results of a scientific sample in the Durham, Creedmoor and Monroe exchanges, indicating the percentage of residence and business subscribers making 5 or less, 6-10, 11-20, 21-50, and over 50 local originating calls per month with the average holding time per call indicated for each category. A description of the study and sampling approach should be included.

4. That General shall submit a monthly report, starting with the month of December, 1973 and continuing thereafter, until the Commission rules otherwise, setting out the following information relating to the billing problems.

a. The number of adjustments made to remove toll calls from monthly bills where a subscriber has denied same, and the monthly dollar value of such calls;

b. The number of calls billed to subscribers ninety (90) or more days after the call was made, and the dollar value of such calls;

c. The number of subscriber bills adjusted for billing errors involving local service;

d. Such additional information as the Company believes pertinent to fully reveal billing error situations.

The Company shall retain backup information for each report for ninety days for possible review by Commission personnel.

5. General is required to continue, until further Order of the Commission, all present reporting requirements in effect relating to service.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

(Mr. McDevitt did not participate in the decision of this proceeding.)

DOCKET NO. P-19, SUBS 133 AND 136

WOOTEN, CHAIRMAN, DISSENTING: My personal likes and desires incline me to a lust to vote against any rate increases for any utility, yet I cannot abdicate my statutory responsibilities to vote appropriate increases where justified. The Majority Order in this case denies any rate increase whatsoever to the Applicant, and while the record does not justify the granting of the full relief requested, in my judgment, neither does it support or justify the action of the Majority herein.

The Commission in this case has made substantial adjustments in connection with excess profits of Automatic Electric. I congratulate the Attorney General and the Commission Staff on their efforts to establish the appropriateness of such an adjustment and while I find myself in sympathy with the theory and action of the Commission, I seriously question the adequacy of the evidence in this record to support the same.

Engineering evidence in this record supports some adjustment in the rate base for the elimination of excess plant margin. However, I do not consider it sufficient to agree with the majority action.

It appears that the excess, if any, is small when considered in the light of extensive building and upgrading by the Company during the past five (5) years, all at the insistence and with the approval of this Commission. I conclude that the majority decision in this connection will result in greater future conservative plant margins to such an extent that members of the general public desiring future services might well be delayed for substantial periods of time in obtaining such service. In short the plant margins herein found to be excessive and, therefore, deducted by the Majority do not appear to me to be sufficient to warrant the action taken.

General came before this Commission in 1968 and again in 1971 applying for general rate increases. On each occasion the Commission allowed some rate increases, and found service to be adequate though with certain deficiencies, which it required by its Orders to be corrected. Returns allowed in those two cases were as follows:

Docket No.	Return of Original Cost Common Equity	Return on Fair Value Rate Base
P-19, Subs 94 and 95	10.58%	6.41%
P-19, Sub 115	9.02%	7.53%

For comparison the returns allowed in the instant case are:

Docket No.	Return of Original Cost Common Equity	Return on Fair Value Rate Base
P-19, Subs 133 and 136	7.34%	6.65%

It is to be noted that the Majority herein have found the service of General to the public to be inadequate. This finding is made in the face of the facts that the Commission previously found service to be adequate with some deficiencies in 1968 and again in 1971, and that the best evidence clearly indicates that the service of General improved from 1968 to 1971 and further improved from 1971 to 1973, as witnessed by the Commission Staff investigation, evidence and testimony. In its Order of May 11, 1971, the Commission in Docket No. P-19, Sub 115 required of General eleven (11) specific service improvements, and the evidence in this docket indicates that General has complied with nine (9) of the eleven (11) requirements with some improvement in the other two (2). It seems to this Commissioner that General Telephone has substantially complied with the requirements imposed upon them by the Commission and that a finding of inadequate service is inappropriate. To be sure, General does have some service problems which need attention, and so does every other telephone operating company in this and other states. Telephone service is not, will not, and cannot be perfect due to the very nature of the animal itself. The question is not whether service is perfect and trouble free, but whether or not, from an overall point of view, the Company's service is reasonably adequate for communication purposes, and I conclude and would find the same to be reasonably adequate. I would further conclude and find the need for further and continued improvement.

When I look at the return on original cost common equity allowed by this Commission in Docket No. P-10, Sub 312 for Central and Lee Telephone Companies of 11.50% and in Docket No. P-9, Sub 113 for United Telephone of 11.48%, which said Companies compare favorably with General, I see in the Majority Order herein treatment which is discriminatory, when they provide for a 10.5 - 11.0% return with assumed adequate service.

Historically from 1968 to this date, inflation has been rampant throughout the nation, costs to telephone companies and everyone else have spiraled sharply, yet the original cost common equity return allowed by this Commission has gone down from 10.58% in 1968, to 9.02% in 1971, to 7.34% in 1973, and as is evidenced by the records of the Commission, the earnings of the Company have not equaled that allowed, due, at least in part, to continued inflation. The rate of return on original cost common equity in this case allowed

by the Majority is lower than the present prime interest rate as well as the interest rates required on long-term financing in today's money markets. The rates of return allowed by the Majority on equity in this instance, being lower than prime interest and bond market rates, render the Order herein confiscatory in nature.

An adequate return - not only allowed, but actually earned - is essential if General is to continue to meet its obligations as a telephone utility. It is noted that General in the past five (5) years has not earned the return allowed by this Commission, but on the contrary has earned substantially less. During an inflationary period, a utility cannot earn in a future period a rate of return allowed solely on the basis of past costs and revenue data. It is evident that even the meager return allowed by the Majority cannot reasonably be expected to be earned by General in the future. Sufficient weight has not been given in this case to the serious effects of attrition in determining the rates of return allowed.

Considering attrition and erosion and the evidence in this record, I conclude that the Company's present earnings and those projected for the future have been reduced to such an extent that its ability to sell sufficient additional bonds necessary to finance its future plant construction is placed in jeopardy under the present rates. The sale of equity, if possible, will only result in higher and higher rates.

I predict that our failure to grant appropriate increases in this case will result in higher costs to the Company, and in the long run, much higher rates for the ratepayers, or else a restriction of construction and a reduction in the level of service. A penny saved for the ratepayers today will cost him dearly, many times over in the future in much higher rates and/or a lower level of service.

Increases in rates for telephone service is not now, and never has been popular, yet an appropriate return must be allowed if the public is to be protected from even higher rates in the future. With all of these things in mind, I cannot concur with my colleagues in this instance, and, therefore, file this, my dissent.

Marvin R. Wooten, Chairman

DOCKET NO. P-37, SUB 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Mooresville Telephone Company for Authority to Increase Its Rates and Charges for Telephone Service in its Service Area within North Carolina	)	ORDER ESTABLISHING RATES

HEARD: Courtroom Mooresville Municipal Building, 413 N. Main Street, Mooresville, North Carolina, on February 6th and February 7th, 1973.

BEFORE: Chairman Marvin R. Wooten, Commissioners John W. McDevitt, Hugh A. Wells and Ben E. Roney

APPEARANCES:

FOR THE PETITIONER:

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Pope & Brawley
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FOR THE INTERVENORS:

Ruth G. Bell
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North Carolina Attorney General's Office
Ruffin Building
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For: The Using and Consuming Public

FOR THE COMMISSION STAFF:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On August 17, 1972, Mooresville Telephone Company (hereinafter also styled "Mooresville", "Petitioner" or the "company") Mooresville, North Carolina, filed a Petition with this Commission for authority to increase it rates and charges for local monthly telephone service, semi-public pay stations and PBX trunks, and on January 18, 1973 amended the same to include increased rates and charges for special equipment, and service connections and move charges.

In its Petition Mooresville alleged that it requires increased revenues of $317,438 based on the level of operations at March 31, 1971.

By its Order issued September 11, 1972, the Commission acknowledged the Petition, suspending the effective date of the proposed rates for the purpose of an investigation into their justness and reasonableness and a hearing thereon; pursuant to the Commission's Order, Mooresville published

notice of the present and proposed local monthly station rates, as follows:

	Residence			Business				
							PBX	Semi-Public Pay
	1-Pty.	2-Pty.	4-Pty.	1-Pty.	2-Pty.	4-Pty.	Trunk	Station
Present	3.25	2.75	2.25	6.10	4.90	4.40	9.15	6.10
Proposed	7.50	6.50	5.50	14.50	12.50	10.50	21.75	14.50
Increase	4.25	3.75	3.25	8.40	7.60	6.10	12.60	8.50

A Motion was filed with the Commission on October 9, 1972, by Petitioner, requesting that the Commission amend its order of September 11, 1972, to eliminate the requirement of Paragraph 12 and Paragraph 14 (a) relating to certain cost data and intrastate separations study. Said Motion was denied by this Commission by Order of October 27, 1972.

Notice of Intervention was filed with the Commission on January 4, 1973 by the Attorney General of North Carolina on behalf of the using and consuming public, which notice was recognized by Order of this Commission dated January 12, 1973.

Amendment to the Petition was filed with the Commission on January 16, 1973 by the Petitioner. The matter came on for hearing at the time and place designated by prior order.

The Petitioner offered the testimony and exhibits of the following witnesses: Mr. Sherlie M. Suther, Jr., Vice President and General Manager of Mooresville Telephone Company; Mr. Franklin D. Rowan, Accountant with Kirk & Company, Washington, D. C.; Mr. William F. Malec, Assistant Treasurer of Mid-Continent Telephone Corporation; Mr. John C. Goodman, Assistant Vice President American Appraisal Company, and Mr. Phillip L. Hamrick, President and a Director of Mooresville Telephone Company, and North Carolina Division Manager of Mid-Continent Service Corporation.

The following public witnesses testified: Mrs. Rena Williams; Mrs. J. I. Few; Mr. H. B. Sherrill; Mr. Harold W. Robertson; Mr. Harvey Millsaps; Mr. Paul Baker; Mrs. Fred Hudson; Mrs. George Young; Mrs. Robert Day; Mrs. F. C. Honeycutt; Mrs. Max Wilhelm; Mrs. O. D. Howard; Mrs. James Raffauf; Mr. Kenneth I. Newman; Mr. Milton Almond; Mr. E. C. Cavin; Mr. Edward Miller; Mr. C. T. White; Mr. Glen White; Mr. Raymond Overcash; Mr. Douglas McCune; Mr. Jimmy Gibson; Mrs. Jesse Cowan, Jr.; Mrs. Alec Williams; Mr. Donald W. Lane; Mr. Joe Parker and Dr. Richard M. Martin.

The Commission Staff presented the testimony and exhibits of the following witnesses: Mr. Allen J. Schock, Staff Accountant, Accounting and Economics Division; Mr. Vern W. Chase, Chief Engineer of the Telephone Rate Section, Engineering Division; Mr. William R. Cash, Utilities

Engineer, Engineering Division; Mr. Gene A. Clemmons, Chief Engineer of the Telephone Service Section, Engineering Division.

SYNOPSIS OF EVIDENCE

The public witnesses testified in opposition to the proposed rate increase; a number of the public witnesses testified regarding various service problems, particularly problems associated with the toll center at Statesville, N. C., (a Southern Bell facility through which Mooresville's long distance calls are handled) indicating delayed operator answers or no operator answers and also delays and cut-offs while using direct dial facilities; a number of the witnesses expressed an interest in a greater toll-free calling scope outside Mooresville to nearby communities and to cities such as Statesville and Charlotte; one witness indicated a desire to have touch-tone dialing, one witness cited a lack of public pay phones and a witness from the Shepherd Community indicated some problems with static.

Mr. Sherlie M. Suther, Jr., Mooresville's Vice President and General Manager testified regarding the historical development and expansion of outside plant, dial equipment and station equipment by Mooresville, and regarding the rate deductions by Mooresville during 1955 and 1959, the company not having had a general rate increase since 1952; he testified that the company in its amended Petition proposes to place a portion of the requested rate increase on miscellaneous services and charges; that a Mooresville subscriber can call everywhere within the company's service area without a toll but the company has not made a calling scope study for nearby localities since June, 1971; that the company personnel has conducted tests which indicated excessive operator answer time delays and he has communicated with Southern Bell regarding relief from that problem and in his opinion Southern Bell has given that relief, although Mooresville has not made an ATR study within the last 30 days; that operator assistance problems are Mooresville's responsibility as well as Southern Bell's; that operator assistance has not been consistently satisfactory in the past but is better at the present time; that Mooresville has no plans at the present time for monitoring the operator assistance performance of Southern Bell; that Mooresville is at the present time putting in 411 directory assistance trunks which should help relieve the problem because at the present time Mooresville is using dial "0" trunks to reach the directory assistance operator, whereas the 411 trunks will specify certain trunks for directory assistance operators; that Mooresville currently has 46 toll trunks to the Statesville toll center and according to Southern Bell's provisional estimate five more are being added; that the last usage study was made in November and one is made each quarter; that annual growth of approximately 10% would be anticipated in toll calls to neighboring communities; that the revenue loss which would be experienced in changing from toll to extended area

service would be greater in future years than at the present time; that the company has not done anything about EAS because no one has been asking for it; that the company has no future goals for eliminating toll calls between Mooresville and nearby communities; that he does not think it would be desirable to eliminate toll service to those communities because all of the rate payers would have to pay for EAS service regardless of who uses it; that the company has plans to install five additional pay stations within the next 90 days; that the company has made no studies regarding the community of interest which exists between Mooresville and nearby communities; and that Mooresville has no plans for going to 9|| emergency service.

Mr. Franklin D. Rowan, an accountant with Kirk and Company, Washington, D. C., offered testimony and exhibits regarding test period data taken from the books and records of the Mooresville Telephone Company with pro forma going level adjustments; that the gross operating revenues for said test period are $700,426; that the operating revenue deductions are $579,647 producing a net operating income of $|20,779 which after adding an annualization factor of 2.9|26% produces a net operating income for return in the amount of $|24,297; that the investment in telephone utility plant in service is $3,226,447 after deducting the accumulation provision for depreciation; that the allowance for working capital is $|53,9|8 including $79,764 for materials and supplies and $24,|54 for cash working capital based on |/|2th of operating expenses, and a minimum bank balance of $50,000; that the net investment in telephone utility plant plus the allowance for working capital is $3,380,365 which when related to the net operating income for return figure indicates a rate of return on said net investment in the amount of 3.68%; that based on test period common equity of $|,543,099 the present rates produce a test period rate of return on said common equity of 2.50%; that the company's proposed rate adjustment would produce net operating income for return in the amount of $265,8|8 for a rate of return on said investment of 7.86% a return on fair value of 6.72%, and a rate of return on said end of period common equity of ||.67%.

Mr. Rowan further testified that the requirement for compensating balances as claimed in his audit in the amount of $50,000 is required by Wachovia Bank in Asheville, North Carolina to support a $|,|95,000 line of credit for short-term financing; that Mooresville Telephone Company has not borrowed on that line of credit; that Mooresville has obtained advances from Mid-Continent Telephone Company and the line of credit is Mid-Continent's line of credit and not Mooresville's; that he does not know when or if Mid-Continent has actually borrowed on that line of credit; that his |.7% ratio of uncollectible to total revenue was based on the particular manner in which Mooresville's books were kept, which is not an appropriate way to keep the books and a lower ratio would be more appropriate; that in his experience the retention of sums such as |5% of the line of

credit is customarily required as compensating balance by banks in this area; that 15% of the advances from Mid-Continent from Mooresville would be approximately $215,000; that Mid-Continent may or may not have borrowed a portion of the $1,426,165 in advances from the Wachovia Bank in Asheville; that while he works for an independent accounting firm and presently serves as bookkeeper on a monthly basis for Mooresville Telephone Company, the books and records of Mooresville are kept in Mooresville; and that he makes monthly reports to Mooresville which in turn are made to Mid-Continent as the sole stockholder.

Mr. William F. Malec, Assistant Treasurer of Mid-Continent Telephone Corporation, offered testimony and exhibits regarding the cost of capital to Mooresville Telephone Company, its capital requirements and fair rate of return on capitalization. He testified that Mooresville must obtain external debt and equity funds to pay for necessary capital expenditures with permanent financing of advances as soon as earnings permit such financing at a reasonable cost; that in his opinion the before-tax interest coverage and the resulting return on equity provides an adequate measure of the cost of capital for a small company such as Mooresville if it has a proper capitalization ratio; that an equity ratio in the 45 to 50% range is reasonable and appropriate for Mooresville Telephone Company; that in determining the cost of capital he assumed a cost for the advances at a rate other than the embedded interest cost at the end of the test period, whereas Mr. Rowan's pro forma operating statement used the actual embedded interest cost; that the interest coverage ratio of Mooresville at the end of the test period was 1.41 times; that the proper before-tax interest coverage ranged between a high of 4.90 in 1961 and a low of 3.29 in 1970; that Mooresville would be required to pay an interest cost of between 8.00% and 8.50% in the issuance of long-term bonds, based on the 1972 rate being charged for Baa bonds of approximately 8.00% plus a premium of .50% because of the financial condition of Mooresville as of the test year; that based upon the assumed cost, the overall debt cost of Mooresville for the test period is between 7.39% and 7.77%; that the cost of equity for Mooresville is in the range of 12.03% to 14.44% based on a before-tax interest coverage ratio range of 3.50 to 4.00, producing an overall cost of capital for Mooresville between 9.47% and 10.77%.

Mr. Malec further testified that his study of debt cost included all of the Baa utility issues sold publicly during 1972 and none of the companies that marketed issues during 1972 were charged the .50% premium; that he does not have an opinion as to whether the 7.77% figure would be higher than the cost of debt of the average telephone operating company; that Mooresville Telephone Company does not have to register a debt issue with the Securities and Exchange Commission and is not required by that agency to have a three times coverage; that the 1972 year end times coverage for Mid-Continent for its telephone operations alone is approximately 3.17 times based on the September 30, 1972

operations; that his computation indicates the return on common equity that would be arrived at using the proper coverage and is not a separate measure of what the equity holder demands; that the franchise area in which Mooresville provides service is an economically growing desirable area for a telephone company and is a factor which would be considered favorably by a debt investor; that 3.5 times is used as an approximation of the 3.29 to 3.3| low end of his range; that the figures which he used were based on the |45 company Missouri study; that the criteria for inclusion in that study was $|,000,000 in revenues while the revenues for Mooresville Telephone Company for the test period were $628,000; that the advances from Mid-Continent to Mooresville are not evidenced by any note or contract and there is no due date, the advance being in the nature of a demand note obligation; that Mid-Continent Telephone Company has |00% common stock ownership in Thermal Belt Telephone Company, Eastern Rowan Telephone Company, Mid-Continent Telephone Company, Mooresville Telephone Company in North Carolina and has acquired control of North Carolina Telephone Company; that none of those companies has undertaken conventional long-term financing since acquisition by Mid-Continent except for negotiation for a long-term credit agreement with Stromberg Carlson; and that there is no directive or formal management decision by Mid-Continent as to its treatment of the $|,426,|65 advance.

Mr. John C. Goodman, Assistant Vice President of the American Appraisal Company, Inc., testified regarding his reproduction cost appraisal of Mooresville's telephone properties as of March 3|, |972; he testified that the trended original cost method was used for approximately 99% of the total value; that he developed trend factors, trended cost and condition percent; that the reproduction cost new is $4,499,906; that he determined the existing depreciation by means of physical inspections and consideration of obsolescence and other factors affecting future service life; that the reproduction cost new less depreciation is $3,80|,330; and that in his opinion reproduction cost new less depreciation is an appropriate measure of the present fair value of Mooresville's property.

Mr. Phillip L. Hamrick, President and a Director of Mooresville Telephone Company as well as North Carolina Division Manager for Mid-Continent Telephone Service Corporation, testified that Mid-Continent Telephone Corporation became the sole shareholder of Mooresville Telephone Company in December, |967 and has provided short-term and equity financing for expansion and improvement programs; he testified regarding increased investment and growth in number of stations without rate relief; that the present upgrading program is complete but additional permanent financing will be needed for future construction programs; that current net earnings are not sufficient to maintain Mooresville's credit and attract capital for future plant expansion and service improvement; that wages and other expenses have increased substantially since

Mooresville's last rate case; that the granting of the full increase sought in this case would increase the rate of return on stockholders equity to 11.67% and that without such an increase it would be exceedingly difficult to get additional capital investment in the company; that between Mr. Clemmons' October and December test of operator answer time at the toll center in Statesville, Southern Bell conducted another study and made certain improvements in the operator answering conditions and that during the past year Mooresville also conducted an answer time recording study and reviewed Southern Bell's findings; that Mooresville plans to continue the studies; that Mooresville now has on order traffic usage equipment to conduct its own tests to verify Southern Bell's forecast requirements concerning toll circuits; that the 411 trunk will divert information traffic from the "0" trunk and consequently take a load off the operator positions; and that the company has no current plans to make additional EAS studies but would make such studies upon Commission request or such time as Mooresville felt public interest is demonstrated for such a study.

Mr. Gene A. Clemmons, Chief Engineer Telephone Service Section of the Commission Staff, testified regarding the results of the Commission's Staff review of telephone service provided by Mooresville Telephone Company and presented recommendations concerning the depreciation rates; he testified that the staff made a service review during October and December, 1972 consisting of intra-office test calls, direct distance dialing test calls, transmission and noise measurements on trunks, a review of held orders and regrades, a review of trouble reports, a review of operator answer time and testing of public pay stations; that the intra-office failure rate is not exceedingly high but some improvement could be made; that during DDD testing the Staff encountered many all-trunk busy conditions in Mooresville caused by insufficient DDD trunks and insufficient adapter, which should be relieved by additional equipment installed in December 1972; that October test of operator answers on "0" level trunks indicated a problem with central office lockout but the problem was not indicated in December tests; that October operator answer time tests indicated 23.1% of the answers exceeding two rings; that operator answers in December were within reasonable objectives; that the transmission and noise measurements indicated 4% of the transmission measurements exceeding the range of 3 to 12 db and no noise measurements over 33 dbrnc; that no cutoffs on toll calls were recorded; that the trouble reports per 100 stations have been from 4.3 to 9.4 during 1972 with significant improvement over 1971; that the company as of November 30, 1972, was not holding any new service applications and was holding only 43 regrade applications; that the company has undertaken a substantial upgrading program during 1971 and early 1972 including new outside plant facilities and new cross-bar central office equipment, and an increase in plant investment per station from approximately $334 for 1970 to approximately $500 at the end of March, 1972; that the company's operating expenses are

relatively low on a per station basis; that the company had a high number of out-of-service trouble reports carried over and the Staff recommends that the company compute a monthly index of the percentage of out-of-service trouble reports not cleared within 24 hours.

Regarding the depreciation rates Mr. Clemmons recommended that an adjustment be made in the depreciation rates for central office equipment to reflect a composite service life of 28 years with 0% net salvage for a depreciation rate of 3.6% based on telephone industry experience with crossbar equipment; that the vehicle sub-account carry a depreciation rate of 11.2% that the furniture and office equipment account shoud carry a 6.0% rate and the building account should carry a 3.0% depreciation rate.

Mr. Clemmons further testified that to solve the operator service problems Mooresville should make continuing tests, as Mr. Hamrick indicated was Mooresville's intention; that Mooresville should review any intra-office call problems with the equipment supplier; that he understands Mooresville's intention is to make its own studies and forecasts to determine the need for toll and DDD trunks to be provided by Southern Bell.

Mr. William R. Cash, Utilities Engineer with the Commission Staff, testified regarding his evaluation of the outside plant construction from a standpoint of serviceability and safety and regarding his review of the company's plant organization and records; that he conducted service tests on outside plant line and subscriber stations to ascertain the conditions of transmission noise and signaling on the company's longest loops; that 23% of the stations on the longest loops failed to meet the 1000 hertz loss objective; that line voltage and line telephone, and ground currents at station protectors were measured; that Mooresville's plant practices in connection with station protection were not in full compliance with Mid-Continent practices and procedures, because the company has focused its attention on its building program, but company officials have informed him that a routine program to eliminate grounding deficiencies will be accomplished in 1973; that the company has recently completed the rebuild of its outside plant, which is well constructed and in accordance with accepted industry practices; that the company's plant records are in satisfactory condition; that Mooresville's organizational structure is adequate with the exception that an assistant to the plant manager should be provided in order to establish closer supervision of company plant forces and contractors.

Mr. Vern W. Chase, Chief Engineer Telephone Rate Section of the Commission Staff, testified regarding his evaluation of the division of investment and expenses between intrastate and interstate operations, his review of the status of the toll settlement between Mooresville and Southern Bell, his review as to the effect of toll

separations and settlement changes on Mooresville's operations for the test period, and his review of the rate proposals; he testified that Mooresville's toll separations study was not based on the FCC-NARUC Manual or on minutes of use which is the criteria upon which that manual's separation methods are based; that the Staff has no opinion as to the reliability of the final results of the Mooresville's separation study; that to make a complete cost separation study for Mooresville would be very expensive and for that reason it is to the rate payers' advantage that this proceeding be decided on a total intrastate-interstate basis; that in the event the company is allowed to adjust rates and charges the revised rate schedule indicates a fair method of distribution, with the exception of the base rate area and rural phone areas as now established; that rural zone charges could be eliminated by adding 30¢ per month to the local monthly rates; that if the Commission should allow the company as much as 50% of its request for additional revenue it should consider the elimination of the present color set charge of 25¢ per month because color sets should now be considered as standard equipment; and that the Staff recommends the elimination of the two-party service offering within two years.

Mr. Allen J. Schock, Staff Accountant, offered testimony and exhibits regarding test period data taken from the books and records of the Mooresville Telephone Company with pro forma adjustments for the twelve months ending March 31, 1972; that the gross operating revenues for said test period are $707,897; that the operating revenue deductions are $566,007 producing a net operating income of $141,890 which after adding an annualization factor of 2.503% produces a net operating income for return in the amount of $145,442; that the investment in telephone utility plant in service is $3,212,590 after deducting the accumulated provision for depreciation; that the allowance for working capital is $59,908 including $47,695 for materials and supplies and $24,093 for cash working capital based on 1/12th of operating expenses; that the net investment in telephone utility plant plus the allowance for working capital is $3,272,498 which when related to the net operating income for return figure indicates a rate of return on said net investment in the amount of 4.44%; that based on test period common equity of $1,543,099 the present rates produce a rate of return on common equity of 4.26%; that the company's proposed rate adjustment would produce net operating income for return in the amount of $290,620 for a rate of return on said investment of 8.96% and a rate of return on said end of period common equity of 13.67%.

Based upon the record the Commission makes the following

FINDINGS OF FACT

1. That Mooresville Telephone Company is a duly franchised public utility providing telephone service to subscribers in and around the Town of Mooresville, in

Iredell, Rowan and Mecklenburg Counties, North Carolina, 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 proposed rates and charges as regulated by the Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. That the total net increases in rates and charges proposed by Mooresville would produce a total of $317,438 in additional gross annual revenue.

3. That the test period utilized by all parties and set by the Commission in this proceeding was the twelve months' period ending March 31, 1972.

4. That Mooresville's total annualized test period operating revenues in North Carolina under the present rates are $707,897 including intrastate toll revenues of $33l,245.

5. That Mooresville's reasonable operating expenses for the test period are $289,123 and total operating revenue deductions are $566,007, including increased payroll expenses of $3,126,000, and after an annualization adjustment of 2.503% to net operating income, produce test period net operating income for return of $145,442 which, based upon said test year, gives effect to expected and obtainable productivity gains.

6. That Mooresville's end of period net investment in utility plant at original cost is $3,212,590 based on utility plant in service in the amount of $4,097,595 less that portion of the plant which has been consumed by previous use recovered by depreciation in the amount of $885,005.

7. That Mooresville's net investment in property used and useful in providing service to the public within this state consists of said net investment in utility plant plus allowance for working capital, or $3,272,498 with the working capital allowance of $59,908 based on test period operations including cash working capital which equals 1/12th of its test year operation and maintenance expenses, materials and supplies, and deducting average tax accruals.

8. That the present rate of return on the utility's net investment in property used and useful in service rendered to the public within this state, including the utility plant itself and a reasonable allowance for working capital, is 4.44%.

9. That after fixed charges on the bonds and short-term notes of $169,586, there remains net income for common equity, under present rates, in the amount of $65,737; that the common equity capital in Mooresville at the end of the test period amounted to $1,543,099, producing a rate of

return on common equity under the present rates at the end of the test period of 4.26%.

10. That the replacement cost of Mooresville's property used and useful in providing service to the public within this state as of the end of the test year consisting of a replacement cost of utility plant in the amount of $3,500,000 and the reasonable working capital allowance of $59,908 at current cost, is $3,559,908.

11. That the fair value of Mooresville's property used and useful in providing service to the public within this state as of the end of the test period, considering the reasonable original cost of the property less that portion consumed by use and recovered by depreciation expense, and the replacement cost of the property, under the circumstances of this case, is $3,559,908.

12. That based upon the foregoing findings of net income and fair value, Mooresville's rate of return on fair value for the test year was 4.09%; its rate of return on its actual common equity capital for the test year was 4.26% and the rate of return on common equity as adjusted for the increment by which fair value exceeds original cost was 3.59%; said rates of return on fair value and common equity are insufficient to allow the utility by sound management to produce a fair profit to its stockholders to maintain its facilities and services in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms.

13. That the overall telephone service presently provided by Mooresville Telephone Company is adequate, although the company in the recent past has experienced some service problems, primarily problems associated with its subscribers' use of Southern Bell's Statesville toll center, which appears to have been corrected at the time of the hearing, based on staff measurements and tests, but which Mooresville plans to review periodically.

14. That a rate of return of 7.01% on said fair value will produce a rate of return on actual test period common equity (which in this case does bear an appropriate relationship to total capitalization) of 11.00% and a rate of return of 9.28% on common equity as adjusted for the increment by which fair value exceeds original cost; said rates of return are sufficient to allow the utility by sound management to produce a fair profit to its stockholders, to maintain its facilities and services in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms; that Mooresville will require additional annual gross revenues of $227,415 to achieve said appropriate rates of return, as is illustrated in the tables appearing on pages 20 and 21 of this order.

15. That the rates requested by Mooresville will generate $317,438 in additional revenues which will produce rates of return in excess of those found to be just and reasonable.

16. That the rates contained in the schedules attached hereto as Appendix "A" will produce additional gross annual revenues of $227,415 and are just and reasonable rates.

Whereupon the Commission reaches the following

CONCLUSIONS

1. Upon consideration of the record herein it has become apparent that Mooresville Telephone Company is in need of substantial rate relief, having reduced its rates twice since its last general rate increase in 1951 and currently providing telephone service at such artificially low rates as $3.25 per month for a one-party residence telephone and deriving from those rates a rate of return on common equity of only 4.26%. The question becomes not whether Mooresville's operations require rate relief but how much. In applying the criteria set forth in G.S. 62-133(b) the Commission must estimate the utility's revenue under the present and proposed rates, and ascertain the utility's reasonable operating expenses, by fixing a test period of twelve months ending as close as practicable before the opening of the hearing.

2. Use of the test year so established is valid, as the Court said in the case of Utilities Commission v. City of Durham, 282 N. C. 308 (1972) "...if, but only if, appropriate pro forma adjustments are made for abnormalities which existed in the test period and for changes in conditions occurring during the test period and, therefore, not in operation throughout its entirety". In the present case we conclude that we should adopt Mooresville's pro forma adjustment to toll revenues and the Staff's pro forma adjustments to uncollectibles, payroll costs, other expenses, materials and supplies and related tax adjustments.

3. Mooresville contended through its witness Rowan that a further adjustment should be made to test year working capital requirements to give effect to bank deposits made by Mooresville as "compensating balances". Mooresville's evidence in this case, however, failed to demonstrate the reasonableness of including such a deposit in computing the working capital allowance inasmuch as it does not establish that the deposit was in fact maintained at the asserted level or that the line of credit was utilized by Mooresville during the test period.

4. We conclude that the replacement cost of Mooresville's property used and useful in providing service to North Carolina customers as of the end of the test year, considering the evidence of trended original cost or reproduction cost new, the methodology used in deriving such

evidence, and that portion consumed by use and recovered by depreciation expense, is $3,559,908, and that said replacement cost provides an appropriate measure of fair value in this case considering Mooresville's construction program in relation to its size, the actual depreciation reserve, the adequacy of service and of plant engineering, the recent rebuild of substantial plant with modern, well-designed facilities, and the reasonable working capital allowance. Mr. John C. Goodman offered testimony and exhibits for Mooresville to the effect that the reproduction cost new of Mooresville's property at March 31, 1972 is $4,499,906 and the reproduction cost new less depreciation is $3,801,330. We interpret G.S. 62-133(b)(1) to mean that "replacement cost" envisions the reconstruction of utility plant in accordance with modern design and techniques and with the most up to date changes in the state of the art of telephony. On the other hand, "reproduction cost" (or trended original cost as presented by Witness Goodman) is founded upon the premise of duplication of the plant as is, with any inefficiencies and outmoded or obsolete design included. Consequently, replacement cost envisions a more sophisticated level of evidence than reproduction cost. Accordingly, if the "trended original cost" study of the company in this proceeding is to be fully acceptable, it must be based upon reasonable methodology in order to be some evidence of replacement cost.

The trended original cost study by Witness Goodman has several deficiencies which make it unacceptable as the complete basis for determining replacement cost. Mr. Goodman's testimony refers to a trended book cost and net trended book cost study. The approach taken by this witness is to trend undepreciated vintage dollars of plant investment surviving at the end of the test period. These surviving vintage dollars were estimated as to year of placement. Mr. Goodman selected survivor curves or assumed first-in-first-out to estimate the dollars of surviving plant by year. Mr. Goodman then trended such estimated vintage dollars by applying estimated material and labor indices. These indices were weighted together by using an estimated ratio of labor and material. This ratio is further assumed to apply over the entire life span of the surviving plant. Finally after arriving at his estimated vintage dollars, estimated labor and material weighting and estimated trending indices, Mr. Goodman does not trend the depreciated original cost of the plant but actually trends the undepreciated book value.

Mr. Goodman then testified that he determined by physical field inspections, consideration of obsolescence and other factors, a percent allowance for condition. He did not consider the actual accrued depreciation on Mooresville's books. The percent allowance for condition was then multiplied by trended book cost to produce what Mr. Goodman called the reproduction cost new less depreciation. The resulting net trended book cost is higher than would have resulted had Mr. Goodman considered the depreciation expense

actually recovered by Mooresville, which we have considered in determining replacement cost.

We conclude that although Mr. Goodman's methods and results provide evidence of replacement cost they are not wholly determinative inasmuch as the methods employed do not reflect an appropriate depreciation reserve ratio, the methods employed are based to a significant extent on estimates and assumptions in arriving at the surviving dollars by year of placement before any trending factors are applied, the methods employed use the various estimates and assumptions in arriving at trending factors to be applied against the estimated surviving dollars, and the methods employed give only minimal consideration to advancements in the art of telephone engineering and construction. Accordingly, the net trended cost of Mooresville's plant produced by such trending is an excessively high estimate of replacement cost as is found hereinabove.

5. We conclude that in order for Mooresville by sound management to produce a fair profit to its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on reasonable terms it requires a rate of return on fair value of 7.01% and a rate of return of 9.28% on common equity as adjusted for the increment by which fair value exceeds original cost, and that Mooresville will require additional revenues of $227,415 based on test year operations to achieve said rates of return on fair value and on adjusted common equity. The increase is cost justified and does not reflect future inflationary expectations, the increase is the minimum required to assure continued, adequate and safe service, the increase will achieve the minimum rate of return needed to attract capital at reasonable costs and not to impair the credit of the public utility, and the increase takes into account expected and obtainable productivity gains. By obtaining such additional revenues Mooresville will have the opportunity to increase its interest coverage to 3.72 times and its rate of return on test period common equity to 11%. Accordingly, the rate relief requested herein is excessive inasmuch as it would produce total additional gross annual revenue in excess of that required to produce the rates of return found herein to be reasonable.

6. The following tables, based upon the Findings of Fact, illustrate the calculations for the $227,415 additional revenue found to be necessary, just and reasonable from the records in this proceeding.

MOORESVILLE TELEPHONE COMPANY
STATEMENT OF RATE OF RETURN ON INVESTMENT AFTER ACCOUNTING, PRO FORMA AND RATE INCREASE ADJUSTMENTS FOR THE 12 MONTHS' PERIOD ENDED MARCH 31, 1972

	After Accounting and Pro Forma Adjustments	Rate Increase Adjustments	After Adjustments
Operating Revenues			
Local service revenues	$ 360,659	$227,415	$ 588,074
Toll service revenues	331,245		331,245
Miscellaneous revenues	27,400		27,400
Uncollectibles	(11,407)	(1,054)	(12,461)
Total operating revenues	707,897	226,361	934,258
Operating Revenue Deductions			
Operating expenses:			
Maintenance	137,684		137,684
Traffic	9,027		9,027
Commercial	61,365		61,365
General office	40,053		40,053
Other	40,994		40,994
Total operating expenses	289,123		289,123
Depreciation	177,586		177,586
Taxes - other than income	78,833	13,582	92,415
Income taxes - state	3,497	12,767	16,264
Income taxes - Federal	(18,458)	96,006	77,548
Deferred Federal income tax	40,254		40,254
Investment tax credit - net	(4,828)		(4,828)
Total operating revenue deductions	566,007	122,355	688,362
Net operating income	141,890	104,006	245,896
Add: Annualization factor @ 2.503%	3,552		3,552
Net operating income for return	$ 145,442	$104,006	$ 249,448

Investment in Telephone Plant in Service			
Telephone plant in service	$4,097,595		$4,097,595
Less: Reserve for depreciation	885,005		885,005
Net investment in telephone plant in service	3,212,590		3,212,590
Allowance for Working Capital			
Materials and supplies	47,695		47,695
Cash (1/12 of operating expenses)	24,093		24,093
Less: Average tax accruals	11,880	$ 20,393	32,273
Total allowance for working capital	59,908	20,393	39,515
Net investment in telephone plant and allowance for working capital	$3,272,498	$ 20,393	$3,252,105
Rate of return - percent	4.44		7.67
Fair value rate base	$3,559,908		$3,559,908
Rate of return - percent	4.09%		7.01%

MOORESVILLE TELEPHONE COMPANY
STATEMENT OF RETURN ON COMMON EQUITY
FOR THE 12 MONTHS' PERIOD ENDED MARCH 31, 1972

	Present Rates	New Rates
Net operating income for return	$ 145,442	$ 249,448
Other income	24,144	24,144
Amount available for fixed charges	169,586	273,692
Fixed charges	103,849	103,849
Amount available for common equity	65,737	169,843
Common equity	1,543,099	1,543,099
Return on common equity	4.26%	11.00%
Fair value common equity	1,830,509	1,830,509
Return on fair value common equity	3.59%	9.28%

7. In establishing rates necessary to produce the revenue requirement found herein, we conclude that main station service connection charges should be increased to $12.50, extension connection charges, move and change charges and miscellaneous equipment charges should be increased to $7.50, to produce total additional revenues of $5,473 from service charges and $25,119 from miscellaneous charges, based on the test period number of customers. We further conclude that Mooresville's separate charge for color telephones as well as zone charges, should be eliminated at this time. The color charge generated test period revenue of $5,715 and the zone charge generated test period revenues of $18,420. After said increases and decreases, the monthly station rates will be increased a total of $220,955. (The rate for single-party residence telephone service will be increased, for example, from $3.25 to $5.90 per month, whereas Mooresville initially proposed an increase to $7.50 per month). The increase in annual operating revenues for Mooresville Telephone Company after said increases and decreases will be $227,415 based on the test period number of customers. Rate schedules necessary to produce said additional annual operating revenues are attached as Appendix "A".

IT IS, THEREFORE, ORDERED:

1. That Mooresville Telephone Company be, and hereby is, authorized to increase its local exchange monthly telephone service rates, general exchange tariff item rates and other charges to produce annual gross revenues not exceeding $588,074 based upon stations and operations as of March 31, 1972, by applying increases and decreases in said rates and charges in the net amount of $227,415 as in the schedule of rates and charges hereinafter set forth in Appendix "A".

2. That Mooresville Telephone Company shall file tariff revisions reflecting said increases as set forth in Appendix "A", to be effective on bills rendered in advance for the month of May, 1973, and thereafter.

ISSUED BY ORDER OF THE COMMISSION.

This 30th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Concurring Statement of Commissioner Wells attached.

APPENDIX "A"
MOORESVILLE TELEPHONE COMPANY
DOCKET P-37, SUB 48

Exchange Service Rates

Residence			Business		
Ind.	2 Pty.	4 Pty.	Ind.	2 Pty.	4 Pty.
$5.90	$5.25	$4.20	$12.20	$11.10	$9.45

PBX and key system trunks and semi-public telephones - 1 1/2 times business one-party rate.

See official Order in the Office of the Chief Clerk for the remainder of Appendix "A."

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WELLS, COMMISSIONER, CONCURRING. I concur in the result, but dissent to some of the Findings and Conclusions.

The rates (as opposed to rate of return) allowed by this Order appear to be reasonable and fair. It is my opinion, however, that even with careful and prudent management, these new rates will probably not earn for Mooresville Telephone Company the rates of return found reasonable in this Order.

The evidence in this case is clear that at the end of the test period, Mooresville's capital structure contained a very high percentage (41%) of short-term debt in the form of advances from its Parent Company, Mid-Continent Telephone Corporation. These advances were at a rate of interest (5.5%) considerably lower than current market rates on long-term debt capital or equity capital, and when this short-term debt is converted, as surely it must be, it will carry a much higher interest rate. The result will be that Mooresville's fixed charges will go up rather substantially, its interest coverage will decline, as will its return on common equity.

In fairness to all, I must point out that I do not accept that Mooresville Telephone Company is entitled to earn 11% on its end-of-period common equity or to earnings which will achieve an interest coverage of 3.72%. The rates allowed herein will not do so, and I do not wish to invite another rate case which would seek to achieve such results.

Hugh A. Wells, Commissioner

DOCKET NO. P-19, SUB 152

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
General Telephone Company of the Southeast - Authority to Issue and Sell First Mortgage Bonds in an Amount of $25,000,000 at Competitive Bidding and to Sell Common Stock in an Amount of $8,550,000 to General Telephone & Electronics Corporation	) ORDER GRANTING) AUTHORITY TO) ISSUE AND SELL) FIRST MORTGAGE) BONDS AND) COMMON STOCK

This cause comes before the Commission upon an application of General Telephone Company of the Southeast (Gentel), filed under date of February 13, 1973, through its counsel, wherein authority of the Commission is sought as follows:

1. To issue and sell at competitive bidding $25,000,000 aggregate principal amount of its First Mortgage Bonds (the Bonds), Series V ____%, due March 1, 1973;

2. To execute and deliver a Twentieth Supplemental Indenture to its Mortgage and Deed of Trust, dated November 1, 1947, to secure payment of the Bonds; and

3. To issue and sell 342,000 shares of its Common Stock, $25 par value, to General Telephone & Electronics Corporation (GTE) for $8,550,000 cash.

FINDINGS OF FACT

1. Gentel is a Virginia Corporation doing business in the Commonwealth of Virginia, and duly qualified to transact business as a foreign corporation in the states of Alabama, Georgia, North Carolina, South Carolina, Tennessee and West Virginia. Its general office and principal place of business is 3632 Roxboro Road, Durham, North Carolina, and it owns and operates telephone properties in each of the seven states mentioned in this paragraph.

2. Gentel has expended $78,662,000 for additions to its properties during 1973 and its construction program for the year 1973 is estimated at $74,083,000. In order to finance these expenditures in part, Gentel had outstanding short-term loans aggregating $50,510,500 at December 31, 1972, and which will approximate $59,360,500 by March 28, 1973.

3. Gentel proposes to issue and sell 342,000 shares of its Common stock, $25 par value, to GTE for $8,550,000 cash.

4. Gentel proposes to create, issue and sell $25,000,000 aggregate principal amount of its First Mortgage Bonds, Series V, ___%, due March 1, 2003, to be issued pursuant to its Indenture of Mortgage and Deed of Trust to The First National Bank of Chicago and Robert L. Grinnell, as Trustees (R. R. Manchester, successor individual trustee), dated as of November 1, 1947, as supplemented and amended by nineteen

Supplemental Indentures and to be supplemented and amended by a Twentieth Supplemental Indenture. The Bonds are to be sold at competitive bidding on March 15, 1973, at eleven a.m. at a proposed maximum offering price of 102 percent per unit and will bear interest at a rate which will result in the lowest annual cost of money offered by any Bidder acceptable to Gentel.

5. Gentel will pay a registration fee of $5,100 in compliance with the requirements of the Securities and Exchange Commission, in connection with the sale of the Bonds. Additional expenses other than underwriting discounts and commissions are estimated to be $99,500.

6. The net proceeds from the sale of the Bonds, exclusive of accrued interest, together with the proceeds from the sale of Common Stock, will be applied towards the payment of short-term loans owing to banks and to GTE obtained for the purpose of financing Gentel's construction program.

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.

The Commission's approval of this financing shall not be construed to deprive it of considering and adjusting, if the Commission deems necessary, Gentel's capital structure for ratemaking purposes in the Gentel general rate case (Docket No. P-19, Sub 136) scheduled for hearing by this Commission beginning April 11, 1973.

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 and sell, for cash, plus accrued interest, if any, at competitive bidding $25,000,000 principal amount of First Mortgage Bonds, Series V, ___%, due March 1, 2003;

2. To execute and deliver a Twentieth Supplemental Indenture to its Mortgage and Deed of Trust dated November 1, 1947, to secure payment of the Bonds;

3. To issue and sell 342,000 shares of its Common Stock, $25 par value, to GTE for $8,550,000 cash; and

4. To file with the Commission, in duplicate, a verified report of actions taken and transactions consummated pursuant to the authority herein granted within a period of sixty (60) days following the completion of the transactions authorized herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-19, SUB 152

WELLS, COMMISSIONER, DISSENTING IN PART, AND CONCURRING IN PART. The laws of North Carolina as set forth in Chapter 62 of the General Statutes, more particularly Sections 161 and 167 of said chapter, require this Commission to exercise its judgment in connection with the raising of external capital (either debt or equity) by public utility firms franchised to do business in the State. The criteria under which the Commission shall exercise its judgment are clearly set forth in the law and the rules of the Commission.

My experience with General Telephone Company of the Southeast has led me to question whether that company is wisely and prudently spending its capital funds. In this docket, I can concur that General has met the criteria set forth in G. S. 62-161(a)-i.e., that the transactions herein proposed are for lawful objects. I find nothing in the record other than the naked conclusion of the Applicant that the other three criteria are met. I do find from other dockets and the files of this Commission information which creates much doubt in my mind that the other three criteria are being met or will be met by this company, so far as its North Carolina operations are concerned.

I must, therefore, conclude that my judgment would be to require much more of this company than we now do in passing upon its financings. I concur in the result only because I realize that in order to continue to provide service, capital must be raised. I dissent strongly upon the grounds that the application filed by General is factually insufficient and that our Order approving it is routine and perfunctory.

Hugh A. Wells, Commissioner

DOCKET NO. P-44, Sub 66

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application of Old Town Telephone System, Incorporated, O T Tel, Inc., and Mid-Continent Telephone Corporation for Authority to Merge the Old Town Telephone System, Incorporated, into O T Tel, Inc., and to Transfer the Certificate of Public Convenience and Necessity	ORDER ALLOWING MERGER AND TRANSFER

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 26, 1973

BEFORE: Chairman Marvin R. Wooten, Presiding; Commissioner Hugh A. Wells and Commissioner Ben E. Roney

APPEARANCES:

For the Applicants:

Mr. P. Kent Burns
Boyce, Mitchell, Burns and Smith
Attorneys at Law
Box 1406, Raleigh, North Carolina
Appearing For: O T Tel, Inc., and Mid-Continent Telephone Corporation

Mr. Ralph M. Stockton
Hudson, Petree, Stockton, Stockton and Robinson
Attorneys at Law
610 Reynolds Building
Winston-Salem, North Carolina
Appearing For: Old Town Telephone System, Inc.

Mr. George C. McConnaughey
George, Greek, Kemp, McMahon & McConnaughey
Attorneys at Law
100 E. Broad Street
Columbus, Ohio 43215
Appearing For: Mid-Continent Telephone Corporation and O. T. Tel, Inc.

For the Intervenors:

Mr. R. Kason Keiger
Attorney at Law
403 Pepper Building
Winston-Salem, North Carolina
Appearing For: Robert Kason Keiger

For the Commission Staff:

Mr. Robert F. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina

Mr. E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991 - Ruffin Building
Raleigh, North Carolina

BY THE COMMISSION. On July 27, 1973, a joint petition was filed with the North Carolina Utilities Commission by the three Applicants herein - Old Town Telephone System, Incorporated ("Old Town"), O T Tel, Inc. ("O T Tel"), and Mid-Continent Telephone Corporation ("Mid-Continent"). The petition requested the Commission to approve a proposed merger between Old Town, a North Carolina franchised telephone public utility and O T Tel, a North Carolina corporation which is a wholly-owned subsidiary of Mid-Continent, an Ohio corporation. The petition also requested a transfer of the Certificate of Public Convenience and Necessity heretofore issued from Old Town to O T Tel as the surviving corporation following the proposed merger. The petition further requested approval of certain mechanical and technical actions necessary to effectuate the merger. The net effect of the proposed merger would result in Mid-Continent, by and through its wholly-owned subsidiary, O T Tel, thereafter furnishing telephone utility service to the public for compensation, which service was theretofore being furnished by Old Town under its previously granted franchise. The petition was verified by all three Applicants and was signed by their counsel pursuant to Commission Rule R1-5. The attorney of record signing for Old Town was R. Kason Keiger.

Attached to the petition were a "Plan and Agreement of Merger and Reorganization" and a "Three Party Agreement", both dated May 31, 1973. By item 1.(c)(ix) of the "Three Party Agreement", Old Town represented and warranted that the Merger Agreements were ". . . duly authorized by its Board of Directors" and that ". . . the execution of such Agreements and consummation of the transactions contemplated thereby will not violate any provision of its Charter or Articles of Incorporation or Bylaws, or any provision of any mortgage, agreement, instrument, order, judgment or decree of or to which it is a party, or by which it is bound, or any other restriction of any kind or character to which it is subject." (Emphasis added.) Old Town further agreed, by item 2.(b)(i) of said Three Party Agreement that "The Board of Directors of Old Town will call a meeting of its stockholders, in compliance with the laws of the State of North Carolina, to take place for the purpose of voting upon the Merger Agreement and will recommend to such stockholders

that they approve such agreement." (Emphasis added.) The attorney for Old Town, who assisted in the preparation of these documents, was R. Kason Keiger.

By Order dated August 16, 1973, the Commission, being of the opinion that the matter affected the public interest, set the matter for hearing on October 26, 1973, required the furnishing of additional data and information, ordered publication of notice in the affected area, and determined to decide the matter on the basis of the record if no legitimate protests or interventions were received by October 16, 1973.

On September 26, 1973, Old Town, O T Tel and Mid-Continent filed Reply to the additional information required by the Commission Order setting the matter for hearing. On October 10, 1973, petitioners filed Affidavit of Publication concerning the public hearing, showing that same was published on September 11, 13, 18, and 20, 1973.

On October 15, 1973, a petition for leave to intervene was filed by R. Kason Keiger, attorney for Old Town, in this capacity and as a subscriber, stockholder, custodian-stockholder and director of Old Town. Said petition principally questioned matters and things involving alleged misconduct of directors and minority shareholders' rights, over which this Commission has no jurisdiction. The petition did, however, generally allege in paragraph 2.c. that "the costs of service in the Old Town area will be significantly increased as a result of the proposed merger" and in paragraph 2.j. that "the relief sought by the corporate petitioners is not compatible with the public interests, is not appropriate for service to the public in the area involved, and is not justified by public convenience and necessity." The petition prayed that R. Kason Keiger be allowed to withdraw as attorney of record for Old Town, that he be allowed to intervene in this proceeding, that authority for the proposed merger be denied and that the hearing date, which had been set some two months earlier by the previous Commission Order, be continued indefinitely.

On October 17, 1973, a reply to the requested intervention was filed by O T Tel and Mid-Continent. These parties did not object to Mr. Keiger's appearance as Intervenor, but noted his extensive participation as Attorney for Old Town in the preparation of the Merger Agreements, the Registration Statement with the S.E.C. and the Joint Application for Merger Approval filed with this Commission. For this reason and for the Commission's lack of jurisdiction over the majority of the issues raised by Mr. Keiger's petition for leave to intervene, O T Tel and Mid-Continent opposed any continuance of the hearing.

On October 18, Mid-Continent moved that its out-of-state attorney be allowed to appear and participate at the hearing in association with North Carolina counsel.

On October 17, 1973, the Commission issued an Order allowing R. Kason Keiger to withdraw as counsel of record for Old Town, allowing R. Kason Keiger to intervene herein, and denying the request for a continuance. Old Town was ordered to provide itself with legal counsel to replace Mr. Keiger. On October 19, 1973, Old Town, by and through its new counsel, filed its reply to the Keiger petition for leave to intervene also requesting that no continuance be granted.

On October 22, 1973, R. Kason Keiger filed with the Commission the following documents: (1) EXCEPTION TO DENIAL OF MOTION FOR CONTINUANCE, (2) RENEWED MOTION FOR CONTINUANCE, (3) Subpoenas for James Casky, Frank J. Schilagi, Marjorie H. Felmet, Victor G. Jamison and Arnold H. Snider, Jr., who are officers, directors or employees of Old Town or O T Tel, and (4) Subpoenas duces tecum for Weldon W. Case, President of Mid-Continent and J. Lee Keiger, brother of R. Kason Keiger and President of Old Town. Said Subpoenas were issued.

On October 22, 1973, the Commission issued an Order denying the Exceptions to Denial of Motion for Continuance and Denying the Renewed Motion for Continuance. On October 24, 1973, the Commission issued an Order allowing the appearance of out-of-state counsel for Mid-Continent.

On October 25, 1973, Mid-Continent filed a Motion to Quash the Subpoena duces tecum directed to its President Weldon W. Case. Also on 25 October 1973, Old Town filed a Motion to Quash the Subpoena duces tecum directed to its President J. Lee Keiger. Ruling on said motions was deferred, to be decided as the first item of business at the hearing then scheduled for 10:00 a.m. on the following day, the 26th of October 1973.

At the hearing, it became clear throughout the course of the proceedings, that the sole purpose of the intervention by R. Kason Keiger was to attempt to litigate minority stockholders' derivative issues over which the Commission had no jurisdiction and which were not relevant to the legitimate issues before the Commission. In addition, Intervenor's conduct in refusing to confine himself to these legitimate issues, in continually interrupting the Chairman and the Commission and in failing to heed numerous warnings from the bench was such as to confuse, compound, obstruct, frustrate and delay a fair and impartial examination of the joint application. For these reasons the Commission declared a recess, reconsidered its earlier action in granting the petition for leave to intervene and, of its own motion, struck said intervention. There then being no legitimate protest or intervention of record, the Commission, pursuant to its previous order setting the hearing, recessed to consider and decide the matter based upon the verified application, the supplemental data furnished by Applicants and the official record herein. During the course of the hearing, the Commission had taken

judicial notice of its own records relating to the application and filings by Applicants, relating to Old Town and relating to the five other telephone utilities owned and operated in North Carolina by subsidiaries of Mid-Continent.

No protests or interventions were received from any member of the public generally or from anyone without a vested financial interest in the outcome of this proceeding. Based upon the application, the subsequent data filed pursuant thereto and the records of the Commission comprising the record in this case, the Commission now makes the following

FINDINGS OF FACT

1. The petition for leave to intervene filed by R. Kason Keiger in this cause was improvidently granted. It was filed for the sole purpose of airing private stockholders' disputes and grievances before the Commission. The proper forum for such disputes and grievances is in the Superior Courts of North Carolina. The Commission has no jurisdiction over such grievances.

2. The actual effect of the intervention at the attempted public hearing was to delay, frustrate, confound and confuse a fair and impartial examination of the application through the contemptuous actions in the presence of the Commission by the Intervenor.

3. Old Town and O T Tel are corporations duly organized and existing under the laws of the State of North Carolina. Mid-Continent is a corporation duly organized and existing under the laws of the State of Ohio. O T Tel is a wholly-owned subsidiary of Mid-Continent.

4. Old Town is engaged in the business of providing telephone utility service to the public for compensation under a Certificate of Public Convenience and Necessity heretofore issued to it by this Commission. Such service is rendered in the King, Rural Hall, Stanleyville, Old Town and Lewisville areas of Forsyth, Surry and Stokes Counties, North Carolina.

5. Applicants seek Commission approval for the merger of Old Town into O T Tel and for the transfer of the Certificate of Public Convenience and Necessity from Old Town to O T Tel. Following such merger and transfer, O T Tel will provide all the service formerly provided by Old Town, and O T Tel will use the name "The Old Town Telephone System, Incorporated." Old Town will cease to exist. As part of said merger, O T Tel will acquire all the assets and assume all of the liabilities of Old Town.

6. The proposed merger will serve the public convenience and necessity by assuring the subscribers of Old Town the backing of Mid-Continent, a $390 million dollar company. Old Town's assets are less than $8 million dollars.

7. Mid-Continent Telephone Service Corporation will provide services to the surviving corporation at cost. Such services will cost $24,000 per year absent unusual circumstances and will give the survivor corporation access to specialized disciplines and talents not otherwise available on a full-time basis to companies as small as Old Town. Such talents and disciplines include operating and financial management; financing for construction and operations by interim debt and equity to build a sound financial structure; use of technical operating equipment; personnel skills schools; opportunity for Old Town personnel to advance within a larger system; and economies of scale in pooling of talents.

8. The surviving corporation will be free to use Mid-Continent's mass purchasing power when favorable, but will be equally free to purchase materials supplies and plant account items by bids or outside negotiated prices. Old Town system construction which is financed by REA will continue to be subject to REA "Bid Rules." The Mid-Continent directory publishing contract will be more favorable to Old Town than its presently existing individually negotiated contract.

9. The cost of service per station will increase during the first twelve months after transfer of ownership from $58.32 per station to $60.51 per station, or a per station increase of .037 per cent. The bulk of this increase will be for maintenance and depreciation items, which are for the public benefit. To the extent they cannot be improved upon, Old Town's present operating practices and personnel will not be changed.

10. Mid-Continent will not seek to amortize on the books of the survivor corporation any "purchase premium" or excess transfer costs over and above the present net original book value of Old Town's assets.

11. Mid-Continent presently has five subsidiaries furnishing telephone utility service to the public for compensation in North Carolina. These companies and the dates of purchase are:

a) Eastern Rowan Telephone Company - December, 1963
b) Thermal Belt Telephone Company - December, 1965
c) Denton Telephone Company - June, 1966
d) Mooresville Telephone Company - September, 1967
e) North Carolina Telephone Company - July, 1972

In addition, Mid-Continent or its subsidiaries operate 51 other telephone utility companies principally in the States of Ohio, Pennsylvania, New York, Illinois, Michigan, South Carolina, Georgia, Florida, Indiana and Mississippi. The operations of Mid-Continent's North Carolina subsidiaries have been up to this point, fair, effective, and reasonable and in the public interest.

12. The survivor corporation of the merger will, for its rates and standards and quality of service, continue to be subject to the jurisdiction and regulation of this Commission.

13. The franchise, which is now proposed to be transferred from Old Town to O T Tel, has been actively operated since originally granted by this Commission. There is a continuing need and demand for the services being rendered under such franchise.

Based on the foregoing Findings of Fact, the record as a whole and G. S. 62-111, the Commission now reaches the following

CONCLUSIONS OF LAW

1. No legitimate protest or intervention has been filed with the Commission opposing the proposed merger.

2. The laws and policy of the State of North Carolina, including G. S. 62-111, favor the free alienation of property if justified by public convenience and necessity.

3. The proposed merger is justified by the public convenience and necessity, is for a lawful object within the corporate purposes of all companies involved in the transaction, is compatible with the public interest, is consistent with the proper performance by the Applicants of their present and future service obligations to the public, will not impair the ability of the surviving corporation to render such service, and is reasonably necessary and appropriate for such service to the public.

IT IS, THEREFORE, ORDERED

1. That the Plan of Merger and Reorganization attached to the Application is hereby approved.

2. That, upon completion of all necessary arrangements, financial and otherwise, to effectuate the merger as proposed in the Plan, the Certificate of Public Convenience and Necessity heretofore issued by this Commission to Old Town Telephone System, Incorporated, is hereby transferred to O T Tel, Inc.

3. That upon notice to the Commission within thirty (30) days of the completion of the merger and change of name as proposed, a new Certificate of Convenience and Necessity shall be issued to "The Old Town Telephone System, Incorporated" to engage in the business of furnishing telephone utility service to the public for compensation in the same franchised territory presently being served by Old Town. The rates shall be those presently authorized and approved for Old Town.

4. That, subject to further regulation by the Commission, Mid-Continent Telephone Corporation is hereby authorized, by and through its wholly-owned North Carolina subsidiary, O T Tel, Inc., to acquire the assets and assume the liabilities of Old Town by having Old Town merge into O T Tel, Inc.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. P-7, SUB 585

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request for Southern Bell Telephone and Telegraph Service from its Pembroke Exchange in lieu of Red Springs Service of the Carolina Telephone and Telegraph Company from Certain Citizens Residing in the Union Chapel Community of Burnt Swamp Township, Robeson County, North Carolina.	)	ORDER

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on July 25, 1973, at 9:30 A.M.

BEFORE: Commissioners Hugh A. Wells (Presiding), Ben E. Roney and Chairman Marvin R. Wooten

APPEARANCES:

For the Petitioners:

Mr. Bobby Locklear
Route 4, Box 562, Lumberton, North Carolina

For the Respondents:

Mr. William W. Aycock, Jr.
Taylor, Brinson & Aycock
Attorneys at Law
P. O. Box 308, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company

Mr. Henry S. Manning, Jr.
Joyner & Howison
Attorneys at Law

P. O. Box 109, Raleigh, North Carolina 27602
For: Southern Bell Telephone and
Telegraph Company

For the Commission:

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

BY THE COMMISSION. This matter came on for hearing as captioned before Commissioners Wells (Presiding), and Roney, and Chairman Marvin R. Wooten to read the record in order for his participation in the proceedings. The matter was heard in the Commission Hearing Room in Raleigh, North Carolina, at 9:30 A.M., on July 25, 1973, upon complaint of the Petitioners as indicated in the Order setting the hearing.

Following the completion of the hearing, conferences were held between the Commissioners and Carolina Telephone and Telegraph Company and Southern Bell Telephone and Telegraph Company to determine the possibility of the complaint proceedings being settled by negotiations between the parties. As the result of said conferences, Carolina and Bell and have agreed to file and have filed a revised boundary between Carolina's Red Springs Exchange and Bell's Pembroke Exchange which will enable almost all of the Petitioners to obtain Pembroke service from Bell. The revised boundary map has been submitted to the consideration of the Petitioners, and all but five of the Petitioners have indicated their agreement with the revisal.

The Commission considers that the complaint has been satisfied by the two telephone companies against whom it was directed, and

IT IS, THEREFORE, ORDERED:

That this proceeding be closed and the complaint be, and hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 585

WOOTEN, CHAIRMAN, CONCURRING. I concur in the action of the majority in this case in dismissing the proceedings for the reason that I conclude that the Petitioners failed to

justify the relief sought and that under the facts of this case, the Commission is without authority to Order the utilities involved to satisfy the complaint presented. I further will agree to accept the settlement as agreed to by and between certain of the parties herein for the reasons that the parties thereto have so agreed.

M. R. Wooten, Chairman

DOCKET NO. P-55, SUB 726

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation by the Commission on its Own) ORDER
Motion to Transfer Service Area from Saluda) TRANSFERRING
Mountain Telephone Company to Southern Bell) SERVICE
Telephone and Telegraph Company.) AREA

PLACE: Commission Hearing Room, Raleigh, North Carolina

DATE: May 8, 1973

BEFORE: Chairman Marvin R. Wooten, presiding, Commissioners John W. McDevitt, Hugh A. Wells, and Ben E. Roney.

APPEARANCES:

For the Respondents:

R. C. Howison, Jr.
Joyner and Howison
Attorneys at Law
Wachovia Bank Building
Raleigh, North Carolina
Appearing for: Southern Bell Telephone and Telegraph Company

Robert A. Jones
Jones and Jones
Attorneys at Law
122 Woodland Avenue
Forest City, North Carolina
Appearing for: Saluda Mountain Telephone Company

For the Commission Staff:

Wilson B. Partin
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina
Appearing for: Commission Staff

BY THE COMMISSION: Upon investigation of a complaint by a resident of Polk County, North Carolina, the Commission found an area in Polk County in which there is no telephone service available. The area is within the assigned service area of Saluda Mountain Telephone Company (hereinafter called "Saluda"). Saluda declines to serve the area on the grounds that it is not economically feasible.

Southern Bell Telephone and Telegraph Company (hereafter called "Southern Bell"), the only other telephone company adjacent to the area was queried by the Commission about the transfer of the area from Saluda to Southern Bell. Southern Bell replied that they opposed any extension of its boundary to service the area without the recovery of a portion of its initial investment. Both Southern Bell and Saluda agree the area is more accessible to Bell's Hendersonville exchange than to Saluda.

The area in dispute is reputed by the companies to be a low annual revenue producer. Despite a proposed development in English Heifer Cove, the population is recognized to be seasonal for the most part. Because of the projected low annual revenue, both Saluda and Southern Bell do not feel that it would be advantageous for their subscribers to extend service into the area.

Because of the impasse generated in this situation, the matter was set for hearing on May 8, 1973.

Mr. David P. Doane, whose desire for telephone service initiated this proceeding, testified substantially as follows:

As a pilot for Stevens Aviation Corporation, a subsidiary of J. P. Stevens Company, he needs a phone in order to check with his dispatcher to find out his assignment for the following day. At his vacation cabin located at English Heifer Cove in Polk County, the only utility is electricity furnished by Duke Power Company. It was around June, 1971 when he first applied to Saluda Mountain Telephone Company but Mr. Edwin Leland, Sr., of Saluda explained that the cost of providing service would be prohibitive due to the necessity of crossing Green River Gorge and the setting of new poles and line.

The nearest pay phone to his cabin is approximately 15 minutes drive away.

Mr. Mead C. Kilpatrick, real estate broker and an associate with the English Heifer Cove Company, furnished testimony as follows:

English Heifer Cove development encompasses approximately 159 acres in Polk County, near or on the Henderson-Polk County Line. At present, there are four homes, including Mr. Doane's, completed with projections of approximately 80

homes. The sale of the homes is being hampered by the lack of phone service.

Mr. Kilpatrick has not personally had any contact with either Southern Bell or Saluda Mountain concerning the provision of telephone service to the development. In answer to questions from Commissioner McDevitt, Mr. Kilpatrick said he felt sure that the English Heifer Cove Company would be willing to pay some of the cost of providing telephone service to its development.

Mrs. Carolyn C. Doane, wife of David P. Doane, testified that during her efforts to get phone service, she contacted both Saluda Mountain and Southern Bell. Mrs. Doane stated that Southern Bell required a $1,000 construction fee and a charge of $27.00 per month to provide service to her cabin. The Doane's rejected the offer. Mrs. Doane further stated that Saluda said that it would cost over $19,000 to run a line to the Doane's property and the cost would be prohibitive to Saluda.

Mr. Fred Dorsey testified that he is a member of the Blue Ridge Wildlife Club which has a hunting lodge in Henderson County approximately two miles from the Doane's vacation cabin. Mr. Dorsey stated that Southern Bell provides telephone service to the lodge.

Under cross-examination Mr. Dorsey testified that the lodge is on the west side of a ridge while English Heifer Cove development is approximately one mile to the east of the ridge line. There are approximately 5,000 acres of Wildlife Commission property adjoining to the Heifer Cove area.

Mr. Edwin C. Leland, Jr., of Saluda Mountain Telephone Company testified substantially as follows:

Of the approximately 500 telephones of Saluda Mountain, none are located in Green River Gorge or on the side of the gorge toward Henderson County. Saluda's last pedestal is approximately 4 to 4 1/2 miles from Mr. Doane's cabin, on the opposite side of Green River. Southern Bell's last pedestal is approximately 2 1/2 miles from the cabin.

In order to extend service to Mr. Doane, Saluda would have to set approximately 30 poles and run wire over 140 spans at a minimum cost of $19,500. This cost includes materials and labor but not clearing of right-of-way, road improvement, or rental for use of Duke Power poles.

Saluda Mountain considered microwave equipment as an alternate method of providing service. The cost for eight channel was in the neighborhood of $27,000 and was also considered economically unfeasible.

It would cost more to provide service to Mr. Doane than it did to install EAS from Saluda to Hendersonville. The EAS cost each subscriber an additional $1.60 per month.

Mr. George K. Selden, Jr., State Forecast and Rate Supervisor for Southern Bell Telephone and Telegraph Company, offered testimony as follows:

The Hendersonville exchange of Southern Bell has been engineered to render service only within the boundaries of that exchange.

The area of Polk County near the English Heifer Cove development is a rugged mountainous region with a wildlife refuge to the east.

By letter from the Commission in August, 1972, Southern Bell was asked to consider the possibility of service to Mr. Doane. It was that which prompted the offer of service for a $1,000 construction fee and a monthly charge of $27.00. The monthly charge would be over and above the basic rates and zone charges applicable. By attaching the telephone cable to Duke Power Company poles, Bell could extend its Hendersonville facilities to Mr. Doane's cabin for approximately $6,800 plus the annual cost of attachment of approximately $80.00 per year.

In Mr. Selden's opinion, the nature of the development at English Heifer Cove is of the type where the homeowners probably don't want telephone service except for availability in case of emergency.

Mr. Vern W. Chase, Chief Engineer of the Commission's Telephone Rate Section, testified that he considers Southern Bell's estimate of the cost to serve Mr. Doane to be conservative and that the offer made to Mr. Doane by Bell in order to provide service is reasonable.

Mr. Chase stated that when between 1950 and 1955, the Commission was placing all parts of North Carolina within the territorial assignments of the telephone companies, boundaries such as county lines were frequently used because it was already positively identified and could alleviate confusion.

After review of the matter, the Commission concludes that for Saluda Mountain Telephone Company to extend its lines to serve the area would constitute an unreasonable economic hardship. Southern Bell Telephone and Telegraph Company has better accessibility to the area than does Saluda. For Bell to serve the area without recovering some portion of the contruction costs would also be unreasonable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Southern Bell Telephone and Telegraph Company, in conjunction with Saluda Mountain Telephone Company,

establish a new exchange service area line between the two companies in order for Bell to service the area. The new boundary line should be in the area of the mountain ridge line west of Green River Cove.

2. That both Bell and Saluda file revised service area maps (1" to the mile) to reflect the area transfer.

3. That Southern Bell shall provide service to the additional area but may as a consideration assess the applicant for service, Mr. Doane, with a "contribution in aid of construction" in the amount of $1,000.00 and may charge him $27.00 a month in addition to the applicable monthly main station and zone rate charge for no more than sixty (60) months to cover the carrying charges on facilities required from the present boundary to Mr. Doane's location.

4. If and when additional telephones are installed in the new area covered by this order, the $27.00 charge covered in the preceding ordering clause shall be prorated among the subscribers of the area.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 728

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Southern Bell Telephone and Telegraph Company - Request for Hearing on Exemption from Filing of Securities for Approval by the Commission.) ORDER DENYING EXEMPTION

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on April 17, 1973, at 10:40 A.M.

BEFORE: Chairman Marvin R. Wooten (Presiding), Commissioners John W. McDevitt, Hugh A. Wells and Ben E. Roney.

APPEARANCES:

For the Applicant:

R. C. Howison, Jr., Esquire
Joyner & Howison

Wachovia Bank Building
Raleigh, North Carolina

John F. Beasley, Esquire
Southern Bell Telephone and Telegraph Company
1245 Hurt Building
Atlanta, Georgia 30303

For the Commission Staff:

William E. Anderson, Esquire
Wilson B. Partin, Esquire
Assistant Commission Attorneys
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION. By its letter of January 4, 1973, the Commission directed Southern Bell Telephone and Telegraph Company (hereinafter called "Bell"), to file all securities to be issued by Bell with the Commission pursuant to the provisions of G. S. 62-160, et seq., and Rule R1-16 of the Commission's Rules and Regulations, and to secure approval of such security issues prior to their being issued.

By letter of January 22, 1973, Bell responded to the Commission's letter, enclosing and referring to its reliance on a letter from the Commission dated June 20, 1957, in which the Commission at that time concluded that it did not have jurisdiction over Bell's securities, and that Bell would not be required to file its security issues with this Commission for its prior approval. Bell requested that the exemption purported to be granted under the Commission's letter of June 20, 1957, remain in effect and that Bell not be required to file its security issues with this Commission for prior approval.

Following the receipt of Bell's letter the Commission set the matter for hearing requiring Bell to sponsor the testimony of a responsible official in order to explain Bell's position in the matter. The matter was accordingly heard in the Commission Hearing Room at 10:40 A.M., Tuesday, April 17, 1973.

At the hearing, Bell introduced the Commission letter of June 20, 1957, and other correspondence between Bell and the Commission relating to said letter. Bell also presented the testimony of A. Max Walker, the Vice President and Treasurer and Chief Financial Officer of Bell.

In his testimony, Mr. Walker stated that Bell was complying with the filing requirements of the Securities and Exchange Commission and the New York Public Service Commission, and that in view of the fact that Bell was a foreign corporation, incorporated in the State of New York, is complying with the filing requirements under the laws of that State and the laws of the United States; that Bell did not feel that it should be required to seek prior approval of the North Carolina Commission for the issuing of its

securities. Mr. Walker alluded to certain problems that would be incurred by Bell in following the procedure of seeking the prior approval of the North Carolina Commission, and alleged that it was not necessary and would be burdensome to his company to have to do so.

Based upon the record, the Commission makes the following

FINDINGS OF FACT

1. Southern Bell Telephone and Telegraph Company is a business corporation incorporated under the laws of the State of New York, and domesticated and qualified to do business and is doing business in the State of North Carolina.

2. Southern Bell Telephone and Telegraph Company is a public utility doing business in the State of North Carolina.

3. Southern Bell Telephone and Telegraph Company from time-to-time issues securities to finance the operation of its public utility business in North Carolina, consisting of debt securities or common stock in Southern Bell Telephone and Telegraph Company issued and sold to its parent company, American Telephone and Telegraph Company, which company owns all of the common stock in Southern Bell Telephone and Telegraph Company.

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

CONCLUSIONS

It is clear chat Southern Bell Telephone and Telegraph Company is operating as a public utility in the State of North Carolina. Article 8 of Chapter 62 of the General Statutes, entitled "Security Regulations", begins with Section 160, which reads as follows:

ARTICLE 8.

Securities Regulation.

"§ 62-160. Permission to pledge assets.--No public utility shall pledge its faith, credit, moneys or property for the benefit of any holder of its preferred or common stocks or bonds, nor for any other business interest with which it may be affiliated through agents or holding companies or otherwise by the authority of the action of its stockholders, directors, or contract or other agents, the compliance or result of which would in any manner deplete, reduce, conceal, abstract or dissipate the earnings or assets thereof, decrease or increase its liabilities or assets, without first making application to the Commission and by order obtain its permission so to do."

It is clear that the above quoted statute makes no exception for foreign corporations doing business in North Carolina, but is all inclusive. The Commission takes notice of the fact that all other foreign corporations doing business in North Carolina as public utility firms are complying with the statute, and that Southern Bell is the sole exception. We therefore conclude that we have no basis in law or in fact to further excuse Southern Bell from complying with the provisions of Article 8 of Chapter 62 of the General Statutes, and the Rules and Regulations of the Commission adopted pursuant to the Commission's responsibilities under Chapter 62 of the General Statutes.

IT IS, THEREFORE, ORDERED THAT:

From and after the date of this Order, Southern Bell Telephone and Telegraph Company be, and hereby is, required to in all respects comply with the provisions of Article 8 of Chapter 62 of the General Statutes of North Carolina relating to securities regulation, and to in all respects comply with the Rules and Regulations of this Commission adopted pursuant to the Commission's authority and responsibility under Chapter 62, and that Bell's application or petition or request for exemption from the provisions of said Article 8 and the Commission's Rules and Regulations be, and hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 730

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Bell Telephone & Telegraph Company - Filing of Tariffs to Establish new Lake Wylie Exchange in South Carolina with Extended Area Service to Charlotte, North Carolina	)	ORDER APPROVING TARIFFS ESTABLISHING LAKE WYLIE EXCHANGE IN SOUTH CAROLINA WITH EAS TO CHARLOTTE, IN LIEU OF FRESH AIR CAMP ZONE OF CHARLOTTE EXCHANGE

On January 22, 1973, Southern Bell Telephone & Telegraph Company (hereinafter called "SOUTHERN BELL") filed tariffs under its General Subscriber Services Tariff, Section A3, Seventh Revised Page 15, and under Exchange Service Area Map, Charlotte-Twentieth Revision, which have the effect of eliminating a small portion of the Charlotte exchange on the South Carolina side of Lake Wylie adjacent to the crossing

of Lake Wylie by Highway 49, now known as the Fresh Air Camp theoretical exchange, and by simultaneous filing of appropriate tariffs with the South Carolina Commission, to establish a new exchange in said Fresh Air Camp area and beyond in South Carolina to be known as the Lake Wylie exchange, with extended area service available from said exchange either to Charlotte, North Carolina, in an easterly direction, or to Clover, South Carolina, exchange of Southern Bell in a westerly direction.

The Commission, in conference on February 19, 1973, took action and so advised Southern Bell that they may withdraw said tariffs and continue serving the Fresh Air Camp area as part of the Charlotte exchange, or the tariffs would be suspended and set for hearing with public notice. Upon being notified of said action, Southern Bell requested opportunity to be heard on said tariff proposal, and was heard by the Commission in conference on February 23, 1973. Upon consideration of the maps filed in said conference and the record of said conference furnishing detail explanation of said proposed change in the service to the Fresh Air Camp by the establishment of the proposed new Lake Wylie exchange in said area, and it appearing from statements of representatives of Southern Bell in said recorded conference that the existing customers of the Charlotte exchange of Southern Bell located in the South Carolina Fresh Air Camp area would continue to receive extended area service to Charlotte at the same rates now in existence to the Charlotte exchange, and that the petitioner Southern Bell has the franchise from the South Carolina Commission for the Lake Wylie exchange area and is the owner and operator of the new proposed Lake Wylie exchange in the South Carolina area, and that said proposed Lake Wylie exchange area is a developing area and could most economically be served by a new exchange rather than by continued expansion of service from Charlotte or from the nearest and presently controlling South Carolina exchange at Clover, South Carolina, for the portions of said proposed new Lake Wylie exchange which lie beyond the Fresh Air Camp area now served from Charlotte, and the Commission being of the opinion that its action in conference on February 19, 1973, should be modified and that the said tariffs filed herein on January 22, 1973, as above described, should be allowed to go into effect,

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Southern Bell Telephone & Telegraph Company's General Subscriber Services Tariff, Section A3 - Seventh Revised Page 15, and Exchange Service Area Map, Charlotte - Twentieth Revision, filed herein on January 22, 1973, are hereby approved upon the terms and conditions hereinafter set forth.

2. That the elimination of the Fresh Air Camp service portion of the present Charlotte exchange, located on the South Carolina side of Lake Wylie at the Highway 49 bridge, is approved on the condition that said area shall become

part of a new exchange known as the Lake Wylie exchange, and that all of the present customers of Southern Bell in said area now receiving service from the Charlotte, North Carolina, exchange shall continue to be offered extended area service from said Lake Wylie exchange to the Charlotte, North Carolina, exchange of Southern Bell with no increase in the rates and charges presently being charged for said service, without prior application and approval thereof by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 2nd day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 730

MCDEVITT, COMMISSIONER, DISSENTING. Upon consideration of Southern Bell's proposal to expand Charlotte local telephone exchange service deeper into South Carolina to serve a planned development in addition to the present group of approximately twenty customers, the Commission rightly directed Southern Bell to withdraw its proposal or it would be set for public hearing. Instead, Southern Bell sought and obtained an informal conference with the Commission in which it obtained majority approval of its proposal. I dissent from this action because Southern Bell in my opinion presented no additional information which justified approval. On the other hand, it only serves to illustrate the absence of fair and objective criteria for determining under what conditions such service improvements should be provided. The demand and need for extended area service and changes in telephone exchange boundaries have mounted with growth and development of the State. It would be beneficial to air Southern Bell's action in a hearing which would afford the public an opportunity to observe the standards which Southern Bell applies in providing this and similar services throughout North Carolina.

John W. McDevitt, Commissioner

DOCKET NO. P-75, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Joint Application of Barnardsville Telephone Company and Telephone and Data Systems, Inc., to Permit the Transfer of All of the Outstanding Shares of Barnardsville Telephone Company to Telephone and Data Systems, Inc.	ORDER PERMITTING STOCK TRANSFER

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina.

DATE: First Hearing, June 5, 1973; Further Hearing, October 16, 1973.

BEFORE: On June 5, 1973, Commissioner Hugh A. Wells, Presiding; Commissioners John W. McDevitt and Ben E. Roney.

On October 16, 1973, Commissioner Hugh A. Wells, Presiding; Chairman Marvin R. Wooten and Commissioner Ben E. Roney.

APPEARANCES:

For the Applicants:

Herbert L. Hyde, Esq.
Philip J. Smith, Esq.
Van Winkle, Buck, Wall, Starnes & Hyde
18-1/2 Church Street
P. O. Box 7376, Asheville, North Carolina 28807

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602
(June 5, 1973 and October 16, 1973)

E. Gregory Stott, Esq.
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602
(October 16, 1973)

BY THE COMMISSION. This is a proceeding arising out of a Joint Petition by the Barnardsville Telephone Company (hereinafter referred to as "Barnardsville") and Telephone and Data Systems, Inc., (hereinafter referred to as "TDS") for approval of an Agreement and Plan of Reorganization; this Agreement provides that TDS shall acquire all of the 300 shares of Barnardsville in exchange for 29,700 shares of the Common Stock of TDS. The Commission deemed the matter to affect the public interest and, by Order dated April 18, 1973, set the matter for public hearing on June 5, 1973. The proceeding came on for hearing at the time and place set out in the Order. The Petitioners offered the testimony of Mr. Kenneth G. Elkins, a stockholder in the Barnardsville company, and Mr. Donald Brown, Manager of Revenue Requirements for TDS. The following members of the Commission Staff presented testimony: Mr. Charles D. Land, an engineer in the Telephone Service Section; Mr. Vern W. Chase, the Chief Engineer of the Telephone Rate Section; and

Mr. Gene Clemmons, the Chief Engineer of the Telephone Service Section. The Petitioners were allowed thirty (30) days after the mailing of the transcript to file briefs.

Prior to the expiration of time for filing briefs, the Petitioners Barnardsville and TDS filed a Motion for further hearing in the matter; the Motion alleged that additional and new evidence was available concerning telephone service improvements for the Barnardsville telephone area and that officials of TDS who were not available at the June 5, 1973, hearing were now available to testify. The Commission granted the Motion for further hearing and set the hearing date for October 16, 1973. At this second hearing the Petitioners offered the testimony of Mr. Donald Brown, who had testified at the prior hearing; Mr. Vincent J. Reed, Plant Supervisor for TDS; and Mr. LeRoy T. Carlson, President and Chairman of the Board of TDS.

After considering the Joint Petitions and the evidence and exhibits presented at the two hearings in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Barnardsville Telephone Company (Barnardsville) is a corporation incorporated under the laws of the State of North Carolina and is a public utility authorized by the North Carolina Utilities Commission to operate a telephone business in and around Barnardsville in Buncombe County, North Carolina.

2. Telephone and Data Systems, Inc. (TDS) is a holding company organized and existing under the laws of the State of Iowa and has its corporate headquarters at 79 West Monroe Street, Chicago, Illinois 60603. TDS conducts telephone operations through its operating subsidiaries in Wisconsin, Minnesota, New Hampshire, Ohio, Maine, Montana, Alabama, Michigan, Vermont, and other states. In addition, TDS owns Telephone Systems Service Division, which renders purchasing services to the telephone operating subsidiaries, and Telephone Engineering Services, which provides engineering services. The acquisition of Barnardsville will constitute the first venture of TDS in North Carolina.

3. TDS and the shareholders of Barnardsville have entered into an Agreement and Plan of Reorganization, dated as of October 19, 1973, providing that all of the 300 shares of Barnardsville shall be exchanged with TDS for 29,700 shares of the common stock of TDS. The consummation of this Agreement is dependent upon approval thereof by the North Carolina Utilities Commission.

4. Barnardsville is a rural community located in Ivy Township, Buncombe County, North Carolina, and is approximately 21 miles from Asheville. The residents of the Barnardsville exchange area are primarily employed in local agriculture and light industry; many residents work in

Asheville. There is a manufacturer of women's clothing in the area which employs around 225 people. A 900 acre development--commonly referred to as Paint Fork--is under construction four miles from the Barnardsville central office; initial plans call for the development of 40 lots and homes. Barnardsville Telephone Company has agreed to provide telephone service to this development.

5. Barnardsville Telephone Company serves approximately 425 stations in and around the Barnardsville community. Classification of stations is as follows:

Residential Service	Stations
One party service	45
Two party service	166
Four party service	129
Five party service	52

Business Service	Stations
One party service	8
Two party	3

There is one full time employee; another employee has been recently hired for part-time work. Net plant investment in 1972 amounted to about $68,000; in 1972 operating revenues were approximately $41,000. The only debt outstanding is a $20,640 note payable to the two active shareholders.

6. At the present time there are two active shareholders in the Barnardsville company, Mr. Kenneth G. Elkins and Mr. W. R. Hopkins, each of whom owns 126 shares of stock. Both of these men are of advancing age and have expressed a wish to retire from the business.

7. TDS in 1972 had operating revenues of $6,497,452; its net operating income was $1,388,045. The consolidated balance sheet of TDS and its operating subsidiaries as of December 31, 1973, lists total assets of $36,750,909. As of June 30, 1973, there were 27 telephone companies and 60,162 telephones in the TDS system; the majority of the telephones are concentrated in the State of Wisconsin.

8. All of the existing Barnardsville outside plant has been constructed since 1949. Approximately 225 customers are still served by open wire and unshielded distribution wire. The central office equipment is a North Electric MCXR switchboard and is 20 years old; 400 lines are in use at the present time, out of a total of 600 lines available. It was the opinion of one of the witnesses for TDS that the switchboard should be replaced within five years. There exists a need for considerable tree trimming, especially along the open wire routes. Some of the outside plant is in violation of the National Electric Safety Code.

9. TDS has submitted a three-year construction program for improvement to existing Barnardsville plant and for new service demands. The program is as follows:

Outside Plant	$ 5,500.00
Central Office Equipment	4,530.00
Stations	7,500.00
General	125.00
Engineering Study	5,000.00
Facilities for Paint Fork Development	22,000.00
Service for New Subscribers, 150 at $75 (Includes Station Apparatus and Connections)	15,000.00
Replacement of Unshielded Facilities	62,172.00
Total	$121,827.00

10. TDS can provide internal funds of a sufficient amount to take care of Barnardsville's temporary needs until such time as long-term funds can be obtained. TDS also has experience in obtaining for its subsidiaries long-term financing from REA, banks, insurance companies and other credit institutions.

11. TDS has entered into an agreement with Mr. Edwin C. Leland, Jr., an employee of the Saluda Mountain Telephone Company, whereby Mr. Leland is to provide management services to Barnardsville on a weekly basis. It is expected that Mr. Leland will perform the services now performed by Mr. Hopkins on his visits to the Barnardsville company. TDS will retain the present full time employee at Barnardsville. In addition, Barnardsville will have access to Telephone Systems Service Corporation and Telephone Engineering Services, wholly-owned subsidiaries of TDS, which will provide management, engineering and purchasing services to Barnardsville.

12. TDS has made no study as to the effect its contemplated construction program would have on the Barnardsville rate structure, although a witness for TDS did state that substantial investments could give rise to a higher revenue requirement.

CONCLUSIONS OF LAW

The Commission is of the opinion that the proposed Agreement and Plan of Reorganization executed by Barnardsville and TDS and filed as an exhibit to their Joint Petition should be approved.

G. S. 62-110 provides:

"Certificate of convenience and necessity.-- No public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire

ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to construction into territory contiguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business."

G. S. 62-111 (a) provides:

"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."

The evidence introduced at the hearing indicates that the active stockholders of Barnardsville are advancing in years and wish to retire from the business; these stockholders have actively participated in the management of the company. There exists a demonstrated need for improvements in the physical plant of the Barnardsville company; many customers are being served by unshielded wire and cable, and portions of the outside plant are in violation of the National Electric Safety Code. Moreover, it is apparent that the Barnardsville company will be called upon to provide service to new customers in the next few years. Capital for the company in prior years has come from the present stockholders; there is at the present time a $20,640 note outstanding which is payable to them. According to the estimates made by TDS, a projected three-year construction plan for Barnardsville will cost in the neighborhood of $12,000. TDS has short-term funds available for the Barnardsville company, and is in a position to aid Barnardsville in obtaining long-term financing. TDS is also in a position to offer Barnardsville engineering, management consultant, and purchasing services that cannot be met by Barnardsville from its own operations. During the course of the hearings, the Commission Staff expressed concern as to whether TDS, a holding company headquartered in Chicago, could be responsive to the needs of the Barnardsville customers. The Commission notes with approval that TDS has made contractual arrangements to employ local management. By this arrangement, it is hoped that the needs of the Barnardsville customers can be promptly considered and met.

IT IS, THEREFORE, ORDERED as follows:

(1) Barnardsville and TDS are hereby authorized to consummate the Agreement and Plan of Reorganization under the terms and conditions proposed therein.

(2) The Joint Petition of Barnardsville and TDS requesting that the Commission authorize the acquisition of all the outstanding shares of Barnardsville by TDS through the exchange of 29,700 shares of TDS common stock is hereby allowed.

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

(4) TDS and Barnardsville shall file, in duplicate, with this Commission, all contracts for compensation for service between TDS, its subsidiaries or affiliates, and Barnardsville, and no such contract shall be valid or operative until such contracts are filed with and approved by the Commission under the provisions of G. S. 62-153.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-118

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Application of Thermal Belt Telephone Company, Mid-Carolina Telephone Company, Eastern Rowan Telephone Company, Mooresville Telephone Company, and Mid-Continent Telephone Corporation for Approval of Merger	)))))	ORDER GRANTING AUTHORITY TO MERGE

This cause comes before the Commission upon the joint application of Thermal Belt Telephone Company ("Thermal Belt"), Mid-Carolina Telephone Company ("Mid-Carolina"), Eastern Rowan Telephone Company ("Eastern Rowan"), Mooresville Telephone Company ("Mooresville"), and Mid-Continent Telephone Corporation ("Mid-Continent"), joint applicants, through their Counsel, George, Greek, King, McMahon and McConnaughey, Columbus, Ohio and F. Kent Burns, Raleigh, North Carolina, filed under date of November 19, 1973, wherein authority of the Commission is sought as follows:

1. To approve the merger of Mid-Carolina Telephone Company, Eastern Rowan Telephone Company and Mooresville Telephone Company into Thermal Belt Telephone Company.

2. To change the name from Thermal Belt Telephone to Mid-Carolina Telephone Company upon consummation of the merger.

FINDINGS OF FACT

1. Each of the applicants except Mid-Continent Telephone Corporation is a public utility providing telephone service to the public under certificates of public convenience and necessity heretofore issued by this Commission.

2. Mid-Continent Telephone Corporation is a corporation duly organized and existing under the laws of the State of Ohio, and having its principal office and place of business at Hudson, Ohio. Mid-Continent is a telephone holding company and has forty subsidiaries, thirty-five of which are telephone operating subsidiaries which include Thermal Belt, Mid-Carolina, Eastern Rowan, and Mooresville in the State of North Carolina.

3. The merging corporations have executed a plan of merger for the purpose of effectuating the proposed merger. Pursuant to the plan of merger, .44 shares of the Thermal Belt stock will be issued for each one share of Eastern Rowan stock, one share of Thermal Belt stock will be issued for each one share of Mid-Carolina stock, and .17 shares of Thermal Belt stock will be issued for each one share of Mooresville stock. In order to make the foregoing exchange of shares, Thermal Belt will issue 1,296 shares of its authorized common stock in addition to the 1,020 shares of such stock now issued and outstanding so that the total issued and outstanding shares of the common stock of the surviving corporation upon the completion of the merger will be 2,316 shares.

4. The assets and liabilities of the merging corporation shall be carried on the books of Thermal Belt at the amounts at which they respectively appear on the books of the merging corporations at the date the merger is consummated.

5. The capital surplus and earned surplus of Thermal Belt shall be the sum of the respective capital surpluses and earned surpluses of the respective corporations subject in each case to intercompany adjustments or eliminations as may be required to give effect to the merger.

6. The merging corporations have operated under a service agreement with Mid-Continent Telephone Service Corporation under orders of this Commission. The same service agreement now in effect will continue to be in effect for the surviving corporation upon completion of the merger. In addition, each of the merging corporations is under the same pension and insurance plans and these same

plans and benefits will be continued by the surviving corporation.

7. The present general and local exchange rates of each of the merging corporations will be continued in effect where those rates are presently effective.

8. The depreciation rates now existing for the properties of each of the four merging corporations will continue in effect upon consummation of the merger.

CONCLUSIONS

The Commission's investigation into this joint application discloses no grounds for denying the said application and discloses no way in which the interest of the using and consuming public will be materially or adversely affected. The merger of the applicants would not result in any change in the corporate control thereof, management policy, or ability to serve the public. The merger will bring about certain operating efficiencies and economies not now available which ultimately benefit the public being served by the applicant.

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 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 Petitioners, be, and they are hereby authorized, empowered and permitted under the terms and conditions set forth in the application as follows:

1. To merge Eastern Rowan Telephone Company, Mid-Carolina Telephone Company and Mooresville Telephone Company into Thermal Belt Telephone Company;

2. To change the name from Thermal Belt Telephone Company to Mid-Carolina Telephone Company upon consummation of the merger;

3. To transfer to Mid-Carolina Telephone Company (formerly Thermal Belt Telephone Company) the Certificates

of Public Convenience and Necessity heretofore issued to Mid-Carolina Telephone Company, Eastern Rowan Telephone Company and Mooresville Telephone Company;

4. To file with this Commission within thirty (30) days following the consummation of the merger a service agreement with Mid-Continent Telephone Service Corporation;

5. To continue the rates, tariffs, rules and regulations now in force and effect for each of the merging corporations by the surviving corporation within the territories to which the present tariffs are applicable;

6. To file within 120 days from the effective date of the merger herein authorized a new consolidated, local and general exchange tariff covering each of the four operations;

7. To file with this Commission, in duplicate, the consolidated indenture of mortgage when available in final form; and

8. To file, in duplicate, within a period of thirty (30) days following the merger a verified report of actions taken and transactions consummated pursuant to the authority herein granted.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. P-78, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Westco Telephone Company for Authority to Convey Its Assets in the State of Georgia to Georgia State Tele- phone Company	)	ORDER APPROVING CONVEY- ANCE OF WESTCO TELEPHONE COMPANY'S GEORGIA ASSETS TO GEORGIA STATE TELEPHONE COMPANY

This cause comes before the Commission upon a petition of Westco Telephone Company (hereafter called "Westco"), filed under date of August 14, 1973, through its counsel, Van Winkle, Buck, Wall, Starnes and Hyde, P.A.; Asheville, North Carolina 28807, wherein approval of the North Carolina Utilities Commission is sought as follows:

To authorize Westco to sell its Georgia assets to Georgia State Telephone Company for cash and apply the proceeds of

such sale toward the reduction of Westco's current bank loans. The method of determining the assets and the value thereof to be in accordance with the terms of the Acquisition Agreement (hereafter called the "Agreement") which was identified as Exhibit A and attached to and made an integral part of the petition. As of February 28, 1973, the cash settlement would have been $545,134 which amount is intended to reflect the depreciated net asset value of the Georgia assets and will be adjusted to include any increases or decreases in the net asset value between February 28, 1973, and the effective date of the Agreement as set out in Section 3 of Exhibit A.

FINDINGS OF FACT

1. The principal office and place of business of Westco Telephone Company is 15 South Main Street, Weaverville, North Carolina, and it is the owner and operator of telephone communications systems in certain counties in the states of North Carolina and Georgia under permits and certificates of convenience and necessity issued by this Commission and by the Georgia Public Service Commission.

2. That Georgia State Telephone Company is a corporation organized and existing under the laws of the State of Georgia and operates telephone facilities exclusively in the State of Georgia and in various areas therein.

3. That Westco Telephone Company owns telephone exchanges in the Towns of Clayton, Mountain City, and Dillard in the State of Georgia and certain pole lines and franchises in connection with said exchanges. All other operations of the Company are confined entirely to the State of North Carolina.

4. That Westco Telephone Company has approximately 24,000 telephone stations in its system and of such number 4,000 stations are located in the State of Georgia. That by reason of having operations in two states, Westco Telephone Company is required to apply different rates to its station, obtain the approval of the North Carolina Utilities Commission and the Georgia Public Service Commission on all financing and for rates within each separate state. Further by reason of the fact that the system is presently operated in two states, FCC approval is necessary for the establishment of test lines and other activities necessary for the proper operation of the Georgia exchanges.

5. As a result of the two state operation as set out above, the administration of the system is made more difficult and expensive and this Company cannot apply proper maintenance and testing by reason of the fact that its test facilities are in Sylva within North Carolina and any testing of the Georgia exchanges are necessarily across state lines.

6. That this Company has entered into an Agreement with Georgia State Telephone Company, subject to the approval of this Commission, under which the latter will acquire all of the assets and property of Westco Telephone Company which are located in the State of Georgia and related to Westco Telephone Company's operations of its Georgia assets, a copy of said Agreement was attached to the application as "Exhibit A" and is made a part of the petition.

7. Under the Agreement, Westco Telephone Company will sell and Georgia State Telephone Company will buy the Georgia assets of Westco Telephone Company as defined in Section 1 of Exhibit A. Under its terms Georgia State Telephone Company will pay Westco Telephone Company a cash payment of $545,134, which amount is intended to reflect an amount equal to the depreciated net asset value of Georgia assets and is based on the balance sheet figures showing the Georgia assets as of February 28, 1973, and will be adjusted to reflect any increases or decreases between February 28, 1973, and the effective date of the Agreement as set out in Section 3 of Exhibit A. In addition thereto, Georgia State Telephone Company will assume the liabilities of Westco Telephone Company relating to the Georgia assets which will be adjusted in accordance with the same formula.

Attached to Exhibit A as Schedule 1 is a plant analysis showing the breakup of assets as between North Carolina and Georgia and an analysis of the reserves applicable. Attached to Exhibit A as Schedule 2 is a description of the two tracts of real estate involved, as Schedule 4 is the proposed assumption agreement and as Schedule 5 a statement showing the depreciated net asset value of the Georgia assets and the Georgia liabilities.

8. That it is the intention of this Petitioner to apply the cash received in the transaction to reduce its current bank loans.

9. That Petitioner is of the opinion that sale of the Georgia assets as set forth herein is in the best interest of Westco Telephone Company and will result in relieving this Petitioner of the burdens of operating an exchange distant from its other operations in another State with the resulting effect of relieving this Petitioner of applying separate rates, being subject to the regulations of two Commissions and will further relieve this Petitioner of excess administrative expenses in connection therewith.

10. That the Westco Telephone Company (Seller) and Georgia State Telephone Company (Buyer) are both wholly-owned operating subsidiaries of Continental Telephone Corporation the third largest independent telephone holding company in the United States.

CONCLUSIONS

From a review and study of the application and Exhibit A attached to and made a part of said application, as well as other information contained in the Commission's files, the Commission is of the opinion and finds as a fact that the proposed sale of Westco's Georgia assets to the Georgia Telephone Company under the terms and conditions set forth in the application and the exhibit attached thereto, are:

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

(b) Compatible with the public interest;

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

(d) Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED, That Westco Telephone Company, be, and it is hereby, authorized, empowered, and permitted under the terms and conditions set forth in the application:

1. To sell its Georgia assets as defined in the Acquisition Agreement to Georgia State Telephone Company subject to the terms and conditions set forth in the Acquisition Agreement attached as Exhibit A and to apply the proceeds of such sale toward the reduction of Westco's current bank loans.

2. To file with this Commission, in duplicate, a verified report of the actions taken, transactions consummated, and accounting journal entries affecting the sale of the Georgia assets 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 4th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. WU-94

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Request of Western Union Telegraph Company,	)
1828 L Street, N.W., Washington, D. C., 20036,	)
to Increase its North Carolina Intrastate	) ORDER
Message Telegram and Order Service Rates to the	) APPROVING
Present Level of the Intrastate Rates	) TARIFFS

BY THE COMMISSION. On August 17, 1973, Western Union Telegraph Company filed by letter revised tariff pages to increase the North Carolina Intrastate Public Message Telegrams and Money Order Services to the level of the interstate rates. It was represented that this increase, if allowed, would produce additional revenue in the amount of $215,669.00 in North Carolina annually. It was represented that after adjustments for all known changes and the effect of the proposed rate revision, the 1972 operating results in North Carolina would have shown a loss of $348,256.00.

On September 4, 1973, the Commission suspended the tariff filing until December 31, 1973 or until further order of the Commission whichever is the earlier and required public notice. In giving public notice, the Commission advised that unless written protests for intervention were received on or before October 15, 1973, the application would be considered by the Commission on the basis of the information contained in the filing and in the records of the Commission. There being no protests filed, the Commission is of the opinion the tariffs should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Western Union Telegraph Company's tariff filing of August 17, 1973, to increase the North Carolina intrastate public message telegrams and money order services to the level of the interstate rates is approved, effective November 15, 1973.

2. That Western Union Telegraph Company shall refile its tariffs before November 10, 1973, changing the effective date to November 15, 1973.

3. That a copy of this order shall be sent to Western Union Telegraph Company, 1828 L Street, N. W., Washington, D. C., 20036.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-379
DOCKET NO. W-379, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Applications by Bill Allen Enterprises, Inc., 1740 E. Independence Boulevard, Charlotte, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Lamplighter Village South Subdivision, Mecklenburg County, and Sewer Utility Service in Steeplechase Subdivision, Mecklenburg and Cabarrus Counties, North Carolina, and for Approval of Rates	)	RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ESTABLISHING RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on Wednesday, April 25, 1973

BEFORE: William E. Anderson, Hearing Examiner

APPEARANCES:

For the Applicant:

Larry C. Hinson, Esquire
Attorney at Law
2842 Selwyn Avenue
Charlotte, North Carolina

For the Commission Staff:

Wilson B. Partin, Jr., Esquire
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

ANDERSON, HEARING EXAMINER: By Application filed with the North Carolina Utilities Commission on March 16, 1973, the Applicant, Bill Allen Enterprises, Inc., seeks a Certificate of Public Convenience and Necessity to provide public utility water and sewer service in Lamplighter Village Subdivision South, Mecklenburg County, North Carolina, and public utility sewer service in Steeplechase Subdivision in Mecklenburg and Cabarrus Counties and approval of rates to be charged therein.

By Order issued March 20, 1973, the Commission scheduled the matter for public hearing, required that the Applicant give notice of the public hearing. The requisite public notice was given in The Mecklenburg Times and by personal service on customers by mail or by hand delivery. A number of customers protested the Application by letter.

The Applicant proposed the following rates:

LAMPLIGHTER VILLAGE SOUTH SUBDIVISION

WATER

Up to first 3,000 gallons per month - $7.80 minimum
All over 3,000 gallons per month - $1.60 per 1,000 gal.

SEWER: 100% of water bill

STEEPLECHASE SUBDIVISION

SEWER ONLY: Flat rate of $9.00 per month

The public hearing was held at the time and place designated by prior order. A number of customers appeared at the hearing to testify in opposition to the Application.

The Applicant was represented by counsel and tendered S. E. Bratten, who is the Applicant's Vice President-Construction and Mr. Howard Cain, Comptroller. The Staff stipulated that the application and system were adequate and the Applicant and Staff stipulated and agreed to the issuance of a Recommended Order approving the following monthly rates:

LAMPLIGHTER VILLAGE SOUTH SUBDIVISION

WATER

First 3,000 gallons per month - $5.00 (Minimum)
Next 1,000 gallons thereafter per month - $1.00 per 1,000 gallons

SEWER: 100% of water rate

STEEPLECHASE SUBDIVISION

SEWER ONLY: Flat rate of $9.00 per month

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 Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant is currently providing public utility water and sewer service to 17 residential customers in Lamplighter Village South Subdivision, and proposes ultimately to serve in excess of 300 residential customers.

2. That the Applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its business address at 1740 E. Independence Blvd., Charlotte, North Carolina; this business enterprise is

engaged in real estate development and construction as well as other operations, including the operation of five previously certificated public utility water systems; it is an affiliate of Investment Land Sales, Inc., which holds prior utility certificates.

3. That Lamplighter Village South Subdivision is a residential mobile home subdivision currently under development located on S. R. 3636 approximately 2 miles from the Town of Pineville, North Carolina.

4. That no other public utility, municipality or membership association currently proposes to provide water service in the Applicant's proposed service area.

5. That the well sites and plans for the design of the proposed water system have been approved by the State Board of Health.

6. That the system as constructed to date is capable of serving current customers.

7. That the rates stipulated and agreed upon, as indicated on page 2 of this order, are just and reasonable rates.

8. That the present Bill Allen Enterprises, Inc., billing form includes a telephone number for emergency service and the Applicant has sufficient personnel to provide such service adequately but there may be some problem with the answering service arrangement presently existing.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant. 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 the domestic water service in the proposed service area.

The comments and conclusions contained in the order issued in Docket No. W-302, Sub I issued contemporaneously regarding general corporate or intracorporate reorganization and operations are included hereby by reference, to the extent applicable to the facts herein.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity be, and hereby is, granted; said Certificate authorizes the Applicant to operate as a public utility providing water and sewer service in Lamplighter Village South Subdivision and sewer service in Steeplechase Subdivision.

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; 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 next regular billing, upon one day's notice to the customers.

4. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend, the Applicant being hereby directed to arrange a conference with an accounting staff member to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This 7th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
BILL ALLEN ENTERPRISES, INC.
Lamplighter Village South Subdivision

RATE SCHEDULE

WATER RATES (RESIDENTIAL SERVICE)

First 3,000 gallons per month - $5.00 (Minimum)
Each 1,000 gallons thereafter - $1.00 per 1,000 gallons

SEWER: 100% of water charge

CONNECTION CHARGE

Water - $250
Sewer - $350 (Payable by other Developers, if any)

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00

If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00
If sewer service discontinued for good cause [N.C.U.C. Rule R10-16(f)] $15.00

BILLS DUE: Fifteen (15) days after date rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-379.

APPENDIX "A"
BILL ALLEN ENTERPRISES, INC.
STEEPLECHASE SUBDIVISION
SEWER RATE SCHEDULE

Monthly Rate - $9.00 per month flat rate

CONNECTION CHARGE: $495.00

RECONNECTION CHARGES

If sewer service discontinued for good cause [NCUC Rule R10-16(f)] $15.00

BILLS DUE: Fifteen (15) days after date rendered

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-379, Sub 1.

DOCKET NO. W-190, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Aqua Co., P. O. Box 837, Wrightsville Beach, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Cape Colony Subdivision, Chowan County, North Carolina, and for Approval of Rates	ORDER GRANTING CERTIFICATE, APPROVING RATES, AND REQUIRING SERVICE IMPROVEMENTS

HEARD IN: Ruffin Building, 1 West Morgan Street, Raleigh, North Carolina, on October 1, 1969, at 10:00 a.m., and in Chowan County Courthouse, East King Street, Edenton, North Carolina, on January 3, 1973, at 9:30 a.m.

BEFORE: Chairman Harry T. Westcott (presiding) and Commissioners John W. McDevitt and Clawson L. Williams, Jr. (October 1, 1969), and Commissioners John W. McDevitt (presiding) and Hugh A. Wells and Chairman Marvin R. Wooten (January 3, 1973)

APPEARANCES:

For the Applicant:

William T. Joyner, Jr.
Joyner & Howison
Attorneys at Law
P. O. Box 109, Raleigh, North Carolina 27602
(October 1, 1969)

James M. Kimzey
Attorney at Law
P. O. Box 150, Raleigh, North Carolina 27602
(October 1, 1969, and January 3, 1973)

For the Intervenors:

Wiley J. P. Earnhardt, Jr.
Attorney at Law
P. O. Box 445, Edenton, North Carolina
(October 1, 1969)
For: Coastal Water Corporation and
United Properties, Inc.

For the Commission Staff:

Edward B. Hipp
Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602
Raleigh, North Carolina 27602
(October 1, 1969)

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602
(January 3, 1973)

BY THE COMMISSION. On May 9, 1968, Applicant, Aqua Co., filed application in the above captioned matter. Public hearing was originally scheduled for December 19, 1968, and for various reasons was continued from time to time.

Public hearing was held on October 1, 1969, and testimony was given concerning water quality, ownership, and the need for establishing rates. The hearing was recessed by the Commission to afford parties opportunity to resolve problems which precluded completion of the proceeding at that time.

Subsequent to the hearing on October 1, 1969, Applicant furnished water utility service in Cape Colony and charged interim rates established by agreement between Applicant and customers. Water service has not been discontinued for nonpayment, although some customers have not paid for the water service received.

After further delays, the Commission scheduled and held public hearing on January 3, 1973, in accordance with public notice served on all parties and customers.

Mr. G. Allie Moore, President of Aqua Co., testified in support of the application. Mr. David F. Creasy testified for the Commission Staff concerning evaluation of Applicant's water utility operations. Fourteen customers served by Aqua Co. testified protesting rates, water quality, and service. Mr. William B. Gardner, City Administrator of Edenton, North Carolina, and Mr. W. P. Jones, Chairman of the Industrial Development Committee of the Edenton Chamber of Commerce, testified as to the interest of the City of Edenton.

Based on evidence presented in official Commission records relating to Applicant's operations, the Commission makes the following

FINDINGS OF FACT

1. Applicant, Aqua Co., is a corporation duly organized under the laws of the State of North Carolina and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. Applicant proposes to furnish metered water utility service in the Cape Colony Development, Chowan County, North Carolina, utilizing existing facilities and has filed a schedule of rates for said service.

3. Cape Colony Development is a residential subdivision. The western half of the property has approximately 25 streets and 400 acres for residential lots. The eastern portion of the property has a residential area and an industrial park containing approximately 14 streets and 400 acres for lots. Approximately 1,800 lots have been sold by the developer.

4. The developer of Cape Colony, United Properties, Inc., installed the water distribution system in the western half of the development, known as Surfside, and in the eastern end of the development, known as Country Club section. United Properties connected its water distribution system to the old military water system which also serves the industrial park and the abandoned airfield in the central portion of the development. The old military water system contains the wells and storage tanks supplying both water systems. The old military water system was owned by Coastal Water Company, whose President, Mr. Lawson Lester, was also a stockholder in United Properties at the time the two water systems were connected. Subsequently, Mr. Lester sold his interest in United Properties and United Properties sold its water distribution system to Aqua Co. Aqua Co. then began operating its newly acquired water distribution system under the same conditions as had United Properties, utilizing the wells and storage tanks of the Coastal Water

Company system. Aqua Co. did not consummate the purchase of the old military water system from Coastal Water Company.

5. Neither Coastal Water Company nor United Properties had ever charged their customers for water service because they did not wish to become regulated utility companies. United Properties sold all its lots in the development and ceased its operations. Coastal Water Company is in receivership.

6. Applicant has installed additional extensions of the water systems in Cape Colony since it began furnishing water service, including a 10-inch water main through the industrial park to supplement the existing main.

7. There is public need and demand for water utility service in Cape Colony which is not being adequately met by Aqua Co. or any other properly constituted agency or authority.

8. The provision in Applicant's proposed rates specifying "bills due 10 days after date rendered" does not conform to the uniform billing practices adopted by the Commission in Docket No. M-100, Sub 39; such a provision specifying "bills past due 15 days after billing date" would conform to said uniform billing practices.

9. Based on the proposed rates, 75 year-round customers with average monthly consumption of 6,000 gallons and 100 seasonal customers at minimum consumption would produce annual revenue of approximately $11,000. Allowance is made for estimated $1,300 annual revenue from fire protection service and industrial customers. Applicant's operating expenses for 1972 were approximately $11,600, based on unaudited figures presented by Applicant.

10. Applicant previously accepted payment for water service in Cape Colony in the amount of $3.00 per month for year-round customers and $18.00 per year for seasonal customers. The proposed rates are approximately 85 percent higher for year-round customers and approximately 165 percent higher for seasonal customers.

11. The original cost of the portion of the water system installed by United Properties was approximately $82,700 and the portion installed by Aqua Co. was approximately $20,150. The depreciation reserve of both portions is approximately $10,300 based on 2.0 percent annual depreciation since mid-1967, leaving a combined net plant value of approximately $92,500, based on original cost.

Applicant has approximately $8,150 undepreciated equity in its water system, consisting of the original cost of the plant of approximately $102,850, less contributions-in-aid as follows: approximately $82,700 from United Properties (value of contributed plant); approximately $9,000 from Chris Craft; and over $3,000 in tap-on fees from customers.

Applicant's depreciated equity is approximately $7,335, consisting of the undepreciated equity of $8,150 less $815 depreciation based on 2.0 percent annual depreciation since mid-1967.

The testimony of D. C. Barbot and Associates, Consulting Engineers, was not based upon an acceptable engineering and valuation study of the property and is not determinative of the replacement cost or fair value of the property. Applicant does not presently own or have any equity in the old military water system.

12. The untreated water from the wells on the old military water system contains excessive amounts of iron and does not meet the U. S. Public Health Service Drinking Water Standards. Iron residue after treatment still exceeds prescribed standards.

13. Plans for the water system were approved by the State Board of Health in 1968, with the proviso that distribution capability on the western portion of the system be strengthened as future development may require.

14. The sites of the wells and storage tanks are unkept and overgrown with weeds; interruptions of service occur from time to time and when the Country Club refills its swimming pool; water becomes cloudy with iron sediment when the system is flushed; some customers do not know whom to call for maintenance; customers are not properly informed about flushing and flushing is not planned and carried out regularly and in a manner to minimize service disruptions and water quality deterioration; water softeners on individual homes are incapable of reducing the iron content of the water; the old military water system may require abnormally high maintenance due to the iron content of the water, which stems largely from interior pipe oxidation; the old military system is overdesigned for current level of residential use.

15. Edenton City officials indicate a strong interest in the development of the industrial park in Cape Colony and the old military water system is necessary for said development.

16. Commission Staff recommendations for improvements in the water utility system and operation contained in Appendix "B" are necessary to enable Applicant to function as a regulated water utility.

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

CONCLUSIONS

There is a demand and need for water utility service in Cape Colony Development which can be met by Applicant. Applicant has not acquired the old military water system,

which provides the present source and storage capacity of water for the system. President Allie Moore testified that he is willing to install two new wells and storage tanks in order to serve the residents of the Country Club section and the Surfside section, in the event Aqua Co. is unable to acquire the old military system.

If Aqua Co. cannot acquire the old military water system at a price which would make the purchase economically feasible in light of necessary improvements, it should abandon water service in the area served by the old military system, develop its own source of water, and limit service to the residential areas within the proposed system.

The City of Edenton acquired the old military installation which includes the area of the Cape Colony residential development, the air station and buildings, some of which have since been disposed of to various industrial and governmental enterprises, and the old military water system which the City was instrumental in selling to Mr. Lawson Lester, apparently without the foresight to guarantee, through the sales contract, a continuing public water supply for the industrial and residential development which city officials testified is vital to the City of Edenton. It is clear that the City of Edenton or the property owners could have acquired the old military water system and initiated a public water system at any point in time. Unfortunately, neither the City nor any other agency, group, or person, save the Applicant, has come forward and sought to show they were ready, willing, and able, financially and otherwise, to establish and operate the proposed system.

The Commission concludes that Aqua Co. has the capability to operate the proposed water system under the terms and conditions hereinafter set forth in Appendix "B" and the rates and charges set forth in Appendix "A" which are deemed to be just and reasonable for fully adequate water service which meets minimum U. S. Public Health Service Water Quality Standards and those imposed by the North Carolina State Board of Health and the North Carolina Utilities Commission.

The Commission further concludes that the unresolved problems of ownership, water supply, water quality, and service are serious matters of continuing concern which require surveillance and appropriate Commission action in the event Aqua Co. fails to discharge its responsibility as holder of a Certificate of Public Convenience and Necessity authorizing the proposed service.

IT IS, THEREFORE, ORDERED

1. That Aqua Co. is hereby granted a Certificate of Public Convenience and Necessity to furnish water utility service in the Country Club section and in the Surfside section of the Cape Colony Development, as described herein

and more particularly as described in the record of this proceeding.

2. That a water utility certificate is denied for the portion of the Cape Colony Development presently served by the Coastal Water Company system, also known as the old military water system; that Applicant may furnish water utility service in said area as a contiguous extension of water service from its certificated service areas in the Country Club section and the Surfside section if said extension of water service can be furnished through water mains owned or controlled by the Applicant.

3. That the schedule of rates attached as Appendix "A" is hereby approved for water utility service in the Cape Colony Development and may be made effective on and after April 1, 1973, both in the franchised areas and in contiguous areas, and that said schedule of rates is deemed to be filed with the Commission pursuant to G. S. 62-138. Aqua Co. is required to mail the Notice attached as Appendix "A" to each of its customers affected.

4. That Applicant is hereby required to comply with the requirements for improvements in the water utility operations prescribed in the attached Appendix "B" within the time limits specified.

5. That Applicant shall maintain books and records such that applicable items of information required in Applicant's prescribed Annual Report to the Commission can be readily identified and utilized in the preparation of the Annual Report.

6. That Applicant is hereby required to establish and maintain specific and permanent arrangements for providing dependable and prompt maintenance and repair service and shall immediately notify the Commission of any changes which may alter or adversely affect the quality of such service.

7. Applicant is hereby granted temporary authority to continue furnishing water utility service in the portion of the Cape Colony Development presently served by the old military water system and to charge the same rates as those approved herein for water service in Cape Colony, under the following terms and conditions:

(a) Applicant shall not furnish water service to any new or additional customers tapped on to the mains of the present old military water system as long as said system is not owned or controlled by Applicant.

(b) Applicant shall comply with the laws of this State and with the rules and orders of this Commission during the period in which it continues to furnish water utility service by means of the old military water system.

(c) Applicant shall give ninety (90) days written notice to the Commission and to each of its water customers in Cape Colony and to the City of Edenton of its intention to abandon or terminate furnishing water utility service by means of the old military water system.

(d) The written notice described in (c) above shall be forwarded by first-class mail to the permanent mailing address of each of said customers and shall be published in a local newspaper having general circulation in the Cape Colony area, and Applicant shall file an Affidavit of Publication with the Commission and shall file an affidavit with the Commission listing the names and addresses of customers furnished said written notice.

(e) If Applicant has not acquired the old military water system within ninety (90) days following the date of this order, then Applicant is hereby directed to immediately give the written notice described in (c) above, thereby giving Applicant a minimum of 90 days, and a maximum of 180 days from the date of this order in which to either acquire the old military water system or to install new wells and tanks and abandon the old military water system.

8. It is further ordered that a copy of this order be sent, by the Chief Clerk of this Commission, to each of the persons who testified in the Edenton phase of this proceeding and to any other customer of Aqua Co. who may request a copy from the Chief Clerk.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-190, SUB 4
AQUA CO.

NOTICE

On 29th day of March, 1973, the Utilities Commission entered an Order granting Aqua Co. a Certificate of Public Convenience and Necessity and approving the following rate schedules, being the rates originally proposed by Aqua Co. in its application filed on May 9, 1968. These rates supersede any rates which may have been charged or paid under any previous arrangements or agreements between the Customers and Aqua Co.

WATER RATE SCHEDULE

METERED RATES (residential service)

Up to first	4,000 gallons per month	$4.00 minimum
Next	5,000 gallons per month	$ .75 per 1,000 gallons
Next	10,000 gallons per month	$ .60 per 1,000 gallons
All over	19,000 gallons per month	$ .40 per 1,000 gallons

FLAT RATES (residential service)

Minimum rate under metered rates will be charged to unmetered, part-time residents

FLAT RATES (fire protection service)

Up to first	350 sprinkler heads	$20.00 per month minimum
Next	150 sprinkler heads	$ .04 per sprinkler head per month
All over	500 sprinkler heads	$ .03 per sprinkler head per month

Water for fire protection will be supplied only at such pressures as are available from time to time in the operation of the water system.

The Company reserves the right to meter water consumption from fire hydrants when such consumption is for other than fire fighting purposes, and to charge for said consumption in accordance with the schedule of metered rates for residential service.

CONNECTION CHARGES - $200 for all new house connections

RECONNECTION CHARGES

If water service cut off by utility for good cause [NCUC Rule R7-20(f)] - $4.00
If water service discontinued at customer's request [NCUC Rule R7-20(g)] - $2.00

BILLS DUE - on billing date

BILLS PAST DUE - fifteen (15) days after billing date

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-190, Sub 4, on March 29, 1973.

APPENDIX "B"
DOCKET NO. W-190, SUB 4 -- AQUA CO.

The following recommendations for improvements in the water utility operation shall be met by Applicant:

1. Install water meters in the Surfside section and in the Country Club section and begin charging metered rates to

eliminate complaints of discrimination by seasonal customers who use their property infrequently. The meters shall be installed and metered rates shall be charged within ninety (90) days from the date of this Order.

2. Investigate each residence in the Cape Colony area to ensure that no unknown or "bootleg" taps are connected to the system to eliminate the possibility of the peak demand on the system being aggravated by unaccounted-for water users. The investigation and disconnection of unauthorized taps shall be completed within ninety (90) days from the date of this Order.

3. Install a water meter on the country club service line within thirty (30) days from the date of this Order and require that the club make arrangements with the water company prior to draining and refilling their swimming pool.

4. Send water samples to the State Board of Health each month for bacteriological analysis under the name of Aqua Co. so that the samples will not be credited to Coastal Plains Utility Company.

5. Send monthly bills for water service to all customers and maintain a record of the permanent address of each customer whenever the address is different from that of the property served. The bills shall contain the name, address, and telephone number of the local representative of Aqua Co. and also the name, address, and telephone number of Aqua Co. in Wrightsville Beach.

6. Send a schedule with each water bill each month listing the day or dates for flushing the mains during the following month. The statement shall explain that the water contains an excessive amount of iron which causes a build-up of iron sediment in the mains, that the sediment must be removed by periodic flushing of the mains, that the water will become cloudy with iron sediment for approximately 24 hours following flushing, and that the cloudy condition caused by flushing does not indicate bacteriological contamination of the water.

7. Submit a detailed proposal to the Commission, within ninety (90) days from the date of this Order, describing measures to be taken to comply with the recommendations by the State Board of Health for improving water quality. The proposal shall include a discussion of super-chlorination, flushing, polyphosphates, aeration, and the time schedule for implementing the proposal.

DOCKET NO. W-365, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Bailey's Utilities, Inc., U. S. Highway 1, North, Raleigh, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Friendship Village Subdivision, Lee 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 March 14, 1973, at 2:00 P. M.

BEFORE: Hearing Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

Robert T. Hedrick, Attorney
3311 North Boulevard
Raleigh, North Carolina 27604

For the Commission Staff:

Edward B. Hipp
Commission Attorney
Post Office Box 991
Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER: The Application in the above-captioned matter was filed with the North Carolina Utilities Commission on January 26, 1973.

By Order issued on February 12, 1973, the Commission scheduled the Application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Friendship Village Subdivision by the Applicant, and was published in The News and Observer, Raleigh, North Carolina, advising that anyone desiring to intervene or to protest the Application was requested to file their intervention or their protest with the Commission by the date specified in the Notice. Affidavit of Publication was presented at the hearing. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Thomas L. Bailey, President of Bailey's Utilities, Inc., appeared at the hearing as a witness and presented testimony in support of the Application.

Based on the information contained in the Application and in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Mr. Thomas L. Bailey, Bailey's Utilities, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Friendship Village Subdivision, Lee County, and has filed a Schedule of Rates for said service.

3. Friendship Village Subdivision is a residential subdivision, the first section of which consists of approximately four streets and 56 lots. The subdivision is located on U. S. Highway No. 1 approximately ten miles North of Sanford, North Carolina, in Lee County.

4. The Applicant proposes to initially install water mains capable of serving approximately 36 customers in the subdivision. The Applicant proposes to meter the water service.

5. The Applicant has secured ownership or control of the water systems and of the sites for the wells treatment plant.

6. There will be an established market for water utility service in the subdivision, and such service is not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility service in the subdivision.

7. The State Board of Health has approved the plans for the proposed water system.

8. The Applicant holds a franchise to provide water utility service in Country Squires Subdivision located on County Road 2049 near Knightdale in Wake County; Oak Ridge Valley Subdivision located on Highway 401 approximately eight miles South of Raleigh in Wake County; Duchess Downs Subdivision located approximately eight miles South of Garner on State Highway 50 in Johnston County; and Paceville Subdivision located on State Highway 39 approximately five miles North of Selma in Johnston County. Approximately 30 customers are now receiving water service in the four subdivisions. Plans provide for water service for approximately 200 customers.

9. The proposed rates and charges are as follow:

METERED RATES -

Up to first 4,000 gallons per month - $6.00
All over 4,000 gallons per month - $ .65 per |,000 gallons

CONNECTION CHARGES: $450 - Paid by Developer

|0. The proposed rates are the same rates as those approved by the Commission for the Applicant's other franchised utility service areas.

||. The Applicant lists its investment in water utility plant as $22,499.|4, based on an unverified balance sheet contained in the Application.

|2. Thomas L. Bailey operates a well and pump business and has been engaged in water system work since |956. He proposes to furnish maintenance and repair service for the water systems seven days per week, 24 hours per day, and to maintain a telephone to receive customers' service calls at all times.

CONCLUSIONS

There will be a demand and need for water utility service in Friendship Village Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Friendship Village Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's present arrangement for providing maintenance and repair service to its water system in Friendship Village Subdivision is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

|. That the Applicant, Mr. Thomas L. Bailey, Bailey's Utilities, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Friendship Village 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-|38.

4. That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of March, |973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-365, SUB |
Bailey's Utilities, Inc.
Friendship Village Subdivision, Lee County

WATER RATE SCHEDULE

METERED RATES (Residential Service)

First 4,000 gallons per month - $6.00 minimum
All Over 4,000 gallons per month - $ .65 per |,000 gallons

CONNECTION CHARGES: $450.00 - Paid by Developer

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00

If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLS DUE: On billing date

BILLS PAST DUE: |5 days after billing date

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-365, Sub | on March 23, |973.

DOCKET NO. W-177, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Brookwood Water Corporation, 6302 Raeford Road, Fayetteville, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Springfield Place Subdivision, Cumberland 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 March 27, 1973, at 2:00 P. M.

BEFORE: Hearing Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr.
McCoy, Weaver, Wiggins, Cleveland & Raper
Attorneys at Law
Post Office Box 1688
Fayetteville, North Carolina 28302

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
Post Office Box 991
Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER: The Application in the above-captioned matter was filed with the North Carolina Utilities Commission on February 20, 1973.

By Order issued on March 6, 1973, the Commission scheduled the Application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was published in The Fayetteville Observer, Fayetteville, North Carolina, advising that anyone desiring to intervene or to protest the Application was requested to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Walter Moorman, Assistant Secretary of Brookwood Water Corporation, and Mr. J. S. Harper, President of Brookwood Water Corporation, appeared at the hearing as witnesses for the Applicant and presented testimony in support of the Application. No one appeared at the hearing to protest the Application.

Based on the information contained in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Brookwood Water Corporation, is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Springfield Place Subdivision, Cumberland County, North Carolina, and has filed a Schedule of Rates for said service.

3. Springfield Place Subdivision is a residential Subdivision containing approximately 61 lots and approximately four streets in Section One. The Subdivision is located ten miles North of Fayetteville on U. S. Highway 401, in Cumberland County.

4. The Applicant proposes to initially install water mains capable of serving approximately 61 customers in the Subdivision. The Applicant proposes to meter the water service.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the site for the well.

6. There will be an established market for water utility service in the Subdivision, and such service is not now proposed for the Subdivision by any other public utility, municipality, or property owner association. There is a reasonable prospect for growth in demand for the proposed utility services in the Subdivision.

7. The State Board of Health has approved the water system plans.

8. The quality of the untreated water does not meet the U. S. Public Health Service Drinking Water Standards, as it contains excessive amounts of iron, but the Applicant will provide iron removal treatment before furnishing water to any customers if the iron content does not decrease to acceptable levels prior to that time.

9. The Applicant holds franchises to provide water utility services in certain subdivisions, all being located within Cumberland County, North Carolina. The Applicant received approximately $80,700 revenues from its water utility operations in fiscal year 1971.

10. The proposed rates and charges are as follow:

METERED RATES - (Residential Service)

Up to first 3,000 gallons per month - $4.50 minimum
All over 3,000 gallons per month - $0.55 per |,000 gallons

CONNECTION CHARGES: $350.00 - To be paid by Developer

||. The Applicant has entered into agreements whereby contributions-in-aid of construction in the Subdivision will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

|2. The Applicant lists its proposed total investment in the water utility plant in Springfield Place as approximately $80,700.

|3. The Applicant's arrangements for furnishing customer service in Springfield Place are the same arrangements as those for the Applicant's other service areas, and said customer service by the Applicant in its other service areas is satisfactory.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following:

CONCLUSIONS

There will be a demand and need for water utility service in Springfield Place Subdivision which can best be met by the Applicant.

The rates contained in Appendix "A" attached hereto are just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

|. That Brookwood Water Corporation, is hereby granted a Certificate of Public Convenience and Necessity to provide water utility serving in Springfield Place 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates in Appendix "A" attached hereto is hereby approved, and is hereby deemed to be filed with the Commission in accordance with G. S. 62-|38.

4. That Brookwood Water Corporation shall maintain its books and records for Springfield Place Subdivision in accordance with the Uniform System of Accounts.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements

which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the |8th day of April, |973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-|77, Sub |0
Brookwood Water Corporation
Springfield Place Subdivision
Cumberland County, North Carolina

WATER RATE SCHEDULE

METERED RATES (Residential Service)

Up to first 3,000 gallons per month - $4.50 minimum
All over 3,000 gallons per month - $0.55 per |,000 gallons

CONNECTION CHARGES: $350.00 - To be paid by Developer

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLS PAST DUE: Twenty (20) days after date rendered

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-|77, Sub |0 on April |8, |973.

DOCKET NO. W-388

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of C & M Collection Agency, Inc., P. O. Box 5538, Statesville, North Carolina --Application for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Spring Shore and Northmont Subdivisions, Iredell County, North Carolina, and for Approval of Rates	RECOMMENDED ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND APPROVAL OF RATES

HEARD IN: The Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina, on November |5, |973, at ||:00 a.m.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

William E. Crosswhite
Sowers, Avery & Crosswhite
Attorneys at Law
P. O. Drawer |226
Statesville, North Carolina 28677

For the Commission Staff:

E. Gregory Stott
Associate Commission Attorney
North Carolina Utilities Commission
P. O. Box 99| - Ruffin Building
Raleigh, North Carolina

RONEY, HEARING COMMISSIONER. By application filed with the North Carolina Utilities Commission on July 3, |973 the Applicant, C & M Collection Agency, Inc., seeks a Certificate of Public Convenience and Necessity to provide public utility water services in Spring Shore and Northmont Subdivisions, Iredell County, North Carolina, and approval of rates to be charged therein.

By Order issued July 24, |973, 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 Statesville Record & Landmark and by personal service on customers by mail or by hand delivery. No one petitioned to intervene nor protested in the matter at this time.

Public hearing was held at the time and place designated by prior Order. No one appeared at the hearing to protest the application. Evidence was given in this matter to the effect that Applicant may want to go to a metered water rate at some later date. At this time Applicant made motion to be allowed to amend his application to include metered rate charges of:

First 3,000 gallons - $5.00 minimum
All Over 3,000 gallons - $|.00 per |,000 gallons

At the end of this evidence the record was closed subject to being reopened on the request of some affected party after receiving notice of the amended proposed rates.

Timely protests were received from the Spring Shore Homeowners' Association protesting the installation of water meters and the proposed metered rate schedule. At this time the Commission set this matter for further hearing on November 15, 1973, in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina.

The Protestant (Spring Shore Homeowners' Association) offered the testimony of Mr. Jesse E. Oates. Mr. Oates presented a petition with twenty-eight (28) signatures of the residents of Spring Shore Subdivision protesting the metered rates. Mr. Oates further testified that he thinks the rate increase would be too high and that the water system in its present condition is not rendering services that are worthy of higher rates. He further testified that there is an oral agreement between the home owners and the Applicant that the rates will remain at the present $5.00 flat rate level. Mr. Oates testimony was corroborated by Mr. Joe Graham. Testimony of Mr. Roger P. Dionne was tendered to corroborate testimony given by the two previous witnesses.

Applicant then offered testimony of Mr. Benny Daniel, President of C & M Collection Agency, Inc. Mr. Daniel testified that he is willing to provide water services at the present $5.00 flat-rate schedule; and that he is presently putting in meter boxes on all the homes but does not desire to connect meters to his system. He further testified that he has completed all improvements that were requested of him by the North Carolina Board of Health. Commission Staff Attorney cross-examined the witness concerning information submitted by the Applicant about the Applicant's water utility operations generally.

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 Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is currently furnishing water service to approximately fifty (50) customers in Spring Shore and Northmont Subdivisions at a flat rate of $5.00 per month and proposes ultimately to serve approximately 100 to 150 residential customers.

2. That the Applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its business address at P. O. Box 5538, Statesville, North Carolina.

3. That Spring Shore Subdivision is a residential subdivision currently under development located approximately eight miles southwest of the City of Statesville.

4. That Northmont Subdivision is a residential subdivision currently under development located approximately a mile northwest of the city limits of Statesville.

5. That no other public utility, municipality, or membership association currently proposes to provide water service in the Applicant's proposed service area.

6. That the well sites and plans for the design of the proposed water system have been approved by the State Board of Health.

7. That Applicant is presently providing repair services which are satisfactory to the residents of the above-mentioned subdivisions and will provide the telephone numbers of the repair service.

8. That the proposed flat rate level, $5.00 per month, is acceptable to both C & M Collection Agency, Inc., and the customers in the Northmont and Spring Shore Subdivisions, and they are herein found to be just and reasonable.

Whereupon the Hearing Commissioner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant. The proposed rates are justified 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.

The Hearing Commissioner concludes that the present and above-mentioned arrangements for repair service should be adequate to the needs of the Applicant's customers, but that in the event any change in the repair arrangements should become necessary, Applicant should promptly make a new arrangement equally as satisfactory as the existing one. And that it is the continuing duty of Applicant to keep its customers currently advised of the sources from which they should seek and to whom they could look for repair services.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity be, and hereby is, granted. Said Certificate authorizes the Applicant to operate as a public utility providing water service in Spring Shore and Northmont Subdivisions.

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 the same hereby is, approved. 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 next regular billing upon one day's notice to the customers.

4. That Applicant will continue to install meter boxes at each of his houses built in the Northmont and Spring Shore Subdivisions in case the event arises that someday it will be deemed necessary to go to a metered water service in this area.

5. That the books and records of the Applicant shall be kept in accordance with the rules and regulations of the North Carolina Utilities Commission and according to such reasonable guidelines as the Staff may recommend.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
C & H Collection Agency, Inc.
Spring Shore Subdivision, Iredell County
Northmont Subdivision, Iredell County

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL SERVICE)

FLAT RATE: $5.00 per month

CONNECTION CHARGES - $100.00

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)]	$4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)]	$2.00

BILLS DUE: On Billing Date

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-388.

DOCKET NO. W-36|

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Forest Utilities, Inc., P. O. Box 709, Troy, North Carolina for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Carolina Forest Subdivision, Montgomery County, North Carolina, and for Approval of Rates.	) RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 4, |973, at ||:00 A. M.

BEFORE: Hugh A. Wells, Commissioner

APPEARANCES:

For the Applicant:

J. Ruffin Bailey, Esquire
Bailey, Dixon, Wooten and McDonald
Attorneys at Law
P. O. Box 2246, Raleigh, North Carolina 27602

For the Commission Staff:

William E. Anderson, Esquire
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 99|
Raleigh, North Carolina 27602

WELLS, HEARING COMMISSIONER. On October 26, |972, the Applicant, Carolina Forest Utilities, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Carolina Forest Subdivision, Montgomery County, North Carolina, and for approval of rates.

By Order issued on November 20, |972, the Commission scheduled the application for public hearing, and required that Public Notice be given by the Applicant. Public Notice was furnished to each customer in Carolina Forest Subdivision by the Applicant, and was published in The Montgomery Herald, Troy, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or protest with the Commission by the date specified in the Notice.

Approximately ten (|0) letters were received by the Commission Staff from owners of property in Carolina Forest Subdivision protesting the fact that they would be asked to

pay the proposed water rate even if no water was used. The rate would be, in effect, an availability charge in the case of those who use no water.

The public hearing was held at the time and place specified in the Commission's Order. At the hearing, the Applicant offered as witnesses Mr. Roy D. Baker, Vice President of the Applicant, and Mr. Norman R. Cox of the engineering firm of Hedrick-Cox-Associates, Inc., Cleveland, Ohio. Mr. Baker presented evidence that each property owner who filed a protest letter had agreed to pay to the Applicant an estimated water and availability charge of $60.00 per year or whatever charge was approved by this Commission. Copies of signed contracts to this effect were submitted as evidence for each of the customers from whom written protests were received.

Based on the information contained in the Commission files, and in the records of this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Carolina Forest Utilities, Inc., is a wholly-owned subsidiary of Russwood, Inc., and is a duly organized corporation under the laws of the State of North Carolina. Carolina Forest Utilities, Inc., is authorized under its Articles of Incorporation to engage in the operation of public utilities as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Carolina Forest Subdivision, Montgomery County, North Carolina, and has filed a schedule of rates for said service.

3. Carolina Forest is a recreational development on Lake Tillery containing approximately 1,100 lots and approximately 40 streets. The subdivision is located on State Road No. 1150 approximately 10 miles east of Albemarle, North Carolina.

4. There will be an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivision.

5. The system consists of two wells, a 150,000 gallon storage tank, and associated equipment and mains.

6. The Applicant is the owner of the well sites and controls the rights-of-way for all distribution mains.

7. The water system plans are approved by the State Board of Health.

8. The Applicant proposes to serve three (3) commercial customers and approximately 950 residential customers. The commercial customers are to be metered. The Applicant proposes to meter water service at the present time only for those residential customers installing swimming pools.

9. The Applicant proposes to charge its customers a flat rate of $60.00 per year whether the customer actually uses any water or not. Each customer would pay $60.00 per year regardless of the number of lots he owns.

10. Contracts were signed by all property owners in which they agreed to pay a water availability charge to the Applicant, subject, however, to the approval of any such proposed charges by this Commission.

11. Carolina Forest Utilities, Inc., has made no water charges to the property owners prior to the hearing.

12. A representative of the Applicant in Albemarle, North Carolina, has been designated to handle the maintenance and service problems which may arise. The customers will be furnished with an emergency telephone number and an alternate number by which service problems may be handled on a 7-day per week, 24-hour per day basis.

CONCLUSIONS

There is a demand and need for water utility service in Carolina Forest Subdivision which can best be met by the Applicant. The Applicant's arrangements for providing maintenance and repair service to the Carolina Forest Subdivision are acceptable.

The rates and charges as proposed by the Applicant are discriminatory, unjust and unreasonable and cannot be allowed. In the first place, Applicant proposes a charge for service availability, as opposed to charging for service rendered, in that each property owner would pay a flat quarterly fee whether or not the owner had actually become an active water customer, this proposed "availability" charge being in addition to a $300.00 initial contribution required of each property owner. The proposed "availability" charge would be the same for each property owner regardless of the number or location of lots owned, which is clearly discriminatory. We conclude, therefore, that the Applicant may begin charging for water service only when the owner of the individual premises has begun use of water thereon and that a separate charge must be levied for each premises upon which water use takes place.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the Applicant, Carolina Forest Utilities, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Carolina Forest 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 Certificate of Public Convenience and Necessity.

(3) That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138. Rates and charges pursuant to said schedule shall not be levied until water service is applied for and furnished to the customers' premises.

(4) That the Applicant shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report.

(5) That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of January, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
Carolina Forest Utilities, Inc.
Carolina Forest Subdivision
Montgomery County, North Carolina

WATER RATE SCHEDULE

METERED RATES (residential service):
$1.50 per 1000 gallons with $15.00 per quarter minimum

METERED RATES (commercial service):
$1.50 per 1000 gallons with $15.00 per quarter minimum

FLAT RATES (residential service):
Minimum rate under metered rates until such time as meters are installed for all customers, except all customers with swimming pools will be metered immediately.

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS PAST DUE: Twenty-five (25) days after date rendered

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-36|. January 25, |973.

DOCKET NO. W-36|

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Forest Utilities, Inc., P. O. Box 709, Troy, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Carolina Forest Subdivision, Montgomery County, North Carolina, and for Approval of Rates.	FINAL ORDER

HEARD IN: (ON REHEARING). Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 24, |973, at |0:00 A.M.

BEFORE: Chairman Marvin R. Wooten (Presiding), Commissioners John W. McDevitt and Ben E. Roney.

APPEARANCES:

For the Applicant:

J. Ruffin Bailey, Esquire
Ralph McDonald, Jr., Esquire
Bailey, Dixon, Wooten and McDonald
P. O. Box 2246, Raleigh, North Carolina 27602

For the Commission Staff:

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

BY THE COMMISSION. The Application of Carolina Forest Utilities, Inc., came on for hearing as designated and published on January 4, |973, before Commissioner Hugh A. Wells who issued a Recommended Order in the cause on January

25, 1973, granting the franchise as requested and approving the proposed rate of $15.00 per quarter to the extent that said rate would be charged to actual water customers but disapproving the Application to the extent that it proposed the charging of said water rates to all lot owners in the subdivision whether the customer actually uses water or not.

The Applicant filed Exceptions to said Recommended Order on February 8, 1973, prior to the Recommended Order becoming effective and final on February 14, 1973. The Applicant prayed for approval of the availability charge as applied for and the opportunity to be heard on the Exceptions in oral argument. By Order issued on February 15, 1973, the Commission set the matter for oral argument and the Applicant's arguments were heard at the time and place designated, following which the Commission issued its Order by which a majority affirmed and adopted the Recommended Order with Wooten, Chairman, dissenting.

On April 13, 1973, the Applicant filed Exceptions to the final Order of the Commission and gave notice of appeal to the North Carolina Court of Appeals. The Applicant contemporaneously filed a Motion pursuant to G. S. 62-90(c) for a further hearing and consideration before the Commission which was allowed by Order issued April 25, 1973.

The matter came on for further presentation of evidence and oral argument on May 24, 1973, at which time the Applicant offered the testimony of Mr. Roy D. Baker and two additional exhibits consisting of estimated 12 months' income statements based on, alternatively, 37 water customers and 1,076 water customers.

Based upon the further hearing the Commission makes the following additional

FINDINGS OF FACT

1. That Applicant's projection of number of customers has ranged from 950 customers to 1,076 customers. Total contributions in aid of construction will be received by the utility company in the amount of $300 per lot (1,076 X $300 = $322,800), to cover the utility company's total plant investment of $312,331.62 (including the $51,128 elevated storage tank) which comprises the total investment in utility plant except for one additional pumping station, grading, seeding, and fencing around the pump station and storage tank which will not appreciably increase the total plant investment. Accordingly, the utility's stockholders will have no investment for which fair value can be ascertained for rate base purposes.

2. That the Applicant's proposed depreciation expense of $7,292 is inappropriate inasmuch as it is largely based upon contributed plant not provided and financed by the utility company and which the utility company, therefore, has no

right to include within the rate base or in rate of return calculations.

3. That the Applicant's estimated payroll taxes in the amount of $1,500 are based upon the excessive employment of two maintenance men, one secretary and one management employee.

4. That the inclusion of an operating expense item for financing the storage tank is inappropriate.

5. That the North Carolina Utilities Commission Statistical and Analytical Report for 1971 published and issued on March 30, 1973, of which judicial notice is taken herein, indicates that average operation and maintenance expenses for Class B water companies in North Carolina during the 1971 period was $65.07 per customer. Based upon the statistical average the operation and maintenance cost to provide service to 37 customers would be $2,407. An estimated figure of $70.00 per customer would amply allow for inflation. A reasonable estimated operation and maintenance expense at the level of $70.00 per customer would produce total operation and maintenance expense of $2,590, compared to revenues of $8,790 based on present customers.

Whereupon the Commission reaches the following

CONCLUSIONS

This is a case of first impression in which the Applicant seeks Commission approval of a tariff provision pursuant to which the utility company will bill all property owners, whether actual water customers or not, a minimum rate of $5.00 per month. This flat rate payable by nonusers has been called an "availability charge".

The availability charge is a novel rate device not heretofore employed by any regulated utility within the State of North Carolina. The Applicant contends that the availability charge is essential to its operation of a public utility water system in a recreational subdivision where the building of residences, and actual demand for water, will occur at an extremely low annual rate.

According to G. S. 62-130, "The Commission shall make, fix, establish or allow just and reasonable rates for all public utilities subject to its jurisdiction." A rate is defined in G. S. 62-3(24) as

> ". . . compensation, charge, fare, tariff, schedule, toll, rental, and classification, or any of them, demanded, observed, charged or collected by any public utility for any service, product or commodity offered by it to the public, and any rules, regulations, practices or contracts effecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification."

In the case of Forest Hills Utility Company v. PUC of Ohio, 31 Ohio St. 2d 46 (1972), the Ohio Supreme Court held that it would be unreasonable and unlawful for the Ohio Public Utilities Commission to impose an availability charge on nonusers of a utility. This case constitutes the only presently existing appellate decision on availability charges.

Our consideration herein must be based on more, however, than a discussion of the legality of the availability charge as a matter of principle or theory; we must consider also whether the Applicant has established its need for the revenues which would be produced by our imposition of such a charge as a part of the Applicant's tariff.

Under general ratemaking theory this Commission must establish such rates as will produce sufficient annual revenues to cover operating and other expenses and produce a net operating income which constitutes a fair rate of return on the utility's property dedicated to public service. In such a manner the utility's shareholders are eventually compensated for having so dedicated their property. The Applicant, however, has financed the construction of its water utility plant primarily through the device of a "tap fee" paid by the potential customers (and to some extent by the developer), amounting to a contribution in aid of construction.

The plant is thus largely contributed by the potential users rather than dedicated by the stockholders. The total investment in utility plant in the amount of approximately $312,000 has been or will soon be amply covered by the $300 contribution in aid of construction by each of the 1,076 property owners or potential customers. In contributing to development of the plant the nonusers have already, in one sense, paid for the availability of the utility system. The availability charge is not proposed as a contribution in aid of construction; rather, the Applicant proposes to treat the availability charge revenues as identical to revenues received from actual water users, considering persons who pay the availability charge as well as water users paying the flat rate to be "customers" from whom annual revenues are produced.

The Applicant has constructed a well-designed, well-engineered, "first rate" facility. It is apparent that in its zeal to establish operating procedures and personnel of a comparable quality, however, the Applicant has substantially overestimated the annual operating expenses essential to the operation of this utility. It proposes a grandiose scheme of operations entailing a number of maintenance personnel, a full time secretary, computerized bookkeeping and high paid management talent, all of which is patently excessive and unnecessary to the operation of a utility system serving 37 customers. In comparing its estimated income statements, it is apparent that the Applicant has prepared its figures on the basis of there

being little difference between providing utility operations for over a 1,000 customers on the one hand and for a handful of customers on the other.

In support of its proposed availability and water usage rates, the Applicant offered estimated annual income statements based on 1,076 customers on the one hand considering all property owners as customers and 37 customers on the other hand referring only to actual water users. The Applicant's estimated annual operating expenses are $57,609 to service 1,076 customers compared with $54,493 to serve 37 customers. The estimated income statements consist of estimated operation and maintenance expenses and actual figures for depreciation and ad valorem taxes. Included in the operating expenses is an item entitled, "lease payments on storage tank" in the amount of $20,103. This item should be capitalized rather than expensed over a period of three years (even if it were to be properly treated as an expense item it would be amortized over the expected life rather than a three year period). When so capitalized, the total value of the utility plant represented by the storage tank becomes a part of the rate base upon which the utility would expect to earn a return, except to the extent to which this plant addition has been paid for by way of the $300 contribution in aid of construction received by the utility per customer.

There is no operating experience from which to ascertain the Applicant's true expense figures; the employees have not been hired; there are no books to audit. The Applicant's estimates are substantially excessive, and we do not find them to be persuasive. Based upon revenues from the actual customers only and the statistical expense figure, as adjusted, found reasonable above, the Applicant will experience annual revenues of $8,790 and operating expenses of $2,590 during the next calendar year, producing net operating income of $6,200 which will cover the ad valorem taxes of $1,638 and leave a reasonable margin available for payroll taxes.

It may well be that in cases of this sort where the plant installed is substantially more extensive than that required to serve the reasonably foreseeable number of customers, there may be some validity to the operating and maintenance charges being somewhat higher than would be true for a smaller utility. Suffice it to say, however, that the Applicant's estimates have failed to provide sufficient data from which we can determine the extent to which higher operating costs would be reasonable. We have made some allowance for those higher costs in the figure of $70 per customer as a reasonable estimate of expenses. Also, other questions arise such as the extent to which the plant not currently necessary to serve present customers is excessive plant and should therefore be excluded from rate of return calculations and considerations. The facts in this case, however, are not sufficient to support findings in that area

of inquiry and we do not reach any decision on that question here.

We conclude that the Applicant has failed to justify the revenue requirements upon which the availability charge is based. We are further, however, of the opinion that such a charge is not appropriate as part of a utility tariff. There is no legal basis for charging utility rates to persons who are not actually receiving the service. We consider the proposed charge to be doubly defective in this case, and reaffirm the order disapproving it.

There has been considerable discussion in these hearings regarding the applicability of the availability charge to lot owners who owned multiple lots, whether contiguous or separate; as it stands the Applicant has indicated his desire to be governed by the Commission on this point, but the problem is moot in view of the foregoing.

Contracts for utility service are merely an extension of the tariff on file with this Commission, and their terms cannot vary from the tariff provisions. Accordingly, the Applicant offered its potential customers contract terms which were subject to the approval of this Commission. The contracts and the form requests for water service previously signed were inextricably intertwined with the real estate transactions. We conclude that the utility should, upon final approval of a tariff herein, provide its customers and potential customers copies of said tariff and give the potential customers an opportunity to request water service, if they desire it, in light of the tariff ultimately approved. The utility should then charge its monthly rate only to present actual customers plus those persons who subsequently apply for service (on new application forms clearly indicating their intention to request service) and are actually furnished service; in this context being "furnished" service means that the user has actually tapped onto the line, with his own plumbing, whether it be residential plumbing or merely a yard faucet through which water may be supplied without further plumbing being added.

IT IS, THEREFORE, ORDERED:

1. That the Findings of Fact contained in the Recommended Order of Commissioner Wells issued on January 25, 1973, be and are hereby adopted as the Findings of the Commission, as supplemented by the Findings set forth herein.

2. That the Applicant's method of financing construction of the system by means of contributions in aid of construction, or tap fees, payable by potential water customers, either as a separate charge or as part of the purchase price, be and hereby is, approved.

3. That the Schedule of Rates, or tariff, established in said Recommended Order be, and hereby is, republished as amended to reflect Commission approval of the tap fees.

4. That the Applicant's proposal to bill nonusers for water service not provided them, or for the "availability" thereof be, and hereby is, disapproved.

5. That said Recommended Order as supplemented herein, and hereby, is affirmed and adopted as the Order of this Commission final and effective as of this date.

6. That the Applicant be, and hereby is, directed to provide its potential water customers with copies of the tariff approved herein and to provide those potential customers who desire to receive actual water service on their premises with new applications for water service, the prior applications being specifically disapproved herein except as they relate to customers presently receiving water service.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Wooten, Chairman, dissents for reasons set forth in Dissenting Opinion dated March 14, 1973.

APPENDIX "A"
Carolina Forest Utilities, Inc.
Carolina Forest Subdivision

WATER RATE SCHEDULE

METERED RATES (Residential Service)

$1.50 per 1,000 gallons with $15.00 per quarter minimum.

METERED RATES (Commercial Service)

$1.50 per 1,000 gallons with $15.00 per quarter minimum.

FLAT RATES (Residential Service)

Minimum rate under metered rates until such time as meters are installed for all customers, except all customers with swimming pools will be metered immediately.

CONNECTION CHARGES

Contribution in aid of construction in the amount of $300 tap fee payable contemporaneous with lot purchase; no separate charge at time of actual tap.

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)]	$4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)]	$2.00

BILLS PAST DUE: Twenty-five (25) days after date rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-36| on June 28, |973.

DOCKET NO. W-358, SUB |

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Fortis Enterprises, Inc., P. O. Box 485, King, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in Briarwood Subdivision, Stokes County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, Ruffin Building, | West Morgan Street, Raleigh, North Carolina, on May 23, |973, at 2:00 P. M.

BEFORE: Hearing Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

Richard E. Stover
Attorney at Law
P. O. Box 564, King, North Carolina 2702|

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 99|, Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER: The Application in the above-captioned matter was filed with the North Carolina Utilities Commission on March 30, |973.

By Order issued on April 24, 1973, the Commission scheduled the Application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Briarwood Subdivision by the Applicant, and was published in The King Times-News, King, North Carolina, advising that anyone desiring to intervene or to protest the Application was requested to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. R. E. Shelton, President of Fortis Enterprises, Inc., appeared at the hearing as a witness for the Applicant and presented testimony in support of the Application. No one appeared at the hearing to protest the Application.

Based on the information contained in the Commission's files and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Fortis Enterprises, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish sewer utility service in Briarwood Subdivision, Stokes County, North Carolina, and has filed a Schedule of Rates for said service.

3. Briarwood Subdivision is a residential subdivision consisting of approximately four streets and approximately 137 lots. The subdivision is located on State Highway 66 near Mt. Olive in Stokes County.

4. The Applicant has entered into agreements securing ownership or control of the sewer system and of the site for the sewage treatment plant.

5. The Applicant holds a franchise to provide water and sewer utility service in Walnut Tree Subdivision in Stokes County, North Carolina, and it furnishes water and sewer utility service to approximately 118 customers and will receive approximately $17,000 annual revenues from its water and sewer utility operations.

6. The annual revenues, based on the proposed flat rate and on 137 customers will be approximately $9,860.

7. The Applicant estimates its net investment in sewer utility plant will be approximately $135,000, based on an unverified statement contained in the Application.

8. The sewerage system plans are approved by the State Office of Water and Air Resources.

9. The Applicant has full time employees who are responsible for providing maintenance and repair service to the sewer system in the subdivision.

Based on the foregoing Findings of Fact, the Hearing Commission reaches the following:

CONCLUSIONS

There will be a demand and need for sewer utility service in Briarwood Subdivision which can best be met by the Applicant, and such services are not now proposed for the subdivision by any other public utility, municipality or property owner's association.

The Applicant's present arrangement for providing maintenance and repair service to its sewer systems in Briarwood is acceptable.

The initial rates approved by the Commission for sewer utility service in Briarwood Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public sewer utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Fortis Enterprises, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide sewer utility service in Briarwood 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" 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 shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the

Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-358, SUB 1
Fortis Enterprises, Inc.
Briarwood Subdivision, Stokes County

SEWER RATE SCHEDULE

FLAT RATES: $6.00 per month

RECONNECTION CHARGES

If sewer service cut off by utility for good cause (NCUC Rule 10-16f): $15.00

BILLS DUE on billing date

BILLS PAST DUE - Twenty-five (25) days after billing date

BILLING shall be monthly, for service in arrears.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-358, Sub 1 on June 6, 1973.

DOCKET NO. W-266, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Ed Griffin Land Company, P. O. Box 1374, Matthews, North Carolina for a Certificate of Public Convenience and Necessity to Provide Sewer Utility Service in Hemby Acres and Beacon Hills, Union County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 17, 1973, at 10:00 A. M.

BEFORE: Chairman Marvin R. Wooten, presiding, and Commissioner John W. McDevitt and Commissioner Ben E. Roney.

APPEARANCES:

For the Applicant:

David S. Dunkle
Attorney at Law
Edwards & Warren, Professional Association
811 Johnston Building
Charlotte, North Carolina 28202

For the Commission Staff:

Wilson B. Partin, Jr.
Assistant Commission Attorney
P. O. Box 991
Raleigh, North Carolina 27602

MARVIN R. WOOTEN, CHAIRMAN: The application in the above captioned matter was filed with the North Carolina Utilities Commission on March 27, 1973.

By Order issued on April 24, 1973, 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 required in the Commission's Order, advising that anyone desiring to intervene or to protest the Application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Robert B. Adcock, Vice President of Ed Griffin Land Company, and Joseph Warren, III, an attorney and accountant acting as advisor to Ed Griffin Land Company, appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. Mr. David P. Creasy, Chief Engineer of the Water and Sewer Section, appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's plans for the sewer utility operations. No one appeared to protest the Application.

Based on the information contained in the Commission's files and in the record of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Ed Griffin Land Company, is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of

Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3. The Ed Griffin Land Company is a wholly owned subsidiary of the Ed Griffin Company, which is the developer of Beacon Hills and Hemby Acres.

2. The Applicant proposes to furnish sewer utility service in Beacon Hills and in Hemby Acres Subdivisions, Union County, North Carolina, and has filed a Schedule of Rates for said service. Sun Valley Water Association, a non-profit corporation financed by the Farmers Home Administration, will furnish water service in both subdivisions.

3. Beacon Hills Subdivision is a residential subdivision consisting of approximately 13 streets and approximately 304 lots. The subdivision is located on County Road 1525, known as Stewarts Mill Road, in Union County. The subdivision is adjacent to Hemby Acres.

4. Hemby Acres is a residential subdivision consisting of approximately 14 streets and approximately 306 lots. The subdivision is located at the intersection of County Road 1525, known as Stewarts Mill Road, and County Road 1501, known as Idlewild Road, in Union County. The subdivision is adjacent to Beacon Hills.

5. The Applicant holds a franchise to furnish water and sewer utility service in Suburban Woods Subdivision, Mecklenburg County, and in Cabarrus Woods Subdivision, Cabarrus County, and it furnishes water and sewer service to approximately 100 customers in said subdivisions.

6. The Applicant will have a certified sewer plant operator for its sewage treatment plant, and the certified operator or one of his assistants will be available on a 24-hour per day, 7-day per week basis for emergency service.

7. The Applicant has entered into agreements with the Ed Griffin Company whereby the Applicant will purchase the sewer system in Hemby Acres and in Beacon Hills from the Ed Griffin Company at a price not in excess of the Ed Griffin Company's cost for construction of such facilities, which sum will be payable only out of the net profits computed before taxes, and only to the extent of 33 1/2% of the annual net profits of the Ed Griffin Land Company. The Applicant also represents in its application that the Ed Griffin Company will pay a $350 per lot tap-on fee to the Ed Griffin Land Company.

8. The Applicant has stipulated that any metered rates for sewer utility service will be based on the water consumption shown by meter readings from the Sun Valley Water Association.

9. The provision in the Applicant's proposed rates specifying penalties for late payment in the amount of 1.5%

per month on the unpaid balance, with a $.50 per month minimum, does not conform to the billing practices prescribed by the Commission, and such a provision specifying "finance charges for late payment are 1% per month on the unpaid balance for bills still past due 25 days after billing date" would conform to the uniform billing practices prescribed in the Commission's Rule R12-9.

10. The annual revenues, based on the proposed rates and on 600 customers at an average water consumption of 6,000 gallons per month per customer would be approximately $51,840. The annual revenues based on approximately 150 customers would be approximately $12,960.

11. The Applicant lists its anticipated original cost of sewer plant for the 600 lots as approximately $436,000. The Applicant will collect approximately $210,000 in contributions in aid of construction in the form of tap fees for the 600 lots at $350 per lot, leaving a net investment of approximately $226,000 in the sewer collection system and the treatment plant. Since the Applicant will not begin making payments to Ed Griffin Company for the original cost of the sewer system until the Applicant has an operating profit, the funds collected in tap fees may be used to defray any operating losses of the company in its early years of operation as well as for reimbursement of a portion of its investment in plant.

12. The annual operating expenses for approximately 150 customers as estimated by the Applicant appears to be excessive in comparison with certain operating ratios developed from the Commission's statistics for regulated water and sewer companies contained in its 1971 Annual Report. In particular, the estimates for salaries, wages and labor, and for repairs and maintenance, appear to be more applicable to the full development of 600 customers than to the 150 customers contained on the income statement.

13. The estimated annual revenue of $51,840 for 600 customers; less the estimated operating expenses of $38,706, which appears to be most nearly applicable to 600 customers; less the estimated annual depreciation of $10,917; leaves $2,217 net income before taxes. The $2,217 net income would provide a return of approximately 1.0% on the $226,000 net investment in the sewer plant.

14. The sewer system plans are approved by the North Carolina Office of Water and Air Resources.

Based on the foregoing Findings of Fact, the Commission reaches the following:

CONCLUSIONS

There will be a demand and need for sewer utility service in Beacon Hills and in Hemby Acres Subdivisions which can best be met by the Applicant, and such services are not now

proposed for the subdivisions by any other public utility, municipality or property owners association.

The Applicant's present arrangements for providing maintenance and repair service to its sewer systems are acceptable.

The Applicant has the option of allowing Sun Valley Water Association to handle billing for sewer service for the Applicant, or of obtaining the water meter readings from Sun Valley for the purpose of handling its own billing, or of billing on a flat rate. There would appear to be problems involved in either of the options concerning metered rates, since Sun Valley owns the meters and their meter reading and billing will be unregulated by the Commission. However, there will also be problems involved in the option concerning flat rates, since the light user will be discriminated against in favor of the heavy user, and there will be less restraint on the total amount of sewer service required even though the capacity of the sewage treatment plant is limited. It appears that metered rates will eliminate any problems involving undue discrimination and restraint on total sewer service required, and that billing based on meter readings by Sun Valley will be more economical for the Applicant and its customers. In the event of a dispute between a customer of the Applicant and the Sun Valley Water Association concerning meter reading or billing for water service, which would also affect the sewer billing, the Applicant could charge the minimum charge established for sewer service if such dispute could not be resolved, and the Commission could then rule on any question that might arise as to whether or not such minimum charge was appropriate for that particular situation.

Under the proposed rates, the Applicant will apparently operate at a loss in the initial phases of its operation, but such losses should not be as great as estimated by the Applicant, and the actual amount of such losses can only be determined to a reasonable extent by the Applicant's actual operating experience. However, the Applicant should be able to earn a profit on its operations as it approaches full capacity.

The initial rates approved by the Commission for sewer utility service in Beacon Hills and Hemby Acres Subdivisions should be those contained in the Schedule of Rates attached hereto, which rates are found to be reasonable for the services described herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Ed Griffin Land Company, is hereby granted a Certificate of Public Convenience and Necessity in order to provide sewer utility service in Beacon Hills and in Hemby Acres Subdivisions, 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" 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 shall maintain its books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-226, SUB 5
Ed Griffin Land Company
Beacon Hills, Union County
Hemby Acres, Union County

SEWER RATE SCHEDULE

METERED RATES

$ .90 per month per 100 cubic feet (or $1.20 per month per 1,000 gallons)
$2.10 per month minimum charge

FLAT RATE

Bills exceeding $5.00 per month under the metered rates and which are in dispute as to the amount shall be subject to a flat rate of $5.00 per month until the dispute is resolved. Bills which are in dispute as to the amount and which do not exceed $5.00 per month under the metered rates shall be subject to the metered rate until the dispute is resolved.

CONNECTION CHARGES

For sewer service cut off by utility for good cause [NCUC Rule R10-16(f)] $15.00

BILLS DUE on billing date

BILLS PAST DUE twenty-five (25) days after billing date

BILLING shall be monthly, in arrears.

FINANCE CHARGES FOR LATE PAYMENT are one percent (1.0%) per month on the unpaid balance for bills still past due 25 days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-226, Sub 5 on August 31, 1973.

DOCKET NO. W-274, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Heater Utilities, Inc., Box 549, Cary, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Lakewood Estates 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, May 16, 1973

BEFORE: Commissioner John W. McDevitt

APPEARANCES:

For the Applicant:

Henry H. Sink, Esq.
Attorney at Law
Suite 508, First Federal Building
Raleigh, North Carolina

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
One West Morgan Street
Raleigh, North Carolina 27602

McDEVITT, HEARING COMMISSIONER: By Application filed with the North Carolina Utilities Commission on March 20, 1973, the Applicant, Heater Utilities, Inc., seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Lakewood Estates Subdivision, Wake County, North Carolina, and approval of rates to be charged therein.

By Order issued April 3, 1973, 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 Raleigh Times. 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 was represented by counsel and offered the testimony of Mr. R. B. Heater, who is the Applicant's President. The Commission Staff Attorney cross-examined the witness concerning the information submitted by the Applicant and the Applicant's water utility operations generally.

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 Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is not at the present time providing public utility water service to residential customers in Lakewood Estates Subdivision, but it proposes ultimately to serve approximately 45 residential customers.

2. That the Applicant is a duly organized and existing corporation under the laws of the State of South Carolina with its registered North Carolina office at Cary, North Carolina.

3. That the Applicant's business address is 323 S. West Street, Cary, North Carolina; this business enterprise is engaged in the construction of private and public residential water systems, including the operation of nine (9) previously certificated public utility water systems in North Carolina.

4. That Lakewood Estates Subdivision is a residential subdivision currently under development located on S. R. 1375 approximately six (6) miles from the Town of Garner, North Carolina.

5. That no other public utility, municipality or membership association currently proposes to provide water service in the Applicant's proposed service area.

6. That the well sites and plans for the design of the proposed water system have been approved by the State Board of Health.

7. That the system, as constructed to date, is capable of serving approximately 45 residences.

8. That the Applicant proposes to charge the following rates for residential service:

METERED RATES

WATER

Up to the first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $ .60 per 1,000 gallons prorated.

CONNECTION CHARGE

$135.00 in subdivision for 3/4"X5/8"; $350.00 outside subdivision for 3/4"x5/8"; larger than 3/4"x5/8", tap cost plus 20%

9. That the gross investment in utility plant in the subdivision to date is approximately $28,925.00.

10. That the Applicant proposes to list its phone number and business address on the bills sent to the customers, and to provide a full-time maintenance and repair service for the Lakewood Estates Subdivision; that an answering service will be used for customer phone calls made to the business office after regular office hours.

11. That the proposed metered rate levels will afford the Applicant an opportunity to obtain a just and reasonable rate of return as the number of customers and demand for water increases, and are fair to the using and consuming public; they, therefore, are herein found to be just and reasonable rates.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant. 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.

The Commissioner concludes that the present and above-mentioned arrangements for repair service should be adequate to the needs of Applicant's customers, but that in the event any change in the repair arrangements should become necessary, Applicant should promptly make a new arrangement equally as satisfactory as the existing one, and that it is the continuing duty of Applicant to keep its customers currently advised of the sources from which they should seek and to whom they should look for repair service.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity be, and hereby is, granted; said Certificate authorizes the Applicant to operate as a public utility providing water service in Lakewood Estates Subdivision.

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; 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 next regular billing, upon one day's notice to the customers.

4. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend, the Applicant being hereby directed to arrange a conference with a Staff member to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This 25th day of May, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
Heater Utilities, Inc.
Lakewood Estates Subdivision

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL SERVICE)

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $ .60 per 1,000 gallons prorated

CONNECTION CHARGES

$135 in subdivision for 3/4"X5/8"; $350 outside subdivision for 3/4"X5/8"; larger than 3/4"X5/8"; tap cost plus 20%

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLS DUE: Fifteen days after date rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 10.

DOCKET NO. W-274, SUB 12
DOCKET NO. W-274, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Applications by Heater Utilities, Inc., P. O. Box 549, Cary, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Nine Subdivisions in Durham, Wayne, Wake and Orange Counties, North Carolina, and for Approval of Rates.	RECOMMENDED ORDER GRANTING FRANCHISES AND APPROVING RATES

HEARD IN: Commission Library, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on October 24, 1973, at 10:00 a.m.

BEFORE: Ben E. Roney, Hearing Commissioner

APPEARANCES:

For the Applicant:

Henry H. Sink
Parker, Sink and Powers
Attorneys at Law
P. O. Box 1471, Raleigh, North Carolina 27602

For the Commission Staff:

Robert P. Page
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER. On July 12, 1973, and on August 1, 1973, the Applicant, Heater Utilities, Inc., filed

applications with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service and for approval of rates in the following subdivisions:

Sub 12 -- Durham County
Mason Woods
Gray Moss
Heather Glen

Wake County
Northgate
Roundtree
Martindale

Wayne County
Pinewood Subdivision

Sub 13 -- Orange County
Robin's Wood
Wildcat Creek

By Orders issued on July 24, 1973, and September 24, 1973, respectively, the Commission scheduled the applications for public hearing at the date and time aforementioned, required the submission of additional information by the Applicant and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to the customers and/or owners in each subdivision, and was, in addition, published in The Durham Morning Herald and The Raleigh Times advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice.

Timely intervention was filed by John E. Aldridge, Jr., and several protests were received. The public hearing was held at the time and place specified by Commission Order. The Intervenor and the Protestants, prior to the hearing, stipulated that the sole purpose for their intervention and protest was to oppose the rates requested by Applicant and not to oppose the granting of the franchises. The Applicant thereupon stipulated that he would not pursue the rates requested in the above-captioned dockets, but would agree to accept rates in these dockets identical to the rates presently being charged in the other eleven subdivisions now operated by Applicant in North Carolina. Applicant and the Commission Staff further stipulated that the request for rates over and above Applicant's presently existing charges would be consolidated for hearing with W-274, Sub 14, a request for general rate increase filed by Applicant on October 24, 1973.

Mr. Robert B. Heater, President of Heater Utilities, Inc., appeared at the hearing as a witness for Applicant and presented testimony in support of the application. Mr. Richard W. Seekamp appeared as a witness for the Commission

Staff concerning his evaluation of Applicant's plans for the proposed water utility operations. No one testified in opposition to granting the franchises requested.

Based on the information contained in the application, the testimony adduced at the public hearing and the Commission records in this proceeding, the Hearing Commissioner now makes the following

FINDINGS OF FACT

1. The Applicant, Heater Utilities, Inc., is a corporation duly organized under the laws of the State of South Carolina, being registered to do business in North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities as defined in G. S. 62-3.

2. The Applicant proposes to provide water utility service to present and future customers in the following North Carolina Subdivisions:

(a)	Durham County	(b)	Wake County
	Mason Woods		Northgate
	Gray Moss		Roundtree
	Heather Glen		Martindale
(c)	Wayne County	(d)	Orange County
	Pinewood		Robin's Wood
			Wildcat Creek

3. No other person, firm, corporation, public utility, municipality or membership association presently proposes to furnish water utility service in the aforementioned subdivisions. No testimony or other evidence was adduced at the public hearing or appears on the face of the record which opposes the issuance of the franchises herein requested or tends to show that Applicant is unfit, unwilling or unable to operate same.

4. Applicant will, as soon as possible, submit certain late exhibits, regarding these franchises, which exhibits will, upon acceptance and approval, constitute a portion of the official Commission records herein.

5. The number of customers in the aforementioned subdivision presently being served is 0; the number ultimately proposed to be served is 623. The gross investment in utility plant to date is approximately $10,000; the estimated net utility plant to be constructed is approximately $386,707.

6. The Applicant now proposes to charge the following rates for residential service:

METERED RATES

WATER

Up to first 3,000 gallons per month-$5.00 minimum
All over 3,000 gallons per month-$ .60 per 1,000 gallons prorated

CONNECTION CHARGE

$135 in platted subdivision for 3/4" X 5/8" tap
$350 outside platted subdivision for 3/4" X 5/8" tap
Cost plus twenty (20%) percent for taps larger than 3/4" X 5/8"

7. The Applicant proposes to list its phone number and business address on the bills sent to the customers, and to provide full-time, seven days a week service for the subdivisions included in these dockets. An answering service will be used for customer phone calls made to the business office after regular office hours.

8. The proposed metered rate levels will afford the Applicant an opportunity to obtain a just and reasonable rate of return as the number of customers and demand for water increases, and are fair to the using and consuming public; they, therefore, are herein found to be just and reasonable rates.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following

CONCLUSIONS

1. There is a demand and need for public utility water service in the service areas proposed by Applicant in the aforementioned subdivisions, which can best be met by Applicant. Public convenience and necessity requires or will require the construction and operation proposed herein by Applicant. Applicant is fit and proper to render the water utility services proposed herein.

2. 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 areas.

3. The present arrangements for repair service should be adequate to the needs of Applicant's customers. However, in the event that any change in the repair arrangements should become necessary, Applicant should make new arrangements to maintain adequate levels of service and should continuously keep its customers advised of the sources from whom they should seek repair service.

IT IS, THEREFORE, ORDERED:

1. That the Applicant is hereby granted a Certificate of Public Convenience and Necessity to provide water utility service in the nine subdivisions described herein, and as more particularly described by the applications in the aforementioned dockets, which applications are made a part hereof by reference.

2. That this Order will, of itself, constitute the Certificate of Public Convenience and Necessity.

3. That the Schedules of Rates attached hereto as Appendices A and B are hereby approved and are hereby deemed to be filed with the Commission pursuant to G. S. 62-138, to become effective on the first or next billing date, upon one day's notice to the customers.

4. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend.

5. That the excess amount of rates requested over and above those rates approved herein, is hereby consolidated with those rates requested in W-274, Sub 14, for the purpose of hearing same as part of the general rate case contained in said docket, upon such notice, terms and conditions as the Commission, by Order in said docket, may provide.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-274, SUB 12
Heater Utilities, Inc.
Mason Woods Subdivision, Durham County
Heather Glen Subdivision, Durham County
Gray Moss Subdivision, Durham County
Roundtree Subdivision, Wake County
Martindale Subdivision, Wake County
Northgate Subdivision, Wake County
Pinewood Subdivision, Wayne County

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL SERVICE)

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $ .60 per 1,000 gallons prorated

CONNECTION CHARGES

$135 in platted subdivision for 3/4" X 5/8" tap
$350 outside platted subdivision for 3/4" X 5/8" tap
Cost plus twenty (20%) percent for larger than 3/4" X 5/8" tap

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLS DUE: Fifteen (15) days after date rendered

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 12, on November 7, 1973.

APPENDIX "B"
DOCKET NO. W-274, SUB 13
Heater Utilities, Inc.
Robin's Wood, Orange County
Wildcat Creek, Orange County

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL SERVICE)

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $ .60 per 1,000 gallons prorated

CONNECTION CHARGES

$135 in platted subdivision for 3/4" X 5/8" tap
$350 outside platted subdivision for 3/4" X 5/8" tap
Cost plus twenty (20%) percent for larger than 3/4" X 5/8" tap

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLS DUE: Fifteen (15) days after date rendered

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 13, on November 7, 1973.

DOCKET NO. W-362
DOCKET NO. LPG-1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Lonnie R. Langley, d/b/a Langwood Mobile Park, Hwy. 97 West, Rocky Mount, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water, Oil and Gas Utility Service in Langwood Mobile Park, Nash County, North Carolina, and for Approval of Rates	) ORDER) GRANTING) FRANCHISE) AND) APPROVING) RATES

HEARD IN: The Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 17, 1973

BEFORE: Chairman Marvin R. Wooten, Presiding, Commissioners Hugh A. Wells and Ben E. Roney

APPEARANCES:

For the Applicant:

Lonnie R. Langley
Highway 97 West
Rocky Mount, North Carolina
(Appearing for himself)

For the Commission Staff:

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

BY THE COMMISSION. On November 3, 1973, Lonnie R. Langley, d/b/a Langwood Mobile Park, filed application with the Commission for a Certificate of Public Convenience and Necessity to provide water, oil and gas utility services to Langwood Mobile Park, Nash County, North Carolina, and for approval of rates.

By Order issued on December 5, 1972, the Commission scheduled the application for public hearing and required that public notice of the hearing be provided by the Applicant.

This matter came on for hearing at the time and place set forth in the Commission's Order of December 5, 1972. No one appeared at the hearing to protest the application.

Mr. Langley testified in support of the application. He stated that for approximately two years he had provided water service to 88 mobile residences, gas service to 50 mobile residences, and oil service to 40 mobile residences.

He indicated that all mobile home lots in the park were rented by him to persons for the use of their mobile homes with separate compensation received for water, gas and oil service from those persons receiving such service. He further stated that there had been relatively little turnover within Langwood Mobile Park. Mr. Langley testified that he lives adjacent to the mobile home park and that his reasons for applying for a franchise for water, gas and oil utility service were that in providing such service, the danger of trucks going in and out of the mobile park for gas and oil deliveries is lessened; that odors from gas and oil resulting from spillage is non-existent; that the general appearance of the mobile park is improved; and further, that by providing water, gas and oil services, he gains a competitive advantage over other mobile home parks in the area. He testified that he has entered into a contract with Pearsall Oil Company, the local Shell distributor, for the oil which he will sell to the mobile home owners purchased at 15.9 cents per gallon, and further, that he has entered into a contract with Exxon (formerly Humble Oil) to purchase propane gas at 16 cents per gallon. Mr. Langley testified that his wife will maintain the books for the utility operations and that he will engage part-time assistance as necessary to aid him with maintenance. He testified that his investment in the water, gas and oil systems amounts to approximately $70,000.

Mr. Thomas Dixon, Safety Engineer of the Commission Staff, testified that he had made a personal investigation with respect to the gas and oil distribution systems involved in this proceeding early in December, 1972. He testified that the systems are sectionized so that each system within the mobile home park can be cut off without affecting the other systems and that 2 inch plastic pipe had been used in the system except that in the first section galvanized pipe or screw-jointed pipe had been used which, under current standards of the Department of Transportation of the United States Government, must be placed under cathodic protection by August, 1976. He described the basic characteristics of propane gas and indicated that, in his opinion, the system is well designed and constructed, and under proper maintenance should not present any unusual problems in regard to safety.

The record of this proceeding indicates that Mr. Langley has not made application to the North Carolina State Board of Health for approval of the water system in Langwood Mobile Park. However, the record indicates that there have been no complaints with respect to either water, gas or oil service from the residents of said mobile park during the two year period such services have been provided by Mr. Langley.

Upon stipulation by Mr. Langley, the proposal concerning deposits and for a service charge for late payment as referred to in Appendix B attached to the Commission's Order of December 5, 1972, were deleted from the proposed tariff.

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

FINDINGS OF FACT

(1) The Applicant, Lonnie R. Langley, d/b/a Langwood Mobile Park, Highway 97 West, Rocky Mount, North Carolina, is an individual providing water, oil and gas utility service in Langwood Mobile Park, Nash County, North Carolina, and proposes to provide such services for compensation as a public utility to the mobile home residences located on the rental property in Langwood Mobile Park.

(2) There are 88 mobile home residential lots receiving water service from the Applicant, 50 receiving gas service and 40 receiving oil service. Additionally, there are 5 unused lots.

(3) The Applicant proposes to provide water, oil and gas service on a separately metered basis in accordance with the proposed tariff filed with the application.

(4) The public convenience and necessity requires the water, oil and propane gas services proposed by the Applicant in the proposed franchised territory, Langwood Mobile Park.

(5) The Applicant has not made application to the North Carolina State Board of Health in regard to approval of the design of the water system.

(6) The Applicant has installed distribution systems for water, oil and gas, and separate meters with respect thereto, amounting to a total investment of approximately $70,000 in Langwood Mobile Park.

(7) The proposed metered rate levels will afford the Applicant an opportunity to obtain a just and reasonable rate of return as the number of customers and demand for water increases, and are fair to the using and consuming public. They are similar to rates now charged by public utility water systems of a comparable size and with comparable operations. They, therefore, are herein found to be just and reasonable rates.

(8) The Applicant has contracted to purchase oil at 15.9 cents per gallon and to purchase propane gas at 16 cents per gallon. The Applicant proposes to charge 49 cents for cooking only during the months of May, June, July, August and September; and proposes to charge 23 cents for heating and cooking during the months of January, February, March, April-October, November and December. In view of substantial investment of approximately $47,000 in the oil and gas distribution systems within Langwood Mobile Park, the anticipated rates under the proposed rates for gas and oil appear to be just and reasonable.

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

CONCLUSIONS

The public convenience and necessity requires the water, oil and propane gas utility services proposed by Lonnie R. Langley, d/b/a Langwood Mobile Park, in Langwood Mobile Park, Nash County, North Carolina.

The rates proposed by the Applicant are just and reasonable and it is therefore concluded that the rate schedule attached hereto as Appendix A should be approved.

The Applicant's proposal for maintenance service appears to be sufficient to provide 24-hour, 7-days a week, maintenance to the residences of Langwood Mobile Park. In the event subsequent arrangements are made for maintenance service, the Applicant is admonished to notify existing customers of such changes in order that customers served by the Applicant will at all times have at their disposal the authorized persons or firms which they may contact in the event of difficulties connected with the operation of the water, oil or propane gas utility systems. In any event, the delegation of maintenance service to any party by the Applicant will not relieve the Applicant of his responsibility under the public utilities law of this State to provide adequate, efficient and safe service to his customers.

Inasmuch as the Applicant has not obtained approval of the State Board of Health for the water system, the Commission concludes that the Applicant should be allowed six months within which to take whatever steps are necessary to obtain said approval. In the event such approval is not obtained within the time specified, the Commission will give consideration to the issuance of show cause proceedings regarding the application of penalties of up to $1,000 per day for each day of non-compliance with such further order.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the application of Lonnie R. Langley, d/b/a Langwood Mobile Park, for a Certificate of Public Convenience and Necessity in order to provide water, oil and propane gas utility service in Langwood Mobile Park, Nash County, North Carolina, be, and the same hereby is, approved.

(2) That this Order shall constitute the Certificate of Public Convenience and Necessity.

(3) That the schedule of rates attached hereto as Appendix A is hereby approved and authorized to become effective on one day's written notice to the Applicant's customers.

(4) That the Applicant shall establish and maintain separate records for the water, gas and oil operations.

(5) That the Applicant is herewith required within six (6) months from the date of this Order to take whatever steps are necessary to obtain State Board of Health's approval of the water system in Langwood Mobile Park and shall file written evidence of such approval with the Commission.

ISSUED BY ORDER OF THE COMMISSION.

This 9th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
Lonnie R. Langley
d/b/a Langwood Mobile Park
Langwood Mobile Park - Rocky Mount, N. C.

WATER, GAS AND OIL RATE SCHEDULES

METERED RATES (RESIDENTIAL SERVICE)

WATER:

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $1.00 per 1,000 gallons

GAS:

$.49 per gallon for cooking only (May, June, July, August, September)
$.23 per gallon for heating and cooking (January, February, March, April - October, November, December)

OIL: 19.9 cents per gallon

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLS DUE: Twenty-five (25) days after date rendered.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-362 and LPG-1.

DOCKET NO. W-363

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Pierce, Heavner, and Jenkins Builders, Inc., T/A Pierce, Heavner, and Jenkins Builders, Inc. Utilities Division, P. O. Box 1806, Gastonia, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Forest Brook Subdivision, Gaston County, North Carolina, and for Approval of Rates	))))))	RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on January 17, 1973, at 2:00 P. M.

BEFORE: Hearing Commissioner Hugh A. Wells

APPEARANCES:

For the Applicant:

Phillip V. Harrell
Mullen, Holland and Harrell
Attorneys at Law
313 South Street
Gastonia, North Carolina

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
Post Office Box 991
Raleigh, North Carolina

WELLS, HEARING COMMISSIONER: On November 9, 1972, the Applicant, Pierce, Heavner, and Jenkins Builders, Inc., T/A Pierce, Heavner and Jenkins Builders, Inc. Utilities Division, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Forest Brook Subdivision, Gaston County, North Carolina.

By Order issued on November 29, 1972, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in Forest Brook Subdivision by the Applicant and was published in The Gastonia Gazette, Gastonia, North Carolina, advising that anyone desiring to intervene or to protest the application was requested to file their intervention or their protest with the Commission by the date specified in the Notice. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Robert L. Heavner appeared at the hearing as a witness for the Applicant and presented testimony in support of the application.

Based on the information contained in the application and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicant, Pierce, Heavner, and Jenkins, Inc. T/A Pierce, Heavner, and Jenkins, Inc. Utilities Division is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Forest Brook Subdivision, Gaston County, North Carolina, and has filed a Schedule of Rates for said service.

3. Forest Brook Subdivision is a residential subdivision, the first phase of which consists of 39 lots and 3 streets. The subdivision is located on N. C. State Road 274, approximately 3 miles south of Gastonia, North Carolina.

4. There is an established market for water utility service in the subdivision, and such services are not now proposed for the subdivision by any other public utility, municipality, or membership association. There is a reasonable prospect for growth in demand for the proposed utility service in the subdivision.

5. The Applicant owns the well site and controls the right-of-way for all distribution mains.

6. The quality of the untreated water meets the U. S. Public Health Service Drinking Water Standards with respect to physical and chemical characteristics.

7. The water system plans are approved by the State Board of Health.

8. The provision in the Applicant's proposed rates specifying that the bills are due 15 days from the date rendered complies with Commission Docket No. M-100, Sub 39 concerning uniform billing practices and shall be included in the approved rate schedule.

9. The Applicant stipulated at the hearing that no late payment charges would be made.

10. The Applicant has made arrangements with a local plumbing contractor to provide emergency maintenance and repair service to the water system in the subdivision.

11. Mr. Heavner and another officer of the Applicant will reside in the subdivision.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following:

CONCLUSIONS

There is a demand and need for water utility service in Forest Brook Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Forest Brook Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions, and which are concluded to be just and reasonable for the services described herein.

The Applicant's arrangement with a local plumbing contractor for providing emergency maintenance and repair service to the water system in Forest Brook is acceptable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Pierce, Heavner, and Jenkins Builders, Inc. T/A Pierce, Heavner and Jenkins Builders, Inc. Utilities Division, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Forest Brook 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" 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 shall maintain his books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and

prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-363
Pierce, Heavner, and Jenkins Builders, Inc.
Utilities Division
Forest Brook Subdivision, Gaston County

WATER RATE SCHEDULE

METERED RATES (residential service)

Up to first 4,000 gallons per month - $4.50 minimum
All over 4,000 gallons per month - $1.00 per 1,000 gallons

CONNECTION CHARGES: $125

RECONNECTION CHARGES

N.C.U.C. Rule R7-20 (f) - $4.00
N.C.U.C. Rule R7-20 (g) - $2.00

BILLING: Quarterly

BILLS PAST DUE: Fifteen (15) days after date rendered

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-363, on February 13, 1973.

DOCKET NO. W-353

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Rushing Agency, Inc., 410 Roosevelt Boulevard, Monroe, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water and Sewer Utility Service in College Grove Subdivision, Union County, North Carolina, and for Approval of Rates.	RECOMMENDED INTERIM ORDER

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 9, 1973.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

Larry E. Harrington, Esq.
and
J. Max Thomas, Esq.
Thomas & Harrington
107 E. Jeff Street
Monroe, North Carolina

For the Intervenor:

James E. Ferguson, II, Esq.
Chambers, Stein, Ferguson & Lanning
237 W. Trade Street
Charlotte, North Carolina
For: Piney Grove Water Association

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

WOOTEN, HEARING COMMISSIONER: By application filed with the North Carolina Utilities Commission on August 24, 1972, the Applicant, Rushing Agency, Inc., 410 Roosevelt Boulevard, Monroe, North Carolina, seeks a Certificate of Public Convenience and Necessity to provide public utility water and sewerage service in College Grove, or Piney Grove, Subdivision in Union County, North Carolina, and approval of rates to be charged therein.

By Order issued September 5, 1972, 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 of the initial hearing date and of a subsequent rescheduled date was given in The Monroe Enquirer - Journal and by personal service on customers by mail or by hand delivery.

A Motion for Leave to Intervene in the matter in protest to the application was filed on behalf of Piney Grove Water Association on January 4, 1973, alleging the pending matter of the establishment of a sanitary district to serve the subdivision in question, said sanitary district having been

approved by the Union County Board of Commissioners on or about October 5, 1972, and currently pending before the State Board of Health. The intervention was allowed and the matter continued until February 9, 1973, and the public hearing was held at the time and place designated by Order.

Upon the call of the matter for hearing, the parties proposed an interim resolution of the matter, pending developments regarding the sanitary district, based upon a number of items which the parties agreed to stipulate, to wit:

STIPULATIONS

1. That a monthly rate for water and sewer service to be charged by Rushing Agency, Inc., be fixed by this Commission at $13.50 for an interim period pending ultimate acquisition by purchase of the water and sewer systems by the Piney Grove Water Association, which is an Intervenor.

2. That this interim period will last for one year, or for a shorter period if the acquisition is accomplished before the expiration of one year.

3. That the Applicant withdraws its request that it be issued a Certificate of Public Convenience and Necessity and instead requests that it be issued temporary operating authority for said interim period.

4. That the Applicant would, during this interim period, provide water and sewer service of the sort currently being provided; that is, it would provide safe, adequate and efficient service but it would not be ordered by this Commission during said interim period to undertake the improvement program necessary to satisfy certain requirements of the State Board of Health regarding the 100-foot radius around the well sites; as a part of its safe, adequate and efficient service, the Applicant will conduct the ordinary monthly bacteriological tests and obtain reports, and will supply a copy of those reports to the Intervenor.

5. That the North Carolina Utilities Commission, as Plaintiff, and the named Intervenors in the related case currently before the Wake County Superior Court will join with the Defendants in seeking relief from that Court dismissing and terminating the proceeding in that Superior Court.

6. That no non-utility water hookups by way of garden hoses or piping be made from one residence to another.

Based upon the above stipulations and the verified application of record, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant constructed and is currently operating public utility water and sewerage facilities in College Grove, or Piney Grove, Subdivision in Union County, North Carolina.

2. That potable water is currently being provided and periodic bacteriological tests are being conducted, but the long-term operation of the water supply facilities must ultimately be governed by the requirements of the North Carolina State Board of Health; compliance with those requirements will require significant additions to and alterations in the current physical plant.

3. That the Piney Grove Water Association, or a successor sanitary district, desires and intends to purchase the utility facilities, when able to do so, and the Applicant desires and intends to sell said facilities to said Association or sanitary district, and the ultimate improvement of those facilities by the Association or sanitary district rather than by the Applicant is desired by the parties and is in the public interest.

4. That adoption of the above stipulations as the basis for an Interim Commission Order is in the public interest, pending further action by the State Board of Health on the proposed sanitary district, and allowing a reasonable opportunity for said sanitary district to acquire the facilities and begin operations.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

Consistent with the foregoing Findings of Fact, it appears that an Order should be issued establishing terms and conditions under which Rushing Agency, Inc., will continue to provide water and sewerage service, pending further action and developments regarding the sanitary district; the foregoing stipulations, which have been agreed upon by the parties, appear to provide a satisfactory basis for such an interim operation.

IT IS, THEREFORE, ORDERED:

1. That a monthly rate of $13.50 for water and sewerage service to be charged by Rushing Agency, Inc., be, and hereby is, established by this Commission as the just and reasonable rate for an interim period, pending ultimate acquisition by purchase of the water and sewerage systems by the Piney Grove Water Association or a successor sanitary district.

2. That this interim period will last for one year, or for a shorter period if the acquisition is accomplished before the expiration of one year.

3. That the Applicant be, and hereby is, granted temporary operating authority for the duration of said interim period.

4. That the Applicant shall, during this interim period, provide water and sewer service of the sort currently being provided; that is, it shall provide safe, adequate and efficient service, but it is not at this time ordered by this Commission to undertake during said interim period the improvement program necessary to satisfy certain requirements of the State Board of Health regarding the 100-foot radius around the well sites; as a part of its safe, adequate and efficient service, the Applicant shall conduct the ordinary monthly bacteriological tests and obtain reports, and will supply a copy of those reports to the Intervenor.

5. That no non-utility water hookups by way of garden hoses or piping shall be made from one residence to another.

6. That the North Carolina Utilities Commission, as Plaintiff, and the named Intervenors in the related case currently before the Wake County Superior Court will join with the Defendants in seeking relief from that Court dismissing and terminating the proceeding in that Superior Court.

7. That the schedule of rates attached hereto as "Appendix A" be, and hereby is, approved; 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 next regular billing, upon one day's notice to the customers, subject only to the prior dissolution of the current Restraining Order in Wake County Superior Court.

8. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and the services shall be provided in strict accordance with the various health and utility laws, rules and regulations governing the operations of public utility water and sewerage systems, with particular reference to billing, disconnects and reconnects; the new Commission Rule R12-9 shall govern billing practices, and the past due date shall be no less than fifteen (15) days after the billing date, as is provided in "Appendix A".

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of February, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
Rushing Agency, Inc.
College Grove Subdivision, (also
known as Piney Grove Subdivision)

RATE SCHEDULE

FLAT RATE (Water and Sewerage Service Combined)

$13.50 per month

CONNECTION CHARGES: None for initial tap

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)]	$4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)]	$2.00
If sewerage service cut off by utility for good cause [N.C.U.C. Rule R10-16(f)]	$15.00

BILLS PAST DUE: Fifteen days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-353.

DOCKET NO. W-396

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Rushing Construction Company, P. O. Box 267, Indian Trail, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Worwood Acres Subdivision, Union 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 July 31, 1973.

BEFORE: Hearing Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

Robert B. Clark, Esq.
Attorney at Law
108 East Jefferson Street
Monroe, North Carolina 28110

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991
Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER. By Application filed with the North Carolina Utilities Commission on May 22, 1973, the Applicant, Rushing Construction Company seeks a Certificate of Public Convenience and Necessity to provide public utility water service in Norwood Acres Subdivision, Union County, North Carolina, and approval of rates to be charged therein.

By Order issued June 6, 1973, 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 Southeast News. 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 was represented by counsel and offered the testimony of Leroy Rushing, who is the Applicant's President. The Commission Staff Attorney cross-examined the witness concerning the information submitted by the Applicant and the Applicant's water utility operations generally.

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 Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is a duly organized and existing corporation under the laws of the State of North Carolina with its registered office at Indian Trail, North Carolina.

2. That the Applicant's business address is 100 Maude Street, Indian Trail, North Carolina; this business enterprise is engaged in the construction business. The Applicant has no previously certificated public utility water systems.

3. That the Applicant provides no public utility water service at the present time in Norwood Acres Subdivision, but it proposes ultimately to serve approximately 50 residential customers.

4. That Norwood Acres Subdivision is a residential subdivision currently under development located on old U. S. 74, approximately three miles from the Town of Matthews, North Carolina.

5. That no other public utility, municipality or membership association currently proposes to provide water service in the Applicant's proposed service area.

6. That the well sites and plans for the design of the proposed water system have been approved by the State Board of Health.

7. That the system as constructed to date is capable of serving approximately 50 residences.

8. That the Applicant proposes to charge the following rates for residential service:

METERED RATES

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $ .80 per 1,000 gallons

CONNECTION CHARGES AND OTHER FEES

$160.00 tap-on fee.

9. That the gross investment in utility plant in the subdivision to date is approximately $31,336.00.

10. That the Applicant proposes to check the water system twice weekly and will be available in the immediate area all of the time in the event that an emergency arises; the name and telephone number of the Applicant's President will be listed in the telephone book and on the utility's billing cards and the prospective customers will be able to call him during the week and on weekends; in the event that they are unable to reach the Applicant's President, the customers can call Mr. Harold Purser.

11. That the proposed metered rate levels will afford the Applicant an opportunity to obtain a just and reasonable rate of return as the number of customers and demand for water increases, and are fair to the using and consuming public; they are similar to rates now charged by public utility water systems of a comparable size and with comparable operations; they, therefore, are herein found to be just and reasonable rates. However, the provision for a $10.00 membership fee should be eliminated, and the Applicant's tap-on fee increased to $160.00.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant. 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.

The Hearing Commissioner concludes that the present and above-mentioned arrangements for repair service should be adequate to the needs of Applicant's customers, but that in the event any change in the repair arrangement should become necessary, Applicant should promptly make a new arrangement equally as satisfactory as the existing one, and that it is the continuing duty of Applicant to keep its customers currently advised of the sources from which they should seek and to whom they should look for repair service.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity be, and hereby is, granted; said Certificate authorizes the Applicant to operate as a public utility providing water service in Norwood 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 as "Appendix A" be, and hereby is, approved; 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 next regular billing, upon one day's notice to the customers.

4. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend, the Applicant being hereby directed to arrange a conference with a Staff member to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of October, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
Rushing Construction Company
Norwood Acres Subdivision

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL SERVICE)

Up to first 3,000 gallons per month - $5.00 minimum
All over 3,000 gallons per month - $ .80 per 1,000 gallons

CONNECTION CHARGES: $160.00 tap-on fee.

RECONNECTION CHARGE

If water service cut off by utility for good cause
[N.C.U.C. Rule R7-20(f)] $4.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-396.

DOCKET NO. W-399

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Suburban Real Estate, Inc., T/A Suburban Utilities Company, P. O. Box 759, Smithfield, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Forest Hills Subdivision, Johnston 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 Thursday, November 1, 1973, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

W. Kenneth Hinton
Attorney at Law
P. O. Box 1162
Smithfield, North Carolina

For the Commission Staff:

Jerry B. Fruitt
Associate Commission Attorney
Ruffin Building
Raleigh, North Carolina 27602

CHAIRMAN WOOTEN, HEARING COMMISSIONER: By application filed with the North Carolina Utilities Commission on August 22, 1973, Suburban Real Estate, Inc., T/A Suburban Utilities Company, seeks a Certificate of Public Convenience and Necessity to provide utility water service in the Forest Hills Subdivision, Johnston County, North Carolina, and approval of rates to be charged therein.

By Order issued September 27, 1973, 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 by personal service on customers by mail or by hand delivery. No one petitioned to intervene in the matter or protested the application.

The public hearing was held at the time and place designated. 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 generally.

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 Hearing Commissioner makes the following

FINDINGS OF FACT

1. The Applicant, Suburban Real Estate, Inc., T/A Suburban Utilities Company, is currently providing public utility water service to nine (9) residential customers in Forest Hills Subdivision and is capable of serving the 36 proposed residential customers.

2. The Forest Hills Subdivision is located in Johnston County approximately 2 miles from the Town of Four Oaks.

3. No other public utility, municipality or membership association currently proposes to provide water service in the Applicant's service area.

4. The well sites and plans for the design of the proposed water system have been approved by the State Board of Health.

5. The Applicant proposes to charge a flat rate of $5.00 per month to be billed on a quarterly basis. Billings will be made in advance, however, payments will not be considered overdue until fifteen (15) days after the end of the quarter.

6. The gross investment in the utility plant to date is $16,047.50.

7. That the Applicant has contracted with Rose Pump Company of Pine Level, North Carolina, to provide emergency service on said system, this service to include night, holiday and weekend emergency service.

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant which can best be met by the Applicant.

That the proposed rates are just and reasonable and the facilities and source of supply which the Applicant proposes to operate should be adequate to supply the reasonable demand of the customers in the proposed service area.

That the Applicant will be permitted as requested to bill quarterly in advance, however, bills are not to be considered past due until fifteen (15) days after the end of the quarter. However, in the event of customer complaints in the future, the method of billing should be reconsidered by the Applicant and the Commission.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That Suburban Real Estate, Inc., T/A Suburban Utilities Company, is hereby granted a Certificate of Public Convenience and Necessity to provide water utility service in the Forest Hills Subdivision as described herein.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Applicant provide satisfactory repair service at all times through agreements with Rose Pump Company of Pine Level, North Carolina, or some other suitable company.

4. That the Applicant is hereby cautioned that it is his continuing duty to keep his customers currently advised of the sources from which they should seek and to whom they should look for repair service.

5. That the Applicant print on his water bills for the benefit of his customers the addresses and phone numbers by which Rose Pump Company and the Applicant can be reached for emergency service.

6. That the books and records of the Applicant shall be kept in accordance with the rules and regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend.

7. That the Applicant submit a chemical analysis of the water in the water system within thirty (30) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This 13th day of November, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

Suburban Utilities Company
Forest Hills Subdivision

WATER RATE SCHEDULE

RATES: Flat $5.00 per month.

CONNECTION CHARGE: No tap-on fee

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)] $4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)] $2.00

BILLING

Billing allowed in advance on a quarterly basis. However, bills not to be considered past due until fifteen (15) days after the end of the quarter. A finance charge of 1% per month will be applied to the unpaid balance of all accounts not paid by fifteen days after the end of the quarter.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-399 on the 13th day of November, 1973.

DOCKET NO. W-372

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application by W. E. Caviness, t/a Touch and Flow Water Systems, 118 Popular Street, Jacksonville, North Carolina, and by M. K. Sessoms, t/a Raeford Plumbing & Heating Company, North Main Street, Raeford, North Carolina, for Authority to Transfer the Water System in Wrightsboro Subdivision, Hoke County, North Carolina, and for Approval of a Certificate of Public Convenience and Necessity and 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 March 6, 1973.

BEFORE: Chairman Marvin R. Wooten, Hearing Commissioner

APPEARANCES:

For the Applicant:

Charles A. Hostetler, Esq.
Hostetler & McNeill
Attorneys at Law
109 Campus Avenue
Raeford, North Carolina

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

WOOTEN, HEARING COMMISSIONER: By Joint Application filed with the North Carolina Utilities Commission on January 16, 1973, the Applicant, M. K. Sessoms, t/a Raeford Plumbing & Heating Company, seeks authority to acquire the water system in Wrightsboro Subdivision owned and operated by W. E. Caviness, t/a Touch and Flow Water Systems, and a Certificate of Public Convenience and Necessity to provide public utility water service in that subdivision, and approval of rates to be charged therein.

By Order issued January 31, 1973, 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 News-Journal, Raeford, North Carolina, and by personal

service on customers by mail or by hand delivery. 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, M. K. Sessoms, appeared himself and was represented by counsel; his evidence was offered and received for the record.

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 Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is currently providing public utility water service to four residential customers in Wrightsboro Subdivision, and seven residential customers in an adjacent mobile home park.

2. That the Applicant is a resident of Hoke County, North Carolina, with his business address at North Main Street, Raeford, North Carolina; this business enterprise is engaged in the plumbing and heating business.

3. That Wrightsboro Subdivision is a residential subdivision in Hoke County, North Carolina, off Highway 401 south-west of Fayetteville, North Carolina, currently receiving water service from W. E. Caviness, t/a Touch and Flow Water System pursuant to a Commission Order issued September 15, 1972, denying a Certificate of Public Convenience and Necessity "subject to leave to operate until successor service can be provided".

4. That no other public utility, municipality or membership association currently proposes to provide water service in the Applicant's proposed service area.

5. That the Applicant, M. K. Sessoms, is in the process of acquiring approval of the State Board of Health for the design of the water system.

6. That the Applicant proposes to charge the following metered rates for residential service:

Up to first 3,000 gallons per month - $6.00 minimum
All over 3,000 gallons per month - $1.00 per 1,000 gallons

7. That there are approximately ten houses in the subdivision but only four are occupied at the present time; because of the highly mobile nature of residents in Wrightsboro Subdivision, being primarily persons associated with Fort Bragg, the Applicant Sessoms has requested a

service charge of $10.00 to be paid by each new customer at the time service is connected; in view of the particular facts in this case, said charge is just and reasonable.

8. That current operations are not producing a net operating income for return but further development of the area is anticipated by the Applicant.

9. That the proposed metered rate levels will afford the Applicant an opportunity to obtain a just and reasonable rate of return as the number of customers and demand for water increases, and are fair to the using and consuming public; they, therefore, are herein found to be just and reasonable rates because of the particular facts of this case.

10. That the Applicant operates a substantial plumbing business employing eleven persons which will be able to provide emergency service; the Applicant should provide telephone numbers for 24-hour per day repair service on its billing statements.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

There is a demand and need for public utility water service in the service area proposed by the Applicant. 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.

The present and above-mentioned arrangements for repair service should be adequate to the needs of Applicant's customers, but that in the event any change in the repair arrangements should become necessary, Applicant should promptly make a new arrangement equally as satisfactory as the existing one, as it is the continuing duty of Applicant to keep its customers currently advised of the sources from which they should seek and to whom they should look for repair service.

IT IS, THEREFORE, ORDERED:

1. That a Certificate of Public Convenience and Necessity be, and hereby is, granted; said Certificate authorizes the Applicant to operate as a public utility providing water service in Wrightsboro Subdivision.

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; said schedule of

rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-|38 and will become effective on the next regular billing, upon one day's notice to the customers.

4. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend, the Applicant being hereby directed to arrange a conference with a Staff member to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This the |9th day of March, |973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
M.K. Sessoms,
T/A Raeford Plumbing and Heating Company
Wrightsboro Subdivision

WATER RATE SCHEDULE

METERED RATES (RESIDENTIAL, COMMERCIAL AND SWIMMING POOL SERVICE)

Up to first 3,000 gallons per month - $6.00 minimum
All over 3,000 gallons per month - $|.00 per |,000 gallons or portion thereof

CONNECTION CHARGES

Tap-on fee	$250.00
Service charge for each new customer at time service is connected	$ |0.00

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)]	$4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)]	$2.00

BILLS PAST DUE

Twenty days after date rendered. A finance charge of |% per month will be applied to the unpaid balance of all accounts not paid within twenty-five (25) days from the billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-372.

DOCKET NO. W-282

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Umstead Water Company, Route 8, Box 114, Raleigh, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service on U. S. 70 and Airport Road near Raleigh, Wake County, North Carolina, and for Approval of Rates	ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, One West Morgan Street, Raleigh, North Carolina on August 21, 1970, at 9:30 A. M. and on May 4, 1972, at 10:00 A. M.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Miles H. Rhyne (August 21, 1970)

and: Commissioner Miles H. Rhyne (May 4, 1972)

APPEARANCES:

For the Applicant:

Waverly H. Robinson
c/o Umstead Water Company
Route 8, Box 114
Raleigh, North Carolina 27607

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602
(August 21, 1970)

William E. Anderson
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602
(May 4, 1972)

BY THE COMMISSION. On August 1, 1970, the application in the above captioned matter was filed with the Commission. Public hearing was held on August 21, 1970, and was continued to enable the Applicant to present further evidence of public convenience and necessity.

On May 4, 1972, further public hearing was held, and late exhibits were due following the hearing consisting of a corporate charter and a letter from the State Board of Health approving the water system. The corporate charter has been filed, but the Board of Health approval letter has not been obtained.

Public notice of the hearings was given as specified by the Commission, and no interventions or protests were received. No one appeared at the hearings to protest the application.

In staff conference on February 26, 1972, the Commission discussed the current status of this matter, and is of the opinion that the water utility franchise should be granted, and that the Applicant should be required to take all steps necessary to obtain State Board of Health approval of the water system within the next 6 months.

Based on the information contained in the application and in the records of this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Applicant, Umstead Water Company, is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service to certain commercial customers on U. S. 70 West and Airport Road, west of Raleigh, and has filed a schedule of rates for said service. The Applicant proposes to limit the supply of water to its customers if the supply becomes critical, and to serve only those customers who can be supplied by the Applicant's available wells located on the property of Carolina Crane Corp.

3. Testimony by Mr. O. Temple Sloan, president of the Applicant, indicates that the Applicant does not anticipate any residential customers because of the commercial nature of the service offered, and because of the area zoning. The gross investment in the water system is approximately $60,000.

4. There is an established market for water utility service in the area, and such services are not now proposed for the area by any other public utility, municipality, or membership association. The Applicant presently furnishes said services to approximately 18 commercial customers in the area.

5. The well sites have been approved by the State Board of Health. The Applicant has submitted plans and specifications of the water system to the Board of Health for their review.

6. The Commission staff representative indicates that the water distribution system and the storage capacity of the elevated tank are satisfactory to comply with the requirements of the State Board of Health, and that the only questionable aspect of this system is its well capacity.

The staff representative recommends that the limited well capacity requires that the limited nature of the water service available be emphasized to each customer.

7. The annual revenues, based on the proposed rates and on 18 customers and a total average consumption of 500,000 gallons per month, would be approximately $7,000.

8. The Applicant has added several classes of commercial customers since this application was filed, and has filed a tariff listing rates for the several classes of customers.

9. The water system is maintained by the Applicant's Secretary-Treasurer, Mr. Waverly H. Robinson, who is also a partner in Carolina Crane Corp., and who resides in Charlotte and commutes to Raleigh on weekends. There have been no customer complaints regarding the service rendered.

CONCLUSIONS

Based on the foregoing Findings of Fact, the Commission concludes that there is a demand and need for water utility service for commercial customers in the area on U. S. 70 West and Airport Road presently served by the Applicant, and that said service can best be furnished by the Applicant.

The initial rates approved by the Commission for said water utility service should be those contained in the Schedule of Rates attached hereto, which rates include the same rates the Applicant was charging for the water utility service prior to the public hearings, and which rates can be considered acceptable to the customers for the specialized service being furnished, in view of the lack of response from the customers.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Umstead Water Company, is hereby granted a Certificate of Public Convenience and Necessity to furnish water utility service to its commercial customers along U. S. 70 West and Airport Road, 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" 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 shall meter the water service for all customers, and shall charge the minimum rate under the metered rates for each class of customers until such time as the water service is metered for all customers in that class.

5. That the Applicant shall ensure that bills for the water service are rendered on a regular, periodic basis; and that said bills shall contain the name, address and phone number of Mr. O. Temple Sloan in Raleigh, North Carolina as the local representative of the water company; and that said bills shall also contain the name, business address and phone number of Waverly H. Robinson in Charlotte, North Carolina, as the alternate representative of the water company.

6. That the Applicant is hereby cautioned that in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements, and the Applicant shall immediately notify the Commission of such alternate arrangements.

7. That the Applicant shall maintain its books and records in such a manner that all of the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

8. That the Applicant is hereby required to take all steps necessary to obtain State Board of Health approval of the water system within six (6) months from the date of this Order.

9. That the Applicant is hereby required to furnish a copy of this Order to each of its present customers, and also to each of its future customers.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-282
Umstead Water Company
From Carolina Crane Corp. on U. S. 70
West to customers on Airport Road, near
Raleigh, North Carolina

WATER RATE SCHEDULE

METERED RATES (Commercial Service)

Service in Umstead Industrial Park:

Up to first 3,000 gallons per month - $4.68 minimum
All over 3,000 gallons per month - $1.00 per 1,000 gallons
Maximum water available per month shall be 6,000 gallons per customer. See note below.

Service outside Umstead Industrial Park (Class I):

Up to first 6,000 gallons per month - $10.00 minimum
All over 6,000 gallons per month - $1.00 per 1,000 gallons
Maximum water available per month shall be 25,000 gallons per customer. See note below.

Service outside Umstead Industrial Park (Class II):

Up to first 25,000 gallons per month - $40.00 minimum
All over 25,000 gallons per month - $1.00 per 1,000 gallons
Maximum water available per month shall be 60,000 gallons per customer. See note below.

Note: Where additional water above the 60,000 gallon limit is requested, the customer requesting such additional water shall be assessed for the cost of the additional wells necessary to provide the additional water. Where more than one customer requests such additional water, the cost shall be shared pro rata between the requesting customers.

CONNECTION CHARGES

Service in Umstead Industrial Park

3/4" service line - $75.00
over 3/4" service line - Actual cost of connection

Service outside Umstead Industrial Park

$3,000.00 tap-on fee, plus connection charge and meter set fee, as follows:

3/4" service line - $250.00 connection charge
1" service line - $300.00 connection charge
over 1" service line - Actual cost of connection
Meter set fee - $ 4.25 per connection

RECONNECTION CHARGES

If water service cut off by utility for good cause [NCUC Rule R7-20(f)]	$4.00
If water service discontinued at customer's request [NCUC Rule R7-20(g)]	$2.00

BILLS DUE when rendered

BILLS PAST DUE fifteen (15) days after billing date

FINANCE CHARGES FOR LATE PAYMENT are one percent (1.0%) per month on the unpaid balance for bills still past due twenty-five (25) days after billing date.

Note: The Company reserves the right to limit the supply of water to customers if the supply becomes critical.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-282, dated March 20, 1973.

DOCKET NO. W-80, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Waterco, Inc., 6700 Belhaven Blvd., Charlotte, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Bermuda Run and Hickory Hill Subdivisions in Davie County, and in Farmwood and Harbor House Estates Subdivisions in Mecklenburg County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER GRANTING FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on July 31, 1973, at 2:00 P. M.

BEFORE: Hearing Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

Charles J. Henderson
Henderson, Henderson, and Shuford
Attorneys at Law
400 Law Building
Charlotte, North Carolina 28202

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney

Post Office Box 991
Raleigh, North Carolina 27602

RONEY, HEARING COMMISSIONER: On May 21, 1973, the Applicant, Waterco, Inc., filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Bermuda Run and Hickory Hill Subdivisions in Davie County, and in Farmwood and Harbor House Subdivisions in Mecklenburg County, North Carolina, and for approval of rates.

By Order issued on June 4, 1973, the Commission scheduled the application for public hearing, and required that Public Notice of the hearing be given by the Applicant. Public Notice was furnished to each customer in the aforementioned Subdivisions by the Applicant, and was published in The Mecklenburg Times, Charlotte, North Carolina, and in The Davie County Enterprise Record, Mocksville, North Carolina, advising that anyone desiring to intervene or to protest the application was required to file their intervention or their protest with the Commission by the date specified in the Notice. No formal interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission's Order. Mr. Garmon C. McCall, Secretary-Treasurer of Waterco, Inc., appeared at the hearing as a witness for the Applicant and presented testimony in support of the application. Mr. J. Roderic Bailey appeared as a witness for the Commission staff and presented testimony concerning his evaluation of the Applicant's plans for the water utility operation. No one appeared to protest the application.

Based on the information contained in the application and in the records of this proceeding, the Hearing Commissioner now makes the following:

FINDINGS OF FACT

1. The Applicant, Waterco, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Bermuda Run and Hickory Hill Subdivisions in Davie County, and in Farmwood and Harbor House Estates Subdivisions in Mecklenburg County, North Carolina, and has filed a Schedule of Rates for said service.

3. Bermuda Run, a Subdivision consisting of approximately 15 streets and 300 lots constructed around a golf course, is located on U. S. Highway 158 approximately 10 miles northeast of Mocksville, North Carolina, in Davie

County. Hickory Hill Subdivision is located on U. S. Highway 64 approximately 3 miles east of Mocksville, and consists of approximately 30 streets and more than 300 lots, and a golf course. Farmwood Subdivision, containing approximately 25 streets and more than 300 lots, is located on State Highway 5| approximately 5 miles north of Matthews, North Carolina, in Mecklenburg County. Harbor House Estates is located off of Interstate 85 approximately |0 miles west of Charlotte, North Carolina, in Mecklenburg County, and is comprised of approximately 3 streets and 75 lots.

4. The Applicant serves a total of approximately 30 customers at the present time in these 4 subdivisions but could be serving as many as 700 or 800 total customers in these areas when their development is completed.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. There is an established market for water utility service in the subdivisions, and such services are not now proposed for the subdivisions by any other public utilities, municipalities, or membership associations. There is a reasonable prospect for growth in demand for the proposed utility services in the subdivisions.

7. The water system plans are approved by the State Board of Health.

8. The Applicant holds franchises to provide water utility service in thirteen other subdivisions in North Carolina, and it furnished water to approximately 842 customers and received approximately $6|,000 in annual revenues from its water utility operations in these subdivisions according to its annual report to the Commission for |972.

9. The Applicant offered no operating expense figures other than those contained in its |972 Annual Report to the Commission.

|0. The Applicant's rates for water utility service in its previously franchised service areas are as shown in Rate Schedule A below:

RATE SCHEDULE A

First 3,000 gallons, or less, per month	$3.50 (Minimum Bill)
Next 5,000 gallons per month, per |,000 gallons . .	.90
Next |2,000 gallons per month, per |,000 gallons .	.80
All over 20,000 gallons per month, per |,000 gallons	.70

The Applicant proposes to charge the rates shown in Rate Schedule B below to the residential customers in Bermuda

Run, Hickory Hills, Farmwood, and Harbor House Estates Subdivisions:

RATE SCHEDULE B

First 3,000 gallons, or less, per month	$5.50 (Minimum Bill)
Next 3,000 gallons per month, per 1,000 gallons . .	1.25
Next 4,000 gallons per month, per 1,000 gallons . .	1.10
Next 10,000 gallons per month, per 1,000 gallons .	1.00
All over 20,000 gallons per month, per 1,000 gallons	.90

11. At the rates shown above in Rate Schedule "A", the Applicant's 1972 Annual Report to the Commission shows a loss of approximately $5,000 for water operations in its franchised areas. Based on these figures, Waterco, Inc., would have had to charge approximately $1.30 more per customer per month to recover its loss and attain a return on its investment comparable to its risk in these water systems. Based on an average monthly water consumption of 6,000 gallons per customer, each customer now pays approximately $6.20 per month.

12. Based on an average monthly consumption of 6,000 gallons per customer, the average water user would be asked to pay $9.25 per month under Rate Schedule "B", now proposed by the Applicant.

13. The Commission staff representative recommended that the Applicant be granted the following rates for residential service:

Up to 3,000 gallons per month	$5.00 Minimum
All over 3,000 gallons per month	1.00 per 1,000 gallons

This would yield a monthly charge of $8.00 for the average water customer, based on an average monthly consumption of 6,000 gallons. These rates are the same as those rates found reasonable for the initial operation of similar regulated water utility systems, and appear to offer the Applicant an opportunity to obtain an adequate return on its investment when its plant becomes more fully utilized.

14. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivisions will be paid by the building contractors or developers of the lots, and will not be paid directly by the water customers.

15. The Applicant shows the anticipated original cost of the water utility in these four subdivisions as $442,800.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following:

CONCLUSIONS

There is a demand and need for water utility service in Bermuda Run, Hickory Hill, Farmwood, and Harbor House Estates Subdivisions which can best be met by the Applicant.

Based on the operating expense figures contained in the Applicant's 1972 Annual Report to the Commission, the rate proposed by the Applicant for residential customers is excessive. A rate of $5.00 minimum for the first 3,000 gallons and $1.00 per 1,000 gallons over the first 3,000 gallons would yield a fair and reasonable return to the Applicant.

The minimum charges proposed by the Applicant for customers using meters larger than 3/4-inch appear reasonable.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Waterco, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Bermuda Run, Hickory Hill, Farmwood, and Harbor House Estates Subdivisions, 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 Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-80, SUB 17
Waterco, Inc.
Bermuda Run, Davie County
Hickory Hill, Davie County
Farmwood, Mecklenburg County
Harbor House Estates, Mecklenburg County

WATER RATE SCHEDULE

METERED RATES

Domestic Service (3/4-inch meter)	
First 3,000 gallons	$ 5.00
Master Meter Billing (1-inch meter)	
First 3,000 gallons	7.50
Master Meter Billing (1 1/2-inch meter)	
First 3,000 gallons	12.50
Master Meter Billing (2-inch meter)	
First 3,000 gallons	17.50
Master Meter Billing (3-inch meter)	
First 3,000 gallons	35.00
Master Meter Billing (6-inch meter)	
First 3,000 gallons	50.00
Next 17,000 gallons - $1.00 per 1,000 gallons	
Over 20,000 gallons - $ .90 per 1,000 gallons	

Condominiums and Mobile Home Parks will pay an additional $2.00 per month per unit.

CONNECTION CHARGES (Paid by Developer)

Bermuda Run	$400.00 each
Farmwood	594.00 each
Hickory Hill	500.00 each
Harbor House Estates	600.00 each

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC Rule R7-20f):	$4.00
If water service discontinued at customer's request (NCUC Rule R7-20g):	$2.00

BILLS DUE - On billing date.

BILLS PAST DUE - Fifteen (15) days after billing date.

BILLING - Monthly, in arrears.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-80, Sub 17 on September 14, 1973.

DOCKET NO. W-373, SUB |

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Daniel A. Vogel, Jr., T/A Foxcroft Apartments, Plaintiff,	)	
vs.	)	ORDER
University of North Carolina at Chapel Hill, d/b/a University Service Plants, Defendant.	)	

HEARD IN: The Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May |0, |973, at |0:00 A.M.

BEFORE: Commissioners Hugh A. Wells (Presiding), John W. McDevitt and Ben E. Roney

APPEARANCES:

For the Plaintiff:

James D. Monteith, Esquire
200 Law Building
Charlotte, North Carolina 28202

For the Defendant:

I. Beverly Lake, Jr., Esquire
Attorney General's Office
Ruffin Building
Raleigh, North Carolina 27602

For the Commission Staff:

W. B. Partin, Jr., Esquire
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building
Raleigh, North Carolina 27602

WELLS, COMMISSIONER. This matter came on for hearing before Division III of the Commission upon the complaint of Daniel A. Vogel, Jr., of Chapel Hill, North Carolina, against the Board of Governors of the University of North Carolina. At the outset of the hearing it was stipulated and agreed by all counsel that the University of North Carolina at Chapel Hill, d/b/a University Service Plants, be substituted as the party Defendant in lieu of the individual members of the Board of Governors of the University of North

Carolina, which amendment to the Pleading was allowed and ordered by the Commission.

Mr. Vogel presented evidence consisting of testimony and exhibits presented by himself and Mr. M. J. Hakan, a Professional Engineer and Partner in Hakan/Corley Associates, an Architectural Engineering Firm in Chapel Hill.

Evidence for the Defendant consisted of testimony and exhibits presented by Mr. Grey Culbreth, Director of Utilities for the University at Chapel Hill, Mr. Everett Billingsley, Professional Engineer, Distribution Superintendent for University Service Plants, and Virgil Ferguson, Professional Engineer, District Manager of Pitometer Associates, an Engineering Consulting Firm of Pittsburgh, Pennsylvania, employed by University Service Plants in study and design of its water system.

Mr. Vogel's evidence tended to show that he is the owner of approximately 60 acres of land of the northeast edge of Chapel Hill, lying between U.S. |5 - 50| and Old Oxford Road, on |9 acres of which land he is presently building and developing an apartment complex known as Foxcroft Apartments. The complex is designed to include 3| apartment buildings of eight units each, with accompanying recreational facilities. The principal access to the development will be a through street running from |5-50| to Old Oxford Road. Vogel's plans originally contemplated water for the project to be supplied from principal mains of University Service Plants in the edge of |5 - 50| and in Old Oxford Road, with a 6-inch connection to run from each source into the project and dead end, each connection to supply approximately |/2 of the planned residential units. The project was designed to include three fire hydrants, one at the |5 - 50| entrance, one at the Old Oxford Road entrance, and one in the middle of the project. The apartment project is underway but does not now have any water service. Two of the buildings under construction recently burned down. Upon Mr. Vogel's completing his construction plans and water layout, he discussed said plans with Service Plant Superintendent Billingsley, and states that he was informed that such plans were not acceptable under the Service Plant's standards. Vogel later amended his plans to provide for a 6-inch line to extend the entire distance through the project from the |5 - 50| connection to the Old Oxford Road connection, but these plans were not acceptable to Service Plants. Vogel proposed that the ownership of the 6-inch line be retained by him, with no dedication to Service Plants, metering to be accomplished by a master meter at each point of connection. Service Plants insisted that the main line through the property should be at least eight inches in diameter and should be dedicated to Service Plants. In addition, Service Plants indicated to Vogel their need for a |2-inch main running from |5 - 50| to Old Oxford Road, and offered to pay Vogel the difference between the cost of installation of an 8-inch and a |2-inch

line, the 12-inch line to be dedicated to Service Plants, and to be owned and maintained by them.

Service Plants' evidence tended to show that the University furnishes public water service to the Town of Chapel Hill and surrounding suburban areas. Its water system has shown rapid growth, with particularly heavy demand in the northeast quadrant, which includes the area in which Foxcroft is located. In an effort to meet the rapidly growing demands upon the system, the University upgraded and formalized its Service Extension Policy in the Spring of 1970, promulgating a formal, written document entitled "Policy for Extension of Water Service" effective July 1, 1970. In 1972, University engaged the services of Pitometer Associates to study its water system and to generate and to recommend a plan for the long-range growth and development of said system. The present water system includes a 12-inch main along 15 - 501, which runs to a point approximately 3/4 of a mile beyond Foxcroft (this main serving residential, commercial and business customers along 15 - 501 and a large area east of said highway), and an 8-inch main along Old Oxford Road (which main serves a large residential area on either side of and beyond Old Oxford Road). Based upon the recommendations of Pitometer Associates, their own studies of the development taking place in the area, and their professional judgment of the most efficient and effective plans to serve the entire area (including Foxcroft and the balance of Vogel's property), Service Plant officials have determined that it is necessary to install a 12-inch free-flowing main through Foxcroft from the 15 - 501, 12-inch main to the Old Oxford Road 8-inch main, and that the 12-inch extension should be dedicated to Service Plants and maintained by them. They have offered to pay Vogel for the difference in the cost between an 8-inch line (the minimum required under the July 1, 1970, Policy) and a 12-inch line, and upon his agreeing to install such a line and dedicate it to them, they will reimburse him for said cost difference and furnish water service to Foxcroft at appropriate rates and charges.

In rebuttal, Vogel offered evidence tending to show that in the past, Service Plants had provided metered service to roughly similar apartment projects from 6-inch mains.

In addition to the evidence adduced at the hearing, the Commission takes judicial notice of the rates, rules and regulations of University Service Plants on file with the Commission.

Based upon the evidence, the Commission makes the following

FINDINGS OF FACT

1. Pursuant to the provisions of Chapter 634, 1971 Session Laws of the General Assembly of North Carolina, the telephone, electric and water divisions of University

Enterprises of the University of North Carolina at Chapel Hill (d/b/a, University Service Plants), are defined as and declared to be "public utilities" as that term is defined in G. S. 62-3(23) and said operations are now subject to jurisdiction and regulation by this Commission pursuant to the provisions of Chapter 62 of the General Statutes.

2. Daniel A. Vogel, Jr., is an individual residing in Chapel Hill, Orange County, North Carolina, engaged in the business of developing and operating an enterprise known as Foxcroft Apartments, located near the Town of Chapel Hill, and he seeks and desires to obtain water service to said development from University Service Plants.

3. Foxcroft Apartments is a "development" as that term is used in Paragraph 3 of Service Plant's published Policy for Extension of Water Service.

4. Service Plants' published Policy for Extension of Water Service is predicated upon a reasonable and professional design and long-range plan for the extension and a provision of public water service to the Community of Chapel Hill and surrounding suburban areas, and its requirements are not discriminatory nor unreasonable, particularly as to the design and capacity of water mains.

5. University Service Plants has offered to furnish water service to Foxcroft apartments under reasonable terms, and the rights of Mr. Vogel as a member of the public to obtain said service are predicated upon his agreeing to comply with such plans.

6. Mr. Vogel's plans for installation of water service were designed essentially to meet the State Plumbing Code and not to comply with the University Service Plants' Policy for Extension of Water Mains and Water Service, and Mr. Vogel's plans are not satisfactory and do not meet Service Plants' requirements.

Upon the foregoing Findings of Fact, the Commission

CONCLUDES

That in order for Mr. Vogel to obtain water service from the University he should agree to comply with the Policy for Extension of Water as set forth in the published Policy of July 1970, which Policy calls for water mains of a minimum size of eight inches. In view of this Policy, the University has requested and required Mr. Vogel to put at least an 8-inch water main through his property, and we conclude that that is a reasonable requirement. In addition to that requirement, the University, in view of the Pitometer Associates' study and prediction for water usage in that area of Chapel Hill, has come to the decision that it would be necessary at this time to install a 12-inch main through the Foxcroft Development, and in view of those circumstances, have asked Mr. Vogel to install such a main,

indicating that they will pay him the difference in cost between the 8-inch minimum required main and the 12-inch main, and we conclude that this is a reasonable requirement on the part of the University, and that Mr. Vogel, in order to obtain water service, should meet such requirement.

IT IS, THERFORE, ORDERED THAT:

(1) In order to obtain water service from University Service Plants, a public utility, Daniel A. Vogel, Jr., must reasonably comply with the Policy for Extension of Water Service promulgated and implemented by Service Plants.

(2) Said Policy requires the installation of water mains of a minimum size of eight inches, and in order to obtain service, Mr. Vogel must meet this requirement.

(3) That the Service Plants' long-range plans for water service in the area indicate a need for a 12-inch main through the Vogel property, and that this need should be accommodated to by Mr. Vogel by his installing said 12-inch main, with the University to pay and reimburse Mr. Vogel for the difference in cost between the cost of installing an 8-inch line and a 12-inch line through said property.

(4) In order for the money cost difference between an 8-inch line and a 12-inch line to be exactly fixed and the University's obligation to Mr. Vogel to be exactly fixed, the following cost estimates, presented at the hearing and not disputed by either party shall be used in computing said difference:

Cost of 8-inch line	$34,253.01
Cost of 12-inch line	$44,673.17

(5) The 12-inch line shall be a free-flowing line through said property, with metering to take place from loops off of said 12-inch line, and in addition to paying Mr. Vogel the difference in the cost of the 8-inch and 12-inch lines as set forth above, the University shall pay Mr. Vogel and reimburse him for the reasonable cost of installing said meter loops off of the 12-inch free-flowing line.

(6) Upon completion of the 12-inch line and its connection to the Service Plants' other main, said line with appropriate easements for access shall be dedicated to Service Plants and maintained by them.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-200, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of LaGrange Waterworks Corp. for Assignment of Service Areas in Cumberland County, and for a Certificate of Public Con- venience and Necessity to Furnish Water Utility Service in said assigned areas in Cumberland County, North Carolina, and for Approval of Rates	)	ORDER DENYING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: Cumberland County Courthouse, Fayetteville, North Carolina on May 9, 1973 at 10:00 a.m.

BEFORE: Commissioners John W. McDevitt, Presiding, Hugh A. Wells and Ben Roney

APPEARANCES:

For the Applicant:

George B. Herndon, Jr.
Nance, Collier, Singleton, Kirkman & Herndon
Attorneys at Law
Drawer 120, Fayetteville, N. C.

For the Intervenor:

Herb Thorp
Rose, Thorp & Rand
Attorneys at Law
200 Green Street
Fayetteville, N. C.

For the Commission Staff:

William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
Ruffin Building, One West Morgan Street
Raleigh, N. C. 27602

BY THE COMMISSION: Upon consideration of the decision in Docket No. W-169, Sub 12, granting a Certificate of Public Convenience and Necessity to the Cumberland Water Company for a water utility service at College Downs Subdivision, Cumberland County, North Carolina,

IT IS, THEREFORE, ORDERED:

That the Application of the LaGrange Waterworks Corporation for a Certificate of Public Convenience and Necessity to provide water utility service in an area in

Cumberland County which includes the College Downs Subdivision be, and hereby is, denied.

BY ORDER OF THE COMMISSION.

This the 2nd day of July, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-240, Sub 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Lampe and Vann, a Partnership, 200 Hawthorne Road, Raleigh, North Carolina, for Approval of Increased Rates for Water Utility Service in Carriage Hills Subdivi- sion, Wake County, North Carolina	) ORDER) GRANTING) GENERAL) RATE) INCREASE

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 9, 1973, at 10:00 A. M.

BEFORE: Commissioners John W. McDevitt (Presiding), Marvin R. Wooten, and Ben E. Roney

APPEARANCES:

For the Applicant:

Charles B. Morris, Jr.
Jordan, Morris and Hoke
Attorneys at Law
Box 709, Raleigh, North Carolina 27602

For the Intervenors:

I. Beverly Lake, Jr.
Assistant Attorney General for Consumer Protection
Ruffin Building
Raleigh, North Carolina 27602

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On October 27, 1972, the Applicants, Ross W. Lampe and Wife, and J. Graves Vann, Jr. and Wife, a Partnership, T/A Lampe and Vann, filed an application with

the North Carolina Utilities Commission for authority to increase rates for water utility service in Carriage Hills Subdivision, Wake County, North Carolina.

By Order issued on November 21, 1972, the Commission suspended the proposed rates, pursuant to G. S. 62-134, and scheduled the matter for public hearing, and required that public notice be given.

On December 1, 1972, the Applicants filed an amendment to their application which reduced the proposed rates contained in the application. On December 8, 1972, the Commission issued an Order approving the amended application and requiring an amended public notice.

Public notice was furnished to each customer in Carriage Hills Subdivision by the Applicant, and was published in The Raleigh Times, Raleigh, North Carolina, advising that anyone desiring to intervene or to protest the application was requested to file their intervention or their protest with the Commission by the date specified in the Notice.

On January 26, 1973, Notice of Intervention was filed with the Commission by Robert Morgan, Attorney General for North Carolina, through I. Beverly Lake, Jr., Assistant Attorney General for Consumer Protection. On January 30, 1973, the Commission issued an Order recognizing the intervention filed by the Attorney General, pursuant to G. S. 62-20.

The public hearing was held at the time and place specified in the Commission's Orders. Mr. John Graves Vann, Jr. and Mr. Earle Duvernay appeared at the hearing as witnesses for the Applicants and presented testimony in support of the application. Mr. David F. Creasy, a staff engineer, and Mr. Danny B. Jones, a staff accountant, appeared as witnesses for the Commission staff and presented testimony concerning their evaluation of the Applicants' water utility operation. There was one letter of protest received by the Commission staff, but no one appeared to protest the application.

Based on the information contained in the application and in the records of this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. The Applicants, Ross W. Lampe and wife, and J. Graves Vann, Jr., and wife, are engaging in the operation of a public water utility as defined in G. S. 62-3.

2. The Applicants have been furnishing water utility service in Carriage Hills Subdivision, Wake County, North Carolina, under a Certificate of Public Convenience and Necessity issued by the North Carolina Utilities Commission on October 14, 1968. The present rates for said service are the same rates authorized by the Commission in its Order

Granting the Certificate of Public Convenience and Necessity in 1968.

3. Carriage Hills Subdivision is a residential subdivision consisting of approximately 1 street and approximately 50 lots. The Subdivision is located approximately 1 1/2 miles from the City of Raleigh on Edwards Mill Road. The Applicants have furnished water service to approximately 22 customers in Carriage Hills since 1968, and have received approximately $1320 annual revenues under the present rates.

4. The provision in the Applicants' present rates specifying "bills due within 10 days from the date rendered" does not conform to the uniform billing practices specified by the Commission, and such a provision specifying "bills past due 15 days after date rendered" would conform to said billing practices.

5. The proposed rates are 100% higher than the rates charged by the Applicants for water utility service in Carriage Hills Subdivision prior to the application.

6. The annual revenues under the proposed rates, based on the Commission staff audit, would be approximately $2,640, and the annual operating expenses, excluding depreciation and income taxes, would be approximately $1358.

7. The net investment in utility plant plus allowance for working capital, based on the Commission staff audit, is approximately $13,075, and the annual depreciation expense is approximately $355.

8. The Commission staff audit included adjustments to the annual depreciation expenses and the depreciation reserve in order to reflect straight line depreciation over the useful life of the plant, as determined by the staff engineer representative. The audit also includes an adjustment in the utility plant in service to disallow approximately 25% of the plant as not being necessary to serve the present customers, as determined by the staff engineer representative.

Based on the foregoing Findings of Fact, the Commission reaches the following:

CONCLUSIONS

The Applicants' net investment in water utility plant plus allowance for working capital in the amount of $13,075 is concluded to be the fair value of the water system for rate making purposes, pursuant to G. S. 62-133. Said conclusion recognizes the manner in which the Applicants obtained the water system and the undeveloped lots in Carriage Hills at public auction, and subsequently had the water system appraised in order to establish its book value, but did not have a formal appraisal made of the undeveloped lots in such

a manner that the appraised value of said lots and said water system could be compared to the actual purchase price at public auction.

The net taxable income under the proposed rates will be approximately $927, and the annual income tax will be approximately $247, leaving a net operating income for return of approximately $680, which will produce an operating ratio of approximately 74.2%, and will produce a rate of return of approximately 5.2% on the fair value of the utility plant investment. The 5.2% rate of return is concluded to be just and reasonable in view of the operating ratio of 74.2%, which is sufficient to compensate the Applicants for their entrepreneurial risk.

The rates approved by the Commission for water utility service in Carriage Hills Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are those proposed by the Applicants, and which rates are concluded to be just and reasonable for the services described herein.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates are hereby deemed to be filed with the Commission, pursuant to G. S. 62-138.

2. That said Schedule of Rates is hereby authorized to become effective immediately for water furnished after the date of this Order, provided said Schedule of Rates does not become effective on bills which are applicable to water service furnished prior to the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 2nd day of April, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-240, SUB 1
Lampe and Vann
Carriage Hills Subdivision, Wake County

WATER RATE SCHEDULE

FLAT RATE: $10 per month

CONNECTION CHARGES: None

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE on billing date

BILLS PAST DUE fifteen (15) days after billing date

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-240, Sub 1 on April 2, 1973.

DOCKET NO. W-240, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Lampe and Vann, a Partnership, 200 Hawthorne Road, Raleigh, North Carolina, for Approval of Increased Rates for Water Utility Service in Carriage Hills Subdivision, Wake County, North Carolina	ORDER OF CORRECTION

BY THE COMMISSION. It has come to the Commission's attention, subsequent to the entry of the Order of April 2, 1973, that the recapitulation of evidence preceding the Findings of Fact on page 2 of said Order is incorrect. Mr. Earle Duvernay did not testify in support of the Application. As clearly indicated on the record, he testified in opposition to the rate increase, as well as in regard to the quality of water service received by him. Therefore, the reference at page 2 of the Commission's Order of April 2, 1973, that ". . . no one appeared to protest the application" is incorrect.

IT IS, THEREFORE, ORDERED that this Order of Correction be made a part of the Commission's Order of April 2, 1973, to the end that the corrections hereinabove to that Order be clearly identified with said Order.

ISSUED BY ORDER OF THE COMMISSION.

This 3rd day of July, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Anne L. Olive, Deputy Clerk

(SEAL)

DOCKET NO. W-67, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Z. V. Pate, Inc., Post Office Box 157, Laurel Hill, North Carolina, for Authority to Increase Rates for Water Utility Service in Laurel Hill Subdivision, Scotland County, North Carolina	)))))	RECOMMENDED ORDER GRANTING RATE INCREASE

HEARD: Tuesday, July 24, 1973, at 2:00 P. M., in the Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina 27602

BEFORE: Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

Mr. Andrew G. Williamson
Mason, Williamson, Etheridge and Mason
316 Wachovia Building
Laurinburg, North Carolina

For the Commission Staff:

Mr. William E. Anderson
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

RONEY, COMMISSIONER: This proceeding was instituted by Z. V. Pate, Inc., on May 14, 1973, by the filing of an application for a rate increase for water service in Laurel Hill, North Carolina.

By Order of the Commission issued on June 4, 1973, the rate increase was suspended for a period of up to 270 days and the Applicant was required to publish notice of the Application and the public hearing thereon in a newspaper of general circulation in the area served. The Commission's Order further required that the Commission Staff make an examination of the books and records of the Applicant.

Public notice was given as required by the Commission. The Commission received no letters of protest from any of the customers in Laurel Hill and no one appeared at the hearing to protest the Application.

Mr. R. W. Hampton, an accountant, appeared as a witness for the Applicant and presented testimony in support of the Application. Mr. Danny B. Jones, Staff Accountant, appeared

for the Commission Staff and offered testimony concerning his examination of the books and records of the Applicant.

Based upon the testimony and Exhibits and the record herein the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant, Z. V. Pate, Inc., is a public utility company duly incorporated in North Carolina holding a Certificate of Public Convenience and Necessity to furnish water utility service in Laurel Hill.

2. That the quality of service furnished by the Applicant is satisfactory.

3. That the net investment in utility plant plus allowance for working capital is approximately $78,800, based on the Commission staff audit, which disallowed $12,691 investment in utility property in Quail Hollow as not being in service as of the end of the test period. The Applicant contends that the Quail Hollow property was in service at the end of the test period, although the Applicant admits said property is not fully utilized.

4. That the annual operating expenses, less depreciation and income taxes, will be approximately $7,014; the annual depreciation expense will be approximately $3,350; and the income taxes will be approximately $2,900; all based on the Commission staff Audit. The Applicant contends that an additional $3,959 operating expenses should have been included in the Staff Audit, based on overhead expenses being absorbed by the parent company, although the $3,959 was not included in the information contained in the Application or in the Applicant's utility accounting records.

5. The annual revenues under the proposed rates will be approximately $19,130, based on the Commission Staff Audit.

6. The annual revenues of $19,130 less annual operating expenses of $7,014, depreciation of $3,350, and income taxes of $2,900, after adjustment for growth, will leave a net income for return of approximately $6,113, which will produce an operating rate of approximately 64.1%.

7. The fair value of the Applicant's investment is concluded to be approximately $80,000, which makes some allowance for the Quail Hollow property being in service, even though most of the property is not fully utilized. The $6,113 net income will produce a return of approximately 7.6% on the Applicant's $80,000 investment, which will be reasonable.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following:

CONCLUSIONS

The Commissioner concludes that the increased rates requested by the Applicant are not excessive and would yield a just and reasonable return to the Applicant.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission, pursuant to G. S. 62-138.

2. That said Schedule of Rates is hereby authorized to become effective immediately for water furnished after the date of this Order, provided said Schedule of Rates does not become effective on bills which are applicable to water service furnished prior to the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-67, SUB 2
Z. V. Pate, Inc.
Laurel Hill, North Carolina

METERED RATE FOR WATER SERVICE

Up to first 3,000 gallons per month, minimum	$3.00
Next 2,000 gallons per month, per 1,000 gallons	.80
Next 2,000 gallons per month, per 1,000 gallons	.70
Next 3,000 gallons per month, per 1,000 gallons	.60
Next 10,000 gallons per month, per 1,000 gallons	.50
All over 20,00 gallons per month, per 1,000 gallons.	.40

SPRINKLER SYSTEM FOR FIRE PROTECTION

Each sprinkler head, per month ..... $ .05

CONNECTION CHARGE - $100.00

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC RULE R7-20-f) $4.00
If water service discontinued at customer's request (NCUC RULE R7-20-g) $2.00

BILLS DUE on billing date

BILLS PAST DUE fifteen (15) days after billing date

FINANCE CHARGES FOR LATE PAYMENT - none

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-67, Sub 2 on August 29, 1973.

DOCKET NO. W-176, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Scientific Water and Sewerage Corporation, 656 Wilmington Highway, Jacksonville, North Carolina for Authority to Increase Rates for Water and Sewer Utility Service in Lauradale Subdivision, Onslow County, North Carolina.	)))))	RECOMMENDED ORDER ESTABLISHING RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June 7, 1973.

BEFORE: Hearing Examiner William E. Anderson.

APPEARANCES:

For the Applicant:

John D. Warlick, Jr., Esq.
Ellis, Hooper, Warlick, Waters & Morgan
Attorneys at Law
P. O. Drawer AE
Jacksonville, North Carolina 28540

For the Commission Staff:

W. B. Partin, Jr., Esq.
Assistant Commission Attorney
North Carolina Utilities Commission
P. O. Box 991, Raleigh, North Carolina 27602

ANDERSON, HEARING EXAMINER. This Order supersedes the Interim Recommended Order issued on June 22, 1973, which denied the proposed increase on an interim basis pending the Applicant's filing an amendment to the Application removing discriminations between the proposed household residential rates and apartment rates.

On July 30, 1973, the Applicant, Scientific Water and Sewerage Corporation, pursuant to the Interim Recommended Order dated June 22, 1973, filed an amendment to the Application for an increase in rates for water and sewer service as filed on March 21, 1973, to increase the water and sewer rates for Lauradale Apartments to a flat rate of

$10.00 per month and to increase the water and sewer rate for Lee Garden Apartments to a flat rate of $8.00 per month, each of said rates to be charged on a monthly basis for each apartment in the respective apartment complex whether or not occupied and to be charged directly to the owner-landlord of the apartment.

In support of said amended Application, the Applicant by affidavit represented that the apartments in Lee Garden Apartments are all one bedroom apartments whereas those in Lauradale Apartments are two bedroom apartments and that the anticipated usage from Lauradale Apartments would exceed that in Lee Garden Apartments; that the anticipated usage from both apartment complexes would be somewhat less than that of the "residential customers" because of the average family size of the apartment occupants as compared to the average family size of the "residential customers"; and that the proposed flat rate charge, because of expected partial vacancies, actually amounts to a comparable rate to the proposed "residential service" rate currently sought based on occupied apartments.

The amendment to the Application was allowed and notice was given by Order providing that any interested person desiring further hearing should request such hearing on or before August 20, 1973. No such requests for further hearing were received on or before August 20, 1973.

Based upon the evidence of record, the Examiner makes the following

FINDINGS OF FACT

1. That the Applicant, Scientific Water and Sewerage Corporation is a North Carolina public utility providing service in the Jacksonville, North Carolina, area and is subject to the jurisdiction of this Commission for the establishment of just and reasonable rates and charges pursuant to Chapter 62 of the General Statutes.

2. That the present and proposed monthly rates in the Application as amended are as follows:

		Present Rates	Proposed Rates
RESIDENTIAL SERVICE (Houses)			
Water:			
First	3,000 gallons, per 1,000 gallons	$ 1.35	$ 1.35
Next	7,000 gallons, per 1,000 gallons	.50	1.00
Next	2,000 gallons, per 1,000 gallons	.60	.90
Next	2,000 gallons, per 1,000 gallons	.90	.80
Next	2,000 gallons, per 1,000 gallons	1.25	.70
Next	2,000 gallons, per 1,000 gallons	1.35	.60
All over	18,000 gallons, per 1,000 gallons	1.35	.50

Sewer:

Flat Rate (Available Only With Water Service	$ 5.00	$ 7.00
CONNECTION CHARGES (Payable by Builder of Houses)	$360.00	$100.00

APARTMENT SERVICE

Water and Sewer Service Combined, Flat Rate:

Two bedroom apartments	$ 8.00	$ 10.00
One Bedroom apartments	6.00	8.00

3. That test year operations as reflected in the Staff audit show the Applicant receiving gross operating revenues of $21,917 with expenses and other revenue deductions in the amount of $21,636 for a net operating income after other adjustments of $232 for a return on a net investment of $92,035 of 0.25%.

4. That the rate adjustments originally proposed in the amount of $8,672 would produce net operating income for return of $5,692 for a rate of return on net investment of 6.22% which is a just and reasonable rate of return on that portion of the Applicant's operations.

5. That the proposed amended apartment rates will produce additional gross operating revenues from test period customers in the amount of $936 (23 Lee Garden Apartments x $2.00 x 12 = $552 plus 16 Lauradale Apartments x $2.00 x 12 = $384) which would not change the above ratios significantly.

6. That this increase in apartment rates and the additional revenues which the Applicant will receive from the approximately 130 additional Lauradale Apartments being served currently, but outside of the test period, will allow a reduction in the rate increase proposed for household residential customers while retaining for the Applicant an opportunity for reasonable earnings. Precise findings as to the net income effect of those additional apartments being served beyond the test period are not possible at this point because the annual expense and investment figures are not presently ascertainable. Based on present figures, however, it does not appear that those apartment revenues will produce an excessive return.

7. That the following rate structure appears appropriate:

WATER SERVICE, PER MONTH

Houses, metered rate:

First 4,000 gallons -- $4.00 (minimum charge)

Next 6,000 gallons	--	1.00 per thousand
Next 2,000 gallons	--	.90 per thousand
Next 2,000 gallons	--	.80 per thousand
Next 2,000 gallons	--	.70 per thousand
Next 2,000 gallons	--	.60 per thousand
All over 18,000 gallons	--	.50 per thousand
Two bedroom apartments, flat rate	--	$5.00
One bedroom apartments, flat rate	--	4.00

SEWER SERVICE, PER MONTH, FLAT RATE

Houses	--	$6.00
Two bedroom apartments	--	5.00
One bedroom apartments	--	4.00

8. That the above approved rate structure removed the discriminations previously existing between the proposed residence household rates and apartment rates; it will provide just and reasonable earnings for the Applicant and provides rates which are similar to or lower than rates for water and sewer service currently provided by water and sewer utilities of a comparable size; they are, therefore, found to be just and reasonable rates.

9. That a household customer using 4,000 gallons of water per month currently pays $5.50 for water and $5.00 for sewer service for a combined bill of $10.50. Under the proposed rates he would pay $6.40 for water and $7.00 for sewer service for a combined monthly rate of $13.40. Under the above approved rate schedule he will pay $10.00 for water and sewer service for a minimum consumption of 4,000 gallons of water; this rate is similar to the flat rate for the two bedroom apartment user (whose anticipated average monthly consumption would be in the range of 4,000 gallons). For consumption of 7,000 gallons he will pay $7.00. The above rates thus charge the apartment user and the household residence minimum water user at a comparable level and place the increase on those who actually consume the larger volumes of water up to 10,000 gallons.

10. That the Applicant's books and records are not in proper form for utility books and records subject to the Rules of this Commission.

Whereupon the Examiner reaches the following

CONCLUSIONS

The rate case was heard on the basis of financial data for the calendar year 1972, and on the basis of the rates initially proposed in the Application filed on March 21, 1971. The calendar year 1972 was the period covered in the audit performed by the Commission Accounting Staff. The water and sewer service provided by the Applicant during

that period included 177 household residential customers, 23 Lee Garden Apartments and 16 Lauradale Apartments. The financial data presented by the Applicant and reflected in the Staff audit for those services proves the necessity for some rate increase. No increase for apartment customers was proposed. It was apparent however at the close of the hearing that the increase must be charged to the apartment customers as well as to the household residential customers in a nondiscriminatory manner. The further Amendment and Notice procedure has now put the case in a posture for issuance of a rate order.

The rate structure approved in this Order will achieve the needed increase in a reasonable and nondiscriminatory manner by spreading the costs equitably over all the minimum use and flat rate customers and charging the costs of additional use to the actual water users.

Both the protestant and the Applicant offered evidence of municipal rates. Such evidence is, however, not controlling because municipal rates are not comparable to regulated utility rates, inasmuch as municipalities finance their water and sewer services by substantial assessments and by taxation. The privately owned water and sewer utilities with tariffs on file with this Commission have submitted financial data from time to time in rate cases and in annual reports which support water rates of at least one dollar per thousand gallons, which is the level established here; a number of the rates on file here for companies with adequate financial data are somewhat higher than that level. From the evidence of record it appears that this Applicant can produce sufficient income from the rates established here and that such rates are fair to the customers.

On August 16, 1973, Mr. David Creasy of the Engineering Staff received a memorandum from Mr. Ernest P. Cain of the State Board of Health stating the following:

> "Referring to our conversation yesterday concerning the water system at Lauradale Subdivision, we direct attention to one of the provisos in the approval letter that an elevated tank was to be constructed when 300 lots were served. According to our information, over 400 lots are connected to this water system at present; and the elevated tank has not yet been constructed. Therefore, this water system is <u>not</u> in compliance with one of the provisions contained in approval of plans and specifications given the water system."

The Examiner concludes that this communication at this stage in the proceeding should not be the basis for denying the increase at the present time inasmuch as (1) the system has just recently passed the 300 customer level, (2) there is no reason to believe that the Applicant will not comply with the design criteria in due course and (3) the Applicant's attorney has committed the Applicant to such action in his letter transmitting the Amended Application. The requisite

plant additions must be made, however, and in the event the Applicant fails to do so the Commission should reopen the matter to consider whether the rates should be reduced until the system is in compliance.

It further appears that the Applicant Scientific Water and Sewerage Corporation has failed to keep its books and records in proper form; this should be corrected so that all books and records kept after January 1, 1973, are in proper form as required by Commission Rules and Staff guidelines. This should constitute a clear warning that failure to comply with these requirements should be grounds for dismissing any rate increase Application forthcoming in the future.

IT IS, THEREFORE, ORDERED:

(1) That the rate schedule attached as Appendix A be, and hereby is, approved without further filing to become effective as the Applicant's schedule of rates and charges on all bills rendered by the Applicant in its next regular monthly billing following the date of this Order.

(2) That the Applicant shall take immediate steps to comply with the overhead storage tank provisions of the State Board of Health design criteria.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of August, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX A
DOCKET NO. W-176, SUB 6
SCIENTIFIC WATER AND SEWERAGE CORPORATION
LAURADALE SUBDIVISION

RESIDENTIAL SERVICE

Water Service, Per Month

Houses, metered rate:

First	4,000 gallons	--	$4.00 (minimum charge)
Next	6,000 gallons	--	1.00 per thousand
Next	2,000 gallons	--	.90 per thousand
Next	2,000 gallons	--	.80 per thousand
Next	2,000 gallons	--	.70 per thousand
Next	2,000 gallons	--	.60 per thousand
All over	18,000 gallons	--	.50 per thousand

Two bedroom apartments,
flat rate -- $5.00

One bedroom apartments, flat rate	--	4.00

Sewer Service, Per Month, Flat Rate

Houses	--	$6.00
Two bedroom apartments	--	5.00
One bedroom apartments	--	4.00

NOTE: Apartment rates are payable by owner-landlord on a monthly basis for each apartment in the respective apartment complex whether or not occupied.

CONNECTION CHARGE

Houses (payable by builder) $100.00.

RECONNECTION CHARGES

If water service cut off by utility for good cause [N.C.U.C. Rule R7-20(f)]	$4.00
If water service discontinued at customer's request [N.C.U.C. Rule R7-20(g)]	$2.00

BILLS DUE: On billing date.

BILLS PAST DUE: Twenty-five (25) days after billing date.

SERVICE CHARGE FOR LATE PAYMENT: None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-176, Sub 6.

DOCKET NO. W-201, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of W. E. Caviness, T/A Touch and Flow Water System, 118 Poplar Street, Jacksonville, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in Colonial Heights and Royal Acres Subdivisions, Wake County, North Carolina, and in Scotsdale Subdivision, Cumberland County, North Carolina.	ORDER DENYING RATE INCREASE

HEARD IN: Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on June 27, 1973, at 2:00 P.M.; September 25, 1973, at 10:00 A.M.; and on December 13, 1973, at 2:00 P.M., and in Jacksonville, North Carolina, on October 2, 1973, at 11:00 A.M. (Deposition)

BEFORE: Commissioner Hugh A. Wells (presiding) and Commissioner Ben E. Roney (June 27, 1973), and

Commissioner Hugh A. Wells (September 25, 1973, and December 13, 1973)

APPEARANCES:

For the Applicant:

Mr. Vaughan S. Winborne
Counsellor and Attorney at Law
1108 Capital Club Building
Raleigh, North Carolina 27601

For the Commission Staff:

Wilson B. Partin
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION. The application in the above captioned matter was filed on March 28, 1973. By Order issued April 24, 1973, the Commission scheduled the application for public hearing, required public notice, and suspended the proposed rates for up to 270 days pursuant to G. S. 62-134.

On May 17, 1973, the Applicant filed an amendment to the application. By letter issued on May 29, 1973, the amendment to the application was allowed. Public notice was given as required in the Commission's Orders, and customer protests were received in response to the notice.

Public hearing was held on June 27, 1973, and it appeared from the evidence received at the hearing that there might be problems arising out of the billing practices of the Applicant and that the Applicant had not furnished the Commission with the information required for proper evaluation of the application. By Order issued July 18, 1973, the Commission scheduled further hearings in the matter and required additional information to be filed by the Applicant. Further public hearing was held on September 25, 1973, at which time it appeared that the Applicant had still not furnished the Commission with all of the information required for proper evaluation of the application. The hearing was continued until depositions could be taken from the Applicant's accountant who was not present at the hearing. By Order issued on November 9, 1973, further hearings were scheduled in January 1974. By further Order on December 4, 1973, the public hearing was rescheduled for December 1973, it appearing that the 270 days' suspension of the Applicant's rates is due to expire on December 24, 1973. Further public hearing was held on December 13, 1973, at which time additional testimony was taken in this matter concerning the information necessary for proper evaluation of the application.

Based upon the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The Applicant is an individual who holds a Certificate of Public Convenience and Necessity to operate as a public utility.

2. The Applicant has not and does not keep his books of account in accordance with the requirements of Chapter 62 of the North Carolina General Statutes and the rules and regulations of this Commission.

3. Applicant has followed the custom and practice of co-mingling the revenues and expenditures of his utility operations with his personal bank accounts and monetary transactions, making it impossible to determine the nature or level of expenses incident to the operation of his utility properties.

4. Applicant has been insensitive to customer complaints as to service, particularly service interruptions, and has not maintained his utility systems and properties in a consistently dependable manner.

5. The investigation of the Commission staff and the reports filed by them have not produced sufficient competent evidence of the Applicant's investment in utility properties, revenues produced, or expenses incurred in the operation of said properties to enable the Commission to make a rational judgment to find and fix rates different from those currently charged by the Applicant.

Based upon the foregoing Findings of Fact, the Commission

CONCLUDES

That the Applicant has failed to carry the requisite burden of proof upon which the Commission can predicate an order to increase his current rates and that the investigation and information furnished by the Commission staff is insufficient to enable the Commission to enter an order increasing said rates and charges.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application in the above captioned matter for authority to increase rates for water and sewer utility service is hereby denied.

2. That this record shall be held open for further action by the Commission to deal with apparent inadequacies in the Applicant's utility operations, billing practices, and record keeping.

3. That the Commission will consider a new application for rate relief in this proceeding upon a showing by the Applicant that arrangements satisfactory to the Commission will be made to ensure that present discrepancies in billing

practices and maintenance of books and records will be corrected, and that present deficiencies in the operation and maintenance of the Scotsdale Subdivision sewer utility plant will be corrected.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of December, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-212, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Devonshire Manor Utilities Company, 600 First Union Building, Durham, North Carolina, for Approval of Stock Transfer, Abandonment of Water Service, and for Approval of Sewer Rates in Devonshire Manor Subdivision, Durham County, North Carolina	) RECOMMENDED ORDER) APPROVING STOCK) TRANSFER, APPROVING) ABANDONMENT OF) WATER SERVICE AND) ESTABLISHING) SEWERAGE RATES

HEARD IN: Hearing Room of the Commission, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on February 2, 1973.

BEFORE: Marvin R. Wooten, Hearing Commissioner.

APPEARANCES:

For the Applicant:

James B. Maxwell, Esq. and
William H. Bayliss, Esq.
Bryant, Lipton, Bryant & Battle
Attorneys at Law
700 First Union National Bank
Durham, North Carolina 27701

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

WOOTEN, HEARING COMMISSIONER. By Application filed with North Carolina Utilities Commission on November 17, 1972,

the Applicant, Devonshire Manor Utilities Company, seeks approval of stock transfer, approval of abandonment of water service and approval of sewerage rates.

By Order issued November 21, 1972, the Commission suspended the rates and required public notice. Protest letters were received on December 8, 1972, requesting a hearing.

By Order issued December 21, 1972, 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 by personal service on customers by mail.

The public hearing was held at the time and place designated by prior order. Persons appearing at the hearing to protest the Application were as follows: Mr. Winston Baugh, Mr. Sterling Tilley, and Mr. Thomas Langston.

The Applicant was represented by counsel and offered the testimony of Mr. L. A. Thomas, who is the Applicant's Vice President. The Commission Staff Attorney cross-examined the witness concerning the information submitted by the Applicant and the Applicant's sewerage utility operations generally, and offered the testimony of the above-named public witnesses.

It was stipulated that the requisite public notice was given; that there are apparently 53 homes in the subdivision, six of which are owned by the developer and have not been sold and are in various stages of construction; that the 53 homes represent the maximum development for the particular section served by the facility in question; that the proposed rate would produce an annual income of $4,770 at maximum development and based upon providing service to all 53 homes on an annual basis; and that the sewerage system is working adequately at the present time.

Mr. L. A. Thomas, Vice President of Devonshire Manor Utilities Company testified that he has been associated with ABG Industries, Inc., an affiliated company, for one year and is familiar with the operation of the sewage treatment facility at Devonshire Manor; that the first year for which operating expense figures are available is 1969; that financial records representing the years 1965 through 1968 were lost due to vandalism at the warehouse office; that the sewerage treatment plant was improved during 1972 and there have been no complaints regarding the functioning of that plant during the past year; that an engineering firm was employed to upgrade the plant and additional facilities have been installed in line with recommendations from the State; that maintenance that would have been done on a year-to-year basis was done in 1972 as a catch-up measure; that the original cost of $83,736 and replacement cost of $99,631 are based on a letter from the engineering firm; that no hookup

charge or connection charge has ever been made to any purchasers of the property since he has been associated with the company and he does not know of any connection charges prior to that time; that actual operating expenses for 1970 were $1,842, for 1971, $1,180 and for 1972 were $5,439.88; that the 1971 and 1972 figures represent primarily the power bills, the payments to the plumbing inspector and some miscellaneous supplies; that the 1972 figures include payments to consulting engineers, plumbing and additional supplies, in addition to the same sort of expenses as in 1970 and 1971; that these expenses were paid by advances from Greenberg Construction Company; that Devonshire Utilities has never received any income to his knowledge; that the $7.50 proposed rate was based upon the minimum charge being used as a sewerage rate in Chapel Hill; that the operating expense figures given do not include overheads or supervision.

Mr. Thomas further testified that he has not made a distinction in his figures between ordinary maintenance expenses and what may be capital investment; that the amounts paid for plumbing services would include the cost of materials as well as a $110 a month payment to Mr. Bobby Dew for periodic maintenance checks; that a "grandfather clause" type of registration has been made for Mr. Bobby Dew with the Water and Air Resources; that ABG is currently engaged in building a larger treatment plant adjacent to the current one and will eventually phase out the current treatment plant and tie the collection lines into the larger plant; that Water and Air Resources has requested that the present plant be eliminated when the new one is built although the present plant is sufficient for present customers and perhaps approximately 20 more, but that Water and Air would prefer the type of treatment the new plant would give as opposed to the treatment provided by the old plant because of the New Hope outfall, but if ABG doesn't go ahead with the new project, the current plant would be satisfactory to provide service; that the existing plant will have some salvage value if removed; that operations at the present time regarding supervision and cleanliness of the site are satisfactory, and the company has let a contract for screening around the site.

Mr. Winston Baugh, a resident of Devonshire Manor Subdivision, testified regarding payment of the original combined water and sewer rate; he voiced the concern of the residents that additional homes will be placed on the system. Mr. Sterling Tilley, a resident of the subdivision testified that he is primarily interested in seeing that a fair rate is set and that further improvement of the treatment plant site is implemented; that in his opinion the expenses claimed for 1972 should be spread over a period of several years because many of the improvements should have been done long ago at a lower cost. Mr. Thomas Langston testified that he is a resident of the subdivision; he testified that he feels the level of $4.00 proposed by the utility two years ago, but never charged, would be

sufficient; that he has never paid a sewer bill although he thought some people in Devonshire Manor paid the $4.00 charge after November 1970.

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 Hearing Commissioner makes the following

FINDINGS OF FACT

1. That the Applicant is currently providing public utility sewerage service to 47 residential customers in Devonshire Manor Subdivision, and proposes ultimately to serve approximately 53 residential customers.

2. That the Certificate of Public Convenience and Necessity issued on January 10, 1966, provided for connection charges as follows: "Water, $350, Sewer $1,250" but the evidence is unclear whether the contribution was received by the utility, either through a separate charge or through property sales by the parent company.

3. That the original parent company, Channing Construction Company, was merged into Greenberg Construction Company in August 1967 and as a result of said merger, Greenberg Construction Company became the sole shareholder of Devonshire Manor Utilities Company.

4. That Devonshire Manor Utilities Company experienced water supply problems during 1967 and arranged for University Service Plants in Chapel Hill, North Carolina, to furnish the subdivision with water.

5. That Devonshire Manor Utilities Company has never had a tariff provision on file establishing a rate for sewerage service, as distinguished from a combined water-sewerage rate and seeks herein a rate of $7.50 per month, which would produce annual revenues at a maximum development of $4,770.

6. That the annual operation and maintenance expenses are not subject to a precise finding based on the record, but are in the range of $1,800 to $2,500.

7. That the tariff heretofore in effect establishes a presumption that connection charges were paid by the customers, and the Applicant has not established that it is entitled to recover depreciation expense on that portion of the plant financed by the customers.

8. That a rate of $5.50 for sewerage service will produce annual revenues of $3,498 and should be sufficient to cover operations adequately and provide fair rate of return on the plant provided by the utility; the proposed rates are not adequately supported herein and are, therefore, unjust and unreasonable rates; but the above rate of $5.50 per month is a just and reasonable rate.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

The Application should be approved insofar as the stock transfer and abandonment of water service. As to the rates, however, the justness and reasonableness of the proposed rates are insufficiently documented. This Commission, however, cannot simply dismiss the proceeding, but to the contrary must establish just and reasonable rates. Accordingly, the rate of $5.50 per month appears to be just and reasonable on the basis of the limited record herein.

IT IS, THEREFORE, ORDERED:

1. That the stock transfer and abandonment of water service herein be, and are hereby, approved.

2. That the schedule of rates attached hereto as "Appendix A" be, and hereby is, approved; 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 next regular billing, upon one day's notice to the customers.

3. That the books and records of the Applicant shall be kept in accordance with the Rules and Regulations of the North Carolina Utilities Commission, and according to such reasonable guidelines as the Staff may recommend, the Applicant being hereby directed to arrange a conference with a Staff member to discuss such guidelines.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of March, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
Devonshire Manor Utilities Company
Devonshire Manor Subdivision

SEWERAGE RATE SCHEDULE

FLAT RATE (RESIDENTIAL): $5.50 Per Month.

CONNECTION CHARGES: None.

RECONNECTION CHARGES

If Sewerage Service Cut Off by Utility for Good Cause [N.C.U.C. Rule R10-16(f)] $15.00

BILLS PAST DUE: Fifteen Days After Date Rendered.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-212, Sub 1.

DOCKET NO. W-266, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motion by Ed Griffin Land Company, 6157 North Independence Boulevard, Charlotte, North Carolina, for Authority to Purchase the Water and Sewer Systems in Cabarrus Woods Subdivision, Cabarrus County, North Carolina, from Ed Griffin Company	)	RECOMMENDED ORDER APPROVING AGREEMENT TO PURCHASE WATER AND SEWER SYSTEM

HEARD IN: Commission Hearing Room, Ruffin Building, One West Morgan Street, Raleigh, North Carolina, on May 17, 1973, at 10:00 A.M.

BEFORE: Chairman Marvin R. Wooten, Presiding, and Commissioner John W. McDevitt and Commissioner Ben E. Roney

APPEARANCES:

For the Applicant:

David S. Dunkle, Esq.
Attorney at Law
Edwards & Warren, Professional Association
811 Johnston Building
Charlotte, North Carolina 28202

For the Commission Staff:

Wilson B. Partin, Jr., Esq.
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

MARVIN R. WOOTEN, CHAIRMAN: By Motion in the cause filed with the North Carolina Utilities Commission on March 19, 1973, the Ed Griffin Land Company, a certificated public utility, seeks Commission approval of an Agreement whereby the Ed Griffin Land Company will purchase the complete water and sewer system constructed by the Ed Griffin Company to serve the Cabarrus Woods Subdivision, Cabarrus County, North Carolina.

The Commission was of the opinion that questions of public policy were involved in the proposal and by Order issued April 25, 1973, set the Motion for public hearing. (On

March 27, 1973, the Ed Griffin Land Company filed an Application for a Certificate of Public Convenience and Necessity to provide sewer utility service in Hemby Acres and Beacon Hills, Union County, North Carolina, and for Approval of Rates; the Commission denominated this case as Docket No. W-266, Sub 5, and consolidated it for hearing with the Motion in the cause. Both dockets came on for hearing on May 17, 1973, at the Commission Hearing Room in Raleigh, North Carolina.)

At the hearing on the consolidated dockets the Ed Griffin Land Company was represented by counsel and offered the testimony of Mr. Robert B. Adcock, Vice President of the Ed Griffin Land Company and Mr. Joseph Warren, III, an attorney in the law firm which represents the Ed Griffin Land Company.

Mr. Adcock's testimony dealt largely with the Land Company's Application for sewer utility service in the Beacon Hills and Hemby Acres Subdivision, Docket No. W-266, Sub 5.

Mr. Joseph Warren testified that Mr. Ed Griffin is the President and sole stockholder of the Ed Griffin Land Company and the Ed Griffin Company; the Ed Griffin Land Company is the utility company and operates water and sewer utilities in subdivisions which have been developed by the Ed Griffin Company. That the Land (utility) Company is asking Commission approval of the Agreement whereby it will purchase the utility facilities of the Ed Griffin Company in Cabarrus Woods Subdivision to the various residences. That the price to be paid for these facilities is the construction cost price paid by the Ed Griffin (realty) Company; that the payment for these facilities is dependent upon the Land (utility) Company making a profit in any given year, payment being limited to 33 1/3 percent of that net profit. Mr. Warren further testified that, in his opinion, the transfer will not result in taxable income to the Land (utility) Company; that the Company will be entitled to the depreciation write-off for tax purposes, at least to the extent that was not contributed by the customers as a contribution in aid of capital. That the Ed Griffin (realty) Company will pay the $100 meter fee and the $350 sewer tap fee in the Cabarrus Woods Subdivision; that the Land (utility) Company will treat these meter and tap fees as contributions in aid of construction. That payments under the Agreement will be treated as ordinary taxable income by the Ed Griffin (realty) Company and as a deductible expense by the Land (utility) Company. Further, that the meter and tap fees will be treated on the books of the Land (utility) Company as contributions in aid of construction and will not be made part of the basis for any depreciation charge to the Land Company's income statement. That the proposed Agreement will not result in an increase in rates.

There was filed as a late exhibit an Affidavit by Mr. Edward C. Griffin, President of the Ed Griffin Land Company and the Ed Griffin Company. In this Affidavit Mr. Griffin stated that the actual costs for constructing the sewer treatment plant and the water and sewer lines in the Cabarrus Woods Subdivision are as follows:

Public Utility Facilities	Construction Costs
1. Sewage Treatment Plant	$107,686.96
2. Sewage Collection Lines	57,718.13
3. Water Wells and Lines	35,618.17
Total to Date	$201,023.26

Mr. Griffin also stated in this Affidavit that these water and sewer facilities shall be sold by the Ed Griffin Company to the Ed Griffin Land Company at a price equal to the actual construction costs, which is $201,023.26.

Based on the information contained in the files of the Commission, and in the record of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. The movant Ed Griffin Land Company is a corporation duly organized under the laws of the State of North Carolina, and is engaged in the sale and distribution of water as a certificated public utility subject to this Commission.

2. The Ed Griffin Company is a corporation duly organized under the laws of the State of North Carolina, and is engaged in the subdivision and sale of lots and in the construction and sale of houses.

3. The Ed Griffin Land Company and the Ed Griffin Company are both wholly owned by Mr. Ed Griffin, who is also the President of the two companies.

4. That there was proposed on 24 March, 1973 an Agreement between the Ed Griffin Company and the Ed Griffin Land Company whereby the Ed Griffin Land Company (Buyer) agreed to purchase the complete water and sewer system constructed by the Ed Griffin Company to serve the Cabarrus Woods Subdivision, Cabarrus County, North Carolina; that the purchase price for the systems is to be an amount not in excess of the Ed Griffin Company's cost for the construction of such facilities, which amount will be payable only out of the net profits computed before taxes and only to the extent of 33 1/3 percent of the annual net profits of the Land Company.

5. That the aforesaid Agreement further provides that the Ed Griffin Company will pay a $100 meter fee and a $350 tap-on fee to the Ed Griffin Land Company; that the Ed

Griffin Land Company will treat these meter and tap fees as contributions in aid of construction.

6. That the construction costs for the sewer and water facilities for the Cabarrus Woods Subdivision subject to the Agreement are as follows:

Public Utility Facilities	Construction Costs
1. Sewage Treatment Plant	$107,686.96
2. Sewage Collection Lines	57,718.13
3. Water Wells and Lines	35,618.17
Total to Date	$201,023.26

7. That the Agreement will result in tax advantages to both the Ed Griffin Land Company and the Ed Griffin Company, but the Agreement will not cause an increase in the rates in the Cabarrus Woods Subdivision.

CONCLUSIONS

The proposed Agreement between the Ed Griffin Land Company and the Ed Griffin Company is not unjust or unreasonable and should be approved; although the Agreement will result in tax advantages to both parties to the Agreement, the sale and transfer of the water and sewer facilities will not result in an increase in rates to the utility customers in the Cabarrus Woods Subdivision.

IT IS, THEREFORE, ORDERED:

That the proposed Agreement between the Ed Griffin Land Company and the Ed Griffin Company for the sale of the water and sewer facilities in the Cabarrus Woods Subdivision be, and hereby is, approved.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-266, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Motion by Ed Griffin Land Company, 6157 North Independence Boulevard, Charlotte, North Carolina, for Authority to Purchase the Water and Sewer Systems in Cabarrus Woods Subdivision, Cabarrus County, North Carolina, from Ed Griffin Company.	ORDER OF CORRECTION

BY THE COMMISSION. It having been brought to the attention of the Commission that the words "tax advantages" appearing in the Findings of Fact and Conclusions of the Order of September 18, 1973, in this docket do not reflect the evidence adduced at the hearing, and the Commission being of the opinion that its Order of September 18, 1973, should be corrected,

IT IS, THEREFORE, ORDERED:

(1) That paragraph 7 of the Findings of Fact be amended to read as follows:

"7. That the Agreement will promote the business interests of both the Ed Griffin Land Company and the Ed Griffin Company, but the Agreement will not cause an increase in the rates in the Cabarrus Woods Subdivision."

(2) That the Conclusions be amended to read as follows:

"The proposed Agreement between the Ed Griffin Land Company and the Ed Griffin Company is not unjust or unreasonable and should be approved; although the Agreement will result in business advantages to both parties to the Agreement, the sale and transfer of the water and sewer facilities will not result in an increase in rates to the utility customers in the Cabarrus Woods Subdivision."

ISSUED BY ORDER OF THE COMMISSION.

This the 26th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

DOCKET NO. W-400
DOCKET NO. W-401
DOCKET NO. W-402
DOCKET NO. W-403
DOCKET NO. W-404
DOCKET NO. W-405

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Motion by William J. Timberlake, T/A Hasty Pump Sales & Service, Route 5, Highway 64 East, Raleigh, North Carolina, for Authority to Incorporate his Water Utility Systems into Six Separate Corporations	ORDER AUTHORIZING TRANSFER OF FRANCHISE AND APPROVING RATES

BY THE COMMISSION: On July 12, 1973, the Commission received a letter from David R. Shearon, attorney for the Respondent, William J. Timberlake T/A Hasty Pump Sales & Service, which requested authority for the Respondent to incorporate his water utility operations into six (6) separate corporations, and to transfer six (6) separate water systems into the six separate corporations.

Commission staff representatives have investigated the proposal, and have reported to the Commission that no advantages or disadvantages affecting the customers could be determined, and that the advantage to the Respondent appears to be a potential tax savings in the event any of the water systems is sold to a governmental water authority in the future.

The Respondent has indicated through his attorney that he will assume full responsibility for the water utility operations of the six (6) corporations, and that he will be the sole stockholder, and that the service to his customers will not be adversely affected.

Based on the information contained in the files of the Commission, the Commission makes the following:

FINDINGS OF FACT

1. The Respondent was granted a franchise to furnish water utility service in Bentley Wood Subdivision, Wake County, North Carolina, by Order issued December 16, 1970, in Docket No. W-290. The Respondent proposes to transfer the Bentley Wood water system to Central Utilities, Inc.

2. The Respondent was granted a franchise to furnish water utility service in Country Hills Estates Subdivision, Johnston County, North Carolina, by Order issued July 15, 1971, in Docket No. W-290, Sub 1. The Respondent proposes to transfer the Country Hills Estates water system to Country Hills Utilities, Inc.

3. The Respondent was granted a franchise to furnish water utility service in Ridge Haven Subdivision, Wake County, North Carolina, by Order issued August 26, 1971, in Docket No. W-290, Sub 2. The Respondent proposes to transfer the Ridge Haven water system to Ridge Haven Utilities, Inc.

4. The Respondent was granted a franchise to furnish water utility service to approximately 36 lots in Sections I and II in Gaylee Village Subdivision, Wake County, North Carolina, by Order issued February 24, 1972, in Docket No. W-290, Sub 3. The Respondent proposes to transfer the Gaylee Village water system to Gaylee Village Utilities, Inc.

5. The Respondent was granted a franchise to furnish water utility service in North Forest Subdivision, Wake

County, North Carolina, by Order issued December 8, 1972, in Docket No. W-290, Sub 4. The Respondent proposes to transfer the North Forest water system to North Forest Utilities, Inc.

6. The Respondent was granted a franchise to furnish water utility service in Barclay Downs Subdivision, Wake County, North Carolina, by Order issued February 13, 1973, in Docket No. W-290, Sub 5. The Respondent proposes to transfer the Barclay Downs water system to Barclay Downs Utilities, Inc.

7. The Respondent was granted a franchise to furnish water utility service in Green Acres Subdivision, Nash County, North Carolina, by Order issued February 13, 1973, in Docket No. W 290, Sub 6. The Respondent has not proposed to transfer the Green Acres water system.

8. The Respondent will continue to honor all contracts and other obligations relating to his water systems through the six corporations.

9. Hasty Pump Sales & Service, Inc., a corporation wholly owned by the Respondent, will perform all services required by the six corporations for their water utility operations, and the books and records of Hasty Pump Sales & Service, Inc., will be available for inspection by the Utilities Commission at any time on the same basis as if it were the holder of a public utility franchise.

10. Central Utilities, Inc., and Country Hills Utilities, Inc., and Ridge Haven Utilities, Inc., and Gaylee Village Utilities, Inc., and North Forest Utilities, Inc., and Barclay Downs, Inc., are corporations duly organized under the laws of the State of North Carolina, and are authorized under their Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

11. The Respondent proposes for the six corporations to charge the same rates for water service as those previously approved by the Commission for the six individual water systems.

Based on the foregoing Findings of Fact, the Commission concludes that the letter from Mr. Shearon described herein should be treated as a Motion in this cause, and that the granting of said motion will not adversely affect service to the customers of the Respondent, but could result in a tax savings for the Respondent.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That each of the six wholly owned corporations of the Respondent is hereby granted a Certificate of Public Convenience and Necessity to furnish water utility service in the subdivision served by the water system transferred to each corporation respectively, as described herein in

paragraphs one (1) through six (6) of the Findings of Fact, upon final consummation of said transfers.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Respondent, William J. Timberlake T/A Hasty Pump Sales & Service, is hereby authorized to transfer six of his water utility systems to six wholly owned corporations of the Respondent, as described herein in paragraphs one (1) through six (6) of the Findings of Fact.

4. That the Certificate of Public Convenience and Necessity held by the Respondent to furnish water utility service in the six subdivisions described herein in paragraphs one (1) through six (6) of the Findings of Fact is hereby cancelled upon final consummation of said transfers, but that the Certificate of Public Convenience and Necessity held by the Respondent to furnish water utility service in Green Acres Subdivision as described herein in paragraph seven (7) of the Findings of Fact is retained by the Respondent.

5. That the Schedules of Rates attached hereto as Appendix A are hereby approved, and that said Schedules of Rates are hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

6. That stock ownership in each of the six corporations described herein in paragraphs one (1) through six (6) of the Findings of Fact shall remain solely in the hands of William J. Timberlake unless specifically authorized by the Commission.

7. That the books and records of the six corporations described herein in paragraphs one (1) through six (6) of the Findings of Fact, and of William J. Timberlake T/A Hasty Pump Sales & Service, and of Hasty Pump Sales and Service, Inc., shall all be subject to consideration by the Commission as a single utility operation for purposes of rate making.

8. That the six corporations described herein in paragraphs one (1) through six (6) of the Findings of Fact shall file with this Commission a report of actions taken and transactions consummated pursuant to the authority granted herein, and that said report shall be filed within thirty (30) days of the consummation of the transactions described herein. The report shall include the journal entries recording the transfers of the water properties, showing the effect of such transactions in accordance with the system of accounts prescribed by the Commission.

9. That each of the six transfers described herein in paragraphs one (1) through six (6) of the Findings of Fact shall be assigned separate docket numbers as follows:

Docket No. W-400 - Country Hills Utilities, Inc.
Docket No. W-401 - Ridge Haven Utilities, Inc.
Docket No. W-402 - Gaylee Village Utilities, Inc.
Docket No. W-403 - North Forest Utilities, Inc.
Docket No. W-404 - Barclay Downs Utilities, Inc.
Docket No. W-405 - Central Utilities, Inc.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of September, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-400
Country Hills Utilities, Inc.
Country Hills Estates, Johnston Co.

WATER RATE SCHEDULE

METERED RATE

Up to first 400 cubic feet per month - $4.50 minimum
All over 400 cubic feet per month - $ .65 per 100 cubic feet

CONNECTION CHARGES - $2.00

RECONNECTION CHARGES

If water service cut off by utility for just cause (NCUC Rule R7-20f) $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) $2.00

SECURITY DEPOSITS in accordance with NCUC Rules, Chapter 12.

BILLS DUE on billing date.

BILLS PAST DUE fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-400 on September 5, 1973.

APPENDIX "A"
DOCKET NO. W-401
Ridge Haven Utilities, Inc.
Ridge Haven Subdivision, Wake County

WATER RATE SCHEDULE

METERED RATE

Up to first 400 cubic feet per month - $4.50 minimum
All over 400 cubic feet per month - $ .65 per 100 cubic feet.

CONNECTION CHARGES - $2.00

RECONNECTION CHARGES

If water service cut off by utility for just cause (NCUC Rule R7-20f) $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) $2.00

SECURITY DEPOSITS in accordance with NCUC Rules, Chapter 12.

BILLS DUE on billing date.

BILLS PAST DUE fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-401 on September 5, 1973.

APPENDIX "A"
DOCKET NO. W-402
Gaylee Village Utilities, Inc.
Gaylee Village Subdivision, Wake Co.

WATER RATE SCHEDULE

METERED RATE

Up to first 400 cubic feet per month - $4.50 minimum
All over 400 cubic feet per month - $ .65 per 100 cubic feet

CONNECTION CHARGES - $2.00

RECONNECTION CHARGES

If water service cut off by utility for just cause (NCUC Rule R7-20f) $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) $2.00

SECURITY DEPOSITS in accordance with NCUC Rules, Chapter 12.

BILLS DUE on billing date.

BILLS PAST DUE fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT - None

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-402 on September 5, 1973.

APPENDIX "A"
DOCKET NO. W-403
North Forest Utilities, Inc.
North Forest Subdivision, Wake County

WATER RATE SCHEDULE

METERED RATE

Up to first 400 cubic feet per month - $4.50 minimum
All over 400 cubic feet per month - $ .65 per 100 cubic feet

CONNECTION CHARGES - $2.00

RECONNECTION CHARGES

If water service cut off by utility for just cause (NCUC Rule R7-20f) $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) $2.00

SECURITY DEPOSITS in accordance with NCUC Rules, Chapter 12.

BILLS DUE on billing date.

BILLS PAST DUE fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-403 on September 5, 1973.

APPENDIX "A"
DOCKET NO. W-404
Barclay Downs Utilities, Inc.
Barclay Downs Subdivision, Wake County

WATER RATE SCHEDULE

METERED RATE

Up to first 400 cubic feet per month - $4.50 minimum
All over 400 cubic feet per month - $ .65 per 100 cubic feet

TAP FEE

$360 per lot for taps on both sides of street - All tap fees paid by developers only.
$400 per lot for taps on one side of street only - All tap fees paid by developers only.

CONNECTION CHARGES - $2.00

RECONNECTION CHARGES

If water service cut off by utility for just cause (NCUC Rule R7-20f) $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) $2.00

SECURITY DEPOSITS in accordance with NCUC Rules, Chapter 12.

BILLS DUE on billing date.

BILLS PAST DUE fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-404 on September 5, 1973.

APPENDIX "A"
DOCKET NO. W-405
Central Utilities, Inc.
Bentley Wood Subdivision, Wake County

WATER RATE SCHEDULE

METERED RATE

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

RECONNECTION CHARGES

If water service cut off by utility for just cause (NCUC Rule R7-20f) $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g) $2.00

SECURITY DEPOSITS in accordance with NCUC Rules, Chapter 12.

BILLS DUE on billing date.

BILLS PAST DUE fifteen (15) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT - None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-405 on September 5, 1973.

DOCKET NO. W-262, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application by Piedmont Construction and Water Company, Inc., P. O. Box 6, Stony Point, North Carolina, and by Catawba Water Supply, Inc., 36 29th Avenue, Hickory, North Carolina, for Authority to Transfer the Water Utility Franchise in Ten Subdivisions in Catawba County, North Carolina, and for Approval of Rates	)	RECOMMENDED ORDER APPROVING TRANSFER AND RATES

HEARD IN: Mooresville Municipal Building, 413 Main Street, Mooresville, North Carolina, on May 15, 1973, at 2:00 P.M.

BEFORE: Hearing Commissioner Marvin R. Wooten

APPEARANCES:

For the Applicants:

William E. Crosswhite
Sowers, Avery and Crosswhite
Attorneys at Law
P. O. Box 1226
Statesville, North Carolina 28677

For the Commission Staff:

Maurice W. Horne
Assistant Commission Attorney
P. O. Box 991, Raleigh, North Carolina 27602

WOOTEN, HEARING COMMISSIONER: On March 23, 1973, the Applicants, Piedmont Construction and Water Company, Inc., and Catawba Water Supply, Inc., filed a joint application with the North Carolina Utilities Commission whereby Catawba Water Supply, Inc., seeks authority to sell its water systems in ten subdivisions in Catawba County to Piedmont Construction and Water Company, Inc.

The Applicants further seek authority for Catawba Water Supply, Inc., to transfer its Certificate of Public Convenience and Necessity to provide water utility service in the ten subdivisions to Piedmont Construction and Water Company, Inc., and for approval of increased water rates in the ten subdivisions.

By Order issued on April 17, 1973, the Commission scheduled the application for public hearing, and required that public notice of the hearing be given by the Applicant. Public Notice was published in the Hickory Daily Record, Hickory, North Carolina, as specified in the Commission's Order, 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 specified in the Notice. Several letters of protest were received by the Commission staff expressing concern about the quality of service in Colonial Heights and Idlewood Acres.

The public hearing was held at the time and place specified in the Commission's Order. Mr. B. B. McCormick, Jr., President of Piedmont Construction and Water Company, Inc., appeared at the hearing as a witness and presented testimony in support of the application. Mr. Darrell Herndon and Mr. Mac Stewart appeared as representatives of the State Board of Health and testified concerning the status of the ten water systems with respect to compliance with State Board of Health standards. Walter Campbell, Francis Cudak, Harry L. Cook, Thomas B. Hardison and Charles L. Poteet appeared as representatives of the St. Stephens Environmental Protection Association and testified that the customers in Colonial Heights and Idlewood Acres were concerned about reports that approximately 130 additional homes in Woodland Mobile Home Park would be added to their water system without any corresponding increase in the number of wells supplying the water, and that the association was concerned about reports that monthly water samples were not being submitted regularly for bacteriological analysis in some of the subdivisions, and that the association wanted assurances that improvements in the quality of service would be made prior to any rate increase being approved.

Based on the information contained in the application in this Docket and in Docket No. W-179, Subs 1 thru 5, and in the records of this proceeding, the Hearing Commissioner now makes the following:

FINDINGS OF FACT

1. The Applicant, Piedmont Construction and Water Company, Inc., is a corporation duly organized under the laws of the State of North Carolina, and is authorized under its Articles of Incorporation to engage in the operation of public utilities, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in the following ten residential subdivisions in Catawba County, North Carolina, and has filed a Schedule of Rates for said service. The ten subdivisions are as follows:

Belle Meade	Monte Vista
Brookwood Terrace	Pinebrook Park
Colonial Heights	Random Woods
Fairbrook Park	Sherrill Development
Greenwood Terrace	Tranquil Village

3. Piedmont proposed to utilize the existing water systems to serve approximately 325 customers in the subdivisions. Piedmont proposes to meter the water service as soon as possible, and to charge a flat rate until meters are installed for all customers.

4. Piedmont has entered into agreements securing ownership or control of the water systems and of the sites for the wells.

5. Piedmont has stipulated that the provisions in its proposed rates specifying reconnection charges and finance charges for late payment be revised to conform to the charges specified by the Commission's rules R12-9 and R7-20(f) and R7-20(g). Piedmont has also stipulated that the tap-on fees for new customers will be the same as those approved for Catawba Water Supply in each subdivision.

6. There is an established market for water utility service in the subdivisions, and such services were furnished in the subdivisions by Catawba Water Supply, Inc., prior to the application.

7. The quality of the water being delivered to the customers meets the U. S. Public Health Service Drinking Water Standards with respect to physical and chemical characteristics in all of the systems, and the Applicant will provide treatment which will control the objectionable characteristics of the excessive iron content in those systems requiring such treatment. Preliminary chemical analysis have indicated that treatment for excessive iron content may possibly be required in Random Woods, Pinebrook Park, Brookwood, and Bell Meade.

8. The water system plans in Random Woods, Colonial Heights, and Brookwood are approved by the State Board of Health. The Board of Health has not approved the remaining seven systems because of their containing some water mains smaller than the prescribed 2" minimum, and because some of the well sites are not acceptable. The Board of Health has accepted the seven systems for surveillance, with the stipulation that the seven systems not be expanded unless they are improved in order to meet the design standards prescribed by the Board of Health. The well sites which are not acceptable generally lack control by the water company of a 100 foot radius around each well, and a few of the wells have potential sources of pollution located within 100 feet of the well.

9. Piedmont holds a franchise to provide water utility service in twenty-seven subdivisions in Alexander, Iredell

and Catawba Counties, and it is presently furnishing water utility service to approximately 1,000 customers in said subdivisions.

10. The annual revenues, based on approximately 325 customers at approximately 5,000 gallons per month per customer would be approximately $27,300 under the proposed new rates and approximately $20,300 under the present rates.

11. The proposed new rates are essentially the same rates as those approved by the Commission for Piedmont's other franchise service areas.

12. The proposed rates are 25% to 75% higher than the rates charged by Catawba Water Supply, Inc., for water utility service in the subdivisions prior to the application.

13. Piedmont's initial investment in water utility plant in the ten subdivisions will be approximately $12,000.

14. Piedmont provides maintenance and repair service to all of its water systems on a 24-hour per day, 7-day per week basis by means of local representatives in each subdivision relaying customer calls thru the Applicant's office to a telephone installed in the car of Mr. McCormick, President of Applicant. Customer service by Piedmont has been satisfactory in its franchised service areas.

Based on the foregoing Findings of Fact, the Hearing Commissioner reaches the following:

CONCLUSIONS

There is a demand and need for water utility service in the ten subdivisions described herein which can be met by Piedmont Construction and Water Company, Inc.

The rates approved by the Commission for water utility service in the ten subdivisions should be those contained in the Schedule of Rates attached hereto, which rates are those found to be reasonable for Catawba Water Supply, Inc., under their previous operating conditions, and which rates should not be increased without a corresponding improvement in the immediate quality of service offered by the utility company. The rates proposed by Piedmont are the same rates as those concluded to be just and reasonable for the water service provided by Piedmont in its other franchised service areas, and are concluded to be just and reasonable for the service proposed herein upon completion of the required improvements in the immediate quality of service. In addition to those improvements which will increase the immediate quality of service, certain long range improvements should be required in order to ensure that the quality of service will be maintained at a high level in the future, but the rates which are approved after completion of the required

improvements in the immediate quality of service should not be subject to such long range improvements.

Piedmont's arrangements for providing customer service in the ten subdivisions will be the same as in its other franchised service areas, and are concluded to be acceptable based on the past performance of said arrangements.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Applicant, Piedmont Construction and Water Company, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in the ten subdivisions in Catawba County described herein and more particularly described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby authorized to become effective on one day's written notice to the customers.

4. That Piedmont Construction and Water Company, Inc., is hereby required to make the improvements in the water utility operations prescribed in Appendix "B" attached hereto, and that upon completion of said improvements in any individual subdivision Piedmont shall submit a report for review by the Commission which lists the improvements made in that subdivision and the date of completion of the improvements, and that upon verification and approval of each report by the Commission, Piedmont shall be authorized by further order of the Commission to charge the rates it proposed in its application for that subdivision.

5. That the Certificate of Public Convenience and Necessity which was previously granted to Catawba Water Supply, Inc., to provide water utility service in the ten subdivisions described herein is hereby cancelled, and that the Certificate of Public Convenience and Necessity which is presently held by Catawba for furnishing water utility service in its remaining two subdivisions shall remain in effect.

6. The Catawba Water Supply, Inc., is hereby authorized to sell its water systems in the ten subdivisions described herein to Piedmont Construction and Water Company, Inc.

7. That Piedmont Construction and Water Company, Inc., is hereby required to make the long range improvements in the water system prescribed in Appendix "C" attached hereto, and that Piedmont shall submit a written report to the Commission which lists the specific improvements to be made in each system and the approximate date each improvement is scheduled for completion and estimated cost of making each

improvement. The written report shall be submitted for review and approval by the Commission within sixty (60) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of June, 1973.

NORTH CAROLINA UTILITIES COMMISSION
Katherine M. Peele, Chief Clerk

(SEAL)

APPENDIX "A"
DOCKET NO. W-262, SUB 12
Piedmont Construction and Water Company, Inc.

Belle Meade	Monte Vista
Brookwood Terrace	Pinebrook Park
Colonial Heights	Random Woods
Fairbrook Park	Sherrill Development
Greenwood Terrace	Tranquil Village

WATER RATE SCHEDULE

METERED RATES

Up to first 3,000 gallons per month - $4.00 minimum
All over 3,000 gallons per month - $0.60 per 1,000 gallons

FLAT RATES

Minimum rates under metered rates until such time as meters are installed for all customers, except that all customers with swimming pools will be charged metered rates immediately.

CONNECTION CHARGES: $200 per lot for new customers

RECONNECTION CHARGES

If water service cut off by utility for good cause (NCUC Rule R7-20f): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20g): $2.00

BILLS DUE on billing date

BILLS PAST DUE Twenty-five (25) days after date rendered

FINANCE CHARGES FOR LATE PAYMENT are one percent (1.0%) per month on unpaid balance for bills still past due twenty-five (25) days after billing date

BILLING shall be monthly, in arrears.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-262, Sub 12 on June 14, 1973.

APPENDIX "B"
DOCKET NO. W-262, SUB 12

The following improvements in the immediate quality of service shall be made by Piedmont Construction and Water Company, Inc., as soon as possible, subject to the terms and conditions contained in the ordering paragraphs of this Order:

1. Install water meters for each customer and charge metered rates for water service.

2. Submit a copy of the final deeds and/or recorded easements for the ten water systems not later than 30 days from the date of this Order.

3. Flush the Belle Meade water system in order to reduce the charcoal sediment in the water to an acceptable level.

4. Take all necessary measures to increase the water pressure in the Colonial Heights water system to an acceptable level, and to ensure that the water pressure in all of the systems is maintained at an acceptable level.

5. Submit monthly water samples to the State Board of Health for bacteriological analysis on a regular basis for all water systems.

6. Do not add any additional customers to any of the water systems without first obtaining State Board of Health approval of the plans and facilities necessary to serve the total customers on the system.

7. Make all physical improvements requested by the State Board of Health at the well sites, such as improvements to the plumbing, well casings, etc.,

8. Make all physical improvements contained on the list of improvements furnished to the Commission by Piedmont as Exhibit #3, including iron filters and chlorination in Belle Meade and Random Woods, and additional storage capacity in Pinebrook Park.

The Hearing Commissioner anticipates that completion of the requirements listed above will enable each of the water systems to render adequate service for rate making purposes, although some of the systems are still not in compliance with the design standards prescribed by the State Board of Health. In the event adequate service is not obtained upon completion of the above requirements, Piedmont is expected to make any additional long range improvements necessary to

obtain adequate service prior to applying for approval of its proposed new rates.

APPENDIX "C"
DOCKET NO. W-262, SUB 12

The following long range improvements shall be made by Piedmont Construction and Water Company, Inc., subject to the terms and conditions contained in the ordering paragraphs of this Order:

1. Provide additional water treatment for excessive iron content in Random Woods, Pinebrook Park, Brookwood, Belle Meade, and any other subdivision where existing treatment is found to be inadequate, and submit a chemical analysis report on the treated water from each well to the Commission staff to verify the effectiveness of such treatment.

2. Replace water mains less than 2" in diameter with mains which are in compliance with State Board of Health design standards.

3. Install additional pumping capacity and storage capacity on water systems where necessary in order to comply with State Board of Health design standards.

4. Install chlorination on each well wherever required by the State Board of Health, provided such chlorination will enable the State Board of Health to approve the well site without further restrictions on that well site (such as 100' clear radius around the well, etc.). This requirement does not relieve Piedmont of its responsibilities to the State Board of Health in the matter of chlorination, but merely relieves Piedmont of the chlorination requirement by this Commission in cases where such chlorination appears to place an additional expense on the customers without obtaining the additional benefit of State Board of Health approval of the water supply facilities.

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10.	Custom P. T. H. D. Builders, Inc. - Recommended Order Granting Contract Authority	T-1657	11-5-73
11.	John Louie Gibson - Order Amending Permit	T-1396, Sub 1	6-6-73
12.	Grantham's Mobile Home Park Sales & Service - Recommended Order Granting Application	T-1640	6-12-73
13.	Alton E. Grimes - Recommended Order Granting Operating Authority	T-352, Sub 4	10-2-73
14.	Hester Transfer & Storage Company - Errata Order	T-1614, Sub 1	5-11-73
15.	Hill-Top Transport - Order Amending Permit	T-1057, Sub 4	1-23-73
16.	Johnson's Mobile Home Services Recommended Order Granting Contract Carrier Authority	T-1636	7-2-73
17.	Johnson's Mobile Home Services Recommended Order Granting Common Carrier Authority	T-1636	12-4-73
18.	Earnest R. Jones - Order Amending Permit	T-806, Sub 3	6-26-73
19.	Lower Creek Mobile Homes Recommended Order Granting Application	T-1516, Sub 1	9-28-73
20.	Merchants Home Delivery Service, Inc. - Recommended Order Granting Permit	T-1655	9-24-73

21.	Ralph K. Patterson Recommended Order Granting Application	T-1660	10-19-73
22.	Truitt's Express Recommended Order	T-1629	3-22-73
23.	Tryon Moving & Storage, Inc. Recommended Order Granting Contract Carrier Authority	T-854, Sub 2	5-2-73
24.	Tucker's Mobile Home Dealer Services - Recommended Order Granting Permit	T-1648	11-5-73
25.	Ward Trucking Company Recommended Order Granting Permit	T-1641	4-25-73
E.	Name Changes		
1.	Ace Moving & Storage Company Approved	T-954, Sub 2	6-29-73
2.	Burham Van Service of North Carolina, Inc. - Approved	T-951, Sub 9	8-7-73
3.	Burris Express, Inc., from Helms Motor Express, Inc. Order Approving Change in Corporate Name	T-681, Sub 39	6-22-73
4.	Central Motor Lines, Inc. Order Correcting Corporate Name	T-262, Sub 9	8-23-73
5.	Novene Mobley English Approved	T-1482, Sub 1	1-30-73
6.	Harnett Transfer, Inc. Approved	T-1132, Sub 3	9-5-73
7.	Bruce Johnson Trucking Company, Inc. - Approved	T-1652, Sub 1	9-4-73
F.	Rates, Fares, and Charges		
1.	Herbert Hoover Barden Recommended Order of Vacation	T-1233, Sub 1	5-24-73
2.	Joe's Mobile Home - Order of Vacation	T-1406, Sub 1	6-19-73
3.	Rates-Truck - Associated Petroleum Carriers, Inc. Order of Vacation	T-825, Sub 161	6-29-73

4.	Rates-Truck - Motor Common Carriers - Order Cancelling Hearing and Discontinuing Proceeding	T-825, Sub 164	8-2-73
5.	Rates-Truck - Motor Common Carriers - Order Cancelling Order of Suspension and Approving Tariffs	T-825, Sub 165	10-1-73
6.	Rates-Truck - Motor Common Carriers - Order Allowing Withdrawal and Cancellation of Proposed Tariff Filing	T-825, Sub 168	10-5-73
G.	Sales and Transfers		
1.	AAA Storage Company, Inc. Transferred from A. Taurus Van Lines	T-9173, Sub 1	6-19-73
	G. W. McKinney - Transferred from AAA Storage Company, Inc.	T-9173, Sub 2	
	A. Taurus Van Lines Recommended Order Dismissing Show Cause and Approving Transfers	T-1593	
2.	Tom Baker Express, Inc. - Order Approving Transfer	T-1533, Sub 1	5-17-73
3.	Bulk Haulers, Inc., from Public Transport Corporation Recommended Order Granting Approval of Transfer	T-1250, Sub 12	1-23-73
4.	Bulk Haulers, Inc., from Public Transport Corporation Final Order Approving Transfer	T-1250, Sub 12	2-20-73
5.	Campbell 66 Service Transferred from Talley-Brook, Inc., Errata Order	T-1626	1-4-73
6.	Carolina Crane Corporation from Warren Brothers, Inc. Order Approving Transfer	T-1381, Sub 1	8-16-73
7.	Cauthen Gin & Bag Company Order Approving Transfer	T-343, Sub 6	12-3-73
8.	Central Motor Lines, Inc., from Winston-Elkin Motor Express, Inc. - Order Approving Merger	T-262, Sub 10	10-5-73

9.	Clark's Transfer - Order Approving Transfer	T-919, Sub 1	9-4-73
10.	Coast Refrigerated Trucking Company, Inc., from A. V. Dedmon Trucking, Inc. - Order Approving Transfers	T-1604, Sub 1	10-31-73
11.	Coastal Moving Company, Inc., from AAA Storage Company, Inc. Order Approving Transfer	T-1643	7-27-73
12.	Coats & Peede Trailer Moving Company from Johnny Lee Williams - Order Approving Transfer	T-1633	1-23-73
13.	Douglas and Bess, Inc. Transferred from Guignard Trucking Company, Inc. (Northeastern Trucking Company) Merger and Transfer Approved	T-1635	7-23-73
14.	Eastern Mobile Homes, Inc., from Richard Lewis Wilburn Order Approving Transfer	T-1622, Sub 1	2-15-73
15.	C. D. Elks Truck Line from John O. Callis and Sons, Inc. Order Approving Transfer	T-1615, Sub 1	2-23-73
16.	Novene Mobley English - Order Amending Permit	T-1482, Sub 1	3-5-73
17.	Everette Truck Line, Inc. Order Approving Transfer	T-27, Sub 5	1-29-73
18.	Everette Truck Line, Inc. Order Approving Transfer	T-27, Sub 6	8-16-73
19.	Grantham Transfer from Herbert Hoover Barden - Recommended Order Approving Transfer	T-1645	6-22-73
20.	Grantham's Mobile Home Park Sales & Service Transferred from Sanford Mobile Home Towing Service - Order Allowing Withdrawal of Appeal	T-1640	7-24-73
21.	Griffin Transfer & Storage Company, Inc. - Order Approving Transfer	T-864, Sub 2	3-28-73
22.	Harper Trucking Company - Order of Merger	T-521, Sub 9 T-521, Sub 10	5-23-73

23.	Hester Transfer & Storage Company (a Corporation) - Order Approving Transfer	T-|6|4, Sub	5-3-73
24.	Hester Transfer & Storage Company (a Corporation) Order of Modification	T-|6|4, Sub	6-25-73
25.	W. B. Holt Transfer & Storage Order Approving Transfer	T-895, Sub	9-||-73
26.	Howell's Motor Freight, Inc., from Rabon Transfer, Inc. Order Approving Transfer	T-|3|8, Sub 2	6-|-73
27.	Iredell Milk Transportation, Inc., from Carolina Milk Transportation Company - Order Approving Transfer	T-|647	7-|6-73
28.	J. E. Ladd & Son - Order Approving Transfer	T-867, Sub	|2-|9-73
29.	Henry Moncure Motors, Inc. Order Approving Transfer	T-|608, Sub	2-|5-73
30.	Mullikin Transfer, Inc. Order Approving Transfer	T-|6|8, Sub	6-|3-73
3|.	Brandon L. Mullis, Inc. Order Approving Transfer	T-|470, Sub	|-4-73
32.	Parker's Van & Storage, Inc. Recommended Order Granting Application	T-|65|	6-22-73
33.	Patterson Storage Warehouse Company, Inc., from A. Marrow, Inc. - Order Approving Transfer	T-857, Sub 2	7-|0-73
34.	Queen's Moving & Storage, Inc., from Hobby's Transfer & Storage Company, Inc. - Order Approving Transfer	T-|639	4-24-73
35.	Seaboard Moving & Storage, Inc., from Warren Brothers, Inc. - Order Approving Transfer	T-|664	8-|6-73
36.	Security Storage Company, Inc., Transferred from Coastal Plains Distributing Company - Order Approving Transfer of Certificate and Change of Origin Point	T-978, Sub |0	5-29-73

37.	Security Storage Company, Inc., Transferred from Coastal Plains Distributing Company - Errata Order	T-978, Sub 10	6-15-73
38.	Security Storage Company, Inc., from Patterson Storage Warehouse Company, Inc. - Order Approving Transfer	T-978, Sub 11	7-31-73
39.	Sells Service, Inc. - Order Approving Transfer	T-942, Sub 4	11-19-73
40.	A. C. Simpson Transfer - Order Approving Transfer	T-844, Sub 2	10-5-73
41.	M. M. Smith Storage Warehouse, Inc., from John G. McGugan, Jr. Order Approving Transfer	T-916, Sub 2	5-4-73
42.	Walters Transfer and Farms, Inc. - Order Approving Transfer	T-616, Sub 2	2-1-73
43.	J. L. Williams Trailer Moving Company Transferred from Eastern Mobile Homes, Inc. Approved	T-1661	8-28-73
H.	Miscellaneous		
1.	Burris Express, Inc. (Helms Motor Express, Inc.) - Order Permitting Withdrawal of Notice of Appeal and Exceptions and Closing Docket	T-681, Sub 38	9-4-73
2.	Complaint-Truck - D. L. H. Corporation - Recommended Order Dismissing Request	T-1287, Sub 25	8-1-73
3.	Complaint-Truck - Red Ball Van Lines, Inc. - Recommended Order Dismissing Show Cause Proceeding	T-1287, Sub 26	7-18-73
4.	Kenosha Auto Transport Corporation - Order Closing Docket	T-1581	5-7-73
5.	William F. Lane - Order Closing Docket	T-1650	6-5-73
V.	RAILROADS		
A.	Mobile Agency Concept		
1.	Seaboard Coast Line Railroad	R-71, Sub 26	1-5-73

	Company - Jacksonville, North Carolina - Order Approving Application		
2.	Seaboard Coast Line Railroad Company - Mooresboro, North Carolina - Order Granting Application	R-71, Sub 29	8-30-73
3.	Seaboard Coast Line Railroad Company - Chadbourn, North Carolina - Order Approving Application	R-71, Sub 31	11-6-73
4.	Seaboard Coast Line Railroad Company - Aberdeen, North Carolina - Order Granting Application	R-71, Sub 34	12-20-73
5.	Southern Railway Company Liberty, North Carolina - Order Approving Application	R-29, Sub 193	4-27-73
6.	Southern Railway Company Liberty, North Carolina - Order Approving Application	R-29, Sub 194	4-27-73
B.	Miscellaneous		
1.	Norfolk and Western Railway Company - Order Granting Application for Abandonment of Several Non-Agency Stations in North Carolina	R-26, Sub 25	12-7-73
2.	Seaboard Coast Line Railroad Company - Order Granting Authority to Retire Team Track	R-71, Sub 32	4-12-73
3.	Seaboard Coast Line Railroad Company - Graingers, North Carolina - Order Granting Application	R-71, Sub 33	9-7-73
4.	Southern Railway Company Motion to Remove Station Building at Mebane Allowed	R-29, Sub 196	7-23-73
5.	Southern Railway Company Addie, North Carolina - Order Granting Petition	R-29, Sub 197	3-30-73
6.	Southern Railway Company Durham, North Carolina - Order Approving Relocation of Freight Agency Station to Ellis Road	R-29, Sub 198	1-31-73

VI. TELEPHONE

A. Complaints

1. Complaint-Telephone - E. A. Friddle vs. Central Telephone Company and Southern Bell Telephone and Telegraph Company - Order Affirming and Adopting Recommended Order Issued 3-19-73	P-29, Sub 85	6-19-73
2. Complaint-Telephone - E. A. Friddle vs. Central Telephone Company and Southern Bell Telephone and Telegraph Company - Order Postponing Effective Date of Commission Order Issued 6-19-73	P-29, Sub 85	7-20-73

B. Radio Common Carriers

1. Anser-Quik Enterprises, Inc., Transferred from Carteret Radio Telephone Service - Approved	P-110, Sub 1	10-24-73
2. Patterson Anserphone Communications Enterprises, Inc., Transferred from Anserphone of Raleigh, Durham, and High Point Authority to Issue Stock and Transfer Certificate - Granted	P-119	10-22-73
3. Ra-Tel Company - Order Approving Modification of Certificate and Extension of Service Area	P-92, Sub 8	10-31-73
4. Telephone Answering Service of Fayetteville, Inc. - Order Approving Purchase and Assignment of Radio Common Carrier Certificate P-99	P-103, Sub 4	8-13-73

C. Securities and Borrowed Funds

1. Carolina Telephone & Telegraph Company - Order Granting Authority to Issue and Sell Debentures	P-7, Sub 589	10-12-73
2. Central Telephone Company Order Granting Authority to Issue and Sell First Mortgage and Collateral Lien Sinking Fund Bonds	P-10, Sub 341	10-26-73

3.	Concord Telephone Company Order Granting Authority to Issue and Sell First Mortgage Bonds	P-16, Sub 120	10-4-73
4.	First Colony Telephone Company Authority to Merge and Authority to Issue Notes	P-28, Sub 14	1-12-73
5.	Heins Telephone Company Authority to Borrow Funds	P-26, Sub 72	11-26-73
6.	Lexington Telephone Company Order Granting Authority to Issue Common Stock	P-31, Sub 94	9-11-73
7.	Mebane Home Telephone Company, Inc. - Order Granting Authority to Borrow Funds and to Sell Stock	P-35, Sub 58	3-6-73
8.	Norfolk & Carolina Telephone & Telegraph Company - Authority to Issue and Sell Common Shares	P-40, Sub 128	4-18-73
9.	Norfolk & Carolina Telephone & Telegraph Company - Authority to Issue and Sell Sinking Fund Debentures	P-40, Sub 129	7-18-73
10.	North Carolina Telephone Company - Authority to Borrow Funds and Issue Note and Mortgage	P-70, Sub 114	4-18-73
11.	North State Telephone Company Authority to Issue and Sell Sinking Fund Notes	P-42, Sub 81	8-15-73
12.	Westco Telephone Company Authority to Sell Common Stock	P-78, Sub 28	3-15-73
13.	Western Union Telegraph Company Authority to Issue and Sell Unsecured Sinking Fund Debentures	WU-93	3-6-73
D.	Miscellaneous		
1.	Central Telephone Company, Central Telephone & Utilities Corporation - Order Granting Authority to Sell N. C. Properties of Lee Telephone Co. to Central Telephone Co.	P-10, Sub 339	3-6-73
2.	Central Telephone & Utilities	P-10, Sub 340	7-24-73

	Corporation and Central Telephone Company - Order Approving Increase in Advances from Parent and Affiliated Corporation		
3.	Ellerbe Telephone Company Order Disallowing Tariff Filing	P-21, Sub 24	1-30-73
4.	Graphic Communications, Inc. Order Allowing Installation of Facsimile Equipment	P-113	2-5-73
5.	Heins Telephone Company - Order Approving Application	P-26, Sub 71	11-15-73
6.	Norfolk & Carolina Telephone & Telegraph Company - Order Granting Authority to Declare Share Dividend	P-40, Sub 127	3-2-73
7.	Pineville Telephone Company Order Granting Certificate of Public Convenience and Necessity	P-120	10-24-73
8.	Southern Bell Telephone & Telegraph Company - Charlotte and Pineville, North Carolina Order Closing Docket Upon Completion of Appeal Proceedings	P-55, Sub 663	8-6-73
9.	Southern Bell Telephone & Telegraph Company - Order Postponing Effective Date of Commission Order Dated 6-12-73	P-55, Sub 728	8-8-73
10.	Southern Bell Telephone & Telegraph Company - Order Denying Request	P-55, Sub 729	3-1-73
11.	Southern Bell Telephone & Telegraph Company - Order Approving Tariff on Less Than Statutory Notice	P-55, Sub 731	4-13-73
12.	Western Union Telegraph Company Order Denying Exemption	WU-89	1-4-73
VII.	WATER AND SEWER		
A.	Certificates Granted		
1.	Bailey's Utilities, Inc. Order Granting Certificate and Approving Rates	W-365	2-22-73

2.	Belmont Water Company, Inc. Order Granting Certificate and Approving Rates	W-393	6-28-73
3.	Bland Construction Company, Inc. - Order Granting Certificate and Approving Rates	W-342, Sub 1	1-25-73
	Recommended Errata Order	W-342, Sub 1	2-2-73
4.	Bondurant Development Company, Inc. - Order Granting Certificate and Approving Rates	W-395	8-23-73
5.	J. C. Bumgarner - Order Granting Interim Temporary Certificate	W-398	12-14-73
6.	C & M Collection Agency, Inc. Interim Recommended Order	W-388	8-17-73
7.	Carolina Forest Utilities, Inc. - Order Affirming and Adopting Recommended Order	W-361	3-14-73
8.	Cumberland Water Company Order Granting Certificate and Approving Rates	W-169, Sub 12	7-2-73
9.	Ray F. Curtis and Evelyn Curtis - Order Granting Certificate and Approval of Rates	W-368	5-11-73
10.	Dillard Grading Company (Forest Hills Water Development Co.) Order Granting Franchise and Approving Rates	W-340, Sub 1	3-13-73
11.	Dillard Grading Company Interim Order Granting Operating Authority	W-340, Sub 2	3-13-73
12.	Essential Utilities, Inc. Order Granting Franchise and Approving Rates	W-297, Sub 2	10-9-73
13.	Fleetwood Falls, Inc. - Order Granting Franchise and Approving Rates	W-380	6-1-73
14.	Fortis Enterprises, Inc. Order Granting Certificate and Approving Rates	W-358	1-25-73

15. General Homes Corporation Order Granting Certificate and Approving Rates	W-364	2-5-73
16. Goose Creek Utility Company Order Granting Certificate and Approving Rates	W-369	6-6-73
17. Guil-Rand Realty and Home Building Company - Order Granting Certificate and Approving Rates	W-391	6-19-73
18. H & H Water Service - Order Granting Certificate and Approving Rates	W-89, Sub 8	2-22-73
19. Heater Utilities, Inc. Recommended Order Granting Franchise and Approving Rates	W-274, Sub 8	2-13-73
20. Heater Utilities, Inc. Recommended Order Granting Certificate and Approving Rates	W-274, Sub 9	3-19-73
21. Holiday Island Property Owners Association - Recommended Order Granting Franchise and Approving Rates	W-386	9-27-73
22. Hound Ears Lodge and Club, Inc. - Order Granting Temporary Authority to Operate and Approving Rates	W-397	11-5-73
23. Hydraulics, Ltd. - Order Granting Certificate and Approving Rates	W-218, Sub 8	5-25-73
24. Investment Land Sales, Inc. Order Granting Certificate and Establishing Rates	W-302, Sub 1	5-7-73
25. Lake Sagamore Water Company, Inc. - Order Granting Certificate and Approving Rates	W-376	7-5-73
26. Lea Water Company - Order Granting Franchise and Approving Rates	W-377	4-10-73
27. Mangum Construction Company Order Granting Certificate and Approving Rates	W-375	3-21-73
28. M. H. Matthis - Order Granting Certificate and Approving Rates	W-383	8-23-73

29. Montclair Water Company - Order Granting Certificate and Approving Rates.	W-173, Sub 8	1-24-73
30. C. J. Moss - Order Granting Interim Temporary Certificate	W-409	10-10-73
31. O/A Utility, Inc. - Order Granting Franchise and Approving Rates	W-392	6-26-73
32. Piedmont Construction and Water Company, Inc. - Order Granting Franchise and Approving Rates	W-262, Sub 10 W-262, Sub 11	6-11-73
33. Pioneer Homes, Incorporated Recommended Order Granting Certificate and Approving Rates	W-317, Sub 1	2-22-73
34. Robin Lake Water System - Order Granting Certificate and Approving Rates	W-370	2-20-73
35. Fred D. Rozzelle - Order Granting Franchise and Approving Rates	W-202, Sub 4	9-21-73
36. Suburban Industries, Inc. Order Granting Franchise and Approving Rates	W-381	6-18-73
37. Suburban Water Company - Order Granting Certificate and Approving Rates	W-394	7-9-73
38. Surry Water Company, Inc. Order Granting Certificate and Approving Rates	W-314, Sub 7	2-1-73
39. Surry Water Company, Inc. Order Granting Certificate and Approving Rates	W-314, Sub 8 W-314, Sub 9	2-1-73
40. William J. Timberlake Recommended Order Granting Franchise and Approving Rates	W-290, Sub 5 W-290, Sub 6	2-13-73
41. Transylvania Utility Company Order Granting Temporary Operating Authority, Approving Initial Issue of Stock, and Rates	W-378 W-378, Sub 1	10-31-73
42. Tull's Bay Utility Corporation Order Granting Certificate and Approving Rates	W-367	2-23-73

43.	Jack A. Underdown Property Management, Inc. - Order Granting Certificate and Approving Rates	W-366	2-22-73
44.	Urban Water Company, Inc. Order Granting Franchise and Approving Rates	W-256, Sub 5	6-|-73
45.	Willow Creek Builders, Inc. Order Granting Franchise and Approving Rates	W-387	|0-23-73
B.	Rates and Revised Tariffs		
|.	Atlantic Beach Sales and Service - Order Establishing Rates	W-75, Sub 3	8-29-73
2.	Beatties Ford Utilities, Inc. Derita Woods Utilities, Inc. Idlewild Utilities, Inc. Sharon Utilities, Inc. Springfield Utilities, Inc. Providence Utilities, Inc. Order Overruling Exceptions and Affirming Recommended Order	W-|92, Sub 2 W-|9|, Sub 2 W-|67, Sub | W-|93, Sub | W-|94, Sub 2 W-|8|, Sub 3	6-29-73
3.	Brookhaven, Inc. - Order Approving Rates	W-||9, Sub 4	9-|7-73
4.	Carolina Pines Construction Company - Order Approving Rates	W-34|, Sub	9-20-73
5.	R. E. Graham - Order Granting Rate Increase	W-|84, Sub	||-8-73
6.	H & H Water Service - Order Approving Revised Tariff	W-89, Sub 9	2-20-73
7.	Charles C. Neill - Order Approving Metered Rates and Requiring Water Meters	W-270, Sub	2-5-73
8.	Piedmont Construction and Water Company, Inc. - Order Approving Increased Rates	W-262, Sub |2	|0-|-73
9.	Regalwood Water Company - Order Approving Revised Tariff	W-|87, Sub 2	2-|9-73
|0.	Ridgecrest Baptist Assembly Order Approving Revised Tariff	W-7|, Sub 2	2-20-73
||.	Jack A. Underdown Property Management, Inc. - Order Approving Revised Rates	W-366, Sub	6-|-73

C. Transfers

1. Devonshire Manor Utilities Company, Inc. - Order Granting Authority to Transfer Ownership	W-212, Sub 2	12-4-73
2. East Central Water, Inc., from W. H. Beard - Order Approving Transfer, Cancelling Franchise, and Requiring Notice	W-351, Sub 1	4-10-73
3. Genoa Water System from Centennial Water Company, Inc. Order Approving Transfer of Franchise and Rates	W-321, Sub 1	10-15-73
4. Heater Utilities, Inc., from Hoke E. Bullock - Order Granting Franchise and Approving Rates	W-274, Sub 11	7-25-73
5. Hensley Enterprises, Inc., from H & H Water Service Order Granting Approval of Transfer	W-89, Sub 10	10-9-73
6. Kemper Corporation from Hanover Services, Inc. Order Approving Transfer of Stock	W-323, Sub 1	10-25-73

D. Transfers to the City of Charlotte

1. Ed Griffin Land Company Approved	W-266, Sub 1	3-7-73
2. Mecklenburg Engineers and Contractors, Inc. - Approved	W-138, Sub 8	7-9-73
3. SBS Utility Company - Approved	W-265, Sub 1	1-10-73
4. Sharon Utilities, Inc. Approved	W-193, Sub 2	2-20-73

E. Miscellaneous

1. Beech Mountain Utility Company to Carolina Caribbean Utility Company - Order Approving Change in Corporation Name	W-300, Sub 2	1-10-73
2. R. D. Jackson - Order Cancelling Certificate	W-26, Sub 3	4-2-73

3. Page-Boling-Jessup, Inc. Order Allowing Motion to Withdraw Application	W-374	3-19-73
4. Ridgecrest Baptist Assembly to Ridgecrest Baptist Conference Center - Order Authorizing Change in Name	W-71, Sub 3	3-14-73
5. F. C. Smith Water System Order Authorizing Abandonment	W-33, Sub 2	5-24-73
6. Water Company, Inc. - Order Requiring Continued Service	W-10, Sub 5	9-21-73